

Attachment A

RFP TERMS AND CONDITIONS

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

I. DEFINITIONS

- A. **Amendment** means a written change, addition, correction or revision to Solicitation Documents and its terms, conditions or requirements by the State.
- 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 State, the Multistate Sourcing Team, NASPO, or NASPO ValuePoint.
- C. **Contractor** means an Offeror with whom the Lead State executes a Master Agreement resulting from this RFP.
- D. **Deliverable** means a good, product, service, solution, result, labor, or other effort being sought through this RFP.
- E. **Interested State** means a state that has requested to be identified as a potential Participating Entity in this RFP.
- F. **Lead State** means the State issuing this RFP.
- G. **Mandatory Provision** means whenever the terms "shall," "must," "will," or "is required" are used.
- H. **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.
- I. **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.
- J. **NASPO** means the National Association of State Procurement Officials.
- K. **NASPO ValuePoint** means the cooperative contracting division of NASPO.
- L. **Offeror** means an entity submitting a proposal in response to this RFP.
- M. **OAC** means the Oklahoma Administrative Code
- N. **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.
- O. **Participating Addendum** means a contract, referencing a Master Agreement, executed by and between a Contractor and a Participating Entity and may include Participating Entity-specific requirements and terms.
- P. **Participating Entity** means a state, or another entity authorized to enter into a Participating Addendum, that executes a Participating Addendum with a Contractor.
- Q. **Permissible Provision** means whenever the terms "can," "may," or "should" are used
- R. **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.
- S. **Proposal Packet** means the order described in the Offeror Instructions in which all Offerors shall insert the relevant sections of a Proposal, and which shall be the format for all submitted Proposals.
- T. **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.
- U. **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.

- V. RFP Close Date** means the date identified in Section II.A.4 of the RFP Summary.
- W. RFP Contact** means the individual identified in Section II.B. of the RFP Summary.
- X. RFP Open Date** means the date identified in Section II.A.1. of the RFP Summary.
- Y. RFP Q&A Deadline** means the date identified in Section II.A.3. of the RFP Summary.
- Z. RFP Website** means the website identified in Section II F. of the RFP Summary.
- AA. Value-Added** means any goods and/or services that an Offeror provides to other customers that an Offeror wishes to offer in addition to those required by Attachment B.

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 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.

- 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:

- 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.

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, discuss or request clarifications or demonstrations from one or more Offerors before 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.

1. The Lead State reserves the right, at its sole discretion, to request clarifications for the purpose of clarification with any or all Offerors. The purpose of any such discussion shall be to ensure full understanding of the Proposal. If clarifications are made because of such discussion, the Offeror(s) shall submit such clarifications in writing to the RFP Contact. Offeror answers that are outside scope of the clarification questions shall be disregarded. Oral explanations or instructions provided to a potential Offeror are not binding.

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 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.
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.

E. Proposed Modifications to the Sample Master Agreement.

1. The Lead State may, but is not obligated to, consider proposed modifications to Attachment J, 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 J, Sample Master Agreement, may be proposed as part of Offeror's Proposal in Attachment I, 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 I, Proposed Modifications to Sample Master Agreement;
 - b. Any proposed modification not accompanied by an explanation as required in Attachment I, 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;
 - d. Any proposed modification merely referencing another document or a URL; and
 - e. Any proposed modification to Attachment B, Scope of Work. While not encouraged, Offerors can propose modifications to the Scope of Work or ask questions about the Scope of Work only during the period identified for asking questions in the RFP Summary.
4. Offerors may propose additional terms but must include them in Attachment I, 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 J, 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 F, 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.
 3. The Contracting Officer listed on the RFP Summary is the only individual the Offeror should communicate with regarding any questions or issues with the RFP.
Communication with any other stakeholders may result in disqualification.
- 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. 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 L, 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. 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.

- K. **NASPO ValuePoint eMarketPlace.** Participation in the NASPO ValuePoint eMarketPlace by Offerors awarded a Master Agreement resulting from this RFP is mandatory. By submitting a Proposal, Offeror agrees to comply with the requirements, terms, and conditions related to the NASPO ValuePoint eMarketPlace set forth in Attachment J, Sample Master Agreement.

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;
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 F, 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.
 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 E, 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 D, 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 D, 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 D, 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.