

**REQUEST FOR PROPOSALS**  
**for**  
**HEAVY CONSTRUCTION & INDUSTRIAL**  
**EQUIPMENT**

**Issued by**  
**THE STATE OF OKLAHOMA**



**OKLAHOMA**  
Office of Management  
& Enterprise Services

**In collaboration with**



**SOLICITATION NUMBER OK-MA-192-23**

**RFP WEBSITE: [ok.gov/dcs/solicit/app/solicitationDetail.php?solID=4415](http://ok.gov/dcs/solicit/app/solicitationDetail.php?solID=4415)**

## RFP OVERVIEW

### I. OVERVIEW

This Request for Proposals (RFP) is being issued by the State of Oklahoma (“Lead State”), Office of Management and Enterprise Services, in collaboration with the NASPO ValuePoint cooperative purchasing program. The purpose of this RFP is to establish one or more Master Agreements with manufacturers of new heavy construction and industrial equipment. Collectively, these Master Agreements will constitute the NASPO ValuePoint Construction Equipment Portfolio.

The purpose of this competitive solicitation is to develop a “catalog category discount” contract to provide for equipment to be made available for purchase. Only Manufacturer Suppliers with dealer networks in many states are asked to bid directly on the contract. The contract will be a multiple award contract for both equipment and warranty work with replacement parts.

#### **About NASPO ValuePoint**

NASPO ValuePoint is a division of the National Association of State Procurement Officials (NASPO), a non-profit association dedicated to advancing public procurement through leadership, excellence, and integrity. In accordance with NASPO ValuePoint’s Lead State Model™, the Lead State is issuing this RFP, evaluating responses, and establishing Master Agreements with the support and assistance of a Multistate Sourcing Team™ composed of individuals from other member states, representing a broad range of perspectives that ensure the RFP incorporates best practices recognized by public entities across the country.

Participation in NASPO ValuePoint Master Agreements is convenient and cost-effective for eligible entities—including state departments, institutions, agencies, and political subdivisions, federally recognized tribes, and other eligible public and nonprofit entities in the 50 states, the District of Columbia, and U.S. territories—and suppliers, with no membership or registration required. In 2021, contractors reported a combined \$16.94 billion in sales through NASPO ValuePoint Master Agreements awarded through cooperative solicitations like this RFP, including a combined \$31.03 million in sales through the current Construction Equipment portfolio.

More information about NASPO, NASPO ValuePoint, and the NASPO ValuePoint Lead State Model can be found at [www.naspo.org](http://www.naspo.org) and [www.naspovaluepoint.org](http://www.naspovaluepoint.org) and in Attachment E, Participation Information.

### II. GENERAL INFORMATION AND INSTRUCTIONS

#### **A. Important Dates.**

1. **RFP Open Date:** December 19, 2022 (Monday)
2. **RFP Q&A Deadline:** January 16, 2023 (Monday) by 3:00pm Central Time
3. **RFP Close Date:** January 30, 2023 (Monday) by 3:00pm Central Time

Dates and deadlines are subject to change. Offerors should continue checking the RFP Website for the most up-to-date information.

#### **B. RFP Contact.** The following individual is the sole contact for this RFP:

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**Asha Parks**

Contracting Officer/Procurement Specialist  
Email - [asha.parks@omes.ok.gov](mailto:asha.parks@omes.ok.gov)

State of Oklahoma, OMES Central Purchasing  
2401 N. Lincoln Blvd.,  
Oklahoma City, OK 73105

- C. Contract Term.** The initial term of the master agreement shall be from the date of award for two (2) years with the option to renew for three (3) additional one-year periods.
- D. Renewals** Prior to any renewal, the Lead State shall subjectively consider the value of the Contract, the Supplier's performance and review of current pricing and discounts offered by Supplier. If it is determined changes to the Master Agreement are required as a condition precedent to renewal, the Lead State and Supplier will cooperate to evidence such required changes in an Addendum.
- E. Extensions.** The Lead State may extend the Master Agreement for ninety (90) days beyond a final renewal term. If exercised, the Lead State shall notify Supplier in writing prior to expiration date. The Lead State, and to the extent allowable by law, may choose to exercise subsequent ninety (90) day extensions at the Agreement pricing rate, to facilitate the finalization of related terms and conditions of a new award or as needed for transition to a new Supplier.

**F. RFP Website.** The following website is the sole official source for RFP information and updates:

Link / URL --- [ok.gov/dcs/solicit/app/solicitationDetail.php?solID=4415](http://ok.gov/dcs/solicit/app/solicitationDetail.php?solID=4415)

**G RFP Documents.** This RFP consists of this RFP Summary, the following attachments, and any information or materials posted by the Lead State to the RFP Website, as amended:

1. Attachment A, RFP Terms and Conditions
2. Attachment B, Scope of Work
3. Attachment C, RFP Evaluation Plan
4. Attachment D, Sample Master Terms and Conditions
5. Attachment E, Potential Participation
6. Attachment F, Protest Information
7. Attachment G, Offeror Information, Acknowledgements, and Certifications
8. Attachment H, Offeror Response Worksheet
9. Attachment I, Cost Proposal
10. Attachment J, Proposed Modifications to Sample Master Agreement
11. Attachment K, Claim of Business Confidentiality
12. Attachment L, Value Add Plan

13. Attachment M, Authorized Dealers Listing
14. Attachment N, Past Performance Reference Survey

#### **H How to Ask Questions.**

1. **Read and review this RFP, including all attachments, exhibits, and amendments.**
2. For questions about the content of this RFP, please submit them in writing via email to **Asha Parks** at [asha.parks@omes.ok.gov](mailto:asha.parks@omes.ok.gov) by the deadline (date and time shown) in Section II.A. Questions submitted after this deadline will not be answered. Answers will be publicly given via the State of Oklahoma Solicitation site as an amendment to the RFP as soon as practicable. Questions must reference the specific section of the RFP to which the question relates.
3. The identity of prospective Offerors will not be published with the answers, but the text of questions will be restated, so Offerors are cautioned about including context in questions that may reveal the source of questions.

#### **D. How to Respond.**

1. **Read and review this RFP, including all attachments, exhibits, and amendments.**
2. Prepare a proposal that:
  - a. Follows the requested format.
  - b. Includes the Solicitation Number on all materials making up the proposal.
  - c. Addresses each question and request for a response in this RFP, including all questions in Attachment H, Offeror Response Worksheet.
  - d. Clearly demonstrates your ability to meet the Scope of Work described in Section III and Attachment B; and
  - e. Includes all required submissions identified in Section IV.
3. Submit your proposal by the RFP Close Date. All responses must be sent electronically to: [OMESCPeBid@omes.ok.gov](mailto:OMESCPeBid@omes.ok.gov)

Proposers are solely responsible for ensuring that their Proposals are received by the Lead State in accordance with these solicitation requirements, before the closing date and time, and sent to email reference above. No paper copies will be accepted. at the place specified on the cover sheet of this RFP.

### **III. SCOPE OF WORK**

A detailed description of the Deliverables being sought through this RFP is attached as Attachment B, Scope of Work.

The scope of this RFP and its resulting Master Agreement(s) is intended to benefit all state departments, institutions, agencies, and political subdivisions and other eligible public and nonprofit entities in the 50 states, the District of Columbia, and U.S. territories. Therefore, **Offerors should not interpret the Scope of Work to be associated with or limited to any specific purchase, implementation, project, need,**

or program within the Lead State or any other state or eligible entity. Proposals should be generally applicable to all potential Participating and Purchasing Entities, except where specificity is requested.

#### IV. OFFEROR RESPONSE

**A. Required Submissions.** All responses are required to be submitted directly through to [OMESCPeBID@omes.ok.gov](mailto:OMESCPeBID@omes.ok.gov). The following must be submitted with your proposal:

1. Completed and signed Attachment G, Offeror Information, Acknowledgements, and Certifications
2. Completed Attachment H, Offeror Response Worksheet
3. Completed Attachment I, Cost Proposal, submitted as a separate document and separate file.
4. Completed Attachment J, Proposed Modifications to Sample Master Agreement
5. Completed and signed Attachment K, Claim of Business Confidentiality
6. Completed and signed Attachment L, Value Added Plan
7. Attachment M, Authorized Dealers & Distributors Listing
8. Attachment N, Past Performance Surveys (3)
9. OMES Form CP076, Responding Bidder Information
10. OMES Form CP004, Certification for Competitive Bid and/or Contract (Non-Collusion Certification).
11. Redacted copy of proposal clearly marked as such, if claiming confidential, proprietary, or protected information.
12. Redlined copy of Attachment D, Sample Master Agreement, if proposing modifications

**B. Other Documents.** The following are informational only and do **not** need to be submitted with your proposal:

1. Attachment A, RFP Terms and Conditions
2. Attachment B, Scope of Work
3. Attachment C, RFP Evaluation Plan
4. Attachment D, Sample Master Agreement
5. Attachment E, Potential Participation
6. Attachment F, Protest Information

#### V. EVALUATION AND AWARD PROCESS

**A.** Proposals will be sealed until the RFP Close Date. After opening, proposals will be evaluated in stages as set forth in this section and further detailed in Attachment C, RFP Evaluation Plan.

1. **Stage 1: Initial Responsiveness.** Proposals will be reviewed for completeness and initial responsiveness. Proposals omitting required documents or responses may be rejected in accordance with Attachment A, RFP Terms and Conditions.
2. **Stage 2: Mandatory Minimum Requirements.** Proposals meeting initial responsiveness requirements will be evaluated against the Mandatory Minimum Requirements set forth in

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Attachment C, RFP Evaluation Plan. Proposals meeting all Mandatory Minimum Requirements will proceed onto the Stage 3: Technical Criteria Evaluation.

3. **Stage 3: Technical Criteria.** Proposals meeting all Mandatory Minimum Requirements will be evaluated against the Technical Criteria set forth in Attachment C, RFP Evaluation Plan. All responses which scored at least 75% of available points will move on to the Stage 4 Cost evaluation.
4. **Stage 4: Cost Evaluation.** Cost Proposals not rejected following evaluation of Technical Criteria will be evaluated. Costs will be scored into three Categories as detailed further within Attachment C – RFP Evaluation Plan. Cost Proposals may also be subject to an independent review for reasonableness and best value by the Lead State.
5. All weighted scores will be totaled to arrive at the supplier's total scored evaluation.
6. In accordance with Oklahoma Statutes, 74 O.S. § 85.5, the State of Oklahoma reserves the right to negotiate with one, selected, all or none of the Offerors responding to this solicitation to obtain the best value for the Lead State. Negotiations could entail discussions on products, services, pricing, contract terminology or any other issues that mitigate the Lead State's risks. The Lead State will consider all issues negotiable and not artificially constrained by internal corporate policies. Negotiation may be with one or more Offerors, for any and all items in the Offeror's Proposal.

Firms that contend that they lack flexibility because of their corporate policy on a particular negotiation item may face a significant disadvantage and may not be considered. If such negotiations are conducted, the following conditions shall apply:

Negotiations may be conducted in person, in writing, or by telephone.

Negotiations will only be conducted with Offerors' that submitted potentially acceptable Proposals. The State reserves the right to limit negotiations to those Proposals that received the highest rankings during the initial evaluation phase.

Terms, conditions, prices, methodology, or other features of the Offeror's Proposal may be subject to negotiations and subsequent revision. As part of the negotiations, the Offeror may be required to submit supporting financial, pricing, and other data in order to allow a detailed evaluation of the feasibility, reasonableness, and acceptability of the Proposal.

7. It is anticipated that this RFP may result in Master Agreement awards to multiple contractors, at the Lead State's discretion. The evaluation process is designed to award the contract resulting from this RFP to the Supplier deemed to be the most responsive and responsible concerning requirements outlined in the Technical Requirements.

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- B.** After evaluations are completed, the Lead State and Multistate Sourcing Team will determine which proposals are most advantageous to the Lead State and potential Participating and Purchasing Entities. Awards will be made at the natural break of high and low scores.
- C.** Prior to announcement of awards and execution of Master Agreements, the Lead State will present an award recommendation to the NASPO ValuePoint Executive Council for approval of the proposed awards.
- D.** Following approval of the NASPO ValuePoint Executive Council, the Lead State will issue an intent-to-award announcement on its electronic procurement system. Proposal files are public records and available for review at the offices of the Lead State by appointment.



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## Attachment A RFP TERMS AND CONDITIONS

This RFP and Offeror's participation therein is subject to the following terms and conditions:

### I. DEFINITIONS

- A. Confidential Information** means any and all information in any form that is marked as confidential or would by its nature be deemed confidential and is obtained by Offeror in connection with this RFP, including but not limited to the data or records of the Lead State, the Multistate Sourcing Team, NASPO, or NASPO ValuePoint.
- B. Contractor** means an Offeror with whom the Lead State executes a Master Agreement resulting from this RFP.
- C. Deliverable** means a good, product, service, solution, result, labor, or other effort being sought through this RFP.
- D. Interested State** means a state that has requested to be identified as a potential Participating Entity in this RFP.
- E. Lead State** means the State issuing this RFP.
- F. Master Agreement** means a contract, resulting from this RFP, that is executed by and between a successful Offeror and the Lead State, acting in collaboration with NASPO ValuePoint.
- G. Multistate Sourcing Team** means the group of individuals assisting the Lead State with solicitation and contracting activities, which may include but are not limited to development of this RFP, evaluation of proposals, negotiation of Master Agreements, and evaluation of Contractor performance.
- H. NASPO** means the National Association of State Procurement Officials.
- I. NASPO ValuePoint** means the cooperative contracting division of NASPO.
- J. Offeror** means an entity submitting a proposal in response to this RFP.
- K. Order** means a purchase order, sales order, agreement, or other document used by a Purchasing Entity to commit funds in exchange for a Contractor's delivery of one or more Deliverables.
- L. Participating Addendum** means a contract, referencing a Master Agreement, that is executed by and between a Contractor and a Participating Entity and may include Participating Entity-specific requirements and terms.
- M. Participating Entity** means a state, or another entity authorized to enter into a Participating Addendum, that executes a Participating Addendum with a Contractor.
- N. Proposal** or **proposal** means an Offeror's submission in response to this RFP, including information submitted directly through the RFP Website and information submitted after the RFP Close Date at the request of the Lead State.
- O. Purchasing Entity** means a state, or another entity authorized to use a Participating Addendum, that issues an Order under a Master Agreement resulting from this RFP through a Participating Entity's Participating Addendum.
- P. RFP** means this request for proposals, including all attachments and exhibits and any information posted by the Lead State to the RFP Website, as amended.
- Q. RFP Close Date** means the date identified in Section II.A.3 of the RFP Summary.





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- R. RFP Contact** means the individual identified in Section II.B. of the RFP Summary.
- S. RFP Open Date** means the date identified in Section II.A.1. of the RFP Summary.
- T. RFP Q&A Deadline** means the date identified in Section II.A.2. of the RFP Summary.
- U. RFP Website** means the website identified in Section II F. of the RFP Summary.

**II. GOVERNING LAW AND VENUE**

- A.** This RFP and Offeror's participation in it is governed by and construed in accordance with the laws of the Lead State.
- B.** Unless otherwise specified in this RFP, the venue for any protest, claim, dispute, or action relating to this RFP, including evaluation and award, is in the state serving as the Lead State.
- C.** Any claim relating to this RFP brought in a federal forum must be brought and adjudicated solely and exclusively within the United States District Court for the Lead State.
- D.** Offeror and Offeror's participation in this RFP must comply with all applicable federal, state, and local laws, rules, and policies.
- E.** All Deliverables proposed by Offeror must comply with all applicable federal, state, and local laws, rules, and policies.

**III. RFP DOCUMENTS**

**A. RFP Website.**

1. The RFP Website is the sole source for official RFP documents and updates. The Lead State may, but is under no obligation to, notify Offeror of updates to the RFP Website, including the posting of RFP amendments.
2. Documents from this RFP may be posted on multiple websites, including non-Lead State procurement solicitation boards and the NASPO ValuePoint website, or distributed through other channels, such as email. Such distribution is for advertising and informational purposes only, and documents and information from sources other than the RFP Website should not be relied upon to develop or submit a proposal. Proposals or questions submitted through any means other than those specified in this RFP will not be addressed or considered by the Lead State.

**B. RFP Amendments.**

1. The Lead State may, at any time and in its sole discretion, issue one or more amendments to this RFP. Information shared orally or in informal communications will not be considered an amendment unless explicitly stated in the communication or documented in writing on the RFP Website.
2. Offerors may, through the process described in this RFP for asking questions, propose amendments to the RFP, including adjustment of deadlines. The Lead State is not obligated to consider any proposed amendment.
3. The Lead State may extend any deadline given to Offerors during the RFP process, including the RFP Close Date and RFP Q&A Deadline.
4. The Lead State may make immaterial corrections or clarifications to the RFP.
5. Offeror is wholly responsible for reviewing amendments and updates to the RFP Website, acknowledging amendments as required, and submitting a proposal that is responsive to and compliant with the RFP as amended.

**C. Waiver.**



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1. The Lead State may waive any requirement in this RFP if the Lead State determines that waiver is in the best interest of the Lead State and potential Participating Entities and Purchasing Entities.
2. Waiver of a requirement will not be construed as waiver of any other requirement in this RFP.
3. The Lead State may waive minor irregularities or defects in an Offeror's proposal.

**D. Conflicts and Issues.**

1. The following should be brought to the attention of the Lead State using the process described in this RFP for asking questions or, if applicable, by filing a protest using the process described in Attachment F, Protest Information:
  - a. Any alleged conflict among the materials composing this RFP; and
  - b. Any alleged issue relating to the content of this RFP, including instructions, requirements, or specifications alleged to be ambiguous, unduly restrictive, erroneous, anticompetitive, or unlawful.
2. Any protest, claim, dispute, or action based upon a conflict or issue described in 1.a or 1.b will be filed no later than the RFP Close Date. Offeror waives the right to file any protest, claim, dispute, or action based upon a conflict or issue described in 1.a or 1.b if not filed by the RFP Close Date.

**IV. PROPOSALS**

- A. **Late Delivery or Non-delivery of Proposal.** Offeror is wholly responsible for ensuring Offeror's proposal is complete and submitted timely to the Lead State in the format required by this RFP. The Lead State will not accept a proposal after the RFP Close Date.
- B. **Modified and Alternate Proposals.** Offeror is expected to submit Offeror's most favorable terms and pricing in its original proposal submitted by the RFP Close Date. The Lead State is under no obligation to provide Offeror an opportunity to modify or submit an addendum to Offeror's original proposal or to submit another proposal, including a best and final offer, prior to final evaluation and award. Alternate proposals will not be accepted unless otherwise specified in this RFP.
- C. **Discussions, Clarifications, and Demonstrations.** The Lead State may, but is not obligated to, enter into discussions with or request clarifications or demonstrations from one or more Offerors prior to awarding a Master Agreement. Offerors are expected to be ready to participate in discussions, clarifications, or demonstrations with limited notice. Discussions, clarifications, and demonstrations must be consistent with Offeror's original proposal and will become an addendum to Offeror's proposal.
- D. **Cost Proposal.**
  1. Offeror must complete all required elements of Attachment I, Cost Proposal. The format and structure of the Cost Proposal is intended to allow for a fair evaluation of like costs among Offerors. Deviation from the format or structure of the Cost Proposal may result in Offeror's proposal being deemed non-responsive.
  2. Offeror is wholly responsible for ensuring figures and calculations submitted in Offeror's completed Cost Proposal are accurate, even if formulas have been provided by the Lead State as a courtesy.
  3. Inclusion of cost or pricing information in any document other than the Cost Proposal may result in Offeror's proposal being deemed non-responsive.



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4. Offeror's proposed costs must be inclusive of all fees and charges, including but not limited to fees or charges for shipping, delivery, credit card payments, or personnel. All costs proposed by Offeror must also be inclusive of the NASPO ValuePoint administrative fee.
5. A Participating Addendum may also require payment of an additional administrative fee by Contractors to a Participating Entity based on sales to Purchasing Entities within the jurisdiction of the Participating Entity. Unless otherwise negotiated by the Participating Entity, Contractor may adjust the Master Agreement pricing incorporated into the Participating Entity's Participating Addendum by an amount not to exceed the Participating Entity's fee. Such adjustments will have no effect on the NASPO ValuePoint administrative fee, pricing in the Master Agreement, or pricing offered to Purchasing Entities outside the jurisdiction of the Participating Entity.
6. In addition to the Cost Proposal evaluation described in this RFP, Cost Proposals may also be subject to an independent review for reasonableness by the Lead State. Costs determined not to be reasonable or best-value by the Lead State, including any cost to which Offeror's proposed markup or discount is to be applied, may result in all or part of Offeror's proposal being rejected, notwithstanding the results of the Cost Proposal evaluation.
7. At the Lead State's discretion, points earned in the Cost Proposal evaluation may be normalized and scaled to award the Offeror earning the highest total cost score the maximum number of cost points possible.

**E. Proposed Modifications to the Sample Master Agreement.**

1. The Lead State may, but is not obligated to, consider proposed modifications to Attachment D, Sample Master Agreement. Provisions of the Sample Master Agreement that are generally inapplicable to, incompatible with, or unsuitable for the subject of this RFP should be brought to the attention of the Lead State using the process described in this RFP for asking questions and will be addressed only at the sole discretion of the Lead State.
2. Offeror-specific modifications to Attachment D, Sample Master Agreement, may be proposed as part of Offeror's proposal in Attachment J, Proposed Modifications to Sample Master Agreement, but are strongly discouraged. The quantity, breadth, and nature of modifications proposed by Offeror may be considered in the Lead State's evaluation of Offeror's proposal and of its risks, costs, and benefits to the Lead State and potential Participating Entities and Purchasing Entities. Proposing excessive or overly restrictive modifications, or proposing modifications upon which Offeror's proposal is conditioned, may result in Offeror's proposal being deemed non-responsive.
3. The following will not be considered by the Lead State:
  - a. Any proposed modification not submitted with Offeror's proposal in Attachment J, Proposed Modifications to Sample Master Agreement;
  - b. Any proposed modification not accompanied by an explanation as required in Attachment J, Proposed Modifications to Sample Master Agreement;
  - c. Any proposed modification not reflected in redlined edits to the Sample Master Agreement and submitted with Offeror's proposal; and
  - d. Any proposed modification merely referencing another document or a URL.

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4. Offerors may propose additional terms but must include them in Attachment J, Proposed Modifications to Sample Master Agreement and must clearly identify where any terms conflict with the Sample Master Agreement.
5. If Offeror is awarded a Master Agreement resulting from this RFP, a comparison of Attachment D, Sample Master Agreement and Offeror's accepted modifications thereto may be posted on the NASPO ValuePoint website for examination by potential Participating Entities and Purchasing Entities.

**F. Proposal Contact.**

1. The Proposal Contact identified by Offeror in Attachment G, Offeror Information, Acknowledgements, and Certifications must be able to respond timely to communications from the Lead State. Offeror must, within 24 hours, notify the Lead State of any change to Offeror's Proposal Contact. Offeror is wholly responsible for ensuring communications received by Offeror's Proposal Contact are reviewed and addressed timely by the appropriate personnel.
2. The Lead State may, but is under no obligation to, notify Offeror's Proposal Contact of updates to the RFP Website, including the posting of RFP amendments. Offeror is wholly responsible for reviewing updates and submitting a proposal that is responsive to and compliant with the RFP as amended.

**G. Proposal Development Costs.** All costs incurred by Offeror in the preparation and submission of a proposal, including any costs incurred during discussions, clarifications, or demonstrations, are the responsibility of Offeror and will not be reimbursed.

**H. Firm Offer.** Offeror's proposal will act as a firm offer for 180 days following the RFP Close Date. After 180 days, the offer will remain open unless revoked by Offeror via written withdrawal of Offeror's proposal in accordance with Oklahoma OAC 260:115 B.

**I. Ownership and Disclosure of Proposals.**

1. Hard copy proposals and tangible items submitted by Offeror in connection with this RFP, including physical media and product samples, will become the property of the Lead State and may not be returned to Offeror.
2. Offeror grants Lead State and NASPO a perpetual, irrevocable, non-exclusive, royalty-free, and transferable right to display, modify, copy, and otherwise use the contents of Offeror's proposal, which may be:
  - a. Shared with NASPO members;
  - b. Shared with entities represented on the Multistate Sourcing Team;
  - c. Posted to the NASPO ValuePoint website following execution of Master Agreements for examination by potential Participating Entities and Purchasing Entities;
  - d. Subject to disclosure in accordance with applicable public information laws, rules, and policies; and
  - e. Subject to retention, archiving, and destruction in accordance with applicable retention laws, rules, and policies.
3. If Offeror is claiming any portion of its proposal as confidential, proprietary, or protected, Offeror must complete the required sections of Attachment K, Claim of Business Confidentiality, and submit with Offeror's proposal a redacted copy of Offeror's proposal, which must be clearly marked as such. Offeror may not mark pricing or Offeror's entire proposal as confidential, proprietary, or protected. Submission of a Claim of Business Confidentiality does not guarantee that information claimed by Offeror as confidential,

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proprietary, or protected will not be subject to disclosure in accordance with applicable public information laws, rules, and policies. If Offeror fails to submit a redacted copy of Offeror's proposal, or fails to claim information as confidential, proprietary, or protected in compliance with this RFP, Offeror releases the Lead State, NASPO, NASPO members, and entities represented on the Multistate Sourcing Team from any obligation to keep the information confidential and waives all claims of liability arising from disclosure of the information.

- J. Confidential Information.** If Offeror is provided or given access to Confidential Information in connection with this RFP, Offeror will keep the Confidential Information in confidence and will not use the Confidential Information for any purpose other than as directed by the Lead State and as necessary to respond to this RFP. Unless otherwise directed by the Lead State, Offeror will destroy Confidential Information within 30 days of the cancellation of this RFP, rejection or withdrawal of the Offeror's proposal, or execution of a Master Agreement between the Lead State and Offeror.

**V. RIGHTS RESERVED TO THE LEAD STATE**

**A. RFP Contact and Multistate Sourcing Team.**

1. The Lead State may change the RFP Contact at any time. The Lead State will notify potential Offerors of the change via an amendment to this RFP, an email to the Offeror's Proposal Contact, or an update to the RFP Website.
2. The Lead State is not required to disclose the composition of the Multistate Sourcing Team and may, at any time and without notice, change the composition of the Multistate Sourcing Team, provided the composition complies with the Lead State's laws, rules, and policies.

- B. Consideration of External Information.** The Lead State and Multistate Sourcing Team may consult external sources and consider external information to confirm the responsibility of Offeror, the responsiveness of Offeror's proposal, and the veracity of any representation made by Offeror. Offeror will be given a reasonable opportunity to respond to any external information obtained by the Lead State and Multistate Sourcing Team that materially and negatively affects evaluation of Offeror's proposal. External information does not include information obtained from references provided by Offeror.

- C. Right to Waive Minor Irregularities.** "Minor irregularity", "minor deficiency" or "minor informality" means an immaterial defect in a Proposal or variation in a Proposal from the exact requirements of a solicitation that may be corrected or waived without prejudice to other Offerors. A minor irregularity, minor deficiency or informality does not affect the price, quantity, quality, delivery or conformance to specifications and is negligible in comparison to the total cost or scope of the acquisition.

The State Purchasing Director may waive minor irregularities, deficiencies or informalities in a Proposal if the State Purchasing Director determines the irregularities, deficiencies or informalities do not prejudice the rights of other Offerors, or are not a cause for Proposal rejection.

- D. Rejection of Proposals.** The Lead State may reject Offeror's proposal at any time if the Lead State determines that:
1. The proposal is non-responsive;



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2. The proposal has failed to meet any mandatory requirement of the RFP, including any minimum scoring threshold;
3. Offeror is not responsible; or
4. Offeror has committed a violation of procurement law, rule, or policy.

**E. Cancellation.**

1. The Lead State may cancel this RFP at any time if the Lead State determines that cancellation is in the best interest of the Lead State and potential Participating Entities and Purchasing Entities.
2. Following cancellation, the Lead State may, at its discretion, re-issue this RFP or issue another RFP for the same or similar Deliverables.

**F. No Exclusivity.**

1. Master Agreements resulting from this RFP will be established solely for the convenience of Participating Entities. The Lead State, Participating Entities, and Purchasing Entities reserve the right to obtain the same or similar Deliverables from other sources when in their best interest and permitted by applicable law, rule, or policy.
2. The Lead State may, at its discretion, issue a supplemental solicitation during the term of a Master Agreement resulting from this RFP if the Lead State determines that:
  - a. There is insufficient competition among Contractors awarded a Master Agreement resulting from this RFP;
  - b. The quantity or diversity of Deliverables available through Master Agreements resulting from this RFP is insufficient to meet demand; or
  - c. Changes in the industry, market, or technology justify the solicitation of new or supplemental Contractors or Deliverables.

**G. Mandatory State Preferences.** The Lead State may apply mandatory evaluation preferences to proposals of eligible Offerors as set forth in applicable laws, rules, policies, or provisions of this RFP. Offeror is wholly responsible for demonstrating eligibility for any applicable preference in Offeror's proposal, including identification of applicable Business Certifications in Attachment G, Offeror Information, Acknowledgements, and Certifications. Offerors that meet the requirements for award with an applied preference but would not receive an award without an applied preference may be awarded a contract for use by the Lead State but will not be awarded a NASPO ValuePoint Master Agreement for use by other states and eligible entities.

**H. Conditional Awards.**

1. Award and execution of a NASPO ValuePoint Master Agreement by the Lead State is conditioned upon the following:
  - a. Approval by NASPO ValuePoint;
  - b. Approval by any individual or group of individuals required to approve Lead State awards or contracts, including but not limited to legal counsel, an overseeing board, or agency head;
  - c. Continued eligibility for award following resolution of any protests received by the Lead State; and
  - d. Negotiation of Master Agreement terms, conditions, and pricing satisfactory to the Lead State, awarded Offeror, and NASPO ValuePoint.
2. Approval of awards and Master Agreements may be in whole or in part.
3. Awards and Master Agreements not approved by NASPO ValuePoint may, at the Lead State's option, result in a contract for use by the Lead State only.





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4. Offeror agrees to hold the Lead State and NASPO harmless and release the Lead State and NASPO from any liability for damages arising from non-award or non-execution of a contract.
5. Nothing in this section affects Offeror's right to file a protest in accordance with Attachment F, Protest Information.
- I. **Term.** The Lead State may, prior to execution, adjust the effective date or duration of the initial term or renewal period of any Master Agreement resulting from this RFP for the purpose of making the Master Agreement coterminous with others. If this RFP is a re-solicitation of an existing NASPO ValuePoint portfolio, the Lead State may, at its option, defer the effective date of Master Agreements resulting from this RFP to reduce or eliminate overlap in portfolio terms.

**VI. POTENTIAL PARTICIPATING ENTITIES**

**A. Interested States.**

1. States that have requested to be named in this RFP as potential participants in the resulting Master Agreement(s) are listed as Interested States in Attachment E, Potential Participation. This list neither guarantees execution of a Participating Addendum by an Interested State nor precludes execution of a Participating Addendum by any state or entity not identified as an Interested State.
2. The Estimated Annual Volume in Attachment E, Potential Participation aggregates usage estimates, self-reported by the Interested States, which may be based on any factor considered relevant by each Interested State, including historical usage and anticipated future usage. No minimum or maximum level of sales volume is guaranteed or implied.
3. Some Interested States have also provided state-specific terms and conditions that may apply to a Participating Addendum executed with an Offeror awarded a Master Agreement through this RFP. Any terms and conditions included in Attachment E, Potential Participation are being provided for informational purposes only and will not be incorporated into the Master Agreement or addressed or negotiated by the Lead State. Participation and the terms and conditions applicable to each Participating Entity will be determined by the Participating Entity following negotiation of a Participating Addendum with a Contractor.

- B. Potential Participation by Canadian Entities.** In addition to potential Participating Entities within the United States, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan, and Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use a Master Agreement resulting from this RFP, with the approval of the Contractor.



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## **Attachment B SCOPE OF WORK**

This Scope of Work describes the Deliverables being sought through this RFP and the scope of what Contractor will be expected to offer through a Master Agreement resulting from this RFP. The Scope of Work is intended to provide interested Offerors with sufficient basic information to submit a proposal. It is not intended to limit a proposal's content or exclude any relevant or essential data.

### **I. Master Agreement Objectives**

The State of Oklahoma, (Office of Management & Enterprise Services (OMES), Central Purchasing (Lead State) is requesting proposals for Heavy Construction and Industrial Equipment in furtherance of the NASPO ValuePoint Cooperative Purchasing Program.

The objective of this RFP is to obtain best value, competitive proposal requirements, and to receive collective volume purchasing by all government entities through the NASPO ValuePoint Cooperative Purchasing Program, which creates more favorable pricing than is obtainable by an individual state or local government entities.

### **II. Master Agreement Deliverables**

#### **1. Product Categories**

##### **A. Heavy Construction Equipment**

The award of this RFP will cover categories which contain heavy construction equipment, such as Articulated Dump Haulers, Articulated Haulers, Backhoes, Cold Planers, Compactors- Road and Asphalt, Dozers, Motor Graders, Pavers, Reclaimers, Site Dumpers, Skid Steers, Telehandlers, Track Excavators, Tracked Loaders, Wheel Loaders, Wheeled Excavator and Sweeper Equipment - Mechanical, Airport/Runway, Walk Behind, Riding, Parking Lot and Sidewalk Sweeping Equipment.

##### **B: Industrial Equipment**

To compliment this offering, industrial equipment will contain equipment such as Air Compressors, Back Up Battery Packs, Generators, Forklifts, Light Towers, Portable Generators, and pull-behind portable solar charging stations.

##### **C. Value Added Option for Additional Equipment**

Attachment L allows Offerors to offer their most frequently purchased items or special contract listings for this award as a value add. These items will hold cost for the first initial period of the contract. This attachment will be included in the evaluation. In addition, Offerors may offer as a value add to this award, other equipment and / or categories which fall under the general guidelines of these equipment types. Subject to Participating Entity approval, these value-add options may or may not be ultimately exercised at the participating addendum level. This may be an emerging technology in equipment or general enhancements such as, Remote Control, Automation, Safety Features, and Alternative Fuel Options. Special financing and or leasing options should also be listed here.





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**III. Contractor Responsibilities and Tasks**

**1. Authorized Dealers / Distributors**

Only manufacturer Offerors with strong dealer networks in multiple states are asked to respond directly to this RFP and will be named on the award of the Master Agreement. The awardees of the resulting Master Agreements will be responsible for all reporting, management fees required, and the individual Participating Addendums executed.

The manufacturer will offer users of this contract set discount levels, which may be sold and serviced at the dealer level. Any interested equipment dealer is highly encouraged to connect with their manufacturer and ensure they have been named as an authorized dealer / distributor. Attachment M, Distributors by State, does list authorized dealer / distributors and will be part of the evaluation process to ensure adequate local supply is addressed as well as shipping and delivery options.

**2. Insurance**

Offerors shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. 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.

**A.** Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:

- (1) Commercial General Liability 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 \$5 million per occurrence.
- (2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

**B.** Offeror / 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.

**C.** Copies of renewal certificates of all required insurance shall 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.

**D.** Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

**3. Licensing**

**A.** Sales of motor vehicles are subject to state Motor Vehicle Statutes. Offeror certifies by submission



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of a response that all required Motor Vehicle Commission licenses are in place and current, and that copies of all such licenses, if requested, will be submitted with the states' participating addendums.

**B.** License requirements for states participating in the contract will be addressed in each state's participating addendum.

**C.** It is the Contractor's responsibility to keep all required Motor Vehicle licensing current during the term of the contract and to furnish copies at any time upon request by the contract administrator. If the Contractor does not maintain current licensing, Central Purchasing may immediately terminate the contract upon discovery of the expiration of the license. Contracts for motor vehicles to be sold may be made only with properly licensed Motor Vehicle Dealers.

**4. Ordering**

**A.** No minimum orders will be considered under this Contract. Please see the pricing attachment for value-added incentive volume discount request.

**B.** Options/Accessories/Attachments on ordered equipment shall include all standard items normally furnished by the Contractor's manufacturer/dealer for the basic equipment being purchased. Contractor shall identify any websites that can be of assistance in determining needs and calculating total cost of items purchased.

**C.** Any trade-in allowances determined by the Contractor shall be deducted from the established current price before the discount is applied. The formula will be to deduct the discount from the established current price and then take off the trade-in allowance. (Only for those Purchasing Entities allowed to trade-in equipment for new equipment).

**5. Changes in Contractor Contact**

The Contractor shall notify the Contracting Officer of any changes in the company status, such as mergers, sell offs, discontinuation of equipment, addition of equipment lines and changes in the contact information of the Contract. The Contracting Officer shall be able to contact the Contractor at all times during business hours.

**6. 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.

**7. Warranty-Equipment/Options/Accessories/Attachments**

**A.** The Contractor agrees the products furnished under this Contract shall be covered by all



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commercial warranties the Contractor provides for such products, and rights and remedies provided herein are in addition to and do not limit any rights afforded by any other clause of this Contract.

**B.** The Contractor warrants that at the time of delivery, all equipment purchased under this Contract will be free from defects in material or workmanship and will conform to the specifications and all other requirements of this Contract.

**C.** All warranty work performed, and parts/materials supplied shall meet original equipment manufacturer (OEM) warranty requirements. Equivalent substitutions must be approved by the Purchasing Entity contact person prior to installation.

**D.** Warranty work performed not meeting specifications or found to be defective, shall not be accepted. The Contractor shall be required to make repairs or corrections at no additional cost to the Purchasing Entity.

**E.** Offeror shall furnish a copy of their warranty applicable for the equipment.  
All equipment warranties shall start on the date of delivery and shall be for the full term of said warranty.

**F.** Before actual warranty work begins, ownership of the equipment shall be established to ensure the equipment in need of repair belongs to the Purchasing Entity requesting the service. The following information shall be provided in order to determine ownership of the equipment:

(1) Name of Purchasing Entity and division, if applicable. Make, Model, and VIN of equipment Control number of Purchasing Entity (Inventory number)

**G.** Repairs made that are covered by a warranty shall not be paid for by the Purchasing Entity.

**H.** The Contractor shall furnish all necessary supervision, labor, equipment, tools, parts, materials, and supplies needed for the warranty repair work.

**I.** All persons utilized in the performance of this contract shall be authorized by the Contractor and be fully qualified to perform the warranty work required. Warranty work shall be performed by certified or trained or authorized service technicians.

**J.** Equipment that will remain in the Contractor's possession overnight and for extended periods shall be stored in a safe and secure location for protection from theft and environmental dangers. The Contractor shall be responsible for the proper care and custody of any state-owned equipment in the Contractor's possession.

**8. Quality of Parts**

**A.** Parts under these specifications should be name brand, nationally advertised merchandise. Equivalent substitutions must be approved by the Purchasing Entity contact person.

**B.** After Market Repair parts must be equal to or exceed Contractor's original equipment manufacturer's



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specifications. Repair parts must be packaged and distributed under their respective nationally known name brands.

**C.** All rebuilt or remanufactured parts must meet the same requirements as listed above.

**D.** Some repair parts may be required to be original equipment manufactured repair parts. Contractor's dealers' network must carry a complete line of OEM parts for all models of equipment they carry.

**E.** Preservation, packaging, and packing and marking will be in accordance with best commercial practice to provide adequate protection against shipping damage.

**9. Warranty/Buy Back**

Contractor is required to provide any buy-back, trade-in, or exchange policy concerning repair parts sold to Purchasing Entities. Contractor shall correct ordering errors without further cost to the ordering entity. A copy of the Warranty shall be included for replacement parts purchased.

**10. Repair Facilities**

Repair facilities that will perform the warranty work of items under this Contract shall be identified as listed on the Contractor's dealer network. As the manufacturer, the Contractor is responsible for ensuring that the facilities adhere to the contract requirements for warranty work performance.

**11. Freight/Shipping/Set-up Fees**

**A.** Freight from the factory to the distributor is the responsibility of the Contractor. Freight from the distributor to the customer is an allowable charge.

**B.** Delivery is to be FOB Destination (of ordering entity) freight collect

**C.** Any Freight, shipping and handling costs and set-up fees paid by the ordering entity are to be annotated on the quote/invoice as a separate line item.

**12. Delivery**

**A.** Delivery of equipment shall be stated in each quotation. It is preferable to expect delivery within 120 calendar days after receipt of order unless other arrangements are made between the ordering party and the Contractor due to current market status. Earlier deliveries are encouraged however there shall be no change in contract price or discount terms because of the earlier delivery.

**B.** All equipment shall be delivered new, unused, assembled, serviced, oiled and ready for immediate use, unless otherwise requested by the Purchasing Entity. Liability for product delivery remains with the Contractor until delivered and accepted.

**C.** Delivery shall be made in accordance with instructions on the purchase order from each Purchasing Entity. If there is a discrepancy between the purchase order and what is listed on the contract, the Contractor shall seek clarification from the ordering party and/or the Contracting Officer.

**D.** Delivery on parts is to be made within 30 days or otherwise stated in quotation.

**E.** One operating manual, an illustrated parts manual or List, and the warranty shall be furnished



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for each new item purchased, as well as any proprietary tools necessary to perform routine service or adjustments, all at no additional cost.

F. All ordering entities will have the option to pick up their equipment from the dealer.

**13. Price Adjustments**

The Contract price shall be the most current Contractor's Manufacturer's Suggested Retail Price (MSRP) in effect at the time the order is placed less the discount percentage offered. This allows for market fluctuations to take place while the discount percentage must remain stable.

The Contractor will be required to notify the Contracting Officer (Lead State) for review and approval when new pricing updates occur and an explanation of what has prompted the change as well as documentation to support the price increase. Documentation may include: the manufacturer's national price increase announcement letter, a complete and detailed description of what products are increasing and by what percentage, a complete and detailed description of what raw materials and/or other costs have increased and provide proof of increase, index data and other information to support and justify the increase.

The price increase must not produce a higher profit margin than the original contract, and must be accompanied by sufficient documentation and nationwide notice of price adjustment to the published commercial price list.

Price Established at Time of Order. Pricing is established at the time an order is placed by a public entity with the Contractor. No retroactive price increases will be allowed, nor will price increases be allowed at time of delivery.

Price Reductions. In the event of a price decrease in any category of product at any time during the contract in an OEM's published commercial price list, including renewal options, the Lead State shall be notified immediately. All published commercial price list price reductions shall be effective upon the notification provided to the Lead State.

**14. New Products**

New Products may be added to the awarded categories as they are introduced as long as the products remain within the scope of that category. The quoted discount cannot be lowered throughout the Contract period.

**15. Discontinued Products**

Contractor is to notify the Contracting Officer of any changes in their schedule of equipment such as discontinued products or replacement models to continue proper presentation on contract award posting.

**16. Price**

The purpose of this competitive solicitation is to develop a category / catalog discount contract structure to provide for equipment to be made available for purchase. This allows for the most current model of equipment to be covered under this contract as equipment is introduced to stay with available market trends.



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The pricing matrix is a percentage discount subtracted from the Contractor's Suggested Retail Price. Contractor can submit actual pricing schedules for their equipment with the percentage discount already figured, as long as the Contractor list price is stated first, then the discount, then the final discount price. If you have products that can be fueled by means other than gas or diesel fuel, and that are considered environmentally friendly, please include them in your response.

The quoted discount percentage will be in affect the entire contract period. Additional or deeper discounts will be accepted, but original discount rates cannot be lowered.

**17. Value Added Contract Items**

Value Added Items have been included with Attachment I, Cost Proposal, within 2 tables titled:

- I.2 Heavy Equipment Value Add
- I.4 Industrial Equipment Value Add

As a value-added option, vendor may specify contract items which will qualify as priority, bestselling, higher usage items, or a special "hot" list or "contract offering" based on a deeper discount.

Due to the large variance of equipment available, and as the subject expert, the vendor may choose the items to offer.

This product listing will allow the vendor to represent the type, style, quality, and breadth of equipment options available if awarded.

This list will remain firm for the initial base year, with the option to refresh or revise the listing of contract special items on an annual basis at contract renewal periods.

Submission of items will be included in the total value-added scoring evaluation.

**Lead State Responsibilities and Tasks**

**Participating State Terms and Conditions. (ADMIN)**

As a courtesy to Offerors, some Participating States' specific Terms and Conditions are provided as Attachments (see Attachment E) to this solicitation. These are for informational purposes only and will be negotiated with other Participating States after award of the Master Agreement. Each State 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.

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## Attachment C RFP EVALUATION PLAN

**Stage 1: Initial Responsiveness.** Proposals will be reviewed for completeness and initial responsiveness. Proposals omitting required documents or responses may be rejected in accordance with Attachment A, RFP Terms and Conditions.

Proposals failing to meet or exceed all requirements may be rejected in accordance with Attachment A, RFP Terms and Conditions.

**Stage 2: Mandatory Minimum Requirements.** Complete and responsive proposals will be reviewed for compliance with the following Mandatory Minimum Requirements:

Criteria	Evaluation	Result
Original Equipment Manufacturer	Pass / Fail	
Dealer Network	Pass / Fail	
References	Pass / Fail	
<b>Stage 2 Result:</b>		

Proposals failing to meet or exceed all Mandatory Minimum Requirements may be rejected in accordance with Attachment A, RFP Terms and Conditions.

**Stage 3: Technical Criteria.** Proposals meeting or exceeding the Mandatory Minimum Requirements will be evaluated against the following Technical Criteria:

Criteria	Points Possible	Offeror's Points Earned
Experience and Qualifications	200	
Ability to meet SOW	300	
Warranties and Service	200	
Promotion of the NASPO ValuePoint Master Agreement	100	
Business Profile	200	
Management and Leadership	200	
References	100	
Value Add Plan	50	
Value Add Items Offered	150	
<b>Stage 3 Total:</b>	<b>1500</b>	

Upon final technical evaluation, all vendors who scored at least 75% of available points will move on to the Stage 4 Cost evaluation.

**Stage 4: Cost Evaluation.** Cost Proposals not rejected following evaluation of Technical Criteria will be evaluated. Each category will be reviewed and scored.

**PROPOSED COSTS**

Cost Item	Offeror's Proposal	Points Possible	Offeror's Points Earned
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Number of Categories Proposed	22 Categories		100	
Market Basket Evaluation	[lowest cost]		200	
Discount % Off Evaluation	[highest average discount %]		200	
<b>Total:</b>			<b>500</b>	

i. Number of Categories Proposed

In this portion of the Cost Evaluation there are 100 points available. It has been determined that a vendor award offering more Categories presents more valuable use cases to an end user, versus a vendor proposing only one category. There are 22 Categories available. Points will be awarded according to the following scale based on the number of categories an Offeror is seeking an award in:

- 1 to 5 Categories → 22 points
- 6 to 10 Categories → 44 points
- 11 to 15 Categories → 66 points
- 16 to 20 Categories → 88 points
- 21 to 22 Categories → 100 points

The Lead State reserves the right to modify this formula and/or assign a nominal value to “0” cost values if application of the formula results in an error, negative numbers, or an unreasonably skewed distribution of points.

ii. Market Basket Evaluation

In this portion of the Cost Evaluation there are 200 points available for each Category. The proposed “Extended Price” for the Category will be compared against the other Offerors’ Extended Price to the Category. Categories that include sub-categories (i.e., Category 5 – Compactors & Category 17 – Sweepers) will first have the Extended Price averaged to then arrive at an Extended Price for the Category, and then applied in the cost evaluation.

The formula for calculating cost points earned for this portion is **Lowest Extended Price / Offeror’s Extended Price x 200**. The Lead State reserves the right to modify this formula and/or assign a nominal value to “0” cost values if application of the formula results in an error, negative numbers, or an unreasonably skewed distribution of points.

iii. Discount % Off Evaluation

In this portion of the Cost Evaluation there are 200 points available. The proposed discount percentages (%) will be averaged across each category to determine the highest average discount % off. The highest average discount % will be used as a baseline to assign the available cost points to the other vendors.

The formula for calculating cost points earned for this portion is **Offeror’s Average Discount / Highest Average Discount x 200**. The Lead State reserves the right to modify this formula and/or assign a nominal value to “0” cost values if application of the formula results in an error, negative numbers, or an unreasonably skewed distribution of points.

**EVALUATION SUMMARY**

Stage 3 & 4	Points Possible	Offeror’s Points Earned
Technical Criteria Evaluation (Stage 3)	1,500	



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Experience and Qualifications Ability to Meet SOW Warranties and Service Promotion of the NASPO ValuePoint Master Agreement Business Profile Management and Leadership References Value Add Plan Value Add Items Offered		
<u>Cost Evaluation</u> (Stage 40) Number of Categories Proposed Market Basket Evaluation Discount % Off Evaluation	500	
<b>Total:</b>	<b>2,000</b>	

**AWARD SELECTION**

The Lead State and Multistate Sourcing Team will then determine which proposals are most advantageous to the Lead State and potential Participating and Purchasing Entities. Awards will be made at the natural break of all scores. It is desired to have at least 90% of available score, however, the variance of responses could show a natural break in high and low scoring responses.

Prior to announcement of awards and execution of Master Agreements, the Lead State will present an award recommendation to the NASPO ValuePoint Executive Council for approval of the proposed awards.

Following approval of the NASPO ValuePoint Executive Council, the Lead State will issue an intent-to-award announcement on its electronic procurement system. Subsequent to posting of the Notice of Intent of Award, the Lead State will begin formalization of NASPO ValuePoint Master Agreements. The Lead State reserves the right during contract negotiation of the Master Agreement to adjust terms and conditions that would not (in the Lead State’s judgment) have a material effect on price, schedule, scope of work, or risk to the Lead State and Participating States, with materiality defined in terms of the effect on the evaluation and award. The Lead State reserves the right to accept contract or pricing changes that are more favorable to the Lead State.

If no Master Agreement is reached with the apparent awardee, the Lead State may negotiate with other Offerors or elect to make no award under this RFP.

## Attachment D SAMPLE MASTER TERMS AND CONDITIONS



### 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) corporation. 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 two years. The term of this Master Agreement may be amended beyond the initial term for 3 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. The Lead State may, prior to execution, adjust the effective date or duration of the initial term or renewal period of any Master Agreement for the purpose of making the Master Agreement coterminous with others.
- 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](mailto: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) 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 by Contractor 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 Sales Data Reporting.** In accordance with this section, Contractor shall report to NASPO ValuePoint all Orders under this Master Agreement for which Contractor has invoiced the ordering entity or individual, including Orders invoiced to Participating Entity or Purchasing Entity employees for personal use if such use is permitted by this Master Agreement and the applicable Participating Addendum ("Sales Data"). Timely and complete



reporting of Sales Data is a material requirement of this Master Agreement. Reporting requirements, including those related to the format, contents, frequency, or delivery of reports, may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. NASPO ValuePoint shall have exclusive ownership of any media on which reports are submitted and shall have a perpetual, irrevocable, non-exclusive, royalty free, and transferable right to display, modify, copy, and otherwise use reports, data, and information provided under this section.

- 5.3.2 Summary Sales Data.** “Summary Sales Data” is Sales Data reported as cumulative totals by state. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Summary Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. If Contractor has no reportable Sales Data for the quarter, Contractor shall submit a zero-sales report.
- 5.3.3 Detailed Sales Data.** “Detailed Sales Data” is Sales Data that includes for each Order all information required by the Solicitation or by NASPO ValuePoint, including customer information, Order information, and line-item details. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Detailed Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. Detailed Sales Data shall be reported in the format provided in the Solicitation or provided by NASPO ValuePoint. The total sales volume of reported Detailed Sales Data shall be consistent with the total sales volume of reported Summary Sales Data.
- 5.3.4 Sales Data Crosswalks.** Upon request by NASPO ValuePoint, Contractor shall provide to NASPO ValuePoint tables of customer and Product information and specific attributes thereof for the purpose of standardizing and analyzing reported Sales Data (“Crosswalks”). Customer Crosswalks must include a list of existing and potential Purchasing Entities and identify for each the appropriate customer type as defined by NASPO ValuePoint. Product Crosswalks must include Contractor’s part number or SKU for each Product in Offeror’s catalog and identify for each the appropriate Master Agreement category (and subcategory, if applicable), manufacturer part number, product description, eight-digit UNSPSC Class Level commodity code, and (if applicable) EPEAT value and Energy Star rating. Crosswalk requirements and fields may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. Contractor shall work in good faith with NASPO ValuePoint to keep Crosswalks updated as Contractor’s customer lists and product catalog change.
- 5.3.5 Executive Summary.** Contractor shall, upon request by NASPO ValuePoint, provide NASPO ValuePoint with an executive summary that includes but is not limited to a list of states with an active Participating

Addendum, states with which Contractor is in negotiations, and any Participating Addendum roll-out or implementation activities and issues. NASPO ValuePoint and Contractor will determine the format and content of the executive summary.

#### **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, 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 Agreement 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** All prices and rates must be guaranteed for the initial term of the Master Agreement.
- 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 (Enter the Number of Days) 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 ascertain 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.

### **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 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 identity 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 to 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.








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- 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.
- 14.14 Survivability.** Unless otherwise explicitly set forth in a Participating Addendum or Order, the terms of this Master Agreement as they apply to the Contractor, Participating Entities, and Purchasing Entities, including but not limited to pricing and the reporting of sales and payment of administrative fees to NASPO ValuePoint, shall survive expiration of this Master Agreement and shall continue to apply to all Participating Addenda and Orders until the expiration thereof.

## Attachment E PARTICIPATION INFORMATION

### The NASPO ValuePoint Process

The NASPO ValuePoint Lead State Model™ is a collaborative procurement process representing the input and interests of public entities across the nation.

#### THE LEAD STATE MODEL™

-  Members & Stakeholders Identify Shared Cooperative Contracting Needs
-  NASPO ValuePoint Engages Lead State & Multistate Sourcing Team
-  Members & Stakeholders Provide Input on RFP Specifications & Objectives
-  Lead State Issues RFP in Compliance with Lead State Laws
-  Lead State & Multistate Sourcing Team Evaluate Supplier Proposals
-  Lead State Negotiates & Executes Master Agreements
-  Participating States & Entities Execute Participating Addenda
-  Purchasing Entities Buy Directly from NASPO ValuePoint Contractors

NASPO ValuePoint does not charge fees to Participating Entities or Purchasing Entities—including state departments, institutions, agencies, and political subdivisions, federally recognized tribes, and other eligible public and nonprofit entities in the 50 states, the District of Columbia, and U.S. territories—to use NASPO ValuePoint Master Agreements. Suppliers pay only a nominal administrative fee based on their total sales. By leveraging the collective volume of potential purchases nationwide, NASPO ValuePoint is able to offer customers the best value in cooperative contracting while giving suppliers the opportunity to reach multiple markets through a single solicitation.

### Historical Usage

The following table identifies total sales reported by Heavy Construction & Industrial Equipment contractors through NASPO ValuePoint Master Agreements over the past five (5) calendar years:

Year	Reported Historical Sales Volume
2018	\$2,467,241
2019	\$11,703,278
2020	\$22,999,217
2021	\$31,028,726

**No minimum or maximum level of sales volume is guaranteed or implied.**

### Interested States

The states below have requested to be named in this RFP as potential participants in the resulting Master Agreement(s). This list neither guarantees execution of a Participating Addendum by an Interested State nor precludes execution of a Participating Addendum by any state or entity not identified as an Interested State.

**Request for Proposals for  
Heavy Construction & Industrial Equipment**

Issued by the **State of Oklahoma**  
**Solicitation Number OK-MA-192-23**



Interested States	Reported Estimated Annual Volume	Sample Participating Addendum Terms and Conditions
Hawaii	\$175,277.00	Exhibit 4
Maine	\$500,000.00	N/A
Missouri	\$1,362,608.00	N/A
New Mexico	N/A	N/A
Washington	\$2,000,000.00	Exhibit 1
Vermont	\$20,000,000.00	Exhibit 2
South Dakota	\$4,100,000.00	N/A
Wyoming	N/A	N/A
Montana	N/A	N/A
Utah	\$28,000,000.00	Exhibit 3

**TOTAL ESTIMATED ANNUAL VOLUME FROM INTERESTED STATES: \$\$\$56,137,885.00**

The Reported Estimated Annual Volume above aggregates usage estimates, self-reported by the Interested States, which may be based on any factor considered relevant by each Interested State, including historical usage and anticipated future usage. **No minimum or maximum level of sales volume is guaranteed or implied.**

Some Interested States have also provided state-specific terms and conditions, included in this attachment, that may apply to a Participating Addendum executed with an Offeror awarded a Master Agreement through this RFP. These terms and conditions are being provided for informational purposes only and will not be incorporated into the Master Agreement or addressed or negotiated by the Lead State. Participation and the terms and conditions applicable to each Participating Entity will be determined by the Participating Entity following negotiation of a Participating Addendum with a Contractor.



**PARTICIPATING ADDENDUM  
NASPO VALUEPOINT**

**HEAVY CONSTRUCTION & INDUSTRIAL EQUIPMENT**  
Administered by the State of Oklahoma (hereinafter "Lead State")

**MASTER AGREEMENT**

**Master Agreement No:** [REDACTED]

**Insert Name of Contractor**  
(hereinafter "Contractor")

and

**State of Washington**  
(hereinafter "Participating State")

**WASHINGTON MASTER CONTRACT No.:** [REDACTED]

This Participating Addendum for the above referenced Master Agreement ("Participating Addendum") is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and [REDACTED], a [REDACTED] ("Contractor") and is dated and effective as of [REDACTED], 20[REDACTED].

**RECITALS**

- A. Pursuant to Legislative authorization codified in RCW 39.26.060, Enterprise Services, on behalf of the State of Washington, is authorized to participate in cooperative purchasing agreements to develop master agreements to procure goods and/or services and to make such competitively solicited and awarded contracts available to Washington state agencies and designated eligible purchasers consistent with terms and conditions set forth by Enterprise Services.
- B. Enterprise Services timely provided public notice of the competitive solicitation process conducted by the above-referenced lead state through Washington's Electronic Business Solutions (WEBS) system.
- C. The above-referenced Lead State, as part of its competitive solicitation process, evaluated all responses to its procurement and identified Contractor as an apparent successful bidder and awarded a Master Agreement to Contractor.
- D. Enterprise Services has determined that participating in this Master Agreement is in the best interest of the State of Washington.
- E. The purpose of this Participating Addendum is to enable eligible purchasers, as defined herein, to utilize the Master Agreement as conditioned by this Participating Addendum.

## AGREEMENT

**NOW THEREFORE**, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

1. **SCOPE:** This Participating Addendum covers the competitive procurement for [REDACTED] led by the State of [REDACTED] for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts with the prior approval of the State's chief procurement official.
2. **PARTICIPATION:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the prior approval of the respective State chief procurement official. Issues of interpretation and eligibility for participation are solely within the authority of the State chief procurement official. Pursuant to this Participating Addendum, the Master Agreement may be utilized by the following ("Purchasing Entities" or "Purchasers"):
  - (a) WASHINGTON STATE AGENCIES. All Washington state agencies, departments, offices, divisions, boards, and commissions.
  - (b) WASHINGTON STATE INSTITUTIONS OF HIGHER EDUCATION (COLLEGES). Any the following specific institutions of higher education in Washington:
    - State universities – i.e., University of Washington & Washington State University;
    - Regional universities – i.e., Central Washington University, Eastern Washington University, & Western Washington University
    - Evergreen State College;
    - Community colleges; and
    - Technical colleges.
  - (c) MCUA PARTIES. The Master Agreement also may be utilized by any of the following types of entities that have executed a Master Contract Usage Agreement (MCUA) with Enterprise Services:
    - Political subdivisions (e.g., counties, cities, school districts, public utility districts, ports) in the State of Washington;
    - Federal governmental agencies or entities;
    - Public-benefit nonprofit corporations (i.e., § 501(c)(3) nonprofit corporations that receive federal, state, or local funding); and
    - Federally-recognized Indian Tribes located in the State of Washington.

By placing an order under this Participating Addendum, each Purchasing Entity agrees to be bound by the terms and conditions of this Participating Addendum, including the Master Agreement. Each Purchasing Entity shall be responsible for its compliance with such terms and conditions.

### 3. **PARTICIPATING STATE MODIFICATIONS OR ADDITIONS TO MASTER AGREEMENT:**

- 3.1. **WASHINGTON'S ELECTRONIC BUSINESS SOLUTIONS (WEBS) SYSTEM:** Within seven (7) days of execution of this Participating Addendum, Contractor shall register in the Washington State Department of Enterprise Services' Electronic Business Solutions (WEBS) System at [WEBS](#).



Contractor shall ensure that all of its information therein is current and accurate and that, throughout the term of the Master Agreement, Contractor shall maintain an accurate profile in WEBS.

- 3.2. **WASHINGTON’S STATEWIDE PAYEE DESK:** To be paid for contract sales, Contractors must register with Washington’s Statewide Payee Desk. Washington state agencies cannot make payments to a contractor until it is registered. Registration materials are available here: [Receiving Payment from the State](#).
- 3.3. **CONTRACT SALES REPORTING:** Contractor shall report total contract sales quarterly to Enterprise Services, as set forth below.
- (a) **REPORTING.** Contractor shall report quarterly Contract sales in Enterprise Services’ [Contract Sales Reporting System](#). Enterprise Services will provide Contractor with a login password and a vendor number.
  - (b) **DATA.** Each sales report must identify every authorized Purchasing Entity by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The “Miscellaneous” option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Purchasing Entities specified herein during the term of this Participating Addendum. Refer sales reporting questions to the Primary Contact set forth below. If there are no contract sales during the reporting period, Contractor must report zero sales.
  - (c) **DUE DATES FOR CONTRACT SALES REPORTING.** Quarterly Contract Sales Reports must be submitted electronically by the following deadlines for all sales invoiced during the applicable calendar quarter:

QUARTER	FOR SALES MADE IN CALENDAR QUARTER ENDING	MASTER CONTRACT SALES REPORT	
		DUE BY	PAST DUE
1	January 1 – March 31	April 30	May 1
2	April 1 – June 30	July 31	August 1
3	July 1 – September 30	October 31	November 1
4	October 1 – December 31	January 31	February 1

- 3.4. **VENDOR MANAGEMENT FEE:** Contractor shall pay to Enterprise Services a vendor management fee (“VMF”) of 1.25 percent on the purchase price for all contract sales (the purchase price is the total invoice price less applicable sales tax) authorized by this Participating Addendum.
- (a) The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:  

$$\text{Amount owed to Enterprise Services} = \text{Total contract sales invoiced (not including sales tax)} \times .01250.$$
  - (b) The VMF must be rolled into Contractor’s current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.
  - (c) Enterprise Services will invoice Contractor quarterly based on contract sales reported

by Contractor. Contractor shall not remit payment until it receives an invoice from Enterprise Services. Contractor's VMF payment to Enterprise Services must reference the following:

- This Washington Master Contract No.: [REDACTED]
  - The NASPO Master Agreement No.: [REDACTED]
  - The year and quarter for which the VMF is being remitted, and
  - Contractor's name as set forth in this Contract, if not already included on the face of the check.
- (d) Contractor's failure accurately and timely to report total net sales, to submit timely usage reports, or to remit timely payment of the VMF to Enterprise Services, may be cause for Enterprise Services to suspend or terminate this Participating Addendum or exercise any other remedies as provided by law.
- (e) Enterprise Services reserves the right, upon thirty (30) days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases.
- (f) For purposes of the VMF, the parties agree that the initial management fee is included in the pricing. Therefore, any increase or reduction of the management fee must be reflected in contract pricing commensurate with the adjustment.

**3.5. CONTRACTOR REPRESENTATIONS AND WARRANTIES:** Contractor makes each of the following representations and warranties as of the effective date of this Participating Addendum and at the time any order is placed pursuant to the Master Contract. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.

- (a) **WAGE VIOLATIONS.** Contractor represents and warrants that, during the term of this Master Contract and the three (3) year period immediately preceding the award of the Master Contract, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW 49.46, 49.48, or 49.52.
- (b) **CIVIL RIGHTS.** Contractor represents and warrants that Contractor complies with all applicable requirements regarding civil rights. Such requirements prohibit discrimination against individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (c) **EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS (MANDATORY INDIVIDUAL ARBITRATION).** Contractor represents and warrants that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Participation Agreement, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

**3.6. COMPLIANCE WITH LAW; TAXES, LICENSES, & REGISTRATION:** Contractor shall comply with

applicable law. Prior to making any sales hereunder, if Contractor is not already registered, Contractor shall register to conduct business in the State of Washington and promptly acquire and maintain all necessary licenses and registrations and pay all applicable taxes and fees. In addition, for all sales to Purchasers in the State of Washington, if Contractor does not currently do so, Contractor shall calculate, collect, and remit, as appropriate, the applicable state and local sales tax on all invoices.

**3.7. CONTRACTOR'S SALES AUTHORITY; PURCHASE ORDERS; & INVOICES:**

- (a) **CONTRACTOR'S SALES AUTHORITY.** Pursuant to this Participating Addendum, Contractor is authorized to provide only those goods/services set forth in the Master Agreement as conditioned by this Participating Addendum. Contractor shall not represent to any Purchaser hereunder that it has any authority to sell any other materials, supplies, services and/or equipment.
- (b) **INVOICES.** Contractor must provide a properly completed invoice to Purchaser. All invoices are to be delivered to the address indicated in the purchase order. Each invoice must include the:
  - Washington Master Contract Number [redacted];
  - Lead State Master Agreement Number [redacted];
  - Contractor's statewide vendor registration number assigned by the Washington State Office of Financial Management (OFM); and
  - Applicable Purchaser's order number.

Invoices must be prominently annotated by the Contractor with all applicable volume discount(s).

3.8 [redacted]

**4. LEASE AGREEMENTS:** Insert applicable provision.

**5. PRIMARY CONTACTS:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

<b>Participating State</b>	<b>Contractor</b>
Attn: [redacted]	Attn: _____
State of Washington	_____
Washington Dept. of Enterprise Services	_____
PO Box 41411	_____
Olympia, WA 98504-1411	Tel: (____) _____
Tel: (360) [redacted]	Email: _____
Email: [redacted]	

**6. SUBCONTRACTORS:** Insert applicable provision.

**7. ORDERS:** Unless the parties to the applicable purchase order agree in writing that another contract or agreement applies to such order, any order placed by a Purchaser for goods/services available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions of) the Master Agreement as conditioned by this Participating Addendum.

**8. GENERAL:**

- 8.1. INTEGRATED AGREEMENT; MODIFICATION. This Participating Addendum and Master Agreement, together with its exhibits, set forth the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. This Participating Addendum may not be modified except in writing signed by the Parties.
- 8.2. AUTHORITY. Each party to this Participating Addendum, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Participating Addendum and that its execution, delivery, and performance of this Participating Addendum has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 8.3. ELECTRONIC SIGNATURES. An electronic signature or electronic record of this Participating Addendum or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Participating Addendum or such other ancillary agreement for all purposes.
- 8.4. COUNTERPARTS. This Participating Addendum may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Participating Addendum at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Participating Addendum.

EXECUTED as of the date and year first above written.

**STATE OF WASHINGTON**  
**DEPARTMENT OF ENTERPRISE SERVICES**

**INSERT NAME OF CONTRACTOR,**  
**A**

By: \_\_\_\_\_

By: \_\_\_\_\_

Type Name

Type Name

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT C: STANDARD STATE PROVISIONS  
FOR CONTRACTS AND GRANTS  
REVISED DECEMBER 15, 2017**

**1. Definitions:** For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. “Agreement” shall mean the specific contract or grant to which this form is attached.

**2. Entire Agreement:** This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

**3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

**4. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.

**5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

**6. Independence:** The Party will act in an independent capacity and not as officers or employees of the State.

**7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys’ fees, collection costs or other costs of the Party or any third party.

**8. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed

herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

*Workers Compensation:* With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

*General Liability and Property Damage:* With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

*Automotive Liability:* The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

*Additional Insured.* The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

*Notice of Cancellation or Change.* There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

**9. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.

**10. False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

**11. Whistleblower Protections:** The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

**12. Location of State Data:** No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

**13. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or



acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

**14. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

**15. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

**16. Taxes Due to the State:**

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

**17. Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

**18. Child Support:** (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

**19. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and

Americans with Disabilities Act”); Section 16 (“Taxes Due the State”); Section 18 (“Child Support”); Section 20 (“No Gifts or Gratuities”); Section 22 (“Certification Regarding Debarment”); Section 30 (“State Facilities”); and Section 32.A (“Certification Regarding Use of State Funds”).

**20. No Gifts or Gratuities:** Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

**21. Copies:** Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

**22. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party’s principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State’s debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

**23. Conflict of Interest:** Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

**24. Confidentiality:** Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

**25. Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) (“Force Majeure”). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

**26. Marketing:** Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

**27. Termination:**

**A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

**B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party’s notice or such longer time as the non-breaching party may specify in the notice.

**C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

**28. Continuity of Performance:** In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

**29. No Implied Waiver of Remedies:** Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

**30. State Facilities:** If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

**31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements:** If this Agreement is a grant that is funded in whole or in part by Federal funds:

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required. For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.
- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

**32. Requirements Pertaining Only to State-Funded Grants:**

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.
- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

Exhibit 3 – State of Utah Terms and Conditions

**ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR GOODS AND SERVICES**

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
  - a) “**Confidential Information**” means information that is deemed as confidential under applicable state and federal laws, including personal information. The Eligible User reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
  - b) “**Contract**” means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term “Contract” shall include any purchase orders that result from this Contract.
  - c) “**Contract Signature Page(s)**” means the State of Utah cover page(s) that the Division and Contractor signed.
  - d) “**Contractor**” means the individual or entity delivering the Procurement Item identified in this Contract. The term “Contractor” shall include Contractor’s agents, officers, employees, and partners.
  - e) “**Custom Deliverable**” means the Work Product that Contractor is required to deliver to the Eligible User under this Contract.
  - f) “**Division**” means the Division of Purchasing and General Services.
  - g) “**Eligible User(s)**” means those authorized to use State Cooperative Contracts and includes the State of Utah’s government departments, institutions, agencies, political subdivisions (e.g., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.
  - h) “**End User Agreement**” means any agreement that Eligible Users are required to sign in order to participate in this Contract, including an end user agreement, customer agreement, memorandum of understanding, statement of work, lease agreement, service level agreement, or any other named separate agreement.
  - i) “**Procurement Item**” means a supply, a service, Custom Deliverable, construction, or technology that Contractor is required to deliver to the Eligible User under this Contract.
  - j) “**Response**” means the Contractor’s bid, proposals, quote, or any other document used by the Contractor to respond to the Solicitation.
  - k) “**Solicitation**” means an invitation for bids, request for proposals, notice of a sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
  - l) “**State of Utah**” means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
  - m) “**Subcontractors**” means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction, including a trade contractor or specialty contractor.
  - n) “**Work Product**” means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor’s Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the Eligible User. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor’s intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor’s performance and the payments made by Eligible Users to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor’s attention by the Division or the Division’s auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.
5. **PERMITS:** If necessary Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of this Contract.
6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT “STATUS VERIFICATION SYSTEM”:** The Status Verification System, also referred to as “E-verify”, only applies to contracts issued through a Request for Proposal process, to sole sources that are included within a Request for Proposal, and when Contractor employs any personnel in Utah.

### Exhibit 3 – State of Utah Terms and Conditions

- a. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
  - b. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
  - c. Contractor's failure to comply with this section will be considered a material breach of this Contract.
7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the Division or the State of Utah, unless disclosure has been made to the Division.
  8. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the Division or the State of Utah.
  9. **CONTRACTOR RESPONSIBILITY:** Contractor is solely responsible for fulfilling the contract, with responsibility for all Procurement Items delivered and/or performed as stated in this Contract. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor's responsibilities under this Contract into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the Eligible Users under this Contract. Moreover, Contractor is responsible for its Subcontractors compliance under this Contract.
  10. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, the Eligible Users and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract to the extent caused by any intentional wrongful act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the fault of an Eligible User. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
  11. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees. Contractor agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
  12. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
  13. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, or declared ineligible by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
  14. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the Division, upon thirty (30) days written termination notice being given to the Contractor. The Division and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.

On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved and conforming Procurement Items ordered prior to date of termination. In no event shall the Eligible Users be liable to the Contractor for compensation for any Procurement Item neither requested nor accepted by an Eligible User. In no event shall the Division's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the Eligible Users for any damages or claims arising under this Contract.
  15. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, a purchase order that results from this Contract may be terminated in whole or in part at the sole discretion of an Eligible User, if an Eligible User reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects an Eligible User's ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

### Exhibit 3 – State of Utah Terms and Conditions

If a written notice is delivered under this section, an Eligible User will reimburse Contractor for the Procurement Item(s) properly ordered and/or properly performed until the effective date of said notice. An Eligible User will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

16. **SALES TAX EXEMPTION:** The Procurement Item(s) under this Contract will be paid for from an Eligible User's funds and used in the exercise of an Eligible Users essential functions. Upon request, an Eligible User will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request an Eligible User's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.
17. **WARRANTY OF PROCUREMENT ITEM(S):** Contractor warrants, represents and conveys full ownership and clear title, free of all liens and encumbrances, to the Procurement Item(s) delivered to an Eligible User under this Contract. Contractor warrants for a period of one (1) year that: (i) the Procurement Item(s) perform according to all specific claims that Contractor made in its Response; (ii) the Procurement Item(s) are suitable for the ordinary purposes for which such Procurement Item(s) are used; (iii) the Procurement Item(s) are suitable for any special purposes identified in the Contractor's Response; (iv) the Procurement Item(s) are designed and manufactured in a commercially reasonable manner; (v) the Procurement Item(s) are manufactured and in all other respects create no harm to persons or property; and (vi) the Procurement Item(s) are free of defects. Unless otherwise specified, all Procurement Item(s) provided shall be new and unused of the latest model or design.  
  
Remedies available to an Eligible User under this section include, but are not limited to, the following: Contractor will repair or replace Procurement Item(s) at no charge to the Eligible User within ten (10) days of any written notification informing Contractor of the Procurement Items not performing as required under this Contract. If the repaired and/or replaced Procurement Item(s) prove to be inadequate, or fail its essential purpose, Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies an Eligible User may otherwise have under this Contract.
18. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:
  - a. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
  - b. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate.
  - c. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
  - d. Other insurance policies required in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the State before the Contract may commence.

The State reserves the right to require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

### 19. RESERVED.

20. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the Division, Contractor also agrees that the Contractor's Response will be a public document, and copies may be given to the public as permitted under GRAMA. The Division, the Eligible Users, and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.
21. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to an Eligible User, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract.
22. **ACCEPTANCE AND REJECTION:** An Eligible User shall have thirty (30) days after delivery of the Procurement Item(s) to perform an inspection of the Procurement Item(s) to determine whether the Procurement Item(s) conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Procurement Item(s) by the Eligible User.

If Contractor delivers nonconforming Procurement Item(s), an Eligible User may, at its option and at Contractor's expense: (i) return the Procurement Item(s) for a full refund; (ii) require Contractor to promptly correct or replace the nonconforming Procurement Item(s); or (iii) obtain replacement Procurement Item(s) from another source, subject to Contractor being



### Exhibit 3 – State of Utah Terms and Conditions

responsible for any cover costs. Contractor shall not redeliver corrected or rejected Procurement Item(s) without: first, disclosing the former rejection or requirement for correction; and second, obtaining written consent of the Eligible User to redeliver the corrected Procurement Item(s). Repair, replacement, and other correction and redelivery shall be subject to the terms of this Contract.

23. **INVOICING:** Contractor will submit invoices within thirty (30) days after the delivery date of the Procurement Item(s) to the Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a discount at the time of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.
  24. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by an Eligible User, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the Eligible User within ten (10) business days of receipt of final payment, shall release the Eligible User from all claims and all liability to the Contractor. An Eligible User's payment for the Procurement Item(s) and/or Services shall not be deemed an acceptance of the Procurement Item(s) and is without prejudice to any and all claims that the Eligible User may have against Contractor. Contractor shall not charge Eligible Users electronic payment fees of any kind.
  25. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the Division, the Eligible Users, and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the Division, the Eligible User, or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.
  26. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The Division, the Eligible User, and Contractor each recognizes that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All Procurement Item(s), documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the Eligible User.
  27. **OWNERSHIP IN CUSTOM DELIVERABLES:** In the event that Contractor provides Custom Deliverables to the Eligible User, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for the Eligible User and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the Eligible User, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the Eligible User any and all copyrights in and to the Custom Deliverables, subject to the following:
    1. Contractor has received payment for the Custom Deliverables,
    2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and
    3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of the Eligible User (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.
    4. Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by the Eligible User.Contractor agrees to grant to the Eligible User a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for the Eligible User and the State of Utah to use the Custom Deliverables. The Eligible User reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the Eligible User's and the State of Utah's internal purposes, such Custom Deliverables. For the Goods delivered that consist of Contractor's scripts and code and are not considered Custom Deliverables or Work Product, for any reason whatsoever, Contractor grants the Eligible User a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for the Eligible User's and the State of Utah's internal business operation under this Contract. The Eligible User and the State of Utah may not participate in the transfer or sale of, create derivative works from, or in any way exploit Contractor's Intellectual Property Rights, in whole or in part.
28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the Division.

Exhibit 3 – State of Utah Terms and Conditions

29. **REMEDIES:** Any of the following events will constitute cause for an Eligible User to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. An Eligible User may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, an Eligible User may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the Division; or (v) demand a full refund of any payment that the Eligible User has made to Contractor under this Contract for Procurement Item(s) that do not conform to this Contract.
30. **FORCE MAJEURE:** Neither an Eligible User nor Contractor will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. An Eligible User may terminate a purchase order resulting from this Contract after determining such delay will prevent Contractor's successful performance of this Contract.
31. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify an Eligible User of any potential or actual misuse or misappropriation of Confidential Information.
- Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the Eligible User, including anyone for whom the Eligible User is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.
- Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the Eligible User or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.
32. **LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
33. **ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Procurement Items based upon the same terms, conditions, and prices of this Contract.
34. **INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Procurement Items from this Contract will be treated as individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
35. **REPORTS AND FEES:**
- a. **Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the State in the form of a check, EFT or online payment through the Division's Automated Vendor Usage Management System. Checks will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, Attn: Cooperative Contracts, PO Box 141061, Salt Lake City, UT 84114-1061. The Administrative Fee will be the amount listed in the Solicitation and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.
  - b. **Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the dollar volume of purchases by each Eligible User. The quarterly report will be provided in secure electronic format through the Division's Automated Vendor Usage Management System found at: <https://statecontracts.utah.gov/Vendor..>
  - c. **Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

Period End	Reports Due
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31
  - d. **Fee Payment:** After the Division receives the quarterly utilization report, it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
  - e. **Timely Reports and Fees:** If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.
36. **ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.

### Exhibit 3 – State of Utah Terms and Conditions

37. **END USER AGREEMENTS:** If Eligible Users are required by Contractor to sign an End User Agreement before participating in this Contract, then a copy of the End User Agreement must be attached to this Contract as an attachment. The term of the End User Agreement shall not exceed the term of this Contract, and the End User Agreement will automatically terminate upon the completion of termination of this Contract. An End User Agreement must reference this Contract, and may not be amended or changed unless approved in writing by the Division. Eligible Users will not be responsible or obligated for any early termination fees if the End User Agreement terminates as a result of completion or termination of this Contract.
38. **PUBLICITY:** Contractor shall submit to the Division for written approval all advertising and publicity matters relating to this Contract. It is within the Division's sole discretion whether to provide approval, which approval must be in writing.
39. **WORK ON STATE OF UTAH OR ELIGIBLE USER PREMISES:** Contractor shall ensure that personnel working on the premises of an Eligible User shall: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized areas; (iii) follow all instructions; and (iv) be subject to a background check, prior to entering the premises. The Eligible User may remove any individual for a violation hereunder.
40. **CONTRACT INFORMATION:** During the duration of this Contract the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies within the State of Utah.
41. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
42. **SUSPENSION OF WORK:** Should circumstances arise which would cause an Eligible User to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the Eligible User.
43. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
44. **CHANGES IN SCOPE:** Any changes in the scope of the services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.
45. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
46. **TRAVEL COSTS:** If travel expenses are permitted by the Solicitation All travel costs associated with the delivery of Services under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to the vendor for correction.
47. **PERFORMANCE EVALUATION:** The Division may conduct a performance evaluation of Contractor, including Contractor's Subcontractors. Results of any evaluation may be made available to Contractor upon request.
48. **STANDARD OF CARE:** The services performed by Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the services that are the subject of this Contract. Contractor shall be liable to the Eligible User for claims, liabilities, additional burdens, penalties, damages, or third party claims (e.g., another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.
49. **REVIEWS:** The Division reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.
50. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The Division or an Eligible User, after consultation with Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the Division or an Eligible User appoints such an expert or panel, the Division or the Eligible User and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
51. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of an Eligible User, the Division, or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.
52. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice Eligible Users' right to enforce this Contract with respect to any default of this Contract or defect in the Procurement Item(s) that has not been cured, or of any of the following clauses, including: Governing Law and Venue, Laws and Regulations, Records Administration,

Exhibit 3 – State of Utah Terms and Conditions

Remedies, Dispute Resolution, Indemnity, Newly Manufactured, Indemnification Relating to Intellectual Property, Warranty of Procurement Item(s), Insurance.

53. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
54. **ERRORS AND OMISSIONS:** Contractor shall not take advantage of any errors and/or omissions in this Contract. The Contractor must promptly notify the Division of any errors and/or omissions that are discovered.
55. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
56. **ANTI-BOYCOTT ISRAEL:** In accordance with Utah Statute 63G-27-101, Contractor certifies that it is not currently engaged in a boycott of the State of Israel and agrees not to engage in a boycott of the State of Israel for the duration of the contract.

(Revision Date: 15 April 2021)

**PARTICIPATING ADDENDUM**



**INSERT PORTFOLIO TITLE HERE**

Led by the State of **insert State**

Master Agreement #: **enter number** (hereinafter "Master Agreement")

Contractor: **enter NAME (Contractor)** (hereinafter "Contractor")

Participating State: **STATE OF HAWAII** (hereinafter "Participating State")

**State of Hawaii, State Procurement Office (SPO) Price List Contract No. insert VL/PL No.**

This Addendum will add the State of Hawaii as a Participating State to purchase from the NASPO ValuePoint Master Agreement Number **insert contract number** with **insert contractor name**.

1. Scope: This addendum covers the **[contract title]** led by the State of **[xxxxxx]** for use by state agencies and other entities located in the Participating State of Hawaii authorized by that State's statutes to utilize State contracts.
2. Participation: All jurisdictions located within the State of Hawaii, which have obtained prior written approval by its Chief Procurement Officer, will be allowed to purchase from the Master Agreement. Private nonprofit health or human services organizations with current purchase of service contracts governed by Hawaii Revised Statutes (HRS) chapter 103F are eligible to participate in the SPO price/vendor list contracts upon mutual agreement between the Contractor and the non-profit. (Each such participating jurisdiction and participating nonprofit is hereinafter referred to as a "Participating Entity"). Issues of interpretation and eligibility for participation are solely within the authority of the Administrator, State Procurement Office.
3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	<b>Name</b>
Address:	<b>Address</b>
Telephone:	<b>Phone</b>
Fax:	<b>Fax</b>
Email:	<b>email</b>

**PARTICIPATING ADDENDUM**



**INSERT PORTFOLIO TITLE HERE**

Led by the State of **insert State**

Participating State

Name:	
Address:	State Procurement Office 1151 Punchbowl Street, Room 416 Honolulu, HI 98613
Telephone:	
Fax:	(808) 586-0570
Email:	

4. Participating State Modifications or Additions to the Master Agreement: These modifications or additions apply only to actions and relationships within the Participating State and its Entities.

The following changes are modifying or supplementing the Master Agreement terms and conditions.

*Specialists: The changes below starting from A. are the SPO standard PA clauses. If you have specific changes to the Master Agreement, please note as applicable in a different color. And if you change any of the SPO standard PA clauses, please note them in another color when routing to the Supervisor. [delete this paragraph.]*

**Changes:**

- A. Usage Reports. Contractor shall submit a quarterly gross sales report (including zero-dollar sales) in EXCEL to the contact person listed in the Participating Addendum, Paragraph 3 (or as amended) in accordance with the following schedule (or as requested):

	Date Range	Due no later than
Fiscal Year, Quarter 1	July 1 – September 30	October 31
Fiscal Year, Quarter 2	October 1 – December 31	January 31
Fiscal Year, Quarter 3	January 1 – March 31	April 30
Fiscal Year, Quarter 4	April 1 – June 30	July 31

The report shall identify each transaction and include the following information:

- Jurisdiction
- Item No. Part Number (if applicable)
- Quantity
- Department/Agency Name
- Product/Service Description
- NASPO ValuePoint Contract Price
- Date of Purchase
- MSRP List Price
- Unit of Measure



**PARTICIPATING ADDENDUM**



**INSERT PORTFOLIO TITLE HERE**

Led by the State of **insert State**

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The quarterly report shall also include any adjustment from prior periods (i.e. exchanges and/or return).

- B. The validity of this Addendum, any of its terms or provisions, as well as the right and duties of the parties in this Addendum, shall be governed by the laws of the State of Hawaii. A copy of the Attorney General's General Conditions, which is made a part of this Addendum, can be found attached as Exhibit A. Any action at law or in equity to enforce or interpret the provisions of this Addendum shall be brought in a court of competent jurisdiction in Honolulu, Hawaii.
- C. **Inspection of Facilities.** Pursuant to HRS § 103D-316, the Participating State, at reasonable times, may inspect the part of the plant or place of business of the Contractor or any subcontractor that is related to the performance of a Master Agreement and this Addendum.
- D. **Campaign Contributions.** The Contractor is notified of the applicability of HRS § 11-355, which prohibits campaign contributions from Contractor during the term of the Addendum if the contractor is paid with funds appropriated by the Hawaii State Legislature.
- E. Purchases by State of Hawaii government entities under this Master Agreement is not mandatory. This Addendum is secondary and non-exclusive.
- F. The State of Hawaii's purchasing card (pCard) is required to be used by the State's executive departments/agencies (excluding the Department of Education, the Hawaii Health System Corporation, the Office of Hawaiian Affairs, and the University of Hawaii) for all orders totaling less than \$2,500. For purchases of \$2,500 or more, agencies may use the pCard, subject to its credit limit or issue a purchase order.
- G. Pursuant to HRS §103D-310(c), if Contractor is doing business in the Participating State, Contractor is required to comply with all laws governing entities doing business in the Participating State, including the following HRS chapters.
  - 1. Chapter 237, General Excise Tax Law;
  - 2. Chapter 383, Hawaii Employment Security Law;
  - 3. Chapter 386, Workers' Compensation;
  - 4. Chapter 392, Temporary Disability Insurance;
  - 5. Chapter 393, Prepaid Health Care Act; and

A Certificate of Good Standing is required for entities doing business in the State.

The Hawaii Compliance Express (HCE) is utilized for verification of compliance. The SPO will conduct periodic checks to confirm Contractor's compliance on HCE throughout the term of the Addendum.

**PARTICIPATING ADDENDUM**



**INSERT PORTFOLIO TITLE HERE**

Led by the State of **insert State**

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Alternatively, Contractors not utilizing HCE to demonstrate compliance shall provide paper certificates to the SPO as instructed below. All certificates must be valid on the date it is received by the SPO. All applications for applicable clearances are the responsibility of the Contractor.

HRS Chapter 237 tax clearance requirement. Pursuant to Section 103D-328, HRS, Contractor shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate.

The Tax Clearance Application, Form A-6, and its completion and filing instructions, are available on the DOTAX website: <http://tax.hawaii.gov/forms/>.

HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements. Pursuant to Section 103D-310(c) Contractor shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue. A photocopy of the certificate is acceptable to the SPO.

The DLIR Form LIR#27 Application for Certificate of Compliance with Section 3-122-112, HAR, and its filing instructions are available on the DLIR website: <http://labor.hawaii.gov/forms/>.

Compliance with Section 103D-310(c), HRS, for an entity doing business in the State. Contractor shall be required to submit a Certificate of Good Standing (COGS) issued by the State of Hawaii Department of Commerce and Consumer Affairs (DCCA) – Business Registration Division (BREG). The Certificate is valid for six (6) months from date of issue. A photocopy of the certificate is acceptable to the SPO.

To obtain the Certificate, the Contractor must be registered with the BREG. A sole proprietorship is not required to register with the BREG and is therefore not required to submit the certificate.

For more information regarding online business registration and the COGS is available at <http://cca.hawaii.gov/breg/>.

H. Effective Date and Contract Period. This Addendum is effective upon the date of execution by the Participating State and shall continue for the term set forth in the Master Agreement.

I. Licensing

**PARTICIPATING ADDENDUM**



**INSERT PORTFOLIO TITLE HERE**

Led by the State of **insert State**

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Contractors must be properly licensed and capable of performing the Work as described in the Master Agreement, in accordance with the Professional and Vocational licensing laws of the state. Contractors under Participating Addendums must maintain any and all required licenses through the duration of the contract and Participating Addendum.

J. Insurance

The Contractor shall maintain in full force and effect during the life of this contract, liability and property damage insurance to protect the Contractor and its Subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under this contract, whether such operations be by the Contractor or by Subcontractor or anyone directly or indirectly employed by either of them. If any Subcontractor is involved, the insurance policy or policies shall name the Subcontractor as additional insured.

As an alternative to the Contractor providing insurance to cover operations performed by a Subcontractor and naming the Subcontractor as additional insured, the Contractor may require the Subcontractor to provide its own insurance, which meets the requirements herein. It is understood that a Subcontractor's insurance policy or policies are in addition to the Contractor's own policy or policies.

The following minimum insurance coverage(s) and limit(s) shall be provided by the Contractor, including its Subcontractor(s) where appropriate.

<u>Coverage</u>	<u>Limits</u>
Commercial General Liability (occurrence form)	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability	\$1,000,000 per accident
Professional Liability	\$1,000,000 per claim \$2,000,000 aggregate

Professional Liability shall be required from Contractors providing professional services requiring a license to conduct its business such as an engineer, architect, accountant, lawyer, information technology services etc. Use as applicable.

Cyber Liability covering claims and losses with respect to network, internet (Cloud) or other data disclosure risks (such as data breaches, releases of Confidential Information, unauthorize access/use of information, and identity theft) within limits of not less than \$1,000,000 per claim and \$2,000,000 aggregate. – use as applicable

**PARTICIPATING ADDENDUM**



**INSERT PORTFOLIO TITLE HERE**

Led by the State of **insert State**

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Each insurance policy required by this contract **(with the exception of the Professional Liability policy-use as applicable)**, including a Subcontractor's policy, shall contain the following clauses:

- A. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."
- B. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

A Waiver of Subrogation shall apply to the General Liability, Automobile Liability and Worker's Compensation insurance policies and shall be in favor of the State of Hawaii.

The Contractor agrees to deposit with the State of Hawaii certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this Addendum and have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the State during the entire term of the price/vendor list and price/vendor list extensions, if any, including those of its Subcontractor(s), where appropriate. Upon request, Contractor shall allow the State to inspect a copy of the policy or policies.

Failure of the Contractor to provide and keep in force such insurance shall be regarded as material default, entitling the State to exercise any or all of the remedies provided in the contract and this RFP for a default by the Contractor.

The procuring of such required insurance shall not be construed to limit the Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this RFP. Notwithstanding said policy or policies of insurance, the Contractor shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this price list.

- K. **(Optional) Special Provisions for Purchases During Declared Disasters**

**The attached Exhibit B, Required FEMA Disaster Provisions are made part of this addendum made under this Agreement. FEMA requires certain provisions in order to receive reimbursement.**

- 5. **Lease Agreements:** Leasing is not authorized by this Addendum. **Adjust as applicable.**
- 6. **Subcontractors:** All contactors, dealers, and resellers authorized in the State of **insert Lead State**, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint

**PARTICIPATING ADDENDUM**



**INSERT PORTFOLIO TITLE HERE**

Led by the State of **insert State**

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Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement. Subcontractors are **(or are not)** allowed under this Addendum.

7. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

8. Freight Charges (unless otherwise stated in the master contract):

Prices proposed will be the delivered price to any state agency or political subdivision. All deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Buyer except as to latent defects, fraud, and Contractor's warranty obligations. Any portion of a full order originally shipped without transportation charges (that failed to ship with the original order, thereby becoming back-ordered) will also be shipped without transportation charges.

9. Purchase Order and Payment Instructions:

All purchase orders issued by Participating Entities under this Addendum shall include the Participating State contract number: SPO Price List Contract No. **add number** and the NASPO ValuePoint Master Agreement Number **add number**.

Purchase Orders and Payments shall be made to **add contractor name** or authorized subcontractors, if any.

Invoices and Payment Instructions:

Contractor(s) shall forward original invoice(s), directly to the ordering agency. The GET or use tax and county surcharge may be added to the invoice as a separate line item and shall not exceed the current max pass-on tax rate(s) for each island.

County surcharges on state general excise (GE) tax or Use tax may be visibly passed on but is not required. For more information on county surcharges and the max pass-on tax rate, please visit the Department of Taxation's website at <http://tax.hawaii.gov/geninfo/countysurcharge>.

Pursuant to HRS § 103-10, Participating State and any agency of the Participating State or any county, shall have thirty (30) calendar days after receipt of invoice or satisfactory delivery of goods to make payment. Any interest for delinquent payment shall be as allowed by HRS § 103-10.

**PARTICIPATING ADDENDUM**



**INSERT PORTFOLIO TITLE HERE**

Led by the State of **insert State**

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10. Participating Entity as Individual Customer:

Each Participating Entity shall be treated as an individual customer. Except to the extent modified by this Addendum, each Participating Entity will be responsible to follow the terms and conditions of the Master Agreement; and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each Participating Entity will be responsible for its own charges, fees, and liabilities. Each Participating Entity will have the same rights to any indemnity or to recover any costs allowed in the Master Agreement for their purchases. The Contractor will apply the charges to each Participating Entity individually.

11. Entire Contract:

This Addendum, the Master Agreement, and the Attorney General's General Conditions, set forth the entire agreement, and all the conditions, understandings, promises, warranties and representations among the parties with respect to this Addendum and the Master Agreement, and supersedes any prior communications, representations or agreements whether, oral or written, with respect to the subject matter hereof.

Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum, the Master Agreement, and the Attorney General's General Conditions that are included in any purchase order or other document shall be void. The terms and conditions of this Addendum, the Master Agreement, and the Attorney General's General Conditions, shall govern in the case of any such inconsistent, contrary, or additional terms.



**PARTICIPATING ADDENDUM**



**INSERT PORTFOLIO TITLE HERE**

Led by the State of **insert State**

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

Participating State: STATE OF HAWAII	Contractor:
Signature:	Signature:
Name: BONNIE KAHAKUI	Name:
Title: Acting Administrator, SPO	Title:
Date:	Date:

**APPROVED AS TO FORM:**

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Deputy Attorney General

GENERAL CONDITIONS

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## GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency (“HOPA”) (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
  - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
  - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
  - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
  - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
  - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
  - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
  8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
  9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
  10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
  11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
  12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
    - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
  - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
  - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.



- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:
- (1) Any completed goods or work product; and
  - (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
  - (A) Contract prices for goods or services accepted under the Contract;
  - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
  - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

(1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

(A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

(B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or

(C) Within such further time as may be allowed by the Agency procurement officer in writing.

(2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

(3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

(4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
  - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
  - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
    - (A) Changes in the work within the scope of the Contract; and
    - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
  - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
  - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
  - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
  - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
  - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
  - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
  - (2) Method of delivery; or
  - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Contract or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
  - (1) Description of performance (Attachment 1);
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
  - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
    - (5) Method of shipment or packing of supplies; or
    - (6) Place of delivery.
  - b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
  - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
  - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
  - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
  - a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
  - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
  - b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.



34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
  - a. Definitions.

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

    - (1) Social security number;
    - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
  - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
  - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
  - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

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## **Attachment F PROTEST INFORMATION**

This attachment is intended to provide Offerors with an overview of the Lead State's protest law, procedures, and requirements, which may be updated and amended without notice. Offerors filing a protest are wholly responsible for locating, understanding, and complying with protest law, procedures, and requirements in effect at the time of the protest.

### **OAC 260:115-3-19 - Supplier's Protest**

1. A supplier may protest a contract award by a state agency or OMES to the State Purchasing Director. All remedies available to suppliers through the sealed bid process pursuant to the Oklahoma Central Purchasing Act are also available to online bidders in an online bidding process.
  1. **Supplier notification.** A supplier shall submit written notice to the State Purchasing Director of a protest of an award of contract by a state agency or OMES within ten (10) business days of contract award. The supplier protest notice shall state all facts and reasons in specificity for protest.
  2. **State Purchasing Director review and determination.** The State Purchasing Director shall review the supplier's protest and contract award documents.
    1. The State Purchasing Director may determine to respond to the protest or delegate the responsibility by written notice to the state agency that awarded the contract.
    2. The State Purchasing Director or state agency, whichever is applicable, shall send written notice of the decision to deny or sustain the protest to the supplier within ten (10) business days of receipt of the protest.
  3. **Supplier appeal of decision to deny protest.** The supplier may appeal a denial of protest by the State Purchasing Director or a state agency to the OMES Director.
    1. Such appeal shall be filed by the supplier within ten (10) business days of the date of the State Purchasing Director's or state agency's notice of denial pursuant to [75 O.S. §§309 et seq.](#)
    2. The OMES Director may enter an order staying contract performance upon such terms and conditions as the OMES Director determines to be proper. Any request for stay of contract performance must be made in writing and filed during the ten (10) business day time period in which an appeal may be commenced to the OMES Director. The OMES Director shall have continuing jurisdiction to modify any such orders made in connection with a stay during the pendency of the appeal as appropriate under the circumstances presented.
  4. **Director actions and determination.** The OMES director may hear the appeal or assign the supplier's appeal to an Administrative Law Judge retained by the agency.
    1. If the appeal is assigned to an Administrative Law Judge, the Administrative Law Judge shall review the appeal for legal authority and jurisdiction. If legal authority and

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- jurisdictional requirements are met, the Administrative Law Judge shall conduct an administrative hearing and provide proposed findings of fact and conclusions of law to the OMES Director.
2. If the appeal is heard by the OMES Director, the OMES Director shall have all powers granted by law including all powers delegated to the Administrative Law Judge by this section.
  3. The OMES Director shall send written notice of the final order sustaining or denying the supplier's appeal to the parties.
  4. The cost of actions necessary to process a supplier's appeal, together with any other expenses incurred due to the appeal, shall be paid by the state agency responsible for the initial solicitation.
5. **Conduct of administrative hearing.** Administrative hearings shall be conducted in accordance with the [Administrative Procedures Act](#) and the following procedures:
1. Prehearing conference. A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the supplier in its initial protest to the State Purchasing Director.
  2. Burden of proof. The burden of proof shall be upon the supplier, which must prove its case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.
  3. Representation. Corporations must be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.
  4. Proper parties. In addition to the supplier protesting the contract award, OMES, the supplier awarded the contract and the state agency for which the bid was let may participate in the bid protest proceedings as a proper party.
  5. Discovery. The conduct of discovery is governed by the [Administrative Procedures Act, 75 O.S. §§ 309 et seq.](#) and other applicable law.
  6. Authority of the Administrative Law Judge. The Administrative Law Judge may:
    1. Establish a scheduling order;
    2. Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;
    3. Rule on all interlocutory motions;
    4. Require briefing of any or all issues;
    5. Conduct hearings;
    6. Rule on the admissibility of all evidence;

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7. Question witnesses; and
8. Make proposed findings of facts and conclusions of law to the OMES Director.
7. Remedies. The Administrative Law Judge may recommend that the OMES Director deny the supplier's appeal or that the contract award be cancelled and rebid.
6. **Supplier appeal of OMES Director decision to deny appeal.** If the OMES Director denies a supplier's appeal, the supplier may appeal pursuant to provisions of [75 O.S. §§ 309 et seq.](#)

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## **Attachment G OFFEROR INFORMATION, ACKNOWLEDGEMENTS, AND CERTIFICATIONS**

### **I. OFFEROR INFORMATION**

- A. Company's Full Legal Name:**
- B. Primary Business Address:**
- C. Federal Tax Identification Number:**
- D. Entity Type:**
  - Sole Proprietorship
  - Partnership
  - Limited Liability Company
  - Corporation

### **II. BUSINESS DETAILS**

- A. Company Website.** Provide a URL for your company's website.
- B. Company Size.** Identify the number of employees working for your company.
- C. Ownership Structure.** Describe your company's ownership structure.
- D. Litigation.** List all claims of non-performance or breach from customers in excess of \$5,000, including all pending litigation matters (including civil, criminal, or appellate) or criminal convictions in the past 5 years for the company and all principals. Attach an additional document if necessary.

### **III. PROPOSAL CONTACT**

The Proposal Contact must be able to respond timely to communications from the Lead State. Offeror must, within 24 hours, notify the Lead State of any change to Offeror's Proposal Contact.

- A. Proposal Contact Name:**
- B. Proposal Contact Title:**
- C. Proposal Contact Email:**
- D. Proposal Contact Phone Number:**

### **IV. ACKNOWLEDGEMENTS AND CERTIFICATIONS**

By signing below and submitting a response to this RFP, Offeror acknowledges and certifies the following:

- A. Debarment.** (Check one of the below.)
  - Neither Offeror 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.
  - Offeror cannot certify the statement above, and Offeror will affix a written explanation to this attachment for review by the Lead State. If after reviewing Offeror's written explanation the Lead State determines it is not in the best interest of the Lead State, Participating Entities, or



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Purchasing Entities to award Offeror a Master Agreement, the Lead State may reject Offeror's proposal.

**B. Non-collusion.**

1. This proposal has been developed independently by Offeror and has been submitted without collusion and without any agreement, understanding, or planned common course of action with any other Offeror or supplier of Product in a manner designed to limit fair and open competition.
2. The contents of this proposal have not been communicated by Offeror or its employees or agents to any person not an employee or agent of Offeror and will not be communicated to any such persons prior to the RFP Close Date.

**C. Data Disclosure to Foreign Governments.** (Check one of the below.)

- Offeror is not an entity subject to laws, rules, or policies potentially requiring disclosure of, or provision of access to, customer data to foreign governments or entities controlled by foreign governments, and Offeror's offerings do not contain, include, or utilize components or services supplied by any entity subject to the same. Offeror's offerings also do not contain, include, or utilize covered technology prohibited under Section 889 of the National Defense Authorization Act, as amended.
- Offeror cannot certify the statement above, and Offeror will affix a written explanation to this attachment for review by the Lead State. If after reviewing Offeror's written explanation the Lead State determines it is not in the best interest of the Lead State, Participating Entities, or Purchasing Entities to award Offeror a Master Agreement, the Lead State may reject Offeror's proposal.

**D. Conflicts of Interest.** (Check one of the below.)

- Offeror represents that none of its officers or employees are officers or employees of the Lead State and that none of its officers or employees have a conflict of interest as defined by the laws, rules, or policies of the Lead State.
- Offeror cannot certify the statement above, and Offeror will affix a written explanation to this attachment for review by the Lead State. If after reviewing Offeror's written explanation the Lead State determines it is not in the best interest of the Lead State, Participating Entities, or Purchasing Entities to award Offeror a Master Agreement, the Lead State may reject Offeror's proposal.

**E. Business Certifications.** (Check all that apply.)

- Offeror is a certified service-disabled veteran business, as defined in 74 O.S. §85.44E.

**F. Required Insurance.** Offeror agrees to acquire insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state at the levels prescribed in Attachment D, Sample Master Agreement. Offeror understands that this requirement is mandatory and will not be negotiated by the Lead State.

**G. NASPO ValuePoint Administrative Fee.** Offeror agrees to pay a NASPO ValuePoint administrative fee and submit summary and detailed sales reports in accordance with Attachment

**Request for Proposals for  
Heavy Construction & Industrial Equipment**

Issued by the **State of Oklahoma**  
**Solicitation Number OK-MA-192-23**

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- D, Sample Master Agreement. Offeror understands that this requirement is mandatory and will not be negotiated by the Lead State.
- H. Marketing Plan.** If awarded a Master Agreement resulting from this RFP, within 30 days of execution of the Master Agreement, Offeror will meet with NASPO ValuePoint marketing personnel to review and track progress on the marketing plan described by Offeror in Attachment H, Offeror Response Worksheet.
- I. Confidential, Proprietary, or Protected Information.** As set forth in Attachment A, RFP Terms and Conditions, if Offeror is claiming any portion of its proposal as confidential, proprietary, or protected, Offeror must complete the required sections of Attachment K, Claim of Business Confidentiality, and submit with Offeror's proposal a redacted copy of Offeror's proposal, which must be clearly marked as such. Offeror may not mark pricing or Offeror's entire proposal as confidential, proprietary, or protected. Submission of a Claim of Business Confidentiality does not guarantee that information claimed by Offeror as confidential, proprietary, or protected will not be subject to disclosure in accordance with applicable public information laws, rules, and policies. If Offeror fails to submit a redacted copy of Offeror's proposal, or fails to claim information as confidential, proprietary, or protected in compliance with this RFP, Offeror releases the Lead State, NASPO, NASPO members, and entities represented on the Multistate Sourcing Team from any obligation to keep the information confidential and waives all claims of liability arising from disclosure of the information.
- J. Conditional Awards.** Offeror understands that awards and execution of a Master Agreement are conditional as set forth in Attachment A, RFP Terms and Conditions, and Offeror agrees to hold the Lead State and NASPO harmless and release the Lead State and NASPO from any liability for damages arising from non-award or non-execution of a contract.
- K. Understanding of the RFP.** Offeror has read the RFP in its entirety and understands and agrees to comply with all requirements set forth therein. Any conflicts in the materials composing the RFP and any issues relating to the content of the RFP, including instructions, requirements, or specifications Offeror believes to be ambiguous, unduly restrictive, erroneous, anticompetitive, or unlawful, have been brought to the attention of the Lead State using the process described in the RFP for asking questions or, if applicable, by filing a protest. In accordance with Attachment A, RFP Terms and Conditions, Offeror acknowledges and understands that any protest, claim, dispute, or action based upon a conflict or issue described herein must be filed no later than the RFP Close Date, and Offeror waives the right to file any protest, claim, dispute, or action based upon a conflict or issue described herein if not filed by the RFP Close Date.

**\_ Request for Proposals for  
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**SIGNATURE**

The undersigned is one of the following:

1. The Offeror, if Offeror is an individual;
2. A partner in the company, if Offeror is a partnership; or
3. An officer or employee of the responding corporation having authority to sign on its behalf, if Offeror is a corporation.

By signing below, the undersigned warrants that the representations made and the information provided in Offeror's proposal are true, correct, and reliable for purposes of evaluation for a potential contract award. The submission of inaccurate or misleading information may be grounds for disqualification from contract award and may subject the undersigned, Offeror, or both to suspension or debarment proceedings, as well as other remedies available to the Lead State by law, including termination of any Master Agreement awarded to Offeror.

**OFFEROR:**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Email Address**

\_\_\_\_\_  
**Phone Number**

**Attachment H  
 OFFEROR RESPONSE WORKSHEET**

**Instruction:** Offeror must provide complete and succinct responses to each item below. Insert your responses into this worksheet directly below each question or prompt in a light blue highlight. While supplementary marketing materials are neither requested nor desired, Offeror should provide all information necessary to demonstrate Offeror’s ability to meet the requirements of this RFP and the RFP’s Scope of Work.

	<u>Vendor Response Required</u>	<u>Max Points Available</u>	<u>Evaluator Score</u>
<b>I. Response to Mandatory Minimum Requirements (STAGE 2)</b>			
A. Offeror shall be the Original Equipment Manufacturer (OEM) for all new construction equipment offered under the resulting award. Please confirm whether you meet this requirement.		Pass / Fail	
B. Offeror shall have a dealer network with the capacity to provide sales and distribution to all 50 States. Please confirm that you meet this requirement.		Pass / Fail	
C. References (Past Performance Verification) - Offeror must submit a minimum of 3 references.	Upload file and insert file name here.	Pass / Fail	
<b>II. Response to Technical Criteria (STAGE 3)</b>			
<b>A. Experience and Qualifications</b>		<b>200</b>	<b>0</b>
1. Provide evidence of your customers' satisfaction with your offered equipment and services.			
a. Describe your client retention rate during the past three (3) years.		30	
b. Describe the results of any customer surveys your firm uses to assess client satisfaction.		30	
c. Describe any Vendor performance ratings you firm has been assessed by a 3rd party, or ratings internal to your organization.		30	
2. Provide a brief history of your company.		50	
3. Describe your firm's growth during the past three (3) years.		30	
4. Describe your firm's experience performing the same or similar scope of work or providing the same or similar Deliverables to other public sector customers.		30	
<b>B. Scope of Work</b>		<b>300</b>	<b>0</b>
1. Describe your plan for meeting the Master Agreement Objectives identified in Attachment B, Scope of Work.		100	
2. Provide evidence of your ability to provide the Deliverables identified in the Scope of Work		100	
3. Describe your plan to meet Contractor Responsibilities and Tasks identified in the Scope of Work.		100	
<b>C. Warranties and Service</b>		<b>200</b>	<b>0</b>
1. What are your quality assurance measures and how are they handled in your organization?		20	
2. Describe your customer service offerings, including availability of key personnel and help desk services.		25	
3. How do you assess customer satisfaction?		20	
4. Describe your customer website capabilities.		20	
5. Describe your return policy.		20	
6. Describe your ordering process and methods of order submission, including any online system through which Purchasing Entities can place and track Orders.		20	
7. Describe your ability to support a decentralized system of Orders submitted from many end users in multiple states and locations.		25	
8. Geographic concerns: ability to service entire state.		25	
9. Dealer distribution		25	
<b>D. Promotion of the NASPO ValuePoint Master Agreement</b>		<b>100</b>	<b>0</b>
1. Describe your company's experience working with contracting cooperatives.		20	
2. List the cooperatives through which you currently have a contract and provide sales volume information for each. Identify any restrictions on pricing and sales imposed by your other cooperative contracts.		20	
3. Describe how you intend to market your Master Agreement and encourage participation among potential Participating Entities, including state governments.		20	
4. Describe how you intend to encourage usage of your Master Agreement by Purchasing Entities.		20	

**Attachment H  
 OFFEROR RESPONSE WORKSHEET**

5. Describe your approach to negotiation of Participating Addenda. Describe the extent to which you provide Participating Entities flexibility in incorporating entity-specific language into their Participating Addenda (e.g., Do you require entities to provide statutory citations for their entity-specific language? Are you able to devote resources to simultaneous negotiation of multiple Participating Addenda?).		20	
<b>E. Business Profile</b>		<b>200</b>	<b>0</b>
1. How many years has your company been in the new Construction equipment producing industry?		30	
2. Has your company ever filed for Bankruptcy?		20	
3. During the past 4 years what is your average dollar amount of sales in the United States?		20	
4. How long does it take to produce a typical piece of equipment (base model, not special order)?		30	
5. Are all of your most popular products (base, model, not special order) maintained in inventory?	Select -- Yes OR No	30	
6. Have you ever had a recall situation for any of your equipment?	Select -- Yes OR No	30	
a. If yes, approximately how much of a negative impact in a dollar amount was it to the company to repair /replace the equipment?			
7. Do you manufacturer, or your dealers in your network offer any value-added incentives to purchase such as seasonal sales?	Select -- Yes or No	30	
a. If yes, how would you incorporate special sale situations in the contract?		10	
<b>F. Management and Leadership</b>		<b>200</b>	<b>0</b>
<p>Since the dealers are the ones the Purchasing Entities will be buying the equipment and parts from, as well as setting up and delivering the equipment and performing warranty work and maintenance, information given about your relationship with them is vital when evaluating your response. Please answer completely on a separate page, retaining the numbering system.</p>			
1. Is your dealer network in every state in the U.S. and U.S. properties?	Select -- Yes OR No	30	
a. If no, where are you lacking coverage?			
2. Describe how your dealers are chosen?		25	
3. Describe the type of training that is mandatory for the dealers to retain their ability to sell your equipment.		20	
4. Are your dealers' considered employees or independently owned businesses?	Select -- Employees OR Independently Owned	20	
5. Are the dealers visited by a regional/district managerial employee of the Supplier on a regular basis? (i.e., auditing, inspection of premises, reporting procedures) If the dealers are independently owned businesses, describe how sales are made and to whom payment is made when the contract is part of a cooperative and who provides the required usage reports. If payment is made to a dealer on your behalf, how is that addressed in your company's policies?		50	
6. Will you offer discounts on your extended warranties?	Select -- Yes OR No	30	
a. If yes, please include in your response the types of the extended warranties and the terms.			
b. If no, still include the types and terms of your extended warranty plans.			
7. Do you offer green options for hydraulic fluids?	Select -- Yes OR No	25	
a. If yes, please provide specifications for the fluid.			
<b>G. References.</b>		<b>100</b>	<b>0</b>
<p>As part of the selection process, the Reference survey form in Attachment N must be sent to 3 of your clients, filled out, and returned to the Supplier to submit with your response. Failure to provide the completed Reference forms will cause the response to be considered non-responsive and it will not be considered for award. The references are a valuable tool in the evaluation of your response. The past performance evaluation will assess the Supplier's record of providing services of a similar nature.</p>			
Upload file and insert file name here.			
<b>H. Value Add Features.</b>		<b>200</b>	<b>0</b>
1. Describe your firm's offered value add services		50	
2. Describe your firm's offered value add items offered for contract marketbasket or hot list.		150	

**Attachment I**  
**COST PROPOSAL**  
**Amended January 17, 2023**

<b>INSTRUCTION:</b>
1. This Cost Proposal form consists of multiple sections (tabs at the bottom of this spreadsheet): ---Section 1: Number of Proposed Categories (Green Tab) ---Section 2: Market Basket Evaluation (Orange Tab) ---Section 3: Discount % Off Evaluation (Blue Tabs) ----Heavy Equipment Discount % ----Heavy Equipment Value Add ----Industrial Equipment Discount % ----Industrial Equipment Value Add
2. Offeror must complete all required elements of this Cost Proposal. The format and structure of the Cost Proposal is intended to allow for a fair evaluation of like costs among Offerors. Deviation from the format or structure of this Cost Proposal may result in Offeror's proposal being deemed non-responsive.
2. Offeror is wholly responsible for ensuring figures and calculations submitted in Offeror's completed Cost Proposal are accurate, even if formulas have been provided by the Lead State as a courtesy.
3. Inclusion of cost or pricing information in any document other than this Cost Proposal may result in Offeror's proposal being deemed non-responsive.
4. Offeror's Cost must be inclusive of all fees and charges, including but not limited to fees or charges for shipping, delivery, credit card payments, or personnel.
5. In addition to the Cost Proposal evaluation described in this RFP, Cost Proposals may also be subject to an independent review for reasonableness and best value by the Lead State. Costs determined not to be reasonable or best-value by the Lead State may result in all or part of Offeror's proposal being rejected, notwithstanding the results of the Cost Proposal evaluation.
6. It is Offerors responsibility to ensure it has completed all tabs and required inputs based on its proposed products & services.

**Attachment I**  
**COST PROPOSAL**  
**Section 1 - Number of Proposed Categories**

**ADDITIONAL INSTRUCTION:**

1. Offeror is to input in the **blue** highlighted fields "Yes" or "No" on whether Offeror is seeking an award in the respective Category.
2. Offeror should input "No" if it is not proposing for the given Category. If a field is left blank it is assumed that Offeror is not proposing for an award in that Category.
3. All Categories Offeror selects that "Yes" it is proposing for an award must subsequently include a complete proposal to Section 2 (Market Basket Evaluation) and Section 3 (Discount % Off Evaluation) for the respective Category. Failure to submit a complete Cost Proposal for each Category Offeror is seeking an award in may result in disqualification of Offeror's proposal to that Category.

Category #	Category Description	Select Yes / No for what Categories you are Seeking an Award In
<b>Heavy Equipment</b>		
1	Articulated Dump Haulers	
2	Articulated Haulers	
3	Backhoes	
4	Planer / Cold Planer	
5	Compactors: Road, Asphalt, & Landfill	
6	Dozers	
7	Motor Graders	
8	Pavers	
9	Reclaimers	
10	Site Dumpers	
11	Skid Steers	
12	Telehandlers	
13	Track Excavators	
14	Tracked Loaders	
15	Wheel Loaders	
16	Wheeled Excavator	
17	Sweepers: Airport Runway, Riding, Parking Lot, & Sidewalk	

<b>Industrial Equipment</b>		
1	Air Compressors	
2	Backup Battery Pack	
3	Generators	
4	Forklifts	
5	Light Tower	

# of Categories Seeking an Award In --&gt;

0



**Attachment I**  
**COST PROPOSAL**  
**Section 2 - Market Basket Evaluation**  
**Amended January 17, 2023**

<b>ADDITIONAL INSTRUCTION:</b>	
1.	Offeror must complete all required fields (fields in a <b>blue</b> highlight) on this Cost Proposal. The format and structure of the Cost Proposal is intended to allow for a fair market basket type evaluation of like costs among Offerors. Deviation from the format or structure of this Cost Proposal may result in Offeror's proposal being deemed non-responsive.
2.	Offeror is wholly responsible for ensuring figures and calculations submitted in Offeror's completed Cost Proposal are accurate, even if formulas have been provided by the Lead State as a courtesy.
3.	Categories 5 (Compactors) and 17 (Sweepers) within <b>Heavy Equipment</b> portion include sub-categories. Offeror must propose for each sub-category of an overall Category in order to be considered for an award in that Category. Failure to propose each sub-category of an overall Category may result in disqualification of Offeror's proposal from that Category.
4.	The "Minimum Product Specifications" in column C represent the minimum spec. Offeror is to assess its own inventory of equipment to meet these minimum specifications and input in columns D to H the proposed Equipment.

Category #	Category	Minimum Product Specifications	Offeror's Proposed Product	Specifications for Offeror's Proposed Product	List Price	Minimum Discount % Off	Extended Price
<b>Heavy Equipment</b>							
1	Articulated Dump Haulers	Net Power --- 235 kW (321 hp) at 1,900 rpm Rated Payload --- 53,300 lbs. Heaped Capacity --- 15.0 m <sup>3</sup> (19.6 cu. yd.)					
2	Articulated Haulers	Net Power --- 465 hp Payload capacity --- 45 sh tn Body volume, SAE 2:1 heap --- 32 yd <sup>3</sup>					
3	Backhoes	Net Peak Power --- 75 kW (100 hp) at 1,600 rpm Standard Dipperstick Digging Depth --- 4.30 m (14 ft. 1 in.) Operating Weight --- 14,600 lbs.					
4	Planer / Cold Planer	Rotor Width --- 83-inch Rotor Depth --- 12-inch Operating Weight --- 41,000 lbs. Load Sensing Propel System High capacity, versatile convey					
5 - a	Compactors: Road	Impact Force --- 30KN Speed --- 0-5Km/hour Drum Width --- 800mm * 500mm Climbing --- 25%					
5 - b	Compactors: Asphalt	Operating Weight (with ROPS) --- 10,000 kg. Rated Engine Power --- 80 kW. Drum or Rolling Width --- 1,530 mm.					
5 - c	Compactors: Landfill	Operating Weight --- 90207 lbs. Gross Power --- 435 HP Net Power --- 405 HP					
6	Dozers	Net Power --- 69 kW (92 hp) at 2,200 rpm Operating Weight --- 20,000 lbs. Track on Ground --- 2 184 mm (86 in.)					
7	Motor Graders	Net power, gears 1 and 2 --- 165 horsepower; 123 kilowatts Net power, gears 3 through to 6 --- 185 horsepower; 138 kilowatts Number of cylinders --- 6 Displacement --- 10.3 litres (629 cubic inches)					
8	Pavers	Gross Power --- 225 HP Standard Paving Range --- 3 - 6 m (9' 10"-19' 6") Operating Weight - With SE60 V --- 45090 lb					
9	Reclaimers	Operating Weight --- 50000 lbs Cutting/Mixing Width --- 96 inchs Gross Power --- 415.7 HP					
10	Site Dumpers	Gross Engine Power --- 74 hp (55 kW) Payload --- 13,228 lbs (6,000 kg) Bucket Capacity --- 4.2 yd <sup>3</sup> (3.19 m <sup>3</sup> )					
11	Skid Steers	Rated Operating Capacity --- 795 kg (1,750 lb.) Gross Horsepower --- 48.5 kW (65 hp) Net Horsepower --- 45.6 kW (61 hp) Operating Weight --- 2806 kg (6,180 lb.)					
12	Telehandlers	Maximum Lift Capacity --- 10000 lb / 4535.92 kg Outriggers Up Lift Height --- 55 ft / 16.76 m Outriggers Up Forward Reach --- 42 ft / 12.8 m Lift Capacity at Full Height --- 5000 lb / 2267.96 kg					
13	Track Excavators	Net Power --- 73 kW (98 hp) <b>Digging Depth --- 19 ft.</b> Operating Weight --- 13 407 kg (29,531 lb.)					
14	Tracked Loaders	Rated Operating Capacity --- 1176 kg (2,590 lb.) Gross Horsepower --- 54.8 kW (74 hp) Net Horsepower --- 52.5 kW (70 hp) Operating Weight --- 4313 kg (9,500 lb.)					
15	Wheel Loaders	Net Power --- 47 kW (62 hp) at 2,200 rpm <b>Operating Weight --- 11,100 lbs.</b> Bucket Capacity --- 0.7-1.1 m <sup>3</sup> (0.9-1.4 cu. yd.)					
16	Wheeled Excavator	Net Power --- 129 kW (173 hp) Digging Depth --- 5.83 m (19 ft. 2 in.) Operating Weight --- 19,700 kg (43,431 lb.)					
17 - a	Sweepers: Airport Runway	Net Power --- 99 HP @ 2200 RPM (74 kW) Hopper Capacity --- 7 cubic yards Payload --- 10,000 lbs. Speed - 22 MPH					
17 - b	Sweepers: Riding	Hopper tank capacity --- 26 gallon Water tank capacity -- 7 gallon Suitable for both indoor and outdoor use in dry conditions.					
17 - c	Sweepers: Parking Lot	Cleaning Path --- 50", 64" Hopper Capacity --- 8.8 cu ft Productivity --- 108,791 sqft/hr					
17 - d	Sweepers: Sidewalk	Load Capacity --- 0,12 - 0,14 T Sweeping Width --- 49,21 - 51,96 inch Speed --- 9 MPH					

**Industrial Equipment**

**Attachment I**  
**COST PROPOSAL**  
**Section 2 - Market Basket Evaluation**  
**Amended January 17, 2023**

<b>ADDITIONAL INSTRUCTION:</b>
1. Offeror must complete all required fields (fields in a <b>blue</b> highlight) on this Cost Proposal. The format and structure of the Cost Proposal is intended to allow for a fair market basket type evaluation of like costs among Offerors. Deviation from the format or structure of this Cost Proposal may result in Offeror's proposal being deemed non-responsive.
2. Offeror is wholly responsible for ensuring figures and calculations submitted in Offeror's completed Cost Proposal are accurate, even if formulas have been provided by the Lead State as a courtesy.
3. Categories 5 (Compactors) and 17 (Sweepers) within <b>Heavy Equipment</b> portion include sub-categories. Offeror must propose for each sub-category of an overall Category in order to be considered for an award in that Category. Failure to propose each sub-category of an overall Category may result in disqualification of Offeror's proposal from that Category.
4. The "Minimum Product Specifications" in column C represent the minimum spec. Offeror is to assess its own inventory of equipment to meet these minimum specifications and input in columns D to H the proposed Equipment.

Category #	Category	Minimum Product Specifications	Offeror's Proposed Product	Specifications for Offeror's Proposed Product	List Price	Minimum Discount % Off	Extended Price
1	Air Compressors	Tank Size --- 60 Gallon Pressure --- 150 PSI CFM @ 40 PSI --- 13.4 CFM @ 90 PSI --- 11.5 Running HP --- 3.7					
2	Backup Battery Pack	Battery Capacity --- 258 kWh Power Rating --- 120 KVA DC Bus Voltage --- 358 Volts DC Amp Hours --- 720 Ah					
3	Generators	Generator Fuel Type --- Ultra Low Sulfur Diesel Generator Voltage --- 12VDC Run Time at Full Load --- 28 hours Fuel Tank Capacity --- 62 gallon Portable Generator					
4	Forklifts	Load Capacity --- 6,000 lbs Lift Height --- 23 feet Aisle Widths --- 11 to 12 feet Outdoor and indoor use					
5	Light Tower	Height ---- 23 feet Compact Design Aim lights from the ground <b>Heavy gauge all-steel under carriage</b> Trailer --- MIG welded, unibody-style Tow hitch Lamps --- Four 1000 W metal halide lamps Luminosity --- 110,000 lm per lamp & 440,000 lm total initial intensity					

**Attachment I  
 COST PROPOSAL  
 Section 3 - Discount % Off Evaluation  
 Heavy Construction Equipment**

<b>ADDITIONAL INSTRUCTION:</b>
1. Offeror must complete all required fields (fields in a <b>blue</b> highlight) on this Cost Proposal. The format and structure of the Cost Proposal is intended to allow for a fair discount % off type evaluation of like costs among Offerors. Deviation from the format or structure of this Cost Proposal may result in Offeror's proposal being deemed non-responsive.
2. It has been determined that the best pricing structure for this portion of the evaluation is a simple "percentage off" of the most current dated Supplier's suggested government or commercial catalog or price list. The pricing matrix is a percentage off the Supplier's Suggested Retail Price. Suppliers can submit actual pricing schedules for their equipment though, with the percentage discount already figured, as long as the Supplier list price is stated first, then the discount, then the final discount price. You will have to keep it updated as pricing changes occur.
3. Within the tables, if you have different discounts for different brands / models / sizes of equipment or options, you WILL have to list the items. If you need more space, insert additional lines as necessary. Light blue highlighted cells signify a requested vendor input.

**MINMUM DISCOUNT % OFF TABLE**

Category #				<b>Offered Minimum Discount % Off</b>	
<b>1 ARTICULATED DUMP HAULERS</b>	Hard type value <b>ONLY</b> if offering a single % for the entire category -->			N/A	
	Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
					\$ -
					\$ -
					\$ -
					\$ -
	[insert additional lines as necessary]				\$ -
<b>2 ARTICULATED HAULERS</b>	Hard type value <b>ONLY</b> if offering a single % for the entire category -->			N/A	
	Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
					\$ -
					\$ -
					\$ -
					\$ -
	[insert additional lines as necessary]				\$ -
<b>3 BACKHOES</b>	Hard type value <b>ONLY</b> if offering a single % for the entire category -->			N/A	
	Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
					\$ -
					\$ -
					\$ -
					\$ -
	[insert additional lines as necessary]				\$ -
<b>4 PLANER/COLD PLANER</b>	Hard type value <b>ONLY</b> if offering a single % for the entire category -->			N/A	
	Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
					\$ -
					\$ -
					\$ -
					\$ -
	[insert additional lines as necessary]				\$ -
<b>5 COMPACTORS:</b>	Hard type value <b>ONLY</b> if offering a single % for the entire category -->			N/A	
<b>A. ROAD</b>	Hard type value <b>ONLY</b> if offering a single % for the entire sub-category -->			N/A	
	Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
					\$ -
					\$ -
					\$ -
					\$ -
	[insert additional lines as necessary]				\$ -
<b>B. ASPHALT</b>	Hard type value <b>ONLY</b> if offering a single % for the entire sub-category -->			N/A	
	Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
					\$ -
					\$ -
					\$ -
					\$ -
	[insert additional lines as necessary]				\$ -
<b>C. LANDFILL</b>	Hard type value if offering a single % for the entire sub-category -->			N/A	
	Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
					\$ -
					\$ -
					\$ -

				\$ -
[insert additional lines as necessary]				\$ -

**6 DOZERS**

Hard type value **ONLY** if offering a single % for the entire sub-category -->

N/A

Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**7 MOTOR GRADERS**

Hard type value **ONLY** if offering a single % for the entire sub-category -->

N/A

Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**8 PAVERS**

Hard type value **ONLY** if offering a single % for the entire sub-category -->

N/A

Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**9 RECLAIMERS**

Hard type value **ONLY** if offering a single % for the entire sub-category -->

N/A

Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**10 SITE DUMPERS**

Hard type value **ONLY** if offering a single % for the entire sub-category -->

N/A

Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**11 SKID STEERS**

Hard type value **ONLY** if offering a single % for the entire sub-category -->

N/A

Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**12 TELEHANDLERS**

Hard type value **ONLY** if offering a single % for the entire sub-category -->

N/A

Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**13 TRACK EXCAVATORS**

Hard type value **ONLY** if offering a single % for the entire sub-category -->

N/A

Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**14 TRACKED LOADERS**

Hard type value **ONLY** if offering a single % for the entire sub-category -->

N/A

Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -

[insert additional lines as necessary]				\$ -
--	--	--	--	------

**15 WHEEL LOADERS** Hard type value **ONLY** if offering a single % for the entire sub-category --> N/A

Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**16 WHEELED EXCAVATOR** Hard type value **ONLY** if offering a single % for the entire sub-category --> N/A

Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**17 SWEEPERS:** Hard type value if offering a single % for the entire category --> N/A

**A. AIRPORT/RUNWAY, WALK BEHIND** Hard type value **ONLY** if offering a single % for the entire sub-category --> N/A

Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**B. RIDING** Hard type value **ONLY** if offering a single % for the entire sub-category --> N/A

Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**C. PARKING LOT** Hard type value **ONLY** if offering a single % for the entire sub-category --> N/A

Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**D. SIDEWALK** Hard type value **ONLY** if offering a single % for the entire sub-category --> N/A

Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**Attachment I**  
**COST PROPOSAL**  
**Section 3 - Discount % Off Evaluation**  
**Heavy Equipment Value Add Cost Evaluation and Contract Offering**

**ADDITIONAL INSTRUCTION:**  
 1. Within the tables, list the value add products / services you intend to provide under the resulting contract award. If you need more space, insert additional lines as necessary. Light blue highlighted cells signify a requested vendor input.

**Value Add Cost**

**Category #**

**1 ARTICULATED DUMP HAULERS**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**2 ARTICULATED HAULERS**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**3 BACKHOES**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**4 PLANER/COLD PLANER**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**5 COMPACTORS:**

**A. ROAD**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**B. ASPHALT**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**C. LANDFILL**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -



Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

7 **MOTOR GRADERS**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

8 **PAVERS**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

9 **RECLAIMERS**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

10 **SITE DUMPERS**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

11 **SKID STEERS**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

12 **TELEHANDLERS**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

13 **TRACK EXCAVATORS**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

14 **TRACKED LOADERS**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -



				\$ -
[insert additional lines as necessary]				\$ -

**15 WHEEL LOADERS**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**16 WHEELED EXCAVATOR**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**17 SWEEPERS:**

**A. AIRPORT/RUNWAY, WALK BEHIND**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**B. RIDING**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**C. PARKING LOT**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**D. SIDEWALK**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**Attachment I  
COST PROPOSAL  
Section 3 - Discount % Off Evaluation  
Industrial Equipment**

**ADDITIONAL INSTRUCTION:**

1. Offeror must complete all required fields (fields in a **blue** highlight) on this Cost Proposal. The format and structure of the Cost Proposal is intended to allow for a fair discount % off type evaluation of like costs among Offerors. Deviation from the format or structure of this Cost Proposal may result in Offeror's proposal being deemed non-responsive.
2. It has been determined that the best pricing structure for this portion of the evaluation is a simple "percentage off" of the most current dated Supplier's suggested government or commercial catalog or price list. The pricing matrix is a percentage off the Supplier's Suggested Retail Price. Suppliers can submit actual pricing schedules for their equipment though, with the percentage discount already figured, as long as the Supplier list price is stated first, then the discount, then the final discount price. You will have to keep it updated as pricing changes occur.
3. Within the tables, if you have different discounts for different brands / models / sizes of equipment or options, you WILL have to list the items. If you need more space, insert additional lines as necessary. Light blue highlighted cells signify a requested vendor input.

**MINIMUM DISCOUNT % OFF TABLE**

Category #					<b>Offered Minimum Discount % Off</b>
<b>1 AIR COMPRESSORS</b>	Hard type value <b>ONLY</b> if offering a single % for the entire category -->				N/A
Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price	
				\$ -	
				\$ -	
				\$ -	
				\$ -	
[insert additional lines as necessary]				\$ -	

Category #					<b>Offered Minimum Discount % Off</b>
<b>2 BACK UP BATTERY PACKS</b>	Hard type value <b>ONLY</b> if offering a single % for the entire category -->				N/A
Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price	
				\$ -	
				\$ -	
				\$ -	
				\$ -	
[insert additional lines as necessary]				\$ -	

Category #					<b>Offered Minimum Discount % Off</b>
<b>3 GENERATORS</b>	Hard type value <b>ONLY</b> if offering a single % for the entire category -->				N/A
Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price	
				\$ -	
				\$ -	
				\$ -	
				\$ -	
[insert additional lines as necessary]				\$ -	

Category #					<b>Offered Minimum Discount % Off</b>
<b>4 FORKLIFTS</b>	Hard type value <b>ONLY</b> if offering a single % for the entire category -->				N/A
Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price	
				\$ -	
				\$ -	
				\$ -	

				\$ -
[insert additional lines as necessary]				\$ -

**Offered  
Minimum  
Discount %**

**Category #**

**5 LIGHT TOWERS**

Hard type value **ONLY** if offering a single % for the entire category -->

**Off**

**N/A**

Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**Offered  
Minimum  
Discount %**

**Category #**

**6 OTHER (IN SCOPE)**

Hard type value **ONLY** if offering a single % for the entire category -->

**Off**

**N/A**

Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**Offered  
Minimum  
Discount %**

**Category #**

**7 OTHER (IN SCOPE)**

Hard type value **ONLY** if offering a single % for the entire category -->

**Off**

**N/A**

Brand Name	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Minimum Discount % Off	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**Attachment I  
COST PROPOSAL  
Section 3 - Discount % Off Evaluation  
Industrial Equipment Value Add Cost Evaluation and Contract Offering**

**ADDITIONAL INSTRUCTION:**  
1. Within the tables, list the value add products / services you intend to provide under the resulting contract award. If you need more space, insert additional lines as necessary. Light blue highlighted cells signify a requested vendor input.

**Value Add Cost**

**Category #**

**1 AIR COMPRESSORS**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**2 BACK UP BATTERY PACKS**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**3 GENERATORS**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**4 FORKLIFTS**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**5 LIGHT TOWERS**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**6 OTHER (IN SCOPE)**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -

**7 OTHER (IN SCOPE)**

Brand Name / Service / Product Description	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	List Price	Discount %	Extended Price
				\$ -
				\$ -
				\$ -
				\$ -
[insert additional lines as necessary]				\$ -





**Request for Proposals for  
Heavy Construction and Industrial Equipment**

Issued by the **State of Oklahoma**  
**Solicitation Number OK-MA-192-23,**

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## **Attachment J PROPOSED MODIFICATIONS TO SAMPLE MASTER AGREEMENT**

The Lead State may, but is not obligated to, consider proposed modifications to Attachment D, Sample Master Agreement.

Provisions of the Sample Master Agreement that are generally inapplicable to, incompatible with, or unsuitable for the subject of this RFP should be brought to the attention of the Lead State using the process described in this RFP for asking questions and will be addressed only at the sole discretion of the Lead State.

Offeror-specific modifications to the Sample Master Agreement may be proposed as part of Offeror's proposal in this attachment but are **strongly discouraged**. The quantity, breadth, and nature of modifications proposed by Offeror may be considered in the Lead State's evaluation of Offeror's proposal and of its risks, costs, and benefits to the Lead State and potential Participating Entities and Purchasing Entities. Proposing excessive or overly restrictive modifications, or proposing modifications upon which Offeror's proposal is conditioned, may result in Offeror's proposal being deemed non-responsive.

**Offeror's Proposed Modifications.** (Check one of the below.)

- Offeror has no proposed modifications to Attachment D, Sample Master Agreement.
- Offeror proposes the modifications set forth in the table below and **will submit with Offeror's proposal a redlined copy of Attachment D, Sample Master Agreement** incorporating each proposed modification. Offeror understands, acknowledges, and agrees to comply with the following:
  - The following will not be considered by the Lead State:
    - Any proposed modification not submitted in this attachment;
    - Any proposed modification not accompanied by an explanation as required in this attachment;
    - Any proposed modification not reflected in redlined edits to the Sample Master Agreement and submitted with Offeror's proposal; and
    - Any proposed modification merely referencing another document or a URL.
  - Offerors may propose additional terms but must include them in this attachment and must clearly identify where any terms conflict with the Sample Master Agreement.
  - If Offeror is awarded a Master Agreement resulting from this RFP, a comparison of Attachment G, Sample Master Agreement and Offeror's accepted modifications thereto may be posted on the NASPO ValuePoint website for examination by potential Participating Entities and Purchasing Entities.
  - Each of the following fields **must** be completed for each proposed modification to the Sample Master Agreement:
    - **Sample Master Agreement Section Reference:** The page, section, or paragraph in the Sample Master Agreement that is the subject of Offeror's proposed modification.
    - **Sample Master Agreement Language:** The language in the Sample Master Agreement that the Offeror is proposing to modify.



**Request for Proposals for  
Heavy Construction and Industrial Equipment**

Issued by the **State of Oklahoma**  
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- **Proposed Changes and Alternate Language:** The Offeror’s proposed changes to the Sample Master Agreement language including, if applicable, Offeror’s proposed alternate language.
- **Justification for Proposed Change:** Offeror’s justification for the proposed change.
- **Risk and Benefits of Acceptance:** Offeror’s analysis of the risk and benefits to the Lead State, Participating Entities, or Purchasing Entities—including quantifiable costs or cost savings—if Offeror’s proposed change is accepted by the Lead State.

Sample Master Agreement Section Reference	Sample Master Agreement Language	Proposed Changes and Alternate Language	Justification for Proposed Change	Risk and Benefits of Acceptance

[Add additional rows as needed.]





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## Attachment K CLAIM OF BUSINESS CONFIDENTIALITY

**Offeror's Claims of Business Confidentiality.** (Check one of the below.)

- Offeror is not claiming any information within Offeror's proposal as confidential, proprietary, or protected. (Check box and skip to SIGNATURE section below.)
  
- Offeror claims the information set forth in the table below as confidential, proprietary, or protected and **will submit with Offeror's proposal a redacted copy of Offeror's proposal**, which must be clearly marked as such. Offeror understands, acknowledges, and agrees to comply with the following:
  - Each of the following fields **must** be completed for each claim asserted by Offeror:
    - **Proposal Section Reference:** The page, section, or paragraph in Offeror's proposal containing the information claimed to be confidential, proprietary, or protected.
    - **Confidential Information:** A description of the information claimed to be confidential, proprietary, or protected.
    - **Basis for Claim:** The basis for Offeror's claim, which in accordance with Oklahoma Administrative Code 260: 115-3-9 shall be one of the following:
      - - Specifically identify what information is confidential
        - Enumerate the specific grounds, based on applicable laws which support treatment of the material as exempt from disclosure, and explain why disclosure is not in the best interest to the public if the information is incorporated into an awarded contract; and
        - All such information considered confidential either under separate cover or copied in a separate section of the bid as required. Failure to comply with this requirement may result in the decision to not consider bidder's confidential claim. The acquiring agency has no responsibility to look outside the required section of a bid for portions claimed as confidential and an entire bid will not be considered confidential in any event.
    - **Explanation:** Explanation of how the information claimed to be confidential meets the definition of one of the bases above.
  
  - **Offeror may not mark pricing or Offeror's entire proposal as confidential, proprietary, or protected.**

**Request for Proposals for  
Heavy Construction & Industrial Equipment**



Issued by the **State of Oklahoma**  
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Proposal Section Reference	Confidential Information	Basis for Claim	Explanation

[Add additional rows as needed.]

**SIGNATURE**

By signing below, the undersigned certifies under penalty of perjury that the representations made, and the information provided herein are true and correct and may be relied upon by the Lead State for purposes of determining the validity of Offeror’s claim(s). Offeror understands that submission of a Claim of Business Confidentiality does not guarantee that information claimed by Offeror as confidential, proprietary, or protected will not be subject to disclosure in accordance with applicable public information laws, rules, and policies. Offeror further agrees that if Offeror fails to submit a redacted copy of Offeror’s proposal, or fails to claim information as confidential, proprietary, or protected in compliance with this RFP, Offeror releases the Lead State, NASPO, NASPO members, and entities represented on the Multistate Sourcing Team from any obligation to keep the information confidential and waives all claims of liability arising from disclosure of the information.

**OFFEROR:**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Email Address**

\_\_\_\_\_  
**Phone Number**





**REQUEST FOR PROPOSALS FOR  
HEAVY CONSTRUCTION AND INDUSTRIAL EQUIPMENT**

Issued by the **State of Oklahoma**  
**Solicitation Number OK-MA-192-23,**

**ATTACHMENT L  
VALUE ADDED PLAN**

This template must be used. The Value-Added Plan should identify any value-added options or ideas that may benefit the States. The value-added claims should be prioritized (identify the most important claims first). The Offeror may add or delete Value Added Claim table templates, but do not exceed the 2-page limit for this section. Do NOT include any identifying information in the Plan. Information listed under the “Documented Performance” line may describe where the Respondent has used the approach or solution previously, and what the results were in terms of verifiable metrics.

The example instructional language provided below can be deleted to accommodate more claims

**Example:**

<b>Item Claim:</b>	<i>This would be the place to offer services / packages / optional remittance methods, etc. not specifically requested in the solicitation. Based on the requested scope what additional related, value add options / services would you like to offer?</i>		
<b>How will this add value?:</b>	<i>How would the item / service described above add value to the State's awarded contract?</i>		
<b>Documented Performance:</b>	<i>State in general terms (performance metrics) the historical results of other public entities utilizing this value add.</i>		
<b>Cost Impact (%):</b>	<i>What % impact on cost will this time / service have?</i>	<b>Schedule Impact (%):</b>	<i>What % impact on the schedule (rollout, implementation, maintenance, etc.) will this time / service have?</i>

**Item Claim #1:**

<b>Item Claim:</b>			
<b>How will this add value?:</b>			
<b>Documented Performance:</b>			
<b>Cost Impact (%):</b>		<b>Schedule Impact (%):</b>	

**Item Claim #2:**

<b>Item Claim:</b>			
<b>How will this add value?:</b>			
<b>Documented Performance:</b>			
<b>Cost Impact (%):</b>		<b>Schedule Impact (%):</b>	

**Item Claim #3:**

<b>Item Claim:</b>			
<b>How will this add value?:</b>			
<b>Documented Performance:</b>			



**REQUEST FOR PROPOSALS FOR  
HEAVY CONSTRUCTION AND INDUSTRIAL EQUIPMENT**

Issued by the **State of Oklahoma**  
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<b>Cost Impact (%):</b>		<b>Schedule Impact (%):</b>	
-------------------------	--	-----------------------------	--

**Item Claim #4:**

<b>Item Claim:</b>			
<b>How will this add value?:</b>			
<b>Documented Performance:</b>			
<b>Cost Impact (%):</b>		<b>Schedule Impact (%):</b>	

**Item Claim #5:**

<b>Item Claim:</b>			
<b>How will this add value?:</b>			
<b>Documented Performance:</b>			
<b>Cost Impact (%):</b>		<b>Schedule Impact (%):</b>	

*[Removable instruction – add additional tables as needed to address more claims, not to exceed 2 pages]*



**Attachment M**  
**AUTHORIZED DEALERS / DISTRIBUTORS BY STATE**

**Vendor:** \_\_\_\_\_

**Date:** \_\_\_\_\_

State	Dealer Available		Total by State	Manufacturer Sells Direct To End User	
	Yes	No		Yes	No
ALABAMA					
ALASKA					
ARIZONA					
ARKANSAS					
CALIFORNIA					
COLORADO					
CONNECTICUT					
DELAWARE					
FLORIDA					
GEORGIA					
HAWAII					
IDAHO					
ILLINOIS					
INDIANA					
IOWA					
KANSAS					
KENTUCKY					
LOUISIANA					
MAINE					
MARYLAND					
MASSACHUSETTS					
MICHIGAN					
MINNESOTA					
MISSISSIPPI					
MISSOURI					
MONTANA					
NEBRASKA					
NEVADA					
NEW HAMPSHIRE					
NEW JERSEY					
NEW MEXICO					
NEW YORK					
NORTH CAROLINA					
NORTH DAKOTA					
OHIO					
OKLAHOMA					
OREGON					
PENNSYLVANIA					
RHODE ISLAND					
SOUTH CAROLINA					
SOUTH DAKOTA					
TENNESSEE					
TEXAS					
UTAH					
VERMONT					
VIRGINIA					
WASHINGTON					
WEST VIRGINIA					
WISCONSIN					
WYOMING					

Supplier must provide a list of all Authorized Dealer / Distributors located in each state they are submitting a bid for.  
Supplier must identify the areas covered by each Authorized Dealer / Distributor by city or county.  
Supplier may modify the document to add additional Authorized Dealer or Distributors if needed.  
Supplier must identify each page with their company information.

**Manufacturer Identifying Information**

Manufacturer Name:

Address:

City:

State:

Zip:

Primary Contact:

Phone:

Email:

Website:

**Dealer / Distributor / Agent**

Company Name:

Address:

City:

State:

Zip:

Primary Contact:

Phone:

Email:

Website:

FEIN:

Areas Covered:

**Dealer / Distributor / Agent**

Company Name:

Address:

City:

State:

Zip:

Primary Contact:

Phone:

Email:

Website:

FEIN:

Areas Covered:

**Dealer / Distributor / Agent**

Company Name:

Address:

City:

State:

Zip:

Primary Contact:

Phone:

Email:

Website:

FEIN:

Areas Covered:

**Dealer / Distributor / Agent**

Company Name:

Address:

City:

State:

Zip:

Primary Contact:

Phone:

Email:

Website:

FEIN:

Areas Covered:

Supplier must provide a list of all Authorized Dealer / Distributors located in each state they are submitting a bid for.  
Supplier must identify the areas covered by each Authorized Dealer / Distributor by city or county.  
Supplier may modify the document to add additional Authorized Dealer or Distributors if needed.  
Supplier must identify each page with their company information.

#### Manufacturer Identifying Information

Manufacturer Name:

Address:

City:

State:

Zip:

Primary Contact:

Phone:

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Company Name:

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FEIN:

Areas Covered:

#### Dealer / Distributor / Agent

Company Name:

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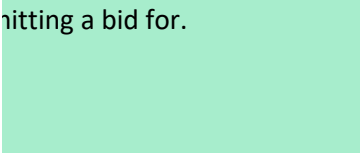
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Areas Covered:

submitting a bid for.









**REQUEST FOR PROPOSALS FOR  
HEAVY CONSTRUCTION AND INDUSTRIAL EQUIPMENT**

Issued by the **State of Oklahoma**  
**Solicitation Number OK-MA-192-23,**

**Attachment N**

**Past Performance Verification**

**Supplier is to have this filled out by 3 separate government contract clients and returned with their response to the solicitation. Failure to submit this for 3 clients will result in your response not being considered.**

Date: \_\_\_\_\_

Name: \_\_\_\_\_  
*(Name and title)*

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Subject: Past Performance Survey of: \_\_\_\_\_  
*Vendor requesting verification*

As a part of the evaluation process, past performance information is requested to be provided. The information will be used to assist in the selection of vendors for awards. Rate each of the criteria on a scale of 1 to 5. Please rate each of the criteria to the best of your knowledge. If you do not have sufficient knowledge of past performance in a particular area, leave it blank.

<b>Exceptional (5)</b>	Best-in-class performance. Performance met all contract requirements and exceeded several to the customer's benefit. No issues were encountered.
<b>Very Good (4)</b>	Performance met all contract requirements and exceeded some to the customer's benefit. There were a few minor issues, which were negligible.
<b>Satisfactory (3)</b>	Performance met contract requirements. There were some minor issues, and corrective actions taken by the contractor were acceptable.
<b>Marginal (2)</b>	Performance did not meet the contractual requirements. There were issues, some of a serious nature, for which corrective action was only somewhat effective.
<b>Unsatisfactory (1)</b>	Performance did not meet contractual requirements. There were serious issues and the contractor's corrective actions were ineffective.

Organization Name:			
Contract Name:		Dollar Amount:	\$
Duration of Contract (Date/Year – Date/Year):			

NO	CRITERIA	Rated	
1	Rate the Quality of customer service		
2	Rate the Professionalism of the employees including prompt response to inquiries		
3	Rate their Ability to complete deliveries on time or early		
4	Rate the Quality of products		
5	Rate their Ability to manage (includes responses and prompt payment to their merchants and subcontractors)		
6	Rate their Ability to follow the customer's delivery requirements.		
7	Rate the Supplier's geographic coverage ability to deliver to all of your locations.		
8	Rate the value-added services provided.		
9	Rate your overall satisfaction during the contract period.		
10	Rate the performance of the Supplier's products as compared to that of its competitors.		
11	Rate the Supplier's ordering procedures.		
12	Rate the timeliness of parts delivery		
13	Rate responsiveness of authorized dealers servicing this line of equipment.		

**COMMENTS:**

Please indicate here any special instances where the client went out of their way to help you in a situation, i.e. delivery, shipping, emergency response, special purchase.

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\_\_\_\_\_  
Email of Evaluator

\_\_\_\_\_  
Signature of Evaluator