



## Attachment A RFP TERMS AND CONDITIONS

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

### I. DEFINITIONS

- A. **Award** means the identification of Offerors eligible to execute a Master Agreement following completion of the public competitive process including the Sourcing Team's evaluation.
- B. **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 Entity, the Sourcing Team, PPA, or RFXPremier.
- C. **Contractor** means an Offeror with whom the Lead Entity executes a Master Agreement resulting from this RFP.
- D. **Day** means a calendar day, unless otherwise indicated.
- E. **Deliverable** means a good, product, service, solution, result, labor, or other effort being sought through this RFP.
- F. **Eligible Entity** means all states (as well as the District of Columbia and US territories), cities, counties, districts, other political subdivisions of any State, Institutions of Higher Education, K-12, quasi-governmental entities, service districts, healthcare institutions, transportation districts, tribes/tribal organizations, or nonprofit organizations.
- G. **eMACS** – The Lead Entity – State of Montana's eProcurement platform.
- H. **Interested Entity** means an Entity that has requested to be identified as a potential Participating Entity in this RFP.
- I. **Lead Entity** means the Entity issuing this RFP.
- J. **Master Agreement** means a contract, resulting from this RFP, that is executed by and between a successful Offeror and the Lead Entity, acting in collaboration with RFXPremier.
- K. **Sourcing Team** means the group of individuals assisting the Lead Entity 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.
- L. **PPA** means the Procurement Professionals Alliance.
- M. **RFXPremier** means the cooperative contracting division of PPA.
- N. **Offeror** means an entity or individual submitting a proposal in response to this RFP.
- O. **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 as authorized under the Master Agreement and a Participating Addendum, if applicable, and accepted or processed by the Contractor. Each Order includes and incorporates by reference the Master Agreement and Participating Addendum, if applicable, and the accepted Order may include any Supporting Materials.
- P. **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.).
- Q. **Participating Entity** means an entity authorized to enter into a Participating Addendum, that executes a Participating Addendum with a Contractor.
- R. **Proposal** or **proposal** means the document(s), data, information, and other media submitted by an Offeror in response to this RFP, including information submitted directly through eMACS and information submitted after the RFP Close Date at the request of the Lead Entity.



- S. **Purchasing Entity** means an 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.
  - T. **RFP** means this request for proposals, including all attachments and exhibits and any information posted by the Lead Entity to eMACS, as amended.
  - U. **RFP Close Date** means the date and time identified in the RFP Overview.
  - V. **RFP Contact** means the individual identified in the RFP Overview.
  - W. **RFP Open Date** means the date and time identified in the RFP Overview.
  - X. **RFP Q&A Deadline** means the date and time identified in the RFP Overview.
  - Y. **RFP Website** means the website identified in the RFP Overview, eMACS.
  - Z. **Solicitation Number** means the number identified on the cover page of the RFP Overview and in the header of each attachment to this RFP.
- AA.** Supporting Materials means materials and documents which the parties identify as incorporated either by attachment or reference. Supporting Materials may include (as examples) product lists, hardware or software specifications, standard or negotiated service descriptions, data sheets and their supplements, supplementary terms, policies, and statements of work (SOWs), published warranties and service level agreements, and may be available to Participating Entity in hard copy or by accessing a designated Contractor website.

## 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 state where the Lead Entity is located, the State of Montana.
- 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 where the Lead Entity is located, the State of Montana.
- 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 State where the Lead Entity is located, the State of Montana.
- 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 (eMACS) is the sole source for official RFP documents and updates. The Lead Entity 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 Entity procurement solicitation boards and the RFXPremier 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 eMACS 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 Entity.

### B. RFP Amendments.

1. The Lead Entity 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 eMACS.

2. Offerors may, through the process described in this RFP for asking questions, propose amendments to the RFP, including adjustment of deadlines. The Lead Entity is not obligated to consider any proposed amendment.
3. The Lead Entity may extend any deadline given to Offerors during the RFP process, including the RFP Close Date and RFP Q&A Deadline.
4. The Lead Entity may make immaterial corrections or clarifications to the RFP.
5. Offeror is wholly responsible for reviewing amendments and updates to eMACS, acknowledging amendments as required, and submitting a proposal that is responsive to and compliant with the RFP as amended.

**C. Waiver.**

1. The Lead Entity may waive any requirement in this RFP if the Lead Entity determines that waiver is in the best interest of the Lead Entity 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 Entity may waive minor irregularities or defects in an Offeror's proposal.

**D. RFP Conflicts and Issues.**

1. The following should be brought to the attention of the Lead Entity using the process described in this RFP for asking questions.:
  - 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, anti-competitive, or unlawful.
2. Any protest, claim, dispute, or action based upon a conflict or issue described in Subsection 1.a or Subsection 1.b or upon a violation of law related to this RFP or the award of a contract **will be submitted by the close of the Q+A period.**

## 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 Entity in the format required by this RFP. The Lead Entity 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 Entity 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 Entity 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 H, 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 Entity 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.
4. Inclusion of additional terms and conditions in the cost proposal may result in Offeror's proposal being deemed non-responsive.
5. 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, and personnel. All costs proposed by Offeror must also be inclusive of the RFXPremier administrative fee. Proposed costs incorporated into a Master Agreement resulting from this RFP represent not-to-exceed pricing and minimum discounts, where applicable. Except as permitted by Subsection 5, pricing offered to Participating Entities and Purchasing Entities must be no higher than pricing set forth in the Master Agreement.
6. 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 RFXPremier administrative fee, pricing in the Master Agreement, or pricing offered to Purchasing Entities outside the jurisdiction of the Participating Entity.
7. 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 Entity. Costs determined not to be reasonable or best-value by the Lead Entity, 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.
8. At the Lead Entity'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 and other Offerors' cost scores may be set in proportion to the scaled score.

**E. Proposed Modifications.**

1. The Lead Entity may, but is not obligated to, consider proposed modifications to Attachment D, Sample Master Agreement and Attachment E, Sample State of Montana Participating Addendum. Provisions of these sample contract documents that are generally inapplicable to, incompatible with, or unsuitable for the subject of this RFP should be brought to the attention of the Lead Entity using the process described in this RFP for asking questions and will be addressed only at the sole discretion of the Lead Entity. Offerors are encouraged to use discretion and only submit proposed modifications if absolutely necessary as excessive redlines could negatively impact the timeline to award Master Agreements.
2. The Lead Entity may, but is not obligated to, consider proposed modifications to Attachment D, Sample Master Agreement and Attachment E, Sample State of Montana Participating Addendum. Any Offeror-specific modifications to Attachment D, Sample Master Agreement and Attachment E, Sample State of Montana Participating Addendum, must be proposed as part of the Q+A process. If any modifications are proposed in Attachment I, Offeror must submit a redlined copy of Attachment D and a redlined copy of Attachment E showing their proposed modifications.



- a. This will be the only opportunity for Offerors to proposed modifications to Attachment D and Attachment E. Any proposed modifications received after the Q+A period closes will not be considered by the Lead Entity.
  3. Any proposed modifications accepted by the Lead Entity will be issued as an Amendment to the RFP. Proposed modifications must reference the specific section of the RFP to which the modification relates. Any proposed modification which is neither accepted nor rejected by the Lead Entity may be revisited during negotiations with Offerors that the Lead Entity intends to award to at the sole discretion of the Lead Entity. When applicable, revisited modifications may be made available to all awarded Offerors.
  4. Offerors may propose additional terms but must include them in Attachment I, Proposed Modifications and must clearly identify where any terms conflict with the Sample Master Agreement.
  5. The Lead Entity will negotiate the Master Agreement and the State of Montana Participating Addendum at the same time, after an intent to award is publicly posted.
  6. Only proposed modifications that are submitted in Attachment I, Proposed Modifications, will be considered during negotiations, including any additional terms that the Offeror would like considered. The following will not be considered by the Lead Entity:
    - a. Any proposed modification not submitted with Offeror's proposal in Attachment I, Proposed Modifications;
    - b. Any proposed modification not accompanied by an explanation as required in Attachment I, Proposed Modifications;
    - 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.
  7. 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 RFXPremier website for examination by potential Participating Entities and Purchasing Entities.
- F. Proposal Contact.**
  1. The Proposal Contact identified by Offeror must be able to respond timely to communications from the Lead Entity. Offeror must, within 24 hours, notify the Lead Entity 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 Entity may, but is under no obligation to, notify Offeror's Proposal Contact of updates to eMACS, 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.
- 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 Entity and may not be returned to Offeror.
  2. Offeror grants Lead Entity and PPA 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 PPA members;
  - b. Shared with entities represented on the Sourcing Team;
  - c. Posted to the RFXPremier 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 including trade secrets, confidential, proprietary, or protected, Offeror must complete the required sections in eMACS by submitting a trade secret affidavit. The Offeror shall also 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 including trade secret, confidential, proprietary, or protected. This does not guarantee that information claimed by Offeror as including trade secrets, 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 including trade secrets, confidential, proprietary, or protected in compliance with this RFP, Offeror releases the Lead Entity, PPA, PPA members, and entities represented on the 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 Entity and as necessary to respond to this RFP. Unless otherwise directed by the Lead Entity, Offeror will destroy Confidential Information within 30 days of the cancellation of this RFP, rejection or withdrawal of Offeror's proposal, or execution of a Master Agreement between the Lead Entity and Offeror.

## V. RIGHTS RESERVED TO THE LEAD ENTITY

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

1. The Lead Entity may change the RFP Contact at any time. The Lead Entity 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 eMACS.
2. The Lead Entity is not required to disclose the composition of the Sourcing Team and may, at any time and without notice, change the composition of the Sourcing Team, provided the composition complies with the Lead Entity's laws, rules, and policies.

B. **Consideration of External Information.** The Lead Entity and 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 Entity and 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. **Rejection of Proposals.** The Lead Entity may reject Offeror's proposal at any time if the Lead Entity determines that:

1. The proposal is non-responsive;
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.

**D. Cancellation.**

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

**E. No Exclusivity.**

1. Master Agreements resulting from this RFP will be established solely for the convenience of Participating Entities. The Lead Entity, 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 Entity may, at its discretion, issue a supplemental solicitation during the term of a Master Agreement resulting from this RFP if the Lead Entity 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.

**F. Mandatory State Preferences.** The Lead Entity 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. 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 Entity but will not be awarded a RFXPremier Master Agreement for use by other states and eligible entities.

**G. Conditional Awards.**

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

**H. Protest.** Award protests will be in accordance with the Lead Entity's statute - Montana Code: 18-4-242. This code 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.



- I. **Term.** The Lead Entity 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 RFXPremier portfolio, the Lead Entity 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 Entities.

1. Entities that have requested to be named in this RFP as potential participants in the resulting Master Agreement(s) are listed as Interested Entities in Attachment F, Participation Information. This list neither guarantees execution of a Participating Addendum by an Interested Entity nor precludes execution of a Participating Addendum by any entity not identified as an Interested Entity.
2. The Estimated Annual Volume in Attachment F, Participation Information aggregates usage estimates, self-reported by the Interested Entities, which may be based on any factor considered relevant by each Interested Entities, including historical usage and anticipated future usage. No minimum or maximum level of sales volume is guaranteed or implied.
3. Some Interested Entities have also provided entity-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 F, Participation Information are being provided for informational purposes only and will not be incorporated into the Master Agreement or addressed or negotiated by the Lead Entity. 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.