



The State of Oklahoma
Office of Management & Enterprise Services (OMES)
Central Purchasing

In conjunction with



Request for Proposals

Oklahoma Solicitation Number OK MA 818

NASPO ValuePoint Master Agreement for

Professional Grade Tools and Diagnostic Equipment

November 30, 2017

RFP Title:	Professional Grade Tools & Diagnostic Equipment
RFP Project Description: (See Section 1.1)	The State of Oklahoma in conjunction with NASPO ValuePoint, is seeking Contractor(s) for the purchase of Professional Grade Tools and Diagnostic Equipment
RFP Lead: (See Section 1.2)	Lisa Bradley OMES/Central Purchasing 5005 North Lincoln Blvd, STE 300 Oklahoma City, OK 73105 Lisa.Bradley@omes.ok.gov 405-522-4480
Submit sealed proposal MANUAL PROPOSALS MUST BE RECEIVED AT THE PHYSICAL ADDRESS DESIGNATED FOR COURIER SERVICE AND TIME/DATE STAMPED PRIOR TO THE CLOSING DATE AND TIME.	Address for Courier: OMES Central Purchasing 5005 North Lincoln Blvd., STE 300 Oklahoma City, OK 73105 Address for US Mail: OMES Central Purchasing 5005 North Lincoln Blvd., STE 300 Oklahoma City, OK 73105
Pre-Proposal Conference: Pre-Proposal Conference Location: (See Section 2.3)	Wednesday, December 13, 2017 10:00 AM Central Time Webinar. Please RSVP by December 11, 2017 Invitations will be sent to those which reserve a seat.
Deadline To Receive Questions: (See Sections 1.3 and 2.1)	Wednesday, December 20, 2017
Question & Answers: (See Section 2.1)	All questions, including those about Terms and Conditions, must be submitted by email to: Lisa.Bradley@omes.ok.gov Question must be submitted by the question deadline date
RFP Closing Date: (See Section 1.3)	Thursday, January 11, 2018
RFP Closing Time: (See Section 1.3)	3:00 PM Central Time
Initial Term of Contract and Renewals: (See Attachment A, Section 3)	The initial term of the Contract will be two (2) years with the option, upon mutual written agreement, for three (3) additional renewal periods Upon mutual agreement, the contract may be extended or amended.
TAKE NOTE OF THE 0.25% NASPO VALUEPOINT ADMINISTRATIVE FEE DETAILED IN SECTION 6 OF THE NASPO VALUEPOINT STANDARD TERMS AND CONDITIONS, WHICH MUST BE INCORPORATED INTO YOUR BASE PRICE. OTHER STATES MAY NEGOTIATE ADDITIONAL ADMINISTRATIVE FEES IN THEIR PARTICIPATING ADDENDA FOLLOWING AWARD OF A MASTER AGREEMENT.	



Responding Bidder Information

*"Certification for Competitive Bid and Contract" **MUST** be submitted along with the response to the Solicitation.*

1. RE: Solicitation # OK-MA-818

2. Bidder General Information:

FEI / SSN : _____ Supplier ID: _____

Company Name: _____

3. Bidder Contact Information:

Address: _____

City: _____ State: _____ Zip Code: _____

Contact Name: _____

Contact Title: _____

Phone #: _____ Fax #: _____

Email: _____ Website: _____

4. Oklahoma Sales Tax Permit¹:

☐ YES – Permit #: _____

☐ NO – Exempt pursuant to Oklahoma Laws or Rules – Attach an explanation of exemption

5. Registration with the Oklahoma Secretary of State:

☐ YES - Filing Number: _____

☐ NO - Prior to the contract award, the successful bidder will be required to register with the Secretary of State or must attach a signed statement that provides specific details supporting the exemption the supplier is claiming (www.sos.ok.gov or 405-521-3911).

6. Workers' Compensation Insurance Coverage:

Bidder is required to provide with the bid a certificate of insurance showing proof of compliance with the Oklahoma Workers' Compensation Act.

☐ YES – Include with the bid a certificate of insurance.

☐ NO – Exempt from the Workers' Compensation Act pursuant to 85A O.S. § 2(18)(b)(1-11) – Attach a written, signed, and dated statement on letterhead stating the reason for the exempt status.²

¹ For frequently asked questions concerning Oklahoma Sales Tax Permit, see <https://www.ok.gov/tax/Businesses/index.html>

² For frequently asked questions concerning workers' compensation insurance, see <https://www.ok.gov/wcc/Insurance/index.html>

7. Disabled Veteran Business Enterprise Act

- ☐ YES – I am a service-disabled veteran business as defined in 74 O.S. §85.44E. Include with the bid response 1) certification of service-disabled veteran status as verified by the appropriate federal agency, and 2) verification of not less than 51% ownership by one or more service-disabled veterans, and 3) verification of the control of the management and daily business operations by one or more service-disabled veterans.
- ☐ NO – Do not meet the criteria as a service-disabled veteran business.

Authorized Signature

Date

Printed Name

Title



**Certification for Competitive
Bid and/or Contract
(Non-Collusion Certification)**

NOTE: A certification shall be included with any competitive bid and/or contract exceeding \$5,000.00 submitted to the State for goods or services.

Agency Name: Oklahoma State Wide Contract / NASPO ValuePoint Agency Number: N/A

Solicitation or Purchase Order #: OK-MA-818

Supplier Legal Name: _____

SECTION I [74 O.S. § 85.22]:

A. For purposes of competitive bid,

1. I am the duly authorized agent of the above named bidder submitting the competitive bid herewith, for the purpose of certifying the facts pertaining to the existence of collusion among bidders and between bidders and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to said bid;
2. I am fully aware of the facts and circumstances surrounding the making of the bid to which this statement is attached and have been personally and directly involved in the proceedings leading to the submission of such bid; and
3. Neither the bidder nor anyone subject to the bidder's direction or control has been a party:
 - a. to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding,
 - b. to any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract, nor
 - c. in any discussions between bidders and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract, nor
 - d. to any collusion with any state agency or political subdivision official or employee as to create a sole-source acquisition in contradiction to Section 85.45j.1. of this title.

B. I certify, if awarded the contract, whether competitively bid or not, neither the contractor nor anyone subject to the contractor's direction or control has paid, given or donated or agreed to pay, give or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring this contract herein.

SECTION II [74 O.S. § 85.42]:

For the purpose of a contract for services, the supplier also certifies that no person who has been involved in any manner in the development of this contract while employed by the State of Oklahoma shall be employed by the supplier to fulfill any of the services provided for under said contract.

The undersigned, duly authorized agent for the above named supplier, by signing below acknowledges this certification statement is executed for the purposes of:

☐ the competitive bid attached herewith and contract, if awarded to said supplier;

OR

☐ the contract attached herewith, which was not competitively bid and awarded by the agency pursuant to applicable Oklahoma statutes.

Supplier Authorized Signature

Certified This Date

Printed Name

Title

Phone Number

Email

Fax Number

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1 NASPO VALUEPOINT SOLICITATION – GENERAL INFORMATION

1.1 Purpose

The State of Oklahoma, Office of Management & Enterprise Services, OMES, Central Purchasing (Lead State) is requesting proposals for Tools and Related Accessories in furtherance of the NASPO ValuePoint Cooperative Purchasing Program. The purpose of this Request for Proposals (RFP) is to establish Master Agreements with qualified offerors to provide competitively bid pricing for the purchase of tools and accessories for all Participating States. The objective of this RFP is to obtain best value, and to achieve more favorable pricing than is obtainable by an individual state or local government entity because of the collective volume of potential purchases by numerous state and local government entities. The Master Agreement(s) resulting from this procurement may be used by state governments (including departments, agencies, institutions), institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the United States, and other eligible entities subject to approval of the individual state procurement director and compliance with local statutory and regulatory provisions.

The initial term of the master agreement shall be two (2) years with renewal provisions anticipated for three (3) additional renewals as stated in Section 3 of the NASPO ValuePoint Master Terms and Conditions (Attachment A).

It is anticipated that this RFP may result in Master Agreement awards to multiple contractors, in multiple categories, in the Lead State and Sourcing Teams discretion.

This RFP is designed to provide interested Offerors with sufficient information to submit proposals meeting minimum requirements, but is not intended to limit a proposal's content or exclude any relevant or essential data. Offerors are encouraged to expand upon the specifications to add service and value consistent with state requirements.

This will be a new solicitation to replace the current Small Hand & Power Tool Contract expiring 06/30/2018, led by the State of Oklahoma.

While the primary purpose of this solicitation is to select Offerors who can offer products for all members participating in the NASPO ValuePoint Cooperative Purchasing Program, offerors are permitted to submit a Proposal on more limited geographical areas, but not less than one entire Member State. Offerors must clearly describe the geographical limits if proposing a geographical area less than that of all member States. However, if an Offeror elects to submit a proposal for a single State then the Offeror must be willing to supply the entire State and will not be allowed to add additional States following award or at any time during the term of the contract or any renewals. The Lead State/Sourcing Team, with the assistance of the relevant Participating State (or relevant group of Participating States), may evaluate and select an Offeror for award in more limited geographical areas (e.g. a single state) where judged to be in the best interests of the State or States involved.

1.2 Lead State, Solicitation Number and Lead State Contract Administrator

The State of Oklahoma, OMES/Central Purchasing is the Lead State and issuing office for this document and all subsequent addenda relating to it. The reference number for the transaction is Solicitation #OK-MA-818. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

The Lead State Contract Administrator identified below is the single point of contact during this procurement process. Offerors and interested persons shall direct to the Lead State Contract Administrator all questions concerning the procurement process, technical requirements of this RFP, contractual requirements, requests for brand approval, changes, clarifications, and protests, the award process, and any other questions that may arise related to this solicitation and the resulting Master Agreement. The Lead State Contract Administrator designated by the State of Oklahoma, OMES/Central Purchasing is:

Lisa Bradley, CPO, SW Initiatives Contracting Officer
State of Oklahoma, OMES/Central Purchasing
5005 North Lincoln Boulevard, Suite 300
Oklahoma City, OK 73105
Lisa.Bradley@omes.ok.gov
405-522-4480

1.3 Schedule of Events

Solicitation Release: November 30, 2017
Pre-Proposal Conference: December 13, 2017
Question Deadline: December 20, 2017
Closing Date and Time: January 11, 2018 3:00 PM Central Time
Anticipated Award Date: March 15, 2018

All times are Central time unless indicated otherwise.

1.4 Definitions

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

Addenda: The lead state references changes to a Request for Proposal as an *Amendment*. Modifications to a Contract are referenced as an *Addendum*

Lead State means the State conducting this cooperative procurement, evaluation, and award.

Local Government/Political Subdivision is generally described as a local government as a city, county, school district, university or other local government body or corporation empowered to expend public funds

Master Agreement (MA): The underlying agreement executed by and between the Lead State and the Supplier(s).

MSRP: Manufacturer's Suggested Retail Price.

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

Oklahoma's Solicitation Website: <https://www.ok.gov/dcs/solicit/app/solicitationSearch.php?status=open-pending>

Participating Entity: means a state, or other legal entity, properly authorized to enter into a Participating Addendum

Participating State: A member of NASPO ValuePoint who has indicated its intent to participate by signing Intent to Contract, or who subsequently signs a Participating Addendum where required, or another state authorized by NASPO ValuePoint to be a party to the resulting Master Agreement through the execution of a Participating Addendum.

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

Proposer has the same meaning as Offeror

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

Sourcing Team: An independent committee comprised of a majority of State officers or employees established to evaluate and score proposals submitted in response to this RFP

1.5 NASPO ValuePoint Background Information

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

1.6 Participating States

In addition to the Lead State conducting this solicitation, the following Participating States have requested to be named in this RFP as potential users of the resulting Master Agreement: Alaska, Connecticut, Louisiana, Maine, Massachusetts, Missouri, Montana, North Dakota, South Dakota, Utah, Vermont, and Washington. Other entities may become Participating Entities after award of the Master Agreement. Some States may have included special or unique terms and conditions for their state that will govern their state Participating Addendum. These terms and conditions are being provided as a courtesy to proposers to indicate which additional terms and conditions may be incorporated into the state Participating Addendum after award of the Master Agreement. The Lead State will not address questions or concerns or negotiate [other States'](#) terms and conditions. The Participating States shall negotiate these terms and conditions directly with the supplier. State-specific terms and conditions are included in Attachments H-L.

2 SOLICITATION REQUIREMENTS, INFORMATION AND INSTRUCTIONS TO OFFERORS

2.1 RFP Question and Answer Process

All questions, including those about Terms and Conditions, must be submitted in writing, via email, to the Contract Administrator listed on the RFP. Questions must be submitted by the question deadline date and time shown in Section 1.3 (Schedule of Events). Answers will be addressed by addendum, and will be posted to the State of Oklahoma Solicitation site as soon as possible.

The Lead State may refuse to answer questions received after the Question/Answer deadline.

The identity of potential 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.

2.2 RFP Addenda

Formal changes to this RFP including but not limited to contractual terms and procurement requirements shall only be changed via formal written amendments issued by the Lead State.

The Lead State accepts no responsibility for a prospective Offeror not receiving solicitation documents and/or revisions to the solicitation. It is the responsibility of the prospective Offeror to monitor the State of Oklahoma Solicitation Web Site to obtain RFP addenda or other information relating to the RFP. It is highly advisable to potential Offeror's to sign up for Oklahoma's Solicitation Notifications which is available on each RFP Post.

Solicitation Detail

Please use the 'Notify Me' button to be automatically made aware of any amendments to this particular solicitation. If you would like to be electronically notified of future opportunities for this or other type commodities, you will need to register with Central Purchasing by clicking on 'Vendor Registration' link.

Notify Me

2.3 Pre-Proposal Conference Webinar

A pre-proposal conference webinar will be held on Wednesday, December 13, 2017, at 10:00 AM Central Standard Time. Please make reservations to attend in writing to: Lisa.Bradley@omes.ok.gov by December 11, 2017. An invitation with webinar information will be sent via email. Please include Company Name, Attendee Name, and Email Address. Attendance at the conference is optional but highly recommended. There will be a brief background of the contract along with some special instructions on the submission of required forms. Any questions which are mentioned during the pre-proposal conference must be submitted in writing, and answers will be provided via an addendum posted: <https://www.ok.gov/dcs/solicit/app/solicitationSearch.php?status=open-pending>

2.4 Proposal Due Date

Proposals must be received by the posted Closing date and time as described in the Schedule of Events in Section 1.3 of this RFP. Proposals received after the deadline will be late and rejected.

2.5 Cancellation of Procurement

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

2.6 Governing Laws and Regulations

This procurement is conducted by the State of Oklahoma, OMES Central Purchasing, in accordance with the Statutes and Rules of the State of Oklahoma. Full information may be located:

https://www.ok.gov/DCS/Central_Purchasing/CP_Processes_Rules_Statutes/index.html

This procurement shall be governed by the regulations and laws of the State of Oklahoma. Venue for any administrative or judicial action relating to this procurement, evaluation, and award shall be in Oklahoma County, Oklahoma. The provisions governing choice of law and venue for issues arising after award and during contract performance are specified in section 35 of the NASPO ValuePoint Master Agreement Terms and Conditions in Attachment A.

2.7 Firm Offers

Responses to this RFP, including proposed costs, will be considered firm for 180 days after the proposal due date.

2.8 Right to Accept All or Portion of Proposal

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

2.9 Proposal Content and Format Requirements

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

2.10 Bid Submission

- 2.10.1 Submitted bids shall be in strict conformity with the instructions to bidders and shall be submitted with a completed Responding Bidder Information, OMES-FORM-CP-076, and any other forms required by the solicitation.
- 2.10.2 Bids shall be submitted to the Central Purchasing Division in a single envelope, package, or container and shall be sealed, unless otherwise detailed in the solicitation. The name and address of the bidder shall be inserted in the upper left corner of the single envelope, package, or container. SOLICITATION NUMBER AND SOLICITATION RESPONSE DUE DATE AND TIME MUST APPEAR ON THE FACE OF THE SINGLE ENVELOPE, PACKAGE, OR CONTAINER.
- 2.10.3 The required certification statement, "Certification for Competitive Bid and/or Contract (Non-Collusion Certification)", OMES-FORM-CP-004, must be made out in the name of the bidder and must be properly executed by an authorized person, with full knowledge and acceptance of all its provisions.
- 2.10.4 All bids shall be legible and completed in ink or with electronic printer or other similar office equipment. Any corrections to bids shall be identified and initialed in ink by the bidder. Penciled bids and penciled corrections shall NOT be accepted and will be rejected as non-responsive. In addition to a hard copy submittal, the bidder will also be required to submit an electronic copy. Electronic responses must be submitted in the identical format contained in the solicitation (for example Microsoft Word, Microsoft Excel, but not Adobe PDF). In the event the hard copy of the price worksheets and electronic copy of the price worksheets do not agree, the electronic copy will prevail.
- 2.10.5 All bids submitted shall be subject to the Oklahoma Central Purchasing Act, Central Purchasing Rules, and other statutory regulations as applicable, these General Provisions, any Special Provisions, solicitation specifications, required certification statement, and all other terms and conditions listed or attached herein—all of which are made part of this solicitation.

2.11 Solicitation Amendments

- 2.11.1 If an "Amendment of Solicitation", OMES-FORM-CP-011, is issued, the bidder shall acknowledge receipt of any/all amendment(s) to solicitations by signing and returning the solicitation amendment(s). Amendment acknowledgement(s) may be submitted with the bid or may be forwarded separately. If forwarded separately, amendment acknowledgement(s) must contain the solicitation number and response due date and time on the front of the envelope. The Central Purchasing Division must receive the amendment acknowledgement(s) by the response due date and time specified for receipt of bids for the bid to be deemed responsive. Failure to acknowledge solicitation amendments may be grounds for rejection.
- 2.11.2 No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the solicitation. All amendments to the solicitation shall be made in writing by the Central Purchasing Division.
- 2.11.3 It is the bidder's responsibility to check the OMES/Central Purchasing Division website frequently for any possible amendments that may be issued. The Central Purchasing Division is not responsible for a bidder's failure to download any amendment documents required to complete a solicitation.

2.12 Bid Change

If the bidder needs to change a bid prior to the solicitation response due date, a new bid shall be submitted to the Central Purchasing Division with the following statement "This bid supersedes the bid previously submitted" in a single envelope, package, or container and shall be sealed, unless otherwise detailed in the solicitation. The name and address of the bidder shall be inserted in the upper left corner of the single envelope, package, or container. SOLICITATION NUMBER AND SOLICITATION RESPONSE DUE DATE AND TIME MUST APPEAR ON THE FACE OF THE SINGLE ENVELOPE, PACKAGE, OR CONTAINER.

2.13 Certification Regarding Debarment, Suspension, and Other Responsibility Matters

By submitting a response to this solicitation:

- 2.13.1 The prospective primary participant and any subcontractor certifies to the best of their knowledge and belief, that they and their principals or participants
 - 2.13.1.1 Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State or local department or agency;
 - 2.13.1.2 Have not within a three-year period preceding this proposal been convicted of or pled guilty or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) contract; or for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - 2.13.1.3 Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph 2.13.3 of this certification; and
 - 2.13.1.4 Have not within a three-year period preceding this application/proposal had one or more public (Federal, State, or local) contracts terminated for cause or default.
- 2.13.2 Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its solicitation response.

2.14 Bid Opening

- 2.14.1 Sealed bids shall be opened by the Central Purchasing Division at 5005 N. Lincoln Blvd. Suite 300, Oklahoma City, Oklahoma, 73105 at the time and date specified in the solicitation as Response Due Date and Time.
- 2.14.2 On a Request for Proposal (RFP) no pricing shall be released at the time of opening. Should a public opening be requested the only information to be released will be a list of bidders without pricing.

2.15 Open Bid / Open Record

Pursuant to the Oklahoma Public Open Records Act, a public bid opening does not make the bid(s) immediately accessible to the public. The procurement or contracting agency shall keep the bid(s) confidential, and provide prompt

and reasonable access to the records only after a contract is awarded or the solicitation is cancelled. This practice protects the integrity of the competitive bid process and prevents excessive disruption to the procurement process. The interest of achieving the best value for the State of Oklahoma outweighs the interest of vendors immediately knowing the contents of competitor's bids. [51 O.S. § 24A.5 (5)]

Additionally, financial or proprietary information submitted by a bidder may be designated by the Purchasing Director as confidential and the procurement entity may reject all requests to disclose information designated as confidential pursuant to 62 O.S. (2012) § 34.11.1(H)(2) and 74 O.S. (2011) § 85.10. Bidders claiming any portion of their bid as proprietary or confidential must specifically identify what documents or portions of documents they consider confidential and identify applicable law supporting their claim of confidentiality. The State Purchasing Director shall make the final decision as to whether the documentation or information is confidential pursuant to 74 O.S. § 85.10. Otherwise, documents and information a bidder submits as part of or in connection with a bid are public records and subject to disclosure after contract award or the solicitation is cancelled.

2.16 Late Bids

Bids received by the Central Purchasing Division after the response due date and time shall be deemed non-responsive and shall NOT be considered for any resultant award.

2.17 Manufacturers' Name and Approved Equivalents

Unless otherwise specified in the solicitation, manufacturers' names, brand names, information and/or catalog numbers listed in a specification are for information and not intended to limit competition. Bidder may offer any brand for which they are an authorized representative, and which meets or exceeds the specification for any item(s). However, if bids are based on equivalent products, indicate on the bid form the manufacturer's name and number. Bidder shall submit sketches, descriptive literature, and/or complete specifications with their bid. Reference to literature submitted with a previous bid will not satisfy this provision. The bidder shall also explain in detail the reason(s) why the proposed equivalent will meet the specifications and not be considered an exception thereto. Bids that do not comply with these requirements are subject to rejection.

2.18 Clarification of Solicitation

- 2.18.1 Clarification pertaining to the contents of this solicitation shall be directed in writing to the Central Purchasing Contracting Officer specified in the solicitation, and must be prior to the closing date of the solicitation.
- 2.18.2 If a bidder fails to notify the State of an error, ambiguity, conflict, discrepancy, omission or other error in the SOLICITATION, known to the bidder, or that reasonably should have been known by the bidder, the bidder shall submit a bid at its own risk; and if awarded the contract, the bidder shall not be entitled to additional compensation, relief, or time, by reason of the error or its later correction. If a bidder takes exception to any requirement or specification contained in the SOLICITATION, these exceptions must be clearly and prominently stated in their response.
- 2.18.3 Bidders who believe proposal requirements or specifications are unnecessarily restrictive or limit competition may submit a written request for administrative review to the contracting officer listed on the solicitation. This request must be made prior to the closing date of the solicitation.

2.19 Negotiations

- 2.19.1 In accordance with Title 74 §85.5, the State of Oklahoma reserves the right to negotiate with one, selected, all or none of the vendors responding to this solicitation to obtain the best value for the State. Negotiations could entail discussions on products, services, pricing, contract terminology or any other issue that may mitigate the State's risks. The State shall consider all issues negotiable and not artificially constrained by internal corporate policies. Negotiation may be with one or more vendors, for any and all items in the vendor's offer.
- 2.19.2 Firms that contend that they lack flexibility because of their corporate policy on a particular negotiation item shall face a significant disadvantage and may not be considered. If such negotiations are conducted, the following conditions shall apply:
- 2.19.3 Negotiations may be conducted in person, in writing, or by telephone.
- 2.19.4 Negotiations shall only be conducted with potentially acceptable offers. The State reserves the right to limit negotiations to those offers that received the highest rankings during the initial evaluation phase.

- 2.19.5 Terms, conditions, prices, methodology, or other features of the bidders offer may be subject to negotiations and subsequent revision. As part of the negotiations, the bidder 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 offer.
- 2.19.6 The requirements of the Request for Proposal shall not be negotiable and shall remain unchanged unless the State determines that a change in such requirements is in the best interest of the State Of Oklahoma.

2.20 Rejection of Bid

The State reserves the right to reject any bids that do not comply with the requirements and specifications of the solicitation. A bid may be rejected when the bidder imposes terms or conditions that would modify requirements of the solicitation or limit the bidder's liability to the State. Other possible reasons for rejection of bids are listed in OAC 260:115-7-32.

2.21 Award of Contract

- 2.21.1 The State Purchasing Director may award the Contract to more than one bidder by awarding the Contract(s) by item or groups of items, or may award the Contract on an ALL OR NONE basis, whichever is deemed by the State Purchasing Director to be in the best interest of the State of Oklahoma.
- 2.21.2 Contract awards will be made to the lowest and best bidder(s) unless the solicitation specifies that best value criteria is being used.
- 2.21.3 In order to receive an award or payments from the State of Oklahoma, suppliers must be registered. The vendor registration process can be completed electronically through the OMES website at the following link: <https://www.ok.gov/dcs/vendors/index.php>

2.22 Compliance with Applicable Laws

The products and services supplied under the Contract shall comply with all applicable Federal, State, and local laws, and the supplier shall maintain all applicable licenses and permit requirements.

2.23 Proposal Submission Instructions

Proposals must be received by the posted Closing date and time. Proposals received after the deadline will be late and rejected.

You may mail or drop off your response to the State of Oklahoma, OMES Central Purchasing, 5005 N Lincoln Blvd., Suite 300, Oklahoma City, OK 73105, on or before the due date and time.

An Offeror shall submit to the Lead State Contract Administrator one (1) original hard "MASTER" copy and two (2) electronic copies of the Proposal (less Proposal Pricing Page) and all required supporting information and documents on or before the Closing Date and Time. Envelopes, packages or boxes containing the original and the copies must be clearly labeled and submitted in a sealed envelope, package, or box bearing the following information:

- ☒ Name of Proposer
- ☒ RFP Number
- ☒ Closing Date and Time

If discrepancies are found between the copies, or between the original and copy or copies, the original "MASTER" will provide the basis for resolving discrepancies. If one document is not clearly marked "MASTER," the Lead State reserves the right to use the original as the Master. If no document can be identified as an original, Proposer's Proposal may be rejected at the discretion of the Lead State. A Proposer shall also submit on a CD ROM or USB flash drive one electronic copy of its Proposal in MS Word 2003 or higher format. Documents requiring signature must be signed and scanned, however no other scanned documents will be accepted.

Offerors shall submit the Proposal Pricing Page in a separate, sealed envelope, labeled accordingly and placed in sealed carton(s) or package(s) as described above. Prices must be submitted on a pricing matrix Attachment C in Microsoft Excel format. Proposers shall submit their prices in both hard copy and electronic form using Microsoft Excel

on a CD-ROM or USB flash drive. **Do not include Proposal Pricing Page on the same CD-ROM or USB flash drive as the technical proposal.**

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 at the place specified on the cover sheet of this RFP. The Lead State shall not be responsible for any delays in mail or by common carriers or by transmission errors or delays or mistaken delivery. Proposal deliveries made to another location other than to the address identified on the cover sheet of this RFP will be considered non-responsive unless re-delivery is made to the address identified on the cover sheet of this RFP before the Closing Date and Time. **Proposals may NOT be submitted by facsimile or email.**

2.24 Required Format

All Proposals must be submitted in the following format. Detailed information on submitting each of these sections is contained later sections of this RFP.

2.24.1 Administrative Form

The Lead State's Request for Proposal forms completed and signed.

2.24.2 Executive Summary

The one or two page executive summary is to briefly describe the Offeror's Proposal. This summary should highlight the major features of the Proposal. It must indicate any requirements that cannot be met by the Offeror. The Lead State should be able to determine the essence of the Proposal by reading the executive summary.

2.24.3 Technical Response: This section should constitute the Technical response of the proposal and must contain at least the following information:

2.24.3.1 A complete narrative of the Offeror's assessment of the work to be performed, the Offerors ability and approach, and the resources necessary to fulfill the requirements. This should demonstrate the Offeror's understanding of the desired overall performance expectations and clearly indicate any options or alternatives proposed.

2.24.3.2 A specific point-by-point response, in the order listed, to each requirement in the RFP and scope of work.

2.24.4 Cost Proposal. Cost will be evaluated independently from the technical proposal. Please enumerate all costs on the attached Cost Proposal Form.

The Cost Proposal is to be submitted as a separate document. Inclusion of any cost or pricing data within the technical proposal may result in your Proposal being deemed non-responsive.

2.24.5 Usage Fee and Reporting Plan

The detailed plan for meeting the Usage Fee and Reporting Requirements of this RFP must be included with response. This plan should provide a comprehensive description of how the Offeror plans to collect and deliver the data and fees required by NASPO ValuePoint and Participating States.

2.25 Ownership or Disposition of Proposals and other Materials submitted

All Proposals and other materials submitted in response to this RFP shall be the property of the State of Oklahoma and subject to the Oklahoma Public Open Records Act.

2.26 Confidential or Proprietary Information

Financial or proprietary information submitted by an Offeror may be designated by the Purchasing Director as confidential and the procurement entity may reject all requests to disclose information designated as confidential pursuant to 62 O.S. (2012) § 34.11.1(H)(2) and 74 O.S. (2011) § 85.10. Offerors claiming any portion of their Proposal as proprietary or confidential must specifically identify what documents or portions of documents they consider confidential and identify applicable law supporting their claim of confidentiality. The State Purchasing Director shall make the final decision as to whether the documentation or information is confidential pursuant to 74 O.S. § 85.10. Otherwise, documents and information an Offeror submits as part of or in connection with a Proposal are public records and subject to disclosure after contract award or the solicitation is cancelled.

Offerors should be aware that marking any portion of a Proposal as "confidential", "proprietary" or "trade secret" may exclude it from evaluation or consideration for award. In the event that a limited amount of confidential and proprietary information is deemed necessary by the Offeror to respond to solicitation, any such information must be included in a

separate section of the Offeror's Proposal response clearly marked as "CONFIDENTIAL AND PROPRIETARY INFORMATION". Do not incorporate confidential and proprietary information throughout the Proposal response. Rather, provide a reference in the Proposal response directing the reader to the CONFIDENTIAL AND PROPRIETARY INFORMATION section. Elements of the Proposal that define the contractual requirements, such as approaches to the statement of work, prices, and schedule, may not be marked as confidential and proprietary. Proposals not complying with these instructions for identification and segregation of confidential and proprietary information may be rejected.

Information included in the CONFIDENTIAL AND PROPRIETARY INFORMATION section of an Offeror's Proposal is not automatically accepted and protected. All information identified in the CONFIDENTIAL AND PROPRIETARY INFORMATION section will be subject to review by the Lead State in accordance with the procedures prescribed by the Lead State's open records statute, freedom of information act, or similar law.

2.26.1 Redacted Proposal Response

In the event that an Offeror includes a CONFIDENTIAL AND PROPRIETARY INFORMATION section in their Proposal response, an electronic redacted copy of the offeror's Proposal (as accepted) must be submitted with the final Proposal (e.g. a best and final offer) or as otherwise directed by the Lead State. Offeror acknowledges that any information in the redacted copy of their Proposal

2.27 Offeror Exceptions to Terms and Conditions

The Lead State discourages exceptions to contract terms and conditions in the RFP, attached Participating Entity terms and conditions (if any), and the NASPO ValuePoint Master Agreement Terms and Conditions. Exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Lead State (and its evaluation team), the proposal appears to be conditioned on the exception or correction of what is deemed to be a deficiency or unacceptable exception would require a substantial proposal rewrite to correct.

Offerors should identify or seek to clarify any problems with contract language or any other document contained within this RFP through their written inquiries about the RFP using the process in Section 2.1.

Moreover, Offerors are cautioned that award may be made on receipt of initial proposals without clarification or an opportunity for discussion, and the nature of exceptions would be evaluated. Further, the nature of exceptions will be considered in the competitive range determination if one is conducted. In the sole discretion of the Lead State, Exceptions may be evaluated to determine: the extent to which the alternative language or approach poses unreasonable, additional risk to the state; is judged to inhibit achieving the objectives of the RFP; or whose ambiguity makes evaluation difficult and a fair resolution (available to all offerors) impractical given the timeframe for the RFP. Exceptions may result in a Proposal being rejected as nonresponsive and the Lead State is under no obligation to consider exceptions.

2.28 Certification of Non-Debarment

The Offeror certifies that neither the Offeror nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this resulting award and Master Agreement by any Federal, State, or local governmental department or agency. If the Offeror cannot certify this statement, attach a written explanation for review by the Lead State, which reserves the right to deem the Offeror's proposal non-responsive.

Have not within a three-year period preceding this Proposal been convicted of or pled guilty or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) contract; or for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

Have not within a three-year period preceding this Proposal had one or more public (Federal, State, or local) contracts terminated for cause or default.

3 EVALUATION AND AWARD

3.1 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, 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 the Proposal if it does not prejudice the rights of other Offerors or are not a cause for Proposal rejection.

3.2 Discussions with Offerors – Oral Presentations

The Lead State reserves the right to award on receipt of initial proposals without an opportunity for discussion or proposal revision, so Offerors are encouraged to submit their most favorable proposal at the time established for receipt of proposals. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and/or written revisions of proposals. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing Offerors.

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.

The mandatory requirements of the RFP shall not be negotiable and shall remain unchanged unless the Lead State determines that a change in such requirements is in the best interest of the Lead State.

3.3 Award of Master Agreement(s)

Award shall be made to the offeror(s) whose proposal is the most advantageous to the Lead State and NASPO ValuePoint, taking into consideration price and the other evaluation factors set forth in this request for proposal. It is the intent to establish multiple awards throughout the categories, and all offerors are encouraged to compete in as many categories as possible.

However, if Offeror specializes in one category, they will not be penalized for only submitting cost information for that category.

The State of Oklahoma reserves the right to eliminate any category not meeting full expectations from the final award.

3.4 Evaluation Process

Phase 1: In the initial phase of the evaluation process, the Lead State will review all proposals timely received. Unacceptable proposals (non-responsive proposals not conforming to RFP requirements) will be eliminated from further consideration.

- | | | |
|--------|------------------------------|-----------|
| 1.1.1. | Meets Minimum Qualifications | Pass/Fail |
| 1.1.2. | Meets Minimum Requirements | Pass/Fail |

Phase 2: Technical Proposal Evaluation (1000 points)

Acceptable and potentially acceptable proposals will be evaluated against the proposal evaluation criteria.

Evaluation Criteria	Possible Points
Capabilities - Ability to Meet Scope of Work	400 pts
Conformance to the Terms	50 pts
Contract Management	50 pts
Experience, and References	100 pts
Value Added Features	100 pts

Phase 3: Cost Proposal Evaluation:

Evaluation Criteria	Possible Points
Cost	300 Points

Evaluation of Cost Proposals: The Offeror with the lowest cost will receive the maximum 300 points. All other Offerors will receive points as determined by the ratio* of their costs to the lowest cost. Final cost scores will be calculated based on the following:

*Ratio Calculation: Points assigned to each Offerors cost proposal will be based on the lowest proposal cost. The Offeror with the lowest proposed cost will receive 100% of the cost points. All other Offerors will receive a portion of the total cost points based on what percentage higher their Proposed Cost is than the Lowest Proposed Cost. Offeror's whose Proposed Cost is more than double (200%) the Lowest Proposed Cost will receive no points. The formula to compute the points is: $\text{Cost Points} \times (2 - \text{Proposed Cost} / \text{Lowest Proposed Cost})$.

A multi-state Sourcing Team will be responsible for the review and evaluation of Proposals in accordance with the process described in the RFP.

The Supplier agrees to provide the Lead State with sufficient information to allow the Lead State to confirm the Supplier's ability to perform successfully under the Master Agreement if requested.

3.5 Business and Technical Response

- 3.5.1 Attachment F provides a template for an Administrative and Technical responses. The items are referenced to particular areas of the RFP. As this is not the entire response, please utilize this template in your submittal. If additional space is needed, please label as Attachment F – Supplemental Information.

3.6 Value Added Section Overview

- 3.6.1 The purpose of the Value Added plan is to provide Offerors with an opportunity to identify any value added options or ideas that may benefit the State(s) which may result in a change in either cost or scope. These options or ideas may also be referred to as additional or optional services. This area allows the Offeror to differentiate their products and services from other similar companies. Where applicable, the Offeror should identify:

3.6.1.1 What the State may have excluded or omitted from its original scope

3.6.1.2 How these options or ideas have been successful through verifiable performance information and/or best value practices.

3.6.2 The Offeror should list any costs deviations and possible time impacts of its options or ideas. Any items which reflect additional costs should be listed separately and clearly defined. The ideas identified in this Value Added Plan must NOT be included in the Offeror's original Cost Proposal.

3.6.3 The Offeror should identify and briefly describe any options, ideas, alternatives, or suggestions to add value to this contract offering, and indicate how the items will increase or decrease cost and customer satisfactions.

3.6.4 All Value Added Plans must be submitted on Attachment D Value Added Plan Template. There is a two (2) page limit for this section.

3.6.5 No identifiable company information is to be included within the plan. These plans will be labeled Offeror A, B or C, or Offeror 1, 2, or 3 and rated blindly by the evaluation team.

3.7 Past Performance and References

3.7.1 Attachment G is a template for customer surveys. Failure to obtain a past performance score may jeopardize your Proposal's competitiveness.

3.7.2 Send Attachment G to your past customers. Five references are required. To ensure receipt of an adequate number of responses, suggest to send to more than five companies.

3.7.3 It is your responsibility to follow up with your references to ensure timely receipt of all surveys.

3.7.4 All surveys will be returned directly to the Lead State office. References will not be collected by respondent and submitted with the proposal response.

3.8 Notice of Intent to Award

After a final selection(s) is made, 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.

3.9 Protest

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

You may reference the lead state's procedures for a supplier's protest at the following of link provided below.

260:115-3-19. Supplier's Protest https://apps.ok.gov/dcs/searchdocs/app/manage_documents.php?id=1341

3.10 Post Award Formalization of the Master Agreement

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.

4 ADMINISTRATIVE AND TECHNICAL RESPONSE REQUIREMENTS

4.1 Mandatory Minimum Administrative Proposal Requirements

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

- 4.1.1 For all products sold, Supplier must be an original manufacturer or authorized distributor. If requested, Offeror must be able to identify an account number with manufacturers represented.
- 4.1.2 Each product sold shall honor a manufacturer's standard warranty for parts and labor at a minimum.
- 4.1.3 Prices must stay firm for the first twelve (12) months of the contract. Requests for additional increases in pricing for contract items will be limited to once a year, unless market situations arise. Any changes in pricing must be submitted in writing, to the Lead State, at a minimum of 30 days prior to a price increase.

4.2 NASPO ValuePoint Master Agreement Statement of Compliance

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

The Master Agreement will include, but not be limited to, the NASPO ValuePoint Standard Terms and Conditions in Attachment A and Lead State specific terms and conditions required to execute a master agreement, the scope of work (Attachment B) and selected portions of the Offeror's Proposal.

This section highlights particular terms and conditions of NASPO ValuePoint Master Agreement Terms and Conditions, although Offerors will be bound to all the terms and conditions when executing a Master Agreement as shown in Attachment A. Offerors must include a statement in their Proposal that they have read and understand all of the terms and conditions as shown in the Master Agreement (Attachment A).

4.3 Insurance

To be eligible for award, the Offeror agrees to acquire insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state at the prescribed levels set forth in Section 21 of the NASPO ValuePoint Master Agreement Terms and Conditions. Describe your insurance or plans to obtain insurance satisfying the requirements in Section 21.

4.4 NASPO ValuePoint Administrative Fee and Reporting Requirements

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

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

4.5 NASPO ValuePoint eMarket Center

To be eligible for award, the Offeror agrees, by submission of a Proposal, to cooperate with NASPO ValuePoint and SciQuest, doing business as JAGGAER (and any authorized agent or successor entity to JAGGAER) to integrate its presence in the NASPO ValuePoint eMarket Center either through an

electronic catalog (hosted or punchout site) or unique ordering instructions. Refer to Attachment A, Section 9, NASPO ValuePoint Master Agreement Terms and Conditions for the prescribed requirements. Those terms and conditions require as a minimum that the Offeror agrees to participate in development of ordering instructions. Proposer shall respond how they can support the eMarket Center in the Proposal through either a hosted catalog or punchout solution.

4.6 Lead State Terms and Conditions

Refer to Attachment E for the Lead State Special Terms and Conditions that apply to this solicitation. Offeror shall indicate in their Proposal that they have read and understand all of the requirements shown Lead State Terms and Conditions.

4.7 Participating State Terms and Conditions

As a courtesy to Offerors, some Participating State specific Terms and Conditions are provided in Attachments 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.

4.8 Technical Requirements

This section contains technical requirements pertaining to the Professional Grade Tool and Diagnostic Equipment RFP. Other sections of this RFP contain additional requirements that must be met in order to be considered responsive. Offerors must identify in their Proposal how their company meets (or exceeds) all requirements listed in Section 4 of this RFP solicitation.

4.8.1 Offeror Profile

Provide the following information specific to your company:

- a. Your company's full legal name
- b. State of incorporation
- c. Primary business address
- d. Describe your company ownership structure
- e. Employee size (number of employees)
- f. Website
- g. Sales contact information
- h. Your client retention rate during the past 3 years
- i. A brief history of your company and the year it was founded
- j. Describe your company's growth during the past three years.

4.8.2 Customer Service

- a. What are your hours of operation and when are key account people available to us?
- b. Describe how problem identification and resolution will be handled.
- c. How will you service our account? Describe the system you will use to manage our account.
- d. How do you respond to customer complaints and service issues?
- e. How do you assess customer satisfaction?
- f. What are your quality assurance measures and how are they handled in your organization.

4.8.3 Technology

- a. Describe your online system that Purchasing Entities would use to place orders and receive results? Include all methods of order submission.
- b. Describe in detail how any online ordering systems will appear. List price minus discount? Net contract price?
- c. Describe contract identification if online ordering is utilized?

- d. Does the item return process change if ordered online?
- e. Describe your ability and process to support a decentralized system of orders submitted from many end users in multiple states and locations.

4.8.4 Data Security

- 4.8.4.1 What measures do you take to protect sensitive customer information?

4.8.5 Scope of Work

- 4.8.5.1 Offerors shall demonstrate in their Proposal how they meet or exceed the requirements of each section of the Scope of Work in Attachment B. Offerors shall show each requirement and its response in their Proposal.

4.8.6 Account Management

- 4.8.6.1 The respondent must include the name and professional resume of the individual who will be the Account Manager for the term of the Contract. The Account Manager will be responsible for operation and administration of the Contract by the Supplier. The Account Manager must respond in a timely manner and in writing unless instructed otherwise to all information requests from the Lead State within one business day.
- 4.8.6.2 The Account Manager shall upon request attend meetings as requested and determined by the Lead State. The Account Manager will be responsible for reports required by the contract and to serve as liaison between the Supplier and Lead State, and any other Participating Entity. The Lead State may require the Supplier to relieve the Account Manager from work on this contract, if in its opinion, it is apparent that the Account Manager does not deliver work that conforms to performance standards outlined in this RFP.
- 4.8.6.3 The Account Manager shall be available to conduct annual meetings, at a minimum, with Lead State to discuss performance and customer service related issues. The Account Manager shall be responsible to conduct and/or coordinate sales meetings, training sessions, and product demonstrations if required.

4.8.7 Promotion of the NASPO ValuePoint Master Agreement

The NASPO ValuePoint Master Agreement Terms and Conditions include program provisions governing participation in the cooperative, reporting and payment of administrative fees, and marketing/education relating to the NASPO ValuePoint cooperative procurement program. In this regard,

- 4.8.7.1 Briefly describe how you intend to promote the use of the Master Agreement.
- 4.8.7.2 Knowing that state procurement officials (CPO) must permit use of the Master Agreement in their state, how will you integrate the CPO's permission into your plan for promoting the agreement?
- 4.8.7.3 Public entities are sensitive to "scope" issues, that is, whether performance is within the intended scope of the solicitation as awarded. In the context of your method of promoting agreements of this nature, how would you clarify any questions regarding the scope of the agreement with respect to any potential order?
- 4.8.7.4 How will your company manage due dates for administrative fee payments and usage reports?
- 4.8.7.5 Through its Cooperative Development Coordinators and Education & Outreach team, NASPO ValuePoint assists Lead States by engaging suppliers in strategies aimed at promoting master agreements. What opportunities and/or challenges do you see in working with NASPO ValuePoint staff in this way?
- 4.8.7.6 Does your company participate in any other public procurement cooperatives? If yes, explain any restrictions or requirements that other cooperatives place on your company for participating with NASPO ValuePoint.

4.8.8 Usage Fee and Reporting Plan

Offerors shall include in their proposal a detailed plan for meeting the usage fee and reporting requirements of NASPO ValuePoint and Participating States. All information within the plan must be kept current, with NASPO ValuePoint and the Lead State Contract Administrator being notified of any changes to the usage fee and reporting plan immediately.

The plan shall include but not be limited to the following components:

- Offerors shall identify the person responsible for providing the mandatory usage reports.
- Offerors shall identify all authorized distributors and the method and frequency in collecting required sales and usage data from each authorized distributor.
- Offerors shall identify the method in which usage fees will be distributed to NASPO ValuePoint and applicable Participating States.
- Offerors shall identify the method in which up to date information will be provided to NASPO ValuePoint and the Lead State Contract Administrator.

5 PRICE AND COST PROPOSAL

5.1 General Information

- 5.1.1** Cost proposals will be evaluated independent of the technical evaluation. Cost proposals must be submitted to the Lead State as a separate document in Offerors Proposal. Do not embed cost proposal in the technical proposal response.
- 5.1.2** Offeror shall provide detailed costs for all costs associated with the responsibilities of managing this contract.
- 5.1.3** Offeror must submit cost, prices and rates as required by Attachment C. Cost Sheets. Prices and rates shall include all anticipated charges, including but not limited to, freight and delivery, cost of materials and product, travel expenses, transaction fees, overhead, profits, and other costs or expenses incidental to the Offeror's performance.
- 5.1.4** The Lead State is exempt from federal excise taxes and no payment will be made for any taxes levied on the Offeror's or any Subcontractor's employee's wages. The Lead State will pay for any applicable Lead State or local sales or use taxes on the products provided or the services rendered. If required by Lead State, Taxes shall be included as a separate line item on an Offeror's invoice. The tax rules with respect to other Participating Entities may vary and are expected to be addressed in the Participating Addenda.

5.2 Cost Submission

- 5.2.1** All pricing information shall be submitted on Attachment C.
- 5.2.2** There are three tabs to be completed, along with one brief instruction sheet.
- 5.2.3** The Percentage Discount tab is required, and will be included in the cost evaluation score.

5.3 Value Added Contract Items

- 5.3.1** Value Added Categories 1 and 2 have been included with Attachment C, Cost Workbook.
- 5.3.2** As a value added option, vendor may specify contract items which will qualify as priority, best-selling, higher usage items, or a special "hot" list or "contract offering" based on a deeper discount.
- 5.3.3** Due to the large variance of tool availability, and as the subject expert, the vendor may choose the items to offer.
- 5.3.4** This product listing will allow the vendor to represent the type, style, quality, and breadth of tool and/or diagnostic equipment options available if awarded.
- 5.3.5** 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.
- 5.3.6** Submission of either category 1 or 2 will be included in the total value added scoring evaluation.

5.4 Price and Rate Guarantee Period

- 5.4.1** All prices offered shall be guaranteed for the initial first year of the Master Agreement. Any request for price adjustment following the initial first year of the Master Agreement is detailed in Section 11 of the NASPO ValuePoint Master Agreement Terms and Conditions.
- 5.4.2** All discount rates shall be guaranteed for the entire Master Agreement term. Additional discounts may be increased, but not decreased.

ATTACHMENT A: NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS

1. Master Agreement Order of Precedence

a. Any Order placed under this Master Agreement shall consist of the following documents:

- (1) A Participating Entity's Participating Addendum ("PA");
- (2) NASPO ValuePoint Master Agreement Terms & Conditions;
- (3) A Purchase Order issued against the Master Agreement;
- (4) The Scope of Work;
- (5) The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
- (6) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall 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.

2. Definitions

Acceptance is defined by the applicable commercial code, except Acceptance shall not occur before the completion of delivery in accordance with the Order, installation if required, and a reasonable time for inspection of the Product.

Contractor means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

Embedded Software means one or more software applications which permanently reside on a computing device.

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.

Lead State means the State centrally administering any resulting Master Agreement(s).

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

NASPO ValuePoint is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. 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.

Order or Purchase Order means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

Participating Addendum means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

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

Participating State means a state, the District of Columbia, or one of the territories of the United States that is listed in the Request for Proposal as intending to participate. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity; however, a Participating State listed in the Request for Proposals is not required to participate through execution of a Participating Addendum.

Product 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 Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

Purchasing Entity means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and 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.

NASPO ValuePoint Program Provisions

3. Term of the Master Agreement

a. The initial term of this Master Agreement is for two (2) years. This Master Agreement may be extended beyond the original contract period for three (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.

b. The Master Agreement may be extended for a reasonable period of time, not to exceed six months, 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 shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

4. Amendments

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

5. Participants and Scope

a. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The 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. By way 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.

b. Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

c. 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. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.

d. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.

e. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint Program requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; NASPO ValuePoint eMarketCenter; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.

f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of participation by the Chief Procurement Official of the state where the Participating 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 in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.

g. Resale. "Resale" means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. 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 (the definition of which includes services that are deliverables). 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.

6. Administrative Fees

a. The 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 shall 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 proposal.

b. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee in subsection 6a shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

7. NASPO ValuePoint Summary and Detailed Usage Reports

In addition to other reports that may be required by this solicitation, the Contractor shall provide the following NASPO ValuePoint reports.

a. Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

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

c. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, social security numbers or any other numerical identifier, may be submitted with any report.

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

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

8. NASPO ValuePoint Cooperative Program Marketing and Performance Review

a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to 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 qualifying entities can participate in the Master Agreement.

b. Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.

c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the customer agreement. Contractor will ensure that their sales force is aware of this contracting option.

d. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.

e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing

until a logo use agreement is executed with NASPO ValuePoint.

f. Contractor agrees, within 30 days of their effective date, to notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-part contracts or agreements that may affect the promotion of this Master Agreements or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this master agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

g. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, cancel the Master Agreement pursuant to section 28, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may 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] award (or execution if later) of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement pursuant to section 28 or to terminate for default pursuant to section 30.

9. NASPO ValuePoint eMarket Center

a. In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. (doing business as JAGGAER) whereby JAGGAER will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's customers to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.

b. The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provide customers information regarding the Contractors website and ordering information. The Contractor is required at a minimum to participate in the eMarket Center through Ordering Instructions.

c. At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering instructions that the Contractor would like the customer to have.

d. If the solicitation requires either a catalog hosted on or integration of a punchout site with eMarket Center, or either solution is proposed by a Contractor and accepted by the Lead State, the provisions of the eMarket Center Appendix to these NASPO ValuePoint Master Agreement Terms and Conditions apply.

10. Right to Publish

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. The Contractor shall not make any representations of NASPO ValuePoint'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. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

11. Price and Rate Guarantee Period

All prices and rates must be guaranteed for the initial first year of the Master Agreement. Following the initial Master Agreement period, any request for price or rate adjustment must be for an equal guarantee period, and must be made at least thirty (30) days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed.

12. Individual Customers

Except to the extent modified by a Participating Addendum, 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, 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.

Administration of Orders

13. Ordering

a. Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

b. Purchasing Entities may define 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.

c. 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.

d. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.

f. All Orders pursuant to this Master Agreement, at a minimum, shall include:

- (1) The services or supplies being delivered;
- (2) The place and requested time of delivery;
- (3) A billing address;
- (4) The name, phone number, and address of the Purchasing Entity representative;
- (5) The price consistent with this Master Agreement and the contractor's proposal;
- (6) A ceiling amount of the order for services being ordered; and
- (7) The Master Agreement identifier.

g. All communications concerning administration of Orders placed shall 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.

h. 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. Contractor is reminded that 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.

i. Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor agrees to 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 otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, 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.

14. Shipping and Delivery

a. The prices are the delivered price to any Purchasing Entity. All deliveries shall be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain the Contractor's until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount, if any, will be found in the special terms and conditions. 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 shall be shipped without charge.

b. 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 other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.

c. All products must be delivered in the manufacturer's standard package. Costs shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton shall be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

15. Laws and Regulations

Any and all Products offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

16. Inspection and Acceptance

a. Where the Master Agreement or an Order does not otherwise specify a process for inspection and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.

b. 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, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement. 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. 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.

c. 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.

d. The warranty period shall begin upon Acceptance.

e. Acceptance Testing may be explicitly set out in a Master Agreement to ensure conformance to an explicit standard of performance. Acceptance Testing means the process set forth in the Master Agreement for ascertaining that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity. If Acceptance Testing is prescribed, this subsection applies to applicable Products purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Purchasing Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in this Master Agreement or the Participating Addendum, starting from the day after the Product is delivered or, if installed, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. If the Product does not meet the standard of performance 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. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the standard of performance issue(s). If after the cure period, the Product still has not met the standard of performance, 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. Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section. No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met. The warranty period shall begin upon Acceptance.

17. Payment

Payment after Acceptance is normally made within 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, Order, or otherwise prescribed by applicable law. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

18. Warranty

Warranty provisions govern where specified elsewhere in the documents that constitute the Master Agreement; otherwise this section governs. 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. Upon breach of the warranty, 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. 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.

19. Title of Product

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. Transfer of title to the Product shall 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 shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

20. 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.

General Provisions

21. Insurance

a. Unless otherwise agreed in a Participating Addendum, Contractor 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.

b. 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 \$1 million per occurrence/\$2 million general aggregate;

(2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

c. 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.

d. 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) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides that written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

e. 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 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.

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

22. Records Administration and Audit

a. 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 shall 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 shall survive for a period of five (5) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this 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.

b. 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.

c. The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

23. Confidentiality, Non-Disclosure, and Injunctive Relief

a. 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. 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"). 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. 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.

b. 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. 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. 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. 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. 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.

c. Injunctive Relief. Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in 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.

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

e. The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to the cooperative's Confidential Information, defined to include Participating Addenda, as well as 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 section 23. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

24. Public Information

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

25. Assignment/Subcontracts

a. 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.

b. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint and other third parties.

26. Changes in Contractor Representation

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing the Master Agreement in writing within 10 calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. The Contractor agrees to 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.

27. Independent Contractor

The Contractor shall be an independent contractor. Contractor shall have 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 agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

28. Cancellation

Unless otherwise stated, this Master Agreement may be canceled by either party upon 60 days written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon 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 shall 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.

29. 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 war which is beyond that party's reasonable control. The Lead State may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

30. Defaults and Remedies

a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

(1) Nonperformance of contractual requirements; or

(2) A material breach of any term or condition of this Master Agreement; or

(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; or

(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

(5) Any default specified in another section of this Master Agreement.

b. 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 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 shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. 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:

(1) Exercise any remedy provided by law; and

(2) Terminate this Master Agreement and any related Contracts or portions thereof; and

- (3) Impose liquidated damages as provided in this Master Agreement; and
- (4) Suspend Contractor from being able to respond to future bid solicitations; and
- (5) Suspend Contractor's performance; and
- (6) Withhold payment until the default is remedied.

d. 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 a Purchase 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 shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

31. Waiver of Breach

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. 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 shall 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, Participating Addendum, or Purchase Order.

32. Debarment

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. 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.

33. Indemnification

a. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, 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 act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.

b. Indemnification – Intellectual Property. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable ("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 ("Intellectual Property Claim") of another person or entity.

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

(a) provided by the Contractor or the Contractor's subsidiaries or affiliates;

(b) specified by the Contractor to work with the Product; or

(c) reasonably required, in order 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

(d) It would be reasonably expected to use the Product in combination with such product, system or method.

(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 it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. 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 it 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. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

34. No Waiver of Sovereign Immunity

In no event shall 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.

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.

35. Governing Law and Venue

a. The procurement, evaluation, and award of the Master Agreement shall 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 shall 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 shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

b. 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 Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall 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 shall be in the Purchasing Entity's State.

c. 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.

36. 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.

37. 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.

38. 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.

eMarket Center Appendix

a. This Appendix applies whenever a catalog hosted by or integration of a punchout site with eMarket Center is required by the solicitation or either solution is proposed by a Contractor and accepted by the Lead State.

b. Supplier's Interface with the eMarket Center. There is no cost charged by JAGGAER to the Contractor for loading a hosted catalog or integrating a punchout site.

c. At a minimum, the Contractor agrees to the following:

(1) Implementation Timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin enablement process. The Contractor shall have fifteen (15) days from receipt of written request to work with NASPO ValuePoint and JAGGAER to set up an enablement schedule, at which time JAGGAER's technical documentation shall be provided to the Contractor. The schedule will include future calls and milestone dates related to test and go live dates. The contractor shall have a total of Ninety (90) days to deliver either a (1) hosted catalog or (2) punch-out catalog, from date of receipt of written request.

(2) NASPO ValuePoint and JAGGAER will work with the Contractor, to decide which of the catalog structures (either hosted or punch-out as further described below) shall be provided by the Contractor. Whether hosted or punch-out, the catalog must be strictly limited to the Contractor's awarded contract offering (e.g. products and/or services not authorized through the resulting cooperative contract should not be viewable by NASPO ValuePoint Participating Entity users).

(a) Hosted Catalog. By providing a hosted catalog, the Contractor is providing a list of its awarded products/services and pricing in an electronic data file in a format acceptable to JAGGAER, such as Tab Delimited Text files. In this scenario, the Contractor must submit updated electronic data within 60 days to the eMarket Center for the Lead State's approval to maintain the most up-to-date version of its product/service offering under the cooperative contract in the eMarket Center.

(b) Punch-Out Catalog. By providing a punch-out catalog, the Contractor is providing its own online catalog, which must be capable of being integrated with the eMarket Center as a. Standard punch-in via Commerce eXtensible Markup Language (cXML). In this scenario, the Contractor shall validate that its online catalog is up-to-date by providing a written update quarterly to the Lead State stating they have audited the offered products/services and pricing listed on its online catalog. The site must also return detailed UNSPSC codes (as outlined in line 3) for each line item. Contractor also agrees to provide e-Quote functionality to facilitate volume discounts.

d. Revising Pricing and Product Offerings: Any revisions to product/service offerings (new products altered SKUs, new pricing etc.) must be pre-approved by the Lead State and shall be subject to any other applicable restrictions with respect to the frequency or amount of such revisions. However, no cooperative contract enabled in the eMarket Center may include price changes on a more frequent basis than [once per quarter]. The following conditions apply with respect to hosted catalogs:

(1) Updated pricing files are required by the 1st of the month and shall go into effect in the eMarket Center on the [1st day of the following month (i.e. file received on 1/01/13 would be effective in the eMarket Center on 3/01/13)]. Files received after the 1st of the month may be delayed up to a month (i.e. file received on 11/06/09 would be effect in the eMarket Center on 2/01/10).

(2) Lead State-approved price changes are not effective until implemented within the eMarket Center. Errors in the Contractor's submitted pricing files will delay the implementation of the price changes in eMarket Center.

e. Supplier Network Requirements: Contractor shall join the JAGGAER Supplier Network (SQSN) and shall use JAGGAER's Supplier Portal to import the Contractor's catalog and pricing, into the JAGGAER system, and view reports on catalog spend and product/pricing freshness. The Contractor can receive orders through electronic delivery (cXML) or through low-tech options such as fax. More information about the SQSN can be found at: www.sciquest.com or call

the JAGGAER Supplier Network Services team at 800-233-1121.

f. Minimum Requirements: Whether the Contractor is providing a hosted catalog or a punch-out catalog, the Contractor agrees to meet the following requirements:

(1) Catalog must contain the most current pricing, including all applicable administrative fees and/or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with the cooperative contract; and

(2) The accuracy of the catalog must be maintained by Contractor throughout the duration of the cooperative contract; and

(3) The Catalog must include a Lead State contract identification number; and

(4) The Catalog must include detailed product line item descriptions; and

(5) The Catalog must include pictures when possible; and

(6) The Catalog must include any additional NASPO ValuePoint and Participating Addendum requirements. Although suppliers in the SQSN normally submit one (1) catalog, it is possible to have multiple contracts applicable to different NASPO ValuePoint Participating Entities. For example, a supplier may have different pricing for state government agencies and Board of Regents institutions. Suppliers have the ability and responsibility to submit separate contract pricing for the same catalog if applicable. The system will deliver the appropriate contract pricing to the user viewing the catalog.

g. Order Acceptance Requirements: Contractor must be able to accept Purchase Orders via fax or cXML. The Contractor shall provide positive confirmation via phone or email within 24 hours of the Contractor's receipt of the Purchase Order. If the Purchasing Order is received after 3pm EST on the day before a weekend or holiday, the Contractor must provide positive confirmation via phone or email on the next business day.

h. UNSPSC Requirements: Contractor shall support use of the United Nations Standard Product and Services Code (UNSPSC). UNSPSC versions that must be adhered to are driven by JAGGAER for the suppliers and are upgraded every year. NASPO ValuePoint reserves the right to migrate to future versions of the UNSPSC and the Contractor shall be required to support the migration effort. All line items, goods or services provided under the resulting statewide contract must be associated to a UNSPSC code. All line items must be identified at the most detailed UNSPSC level indicated by segment, family, class and commodity.

i. Applicability: Contractor agrees that NASPO ValuePoint controls which contracts appear in the eMarket Center and that NASPO ValuePoint may elect at any time to remove any supplier's offering from the eMarket Center.

j. The Lead State reserves the right to approve the pricing on the eMarket Center. This catalog review right is solely for the benefit of the Lead State and Participating Entities, and the review and approval shall not waive the requirement that products and services be offered at prices (and approved fees) required by the Master Agreement.

k. Several NASPO ValuePoint Participating Entities currently maintain separate JAGGAER eMarketplaces; these Participating Entities do enable certain NASPO ValuePoint Cooperative Contracts. In the event one of these entities elects to use this NASPO ValuePoint Cooperative Contract (available through the eMarket Center) but publish to their own marketplace, the Contractor agrees to work in good faith with the entity and NASPO ValuePoint to implement the catalog. NASPO ValuePoint does not anticipate that this will require substantial additional efforts by the Contractor;

however, the supplier agrees to take commercially reasonable efforts to enable such separate JAGGAER catalogs.

ATTACHMENT B: SCOPE OF WORK

1 INTRODUCTION

The State of Oklahoma, as the “Lead State” and on behalf of NASPO ValuePoint, offers this contract for the purchase of Professional Grade Tools and Diagnostic Equipment for State and Local Government Agencies. The State of Oklahoma, and interested States, expect to purchase up to an estimated \$ 100 million on tools along with diagnostic equipment annually. This will include the necessary attachments, accessories, and any related software upgrades for tools and any diagnostic equipment purchased. There is no guaranteed amount of purchases or utilization of the resultant contract.

2 PRODUCT CATEGORIES

For the purpose of this RFP, there will be two product categories defined below which may be awarded. It is the intent to establish multiple awards throughout the categories, and all offerors are encouraged to compete in as many levels as possible. The State of Oklahoma reserves the right to eliminate any category not meeting full expectations from the final award.

3 PRODUCT CATEGORY DEFINITIONS

- 3.1 Professional Grade Tools – used here as a term to distinguish from general use or consumer grade products. It is intended to communicate a more durable product with the expectation that it will work both better and longer in an environment where it is used more regularly. Built for extended heavy and repeated use, more rugged and tends to not malfunction as quickly. Also associated with better features and options which result in a high end result. Excellent and extended warranties for product repairs are usually in place versus throw away and replace options.
- 3.2 Diagnostic Equipment – used for discovering what is wrong with things that do not work properly. Non-medical equipment. Can include automotive, electrical, plumbing, and other specialized areas which require unique diagnostic analysis for evaluation and repair.

4 SERVICE LEVEL REQUIREMENTS AND EXPECTATIONS

4.1 Reporting

Periodic Reports identifying the Supplier’s fill rate and performance against other metrics will be required at least annually.

4.2 Service Fees

The Supplier will not invoice service fees or additional costs to the Participating Entity during the term of the contract. For instance, there will be no small order, minimum order, special order, shipping (except as Rush delivery as specified in the Cost Proposal), hazardous materials, pallet, fuel charges or surcharges.

4.3 Delivery

Standard orders must be delivered to end users within 5 business days after receipt of order, unless product is a special order item. Rush orders to end users must be delivered next day after receipt of order.

4.3.1 Acceptable hours for deliveries vary by location, and some facilities do not accept palletized deliveries. It is the Supplier's responsibility to determine the acceptable delivery times and packing requirements for each customer at the time the order is placed.

4.4 Response Time

The supplier should respond to all communications no later than one business day.

4.5 Fill Rate

The Supplier should maintain a Fill Rate of at least 98%. The fill rate will be calculated by each Facility, by dividing the number of line items delivered on time by the number of line items ordered for delivery during that month and multiplying the result by 100 to arrive at the percent (%) fill rate. Approved and accepted substitutions shipped and delivered on first fill will not count against fill rate; disapproved or denied substitutions or substitutions not delivered on first fill will count against fill rate. Supplier's failure to maintain a Fill Rate of 98% may result in further review.

4.6 Invoice Accuracy

The Supplier should strive to achieve invoice accuracy of 100% as measured by SKUs ordered.

4.7 Non-Delivery

After notification of impending short or out-of-stock items, Purchasing Entity may cancel balance of incomplete deliveries without penalty. Purchasing Entity may purchase shorted items that cannot be supplied by the Supplier by date required to the next awarded contractor, if this solicitation results in a multi-award situation.

4.8 Overall Customer Satisfaction

Supplier should develop a plan to conduct a quarterly survey of end-users to determine the level of customer service satisfaction experienced by Purchasing Entity, and should conduct such a survey upon request from the Lead State. Both the raw and analyzed survey results should be provided to the Lead State. The following includes some of the areas to be measured on the survey: Responsiveness, Communication, Courtesy, Competence, Effectiveness, and Overall Satisfaction.

4.9 Payment Options

Purchasing Entity will pay the Supplier by check, electronic funds transfer, or with the State(s) authorized P-card.

4.10 Freight Policy

All shipments should be F.O.B. Destination to the specified location, with inside delivery. Supplier is responsible for filing and expediting all freight claims with the carrier. The Supplier will pay title and risk of loss or damage charges.

4.11 Return of Product

Any materials delivered in poor condition, or in excess of the amount authorized by the purchase order may, at the discretion of the Purchasing Entity, be returned to the Supplier at the Supplier's expense within 5 days. Credit for returned goods shall be made immediately once the Supplier receives the returned goods. If any product is returned to a Supplier for failure of performance, the Supplier will, at the State's discretion, refund all amounts paid to the Supplier for such product or replace the product, and the following shall apply:

4.11.1 Within five (5) days of written notification by the Purchasing Entity, the Supplier will make arrangements for the return of the product.

4.11.2 The Supplier shall bear all shipping and insurance costs.

4.11.3 Supplier shall be liable for damages to the product, unless caused by fault or negligence of the Purchasing Entity that occur during the return process.

4.12 Returns Due to User Error

Supplier shall provide for return of unopened items ordered in error for up to 30 calendar days from delivery. For all returns of unopened items or returns due to user error, returns should be provided free-of-charge as long as they occur at a regularly-scheduled delivery time. Otherwise, Purchasing Entity may be responsible for all costs associated with the preparation of the product for shipping, and all shipping costs to the Supplier's nearest service location for such returns; no additional charges are allowed, including restocking fees.

Supplier shall issue a credit to Purchasing Entity's account as soon as items have been received by the Supplier.

4.13 Price Verification

The Supplier should be able to provide manufacturer price lists and its own price lists at the State's request in order for the State to verify pricing. The Supplier should have its own auditing system to verify that correct pricing is being offered to the State. In addition, the State reserves the right to audit Supplier records in order to identify discrepancies. If discrepancies are found, at a minimum, the Supplier will refund the State the difference and may be subject to other legal remedies.

4.14 Rebates

Offerors should offer all rebates and special offers (including commercial and consumer offers) made available by the manufacturer, in addition to contracted pricing.

4.15 Receiving Procedures and Order Inspection

Purchasing Entity shall inspect and verify deliveries, upon receipt of order. Products shall be matched against the packing slip and order specifications. Any cases damaged during loading or delivery will be rejected. Supplier shall replace with like or acceptable product at no charge within two business days of notice.

4.16 Disaster Recovery

The State(s) expects the Supplier to have robust disaster recovery capabilities and procedures, to continue service in all aspects of its operations. Supplier shall provide a copy of such a plan in the response. A more detailed disaster/emergency plan must be completed and approved by the State within thirty (30) days of Contract award.

4.17 Catalogs

Supplier shall have web based catalog(s) and may deliver hard copies, CD-ROM, or electronic media copies of the most current catalog to each Purchasing Entity upon request. Supplier should provide Lead State with an electronic copy of its most recent catalog within five (5) business days of publication.

4.18 Supplier Outsourcing

All suppliers outsourcing of products which are not currently listed in the suppliers catalog or on-line ordering system must be direct line extension products. "A product which has a similar item in an established and awarded product category, and supplier has a publically recognized business partnership with the brand and/or manufacturer.

ATTACHMENT D: 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. Example (this example can be deleted to accommodate more claims)

Example (this example can be deleted to accommodate more claims)

Item Claim:	<i>This would be the place to offer service/package/optional remittance method (etc) not requested in the solicitation-insert description here</i>
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How will this add value?	<i>How would the item described above add value to the State's contract?</i>
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Documented Performance:	<i>State in general terms where offered and the results</i>
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Cost Impact (%):	<i>What is cost or hourly rate?</i>	Schedule Impact (%):	<i>What is the unit of measure for the cost?</i>
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Item Claim:	
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How will this add value?	
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Documented Performance:	
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Cost Impact (%):	Schedule Impact (%):
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Item Claim:	
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How will this add value?	
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Documented Performance:	
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Cost Impact (%):	Schedule Impact (%):
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Item Claim:	
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How will this add value?	
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Documented Performance:	
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Cost Impact (%):	Schedule Impact (%):
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Item Claim:

How will this add value?

Documented Performance:

Cost Impact (%):

Schedule Impact (%):

Item Claim:

How will this add value?

Documented Performance:

Cost Impact (%):

Schedule Impact (%):



State of Oklahoma

Office of Management and Enterprise Services

**STATE OF OKLAHOMA
ADDITIONAL
TERMS AND CONDITIONS
SPECIFIC TO
OKLAHOMA-BASED TRANSACTIONS**

1. Definitions

Acquisition

The term (“Acquisition”) means items, products, materials, supplies, services, and equipment a state agency acquires by purchase, lease purchase, lease with option to purchase, or rental pursuant to the Oklahoma Central Purchasing Act.

Addendum or Addenda

The term (“Addendum or Addenda”) means a document used to effect a contract change or modification to the Participating Addendum.

Effective Date

The term (“Effective Date”) means the date this Participating Addendum was executed by both parties.

2. Participating Addendum Modification

The terms of this Participating Addendum shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the State Purchasing Director.

3. Choice of Law

Any claims, disputes, or litigation relating to the Participating Addendum, including the execution, interpretation, performance, or enforcement of the Participating Addendum shall be governed by the laws of the State of Oklahoma.

4. Choice of Venue

Venue for any action, claim, dispute or litigation relating in any way to the Participating Addendum shall be in Oklahoma County, State of Oklahoma.

ATTACHMENT E

5. Supplier Registration

In order to receive payments from the State of Oklahoma, suppliers must be registered. The vendor registration process can be completed electronically through the OMES website at the following link: <https://www.ok.gov/dcs/vendors/index.php>.

6. Non-Assignment

For Oklahoma Participating Entities and/or Purchasing Entities, Contractor shall provide written notice of any proposed assignment, subcontract, transfer, sublet, or delegation to the State of Oklahoma under the notice provisions contained herein (the "Notice"). The Notice shall include (i) the entity name, (ii) to the extent applicable, the employee name(s), and (iii) the nature of the products or services to be provided and/or performed by the proposed assignee, delegate, sublessee, or subcontractor. Contractor shall not assign, sell, transfer, subcontract, or sublet rights, or delegate responsibilities under the Participating Addendum to a Non-Affiliate without prior written approval of the State of Oklahoma. More specifically, with respect to subcontractors, prior to a subcontractor being utilized by Contractor in connection with provision of the products or services within its obligations herein, Contractor shall obtain written approval of the State of Oklahoma of such subcontractor, which approval shall be within the sole and absolute discretion of the applicable Participating Entity and/or Purchasing Entity. The applicable Participating Entity and/or Purchasing Entity further reserves the right to revoke approval of a subcontractor in instances of poor performance or misconduct, or for other similar reasons. Notwithstanding anything to the contrary herein, if Contractor is permitted to utilize subcontractors in support of the Master Agreement or this Participating Addendum, Contractor shall remain solely responsible for its obligations under the terms of the Master Agreement and this Participating Addendum and for its acts and omissions and those of its agents, employees and permitted subcontractors.

7. Indemnification

In connection with indemnification under the contract, when an Oklahoma state agency is a named defendant in any filed or threatened lawsuit, the defense of the Oklahoma state agency shall be coordinated by the Attorney General of Oklahoma or, in the alternative, the Attorney General of Oklahoma may authorize the Vendor to control the defense and any related settlement negotiations; provided, however, Contractor shall not agree to any settlement of claims against the Oklahoma state agency without obtaining advance written concurrence from the State Attorney General. If the Attorney General of Oklahoma does not authorize sole control of the defense and settlement negotiations to Contractor, Contractor shall have authorization to equally participate in any proceeding related to the indemnity obligation under the contract and shall remain responsible to indemnify the Oklahoma state agency.

ATTACHMENT E

8. Payment

As applicable, Oklahoma Participating Entities and/or Purchasing Entities and Contractor shall comply with applicable Oklahoma law with respect to invoicing and making payments hereunder. Invoices are to be paid in arrears after products have been delivered and accepted or services provided and accepted pursuant to 74 O.S. § 85.44(B). Payment by Oklahoma Participating Entities and/or Purchasing Entities shall be due NET 45 days after a proper invoice is received and the goods have been delivered and accepted or services provided and accepted. Any applicable late fees or interest incurred after forty-five (45) days of nonpayment shall be paid only in accordance with 62 O.S. § 34.72. Invoices shall contain the purchase order number. Failure to provide a proper invoice may result in delay of processing the invoice for payment.

Prompt pay discounts will be offered to the Participating Entity and/or Purchasing Entity with the first discount being offered when payment is made no less than ten (10) days after the receipt of invoice. Additional discounts will be offered when payment is made at different five (5) day increments, e.g. payment made fifteen (15), twenty (20), twenty-five (25), etc. days after receipt of invoice.

If Participating Entity and/or Purchasing Entity finds that an overpayment or underpayment has been made to Contractor, the Participating Entity and/or Purchasing Entity may adjust any subsequent payments to Contractor under the Contract to correct the account. A written explanation of the adjustment will be issued to Contractor by the Participating Entity and/or Purchasing Entity.

9. Audits and Records Clause

For Oklahoma-based transactions, as used in this clause, “records” includes invoices, statements of work, purchase order records, and such other relevant documents, regardless of whether such items are in written form, in the form of computer data, or in any other form. By accepting any purchase order from any Purchasing Entity hereunder, Contractor acknowledges and agrees that any pertinent state or federal agency shall have the right to examine and audit all records relevant to execution and performance of this Participating Addendum.

Contractor is required to retain records relative to the Participating Addendum for the duration of the Participating Addendum and for a period of seven (7) years following completion and/or termination of this Participating Addendum. If an audit, litigation, or other action involving such records is started before the end of such seven-year period, the records are required to be maintained for two (2) years from the date that all issues relating to or arising out of the action are resolved, or until the end of such seven

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(7) year retention period, whichever is later.

Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse Purchasing Entities for any overpayments inconsistent with the terms of the contract or orders or underpayment of fees found as a result of the examination of the Contractor's records.

10. Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The Contractor certifies that the Contractor and its principals:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal, state or local department or agency;
- B. Have not within a three-year period preceding the Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract; for violation of federal or state antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements or receiving stolen property;
- C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the foregoing offenses enumerated in this certification; and
- D. Have not within a three-year period preceding this Contract had one or more public (federal, state or local) contracts terminated for cause or default.

If the Contractor cannot certify this statement, attach a written explanation for review by the State.

11. Pricing

Pursuant to 68 O.S. § 1404, 68 O.S. § 1352, and 68 O.S. § 1356, Purchasing Entities under the Contract that are Oklahoma state agencies are exempt from the assessment of State sales, use, and excise taxes. Further, such Purchasing Entities and Purchasing Entities that are political subdivisions of the State of Oklahoma are exempt from Federal Excise Taxes pursuant to Title 26 of the United States Code. Purchasing Entities will provide Contractor with a tax exemption certificate upon request. Any taxes of any nature whatsoever payable by the Contractor shall not be reimbursed by the Participating Entity or the Purchasing Entity.

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In accordance with 74 O.S. § 85.40, all travel expenses to be incurred by the Contractor in the performance of the Participating Addendum shall be included in the total price/ amount.

The price to the Customer under the Contract shall include and Contractor shall prepay all shipping, packaging, delivery and handling fees. All Product deliveries will be Free on Board Purchasing Entity's Destination. No additional fees shall be charged to the Purchasing Entity for standard shipping and handling. If the Purchasing Entity requests expedited or special delivery, Purchasing Entity may be responsible for any charges for expedited or special delivery.

12. Type of Contract

This is a firm fixed price contract for indefinite delivery and indefinite quantity for the supplies/services specified. Contractor and Participating Entity and/or Purchasing Entity are free to enter into similar agreements

13. Termination for Cause

The State may terminate the Participating Addendum in whole or in part in the event (i) it has provided Contractor with written notice of material breach, and (ii) Contractor fails to cure such material breach within thirty (30) days of receipt of written notice.

The State may terminate the Participating Addendum in whole or in part immediately without a thirty (30) day written notice to Contractor, only if Contractor's material breach is reasonably determined (i) to be an impediment to the function of the State and detrimental to the State, (ii) when conditions preclude the thirty (30) day notice.

14. Termination for Convenience

The State may terminate the Participating Addendum, in whole or in part, for convenience if it is determined that termination is in the State's best interest. The State shall deliver to the Contractor a written notice of termination for convenience specifying the terms and effective date of termination. The Participating Addendum termination date shall be a minimum of thirty (30) days from the date the notice of termination is issued by the State.

15. Open Records

Contractor acknowledges that all State agencies and certain other Oklahoma Purchasing Entities are subject to the Oklahoma Open Records Act. Contractor also acknowledges that such Purchasing Entities will comply with the Oklahoma Open Records Act and with all opinions of the Oklahoma Attorney General concerning this Act. Except for a provision of the contract or Participating Addendum specifically designated as confidential in a writing executed by both parties or a provision protected from disclosure in the Open

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Records Act, no contract or Participating Addendum provision is confidential information and, therefore, any provision is subject to disclosure under the Open Records Act.

16. **Default**

For Oklahoma-based transactions, in the event a Purchasing Entity fails to make a payment to the Contractor for Products delivered, accepted, and properly invoiced, after forty-five calendar days, the Contractor may, upon five business days advance written notice to the State Purchasing Director and the Purchasing Entity's purchasing official, suspend additional shipments of Product or provision of services to such Purchasing Entity until such time as reasonable arrangements have been made and assurances given by such Purchasing Entity for current and future contract payments. This provision shall not affect any other Oklahoma Purchasing Entities' rights and purchases under this Participating Addendum and shall be solely applicable to the Purchasing Entity who has failed to make a payment after forty-five calendar days.

17. **Non-Appropriation Clause**

With respect to all Oklahoma-based transactions and all Oklahoma-based Purchasing Entities, Purchasing Entity may terminate any order if funds sufficient to pay its obligations under this Participating Addendum or any purchase order made under this Participating Addendum are not appropriated by the applicable state legislature, federal government or other appropriate government entity or received from an intended third party funding source. In the event of such insufficiency, Purchasing Entity shall provide ten (10) calendar days' written notice of intent to terminate. Notwithstanding the foregoing, if a Purchasing Entity issues an order and has accepted the products and/or services under such order, the Purchasing Entity shall be obligated to pay for such products and/or services. In the event of termination of an order as provided in the foregoing, neither the Participating Entity nor the Purchasing Entity shall be considered to be in default or breach under the Participating Addendum nor under the contract, nor shall it be liable for any further payments ordinarily due under, with respect to, related to, or arising out of such order, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

18. **Contract Usage Reporting Requirements**

Reports shall provide the total amount sold to all political entities that include but are not limited to Oklahoma State Agencies, Counties, Cities, Schools, and Municipalities. Reports shall be submitted quarterly regardless of quantity.

Usage reports shall be sent electronically to Strategic.Sourcing@omes.ok.gov within 45 calendar days upon completion of performance quarter cited below:

January 1 through March 31

April 1 through June 30

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July 1 through September 30

October 1 through December 31

19. Compliance with Applicable Laws

As long as Contractor has an obligation under the terms of the Contract and in connection with performance of its obligations, the Contractor shall comply with all applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following:

- A. Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. § 81.
- B. Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt federal contracts, grants or loans;
- C. Prospective participant requirements set at 45 C.F.R. part 76 in connection with debarment, suspension and other responsibility matters;
- D. 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, and Executive Orders 11246 and 11375;
- E. Anti-Lobbying Law set forth at 31 U.S.C. § 1325 and as implemented at 45 C.F.R. part 93;
- F. Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Circular A-133 with approval and work paper examination rights of the applicable procuring entity;
- G. Be compliant with the Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. § 1312, and be registered and participate in the Status Verification System. The Status Verification System is defined at 25 O.S. § 1312, includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security, and is available at www.dhs.gov/E-Verify; and

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- H.** Be registered as a business entity licensed to do business in the State, have obtained a sales tax permit, and be current on franchise tax payments to the State, as applicable.
- I.** The Contractor shall maintain all applicable licenses and permits required in association with its obligations under the Contract.
- J.** The Contractor shall inform its employees, agents, and proposed subcontractors, if applicable, who provide Products or perform Services under the Contract of the Contractor's obligations under the Contract and shall require compliance accordingly. At the request of the State, Contractor shall promptly provide adequate evidence that such persons are its employees, agents or approved subcontractors and have been informed of their obligations under the Contract.
- K.** As applicable, Contractor agrees to comply with Governor's Executive Order 2012-01, effective August 06, 2012, which prohibits the use of any tobacco product on any and all properties owned, leased, or contracted for use by the State, including but not limited to all buildings, land and vehicles owned, leased, or contracted for use by agencies or instrumentalities of the State.

20. Contract Management Fee

Pursuant to 74 O.S. § 85.33, the Central Purchasing Division of the State of Oklahoma imposes and Contractor agrees to pay a contract management fee in the sum of one (1) % of the combined total quarterly expenditures from Oklahoma under this Participating Addendum. This contract management fee is to be noted on the quarterly "Contract Usage Report" and paid by the Contractor, to Central Purchasing within 30 calendar days from the completion of the quarterly reporting period. The contract management fee check should be sent to:

**Office of Management and Enterprise Services
Attention: Accounts Receivable
5005 N. Lincoln Boulevard, Suite 300
Oklahoma City, OK 73105**

21. Employment Relationship

This Participating Addendum does not create an employment relationship. Individuals performing Services required by the Contract are not employees of the State of Oklahoma or any Oklahoma Purchasing Entity. Contractor's employees shall not be considered

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employees of the State nor of any Purchasing Entity for any purpose, and accordingly shall not be eligible for rights or benefits accruing to such employees.

22. Publicity

Contractor acknowledges and agrees that the existence of the Master Agreement, this Participating Addendum or any Acquisition thereunder is not in any way an endorsement by the State of Oklahoma or any Oklahoma Purchasing Entity of Contractor, the Products or the Services and shall not be so construed by Contractor in any advertising or publicity materials. Contractor agrees to submit to the State all advertising, sales, promotion, and other publicity matters relating to the Master Agreement or this Participating Addendum wherein the name of the State or any Purchasing Entity is mentioned or language used from which the connection of the State or any Purchasing Entity therewith may, in the State's judgment, be inferred or implied as an endorsement. Contractor further agrees not to publish or use such advertising, sales promotion, or publicity matter or release any informational pamphlets, notices, press releases, research reports, or similar public notices without obtaining the prior written approval of the State.

Oklahoma/NASPO ValuePoint
 OK-MA-818 - Tools and Related Accessories
 Attachment F: Administrative and Technical Proposal Response Template

Business Proposal
 Respondent Name:

Instructions:
 Fill out the blue shaded areas only. Blank cells will be considered as "No Response."
 This appendix contains questions related to general Proposer Information. The information provided by Proposers will be used in the qualitative portions of the evaluation process. Please make comments and use additional attachments as needed.

1. General Questions and Proposer Stability

1. Provide the name, title, street address, city, state, zip code, e-mail address, fax and telephone numbers

Name of Primary Contact	
Title	
Address	
City	
State	
Zip Code	
Email Address	
Telephone	
Fax	
Mobile	

2. Please provide all of the following corporate information.

Main Line Of Business:	
# of years in business:	
# of employees:	
Name of Parent Company, if any:	
Name of Subsidiaries, if any:	

3. Is your firm's primary line of business tool sales? Indicate with an "X" below:

Yes

No

Are there other related lines of business that your firm participates in? If so, please list and describe.

4. Provide an overview of your business model. As a manufacturer, how would you distribute products; direct ship or distributors? If using authorized distributors, please provide listing

5. Provide an overview of the geographical locations of the firm at the national, regional, and local levels.

6. Are major changes (acquisitions, re-structuring, alliances, joint ventures) taking place in your organization? Please provide your answer as succinctly as possible since we are only asking for very critical issues that might significantly impact our evaluation of your company/proposal.

7. Has your company been part of any legal proceedings (actual suits by or against your company) either currently or in the past? If so, please briefly describe them.

8. Please provide indication as to whether your firm has been or is the subject of a bankruptcy or insolvency proceeding or subject of assignment for benefit of creditors.

9. Who are your five largest customers? Please state the % of your revenue derived from your top 5 customers. Please list the % for each of your top 5 customers separately. (e.g., customer 1 - X%, customer 2 - Y%, customer 5 - Z%).

Customer Name	2016 Revenue from Customer (\$)	% of Revenue derived from Customer

2. Service and Quality

10. Identify features and capabilities that differentiate your firm from its competitors.



11. What types of Tools does your company specialize in?

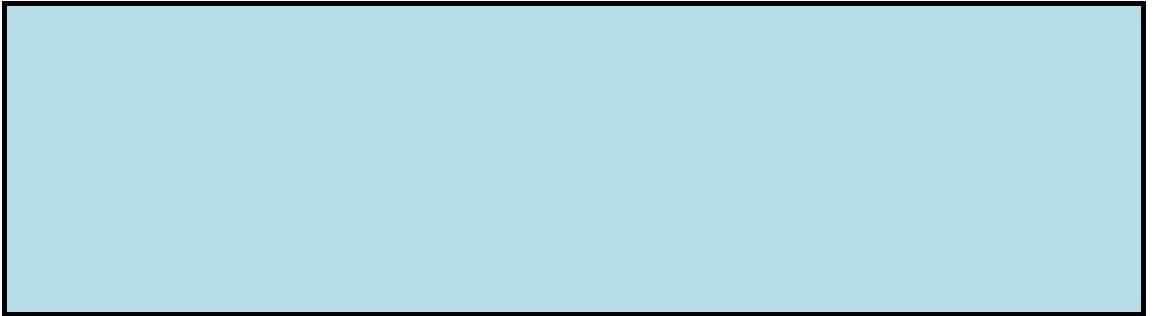


12. How much visibility will this contract have at your company in terms of a specific management level?



3. Product, Breadth & Scope

13. Please explain how you would manage the business for the participating States and multiple sub-political categories, or a geographic regions. If applicable, please provide examples of how you have done this previously for large government or private sector accounts.



14. What are your experiences with providing green products (environmentally friendly) or reduced packaging to current or past clients? Please provide an example.





Oklahoma/NASPO ValuePoint
 OK-MA-818 - Tools and Related Accessories
 Attachment F: Administrative and Technical Proposal Response Template

Administrative Proposal (Desirable and Scoreable Expectations)

Respondent Name:

Instructions:

Fill out the blue shaded areas only. Blank cells will be considered as "No Response."

Please indicate in the table below your ability to meet the Desirable Administrative Requirements as described in Attachment B Section 4. Please ensure that for each expectation, you are able to meet all the requirements, as outlined in the RFP. If there is a desirable expectation that you are unable to comply with, please propose your company's alternate solution. If an item is left blank, you will be implying that your company **cannot** meet the requirement.

RFP Ref. #	Desirable Service Level Expectations	Yes/No (Can/Cannot meet the expectation)	If YES, describe in detail how you will meet the expectation. If NO, propose an alternative.
4.1	Performance Reports		
4.2	Service Fees		
4.3	Delivery		
4.4	Response Time		
4.5	Fill Rate		
4.6	Invoice Accuracy		
4.7	Non-Delivery		
4.8	Customer Satisfaction		
4.9	Payment Options		
4.10	Freight Policy		
4.11	Return of Product		
4.12	Returns Due to User Error		
4.13	Price Verification		
4.14	Rebates		
4.15	Receiving/Inspection		
4.16	Disaster Recovery		
4.17	Catalogs		
4.18	Supplier Outsourcing		

Oklahoma/NASPO ValuePoint
 OK-MA-818 - Tools and Related Accessories
 Attachment F: Administrative and Technical Proposal Response Template

Administrative Proposal (Mandatory Requirements)

Respondent Name:

Instructions:

Fill out the blue shaded areas only. Blank cells will be considered as "No Response."

Please indicate below your ability to meet the requirements as stated in Section 4. "Administrative and Technical Response" in the RFP text document. If an item is left blank, you will be implying that your company **cannot** meet the requirement, and your proposal may be eliminated from evaluation. This form must be completed and returned with your response. If additional space is needed to clarify comments, please reference this attachment.

RFP Ref. #	Mandatory Administrative Requirements	Yes/No	Please provide detailed response supporting your answer
4.1.1.	Are you original manufacturer or authorized distributor for products being sold?		
4.1.2	Provide a standard warranty at a minimum?		
4.1.3.	Prices to stay firm for first 12 months of contract.		
4.2	NASPO ValuePoint Statement of Compliance		
4.3	Insurance		
4.4	NASPO Administrative Fee and Reporting		
4.5	NASPO ValuePoint eMarket Center		
4.6	Lead State Terms and Conditions		
4.7	Participating State Terms and Conditions		
4.8	Technical Requirements		Submit in Separate Document
4.8.1	Offeror Profile		
4.8.2	Customer Service		
4.8.3	Technology		
4.8.4	Data Security		
4.8.5	Scope of Work		
4.8.6	Account Management		
4.8.7	Promotion of NASPO ValuePoint Master Agreement		
4.8.8	Usage Fee and Reporting Plan		

ATTACHMENT G - REFERENCE QUESTIONNAIRE

PROPOSING VENDOR: _____

DATE: _____

REFERENCE: _____

PHONE: _____

CONTACT NAME: _____

TITLE: _____

I. INSTRUCTIONS

A. Proposing Vendor

- Print the name of your reference on "Reference" line.
- Print your company name on "Proposing Vendor" line.
- Send this form to your reference. Five references are required. To ensure receipt of an adequate number of reference responses, send a Reference Sheet to more than five customers.
- It will be your responsibility to follow up with your references to ensure timely receipt of all questionnaires.

B. Instruction for Reference

- Print the responding individual's name, title, phone # and date on the appropriate lines.
- Type your response in the following manner. Use this form or using a separate sheet of paper, restate each question followed by your answer.
- Mail or send via Email your completed questionnaire to:

OMES Central Purchasing
Attn: Solicitation # OK-MA-818
5005 N. Lincoln, Suite 300
Oklahoma City, Oklahoma 73105
Lisa.Bradley@omes.ok.gov

This completed questionnaire **MUST** be received by the proposal due date. **DO NOT** return this questionnaire to the Proposing Vendor.

II. Questions

A. What was the scope of the project you obtained from the vendor?

B. Please answer the following ten (10) questions using the scale provided:

1. Would you rate the quality of the vendor's service as:

Excellent _____ Good _____ Fair _____ Poor _____
Points (5) (4) (2) (0)

2. How would you rate the response time of this vendor?

Excellent _____ Good _____ Fair _____ Poor _____
Points (5) (4) (2) (0)

3. Were the timelines identified for the project schedule consistently met?

Always _____ Usually _____ Sometimes _____ Never _____
Points (5) (4) (2) (0)

4. Did the vendor keep you informed of progress?

Always _____ Usually _____ Sometimes _____ Never _____
Points (5) (4) (2) (0)

5. Did the vendor keep you informed of problems that would affect the timely delivery of the project?

Always _____ Usually _____ Sometimes _____ Never _____
Points (5) (4) (2) (0)

6. Rate their efforts to maintain contact with you on progress, meeting milestones, etc:

Excellent _____ Good _____ Fair _____ Poor _____
Points (5) (4) (2) (0)

7. Did you experience any problems with the accuracy of any invoicing/billing:

No _____ Yes _____
Points (5) (0)

8. Rate how quickly and thoroughly the vendor resolved any invoicing/billing issues:

Excellent _____ Good _____ Fair _____ Poor _____
Points (5) (4) (2) (0)

9. Have the problems you have experienced been dealt with to your satisfaction?

Always _____ Usually _____ Sometimes _____ Never _____
Points (5) (4) (2) (0)

10. Was this Vendor flexible in meeting your requirements?

Yes _____ No _____
Points (5) (0)

If no, why? _____

D. What would you do differently the next time you undertake a similar contract?

E. Explain why you would or would not do business with this vendor again.

State of Maine Participating Addendum Additional Terms

- i. **EQUAL EMPLOYMENT OPPORTUNITY.** During the performance of this contract, the Contractor agrees as follows.

A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Contractor shall take affirmative action to ensure that applicants are employed and employees are treated during their employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include, but not be limited to, the following: employment, upgrading, demotions, transfers, recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

C. The Contractor will send to each labor union or representative of the workers with which he has a collective or bargaining agreement, or other contract or understanding, whereby he is furnished with labor for the performances of his contract, a notice, to be provided by the contracting department or agency, advising the said labor union or workers' representative of the Contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and to applicants for employment.

D. The Contractor will cause the foregoing provisions to be inserted in all contracts for any work covered by this agreement so that such provisions will be binding upon each subcontractor.

E. Contractors and subcontractors with contracts in excess of \$50,000 will also pursue in good faith affirmative action programs.

- ii. **GOVERNING LAW.** This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Contractor consents to personal jurisdiction in the State of Maine.

- iii. **STATE HELD HARMLESS.** The contractor shall release, protect, indemnify and hold NASPO Value Point and the respective states and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, his employees or subcontractors or volunteers.

- iv. **NON-APPROPRIATION.** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

**STATE OF MISSOURI
DIVISION OF PURCHASING (Purchasing)**

TERMS AND CONDITIONS

This contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained herein. Any change must be accomplished by a formal signed amendment prior to the effective date of such change.

1. APPLICABLE LAWS AND REGULATIONS

- a. The contract shall be construed according to the laws of the State of Missouri (state). The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
- b. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the state.
- c. The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.
- d. The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.
- e. The exclusive venue for any legal proceeding relating to or arising out of the contract shall be in the Circuit Court of Cole County, Missouri.
- f. The contractor shall only employ personnel authorized to work in the United States in accordance with applicable federal and state laws and Executive Order 07-13 for work performed in the United States.

2. INVOICING AND PAYMENT

- a. The State of Missouri does not pay state or federal taxes unless otherwise required under law or regulation. Prices shall include all packing, handling and shipping charges FOB destination, freight prepaid and allowed unless otherwise specified herein.
- b. The statewide financial management system has been designed to capture certain receipt and payment information. For each purchase order received, an invoice must be submitted that references the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the state.
- d. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the specific contract terms.
- e. The State of Missouri assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the state's rejection and shall be returned at the contractor's expense.
- f. All invoices for equipment, supplies, and/or services purchased by the State of Missouri shall be subject to late payment charges as provided in section 34.055, RSMo.
- g. The State of Missouri reserves the right to purchase goods and services using the state purchasing card.

3. DELIVERY

Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

4. INSPECTION AND ACCEPTANCE

- a. No equipment, supplies, and/or services received by an agency of the state pursuant to a contract shall be deemed accepted until the agency has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The State of Missouri reserves the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The State of Missouri's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the state may have.

5. CONFLICT OF INTEREST

Elected or appointed officials or employees of the State of Missouri or any political subdivision thereof, serving in an executive or administrative capacity, must comply with sections 105.452 and 105.454, RSMo, regarding conflict of interest.

6. WARRANTY

The contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the state, (2) be fit and sufficient for the purpose intended, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect. Such warranty shall survive delivery and shall not be deemed waived either by reason of the state's acceptance of or payment for said equipment, supplies, and/or services.

7. REMEDIES AND RIGHTS

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the State of Missouri of any existing or future right and/or remedy available by law in the event of any claim by the State of Missouri of the contractor's default or breach of contract.
- b. The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or procured by the contractor in the fulfillment of the contract with the State of Missouri.

8. CANCELLATION OF CONTRACT

- a. In the event of material breach of the contractual obligations by the contractor, the state may cancel the contract. At its sole discretion, the state may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide the state within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.
- b. If the contractor fails to cure the breach or if circumstances demand immediate action, the state will issue a notice of cancellation terminating the contract immediately. If it is determined Purchasing improperly cancelled the contract, such cancellation shall be deemed a termination for convenience in accordance with the contract.
- c. If the state cancels the contract for breach, the state reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the state deems appropriate and charge the contractor for any additional costs incurred thereby.
- d. The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the state for any period in which funds have not been appropriated, and the state shall not be liable for any costs associated with termination caused by lack of appropriations.

9. BANKRUPTCY OR INSOLVENCY

Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify the state immediately. Upon learning of any such actions, the state reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

10. INVENTIONS, PATENTS AND COPYRIGHTS

The contractor shall defend, protect, and hold harmless the State of Missouri, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the contractor's performance or products produced under the terms of the contract.

11. NON-DISCRIMINATION AND AFFIRMATIVE ACTION

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status unless otherwise provided by law. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

- a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
- b. The identification of a person designated to handle affirmative action;
- c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
- d. The exclusion of discrimination from all collective bargaining agreements; and
- e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

If discrimination by a contractor is found to exist, the state shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the state until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

12. AMERICANS WITH DISABILITIES ACT

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

13. FILING AND PAYMENT OF TAXES

The commissioner of administration and other agencies to which the state purchasing law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise.

14. COMMUNICATIONS AND NOTICES

Any notice to the contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, transmitted by e-mail or hand-carried and presented to an authorized employee of the contractor.



**NASPO ValuePoint
INTENT TO PARTICPATE
Cooperative Contract(s) for
Professional Grade Tools and Diagnostic Equipment**

I. PURPOSE:

The purpose of this Agreement is to provide interested NASPO states with the opportunity to participate in multi-state cooperative contract(s) for *Professional Grade Tools and Diagnostic Equipment*.

II. SCOPE OF THE CONTRACT(S)

The State of Oklahoma is authorized by agreement of the participants to act as the procurement officer in developing multi-state cooperative contract(s) for *Professional Grade Tools and Diagnostic Equipment*.

The resulting contracts will be permissive contracts.

Administrative Fee

There will be a 0.25% NASPO ValuePoint administrative fee associated with these contracts. It is anticipated that the individual states will be able to add an administrative fee when the state executes its Participating Addendum.

III. TERM OF THE CONTRACT

The initial term of the contract will be established for 1 year with options to renew up to a cumulative maximum of five (5) years from the date of award with options to extend the contract.

IV. SOLICITATION AND CONTRACT DEVELOPMENT/ADDITIONAL INFORMATION

The solicitation and contract development shall be accomplished in compliance with the NASPO ValuePoint Process Guide and the NASPO Memorandum of Agreement for the NASPO cooperative purchasing program, incorporated herein by reference.

Solicitation Publication Period

Bidders/Offerors will be given at least 40 days after publication to submit proposals.

Solicitation Type and Evaluation Criteria

This RFP will be issued and evaluated in concert with the procurement laws and rules of the State of Oklahoma by a sourcing team comprised of members from several states.

Award(s): The solicitation will permit multiple awards.

Additional Requested Information

State Specific Terms and Conditions: If the participating state wishes to include any State specific terms and conditions with the release of this RFP, please attach those with this Intent to Participate.

Annual Estimated Volume: If your State has an existing contract for this commodity or service, please indicate your annual volume of spend (including any potential political subdivision usage if available).

Annual State Spend \$ 50,000

Annual Political Subdivision Spend \$ _____

DIRECTOR SIGNATURE

State of Montana

_____ Meghan Holmlund, CPO _____

Printed name and Title

_____  _____ for Meghan Holmlund 11/27/17 _____

Signature and Date

mholmlund@mt.gov 406-444-1549 _____

Phone and email

State point of contact for this commodity/service

_____ Tia Snyder, Cooperative Purchasing Unit Supervisor _____

Printed name and Title

tsnyder@mt.gov; 406-444-3315 _____

Phone and email

Please scan and email the signed "Intent to Participate" document no later than **November 21, 2017** to:

Shannon Berry

Cooperative Development Coordinator

NASPO ValuePoint

sberry@naspovaluepoint.org

State Terms and Conditions

ACCESS AND RETENTION OF RECORDS: Contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance. (Section 18-1-118, MCA). Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of eight years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

ASSIGNMENT, TRANSFER AND SUBCONTRACTING: Contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Section 18-4-141, MCA.)

COMPLIANCE WITH LAWS: Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016 Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

HOLD HARMLESS/INDEMNIFICATION: Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

REDUCTION OF FUNDING: State must by law terminate this Contract if funds are not appropriated or otherwise made available to support State's continuation of performance of this Contract in a subsequent fiscal period. (18-4-313(4), MCA) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this Contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, State shall terminate this Contract as required by law. State shall provide Contractor the date State's termination shall take effect. State shall not be liable to Contractor for any payment that would have been payable had the Contract not been terminated under this provision. As stated above, State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy.

State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

VENUE: This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Section 18-1-401, MCA.)

TAX EXEMPTION: State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

STATE OF MONTANA ADMINISTRATIVE FEE: The State of Montana assesses an Administrative Fee of one and one-half percent (1.50%) for all net sales (sales less credits and returns) made under this PA. The prices paid to Contractor must include the 1.5% Administrative Fee. The Contractor shall remit this Administrative Fee concurrent with the Required Usage Reporting described below. The Administrative Fee must be submitted by ACH along with email notification to the State of Montana Contracts Officer. This Administrative Fee is effective upon execution of this Participating Addendum.

REQUIRED REPORTING: Contractor shall submit quarterly reports to the Contracts Officer (CO) assigned by the State to manage this contract. Contractor shall provide CO with an electronic usage report (Excel), which must list the following information at the minimum: purchasing entity; description of items purchased; date of purchase; contract price; and the extended price for each transaction. These reports are due no more than 30 days after the end of the quarter.

First Quarter:	July 1 through September 30
Second Quarter:	October 1 through December 31
Third Quarter:	January 1 through March 31
Fourth Quarter:	April 1 through June 30

Federal Terms and Conditions (Non-Construction)

1. NONDISCRIMINATION

The Contractor agrees that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with the Contractor's performance under this contract, on the ground of race, religion, color, national origin, sex or handicap. Accordingly, and to the extent applicable, the Contractor agrees to comply with the following:

a. On the basis of race, color or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.) as implemented by DoD regulations at 32 CFR part 195.

b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 {3 CFR, 1964-1965 Comp. pg. 339}, as implemented by Department of Labor regulations at 41 CFR part 60.

c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DoD regulations at 32 CFR part 196.

d. On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.

e. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.

2. LOBBYING

a. The Contractor agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. The Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) is incorporated by reference and the State agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

3. DRUG-FREE WORK PLACE

The Contractor agrees to comply with the requirements regarding drug-free workplace requirements in Subpart B of 32 CFR part 26, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

4. ENVIRONMENTAL PROTECTION

a. The Contractor agrees that its performance under this contract shall comply with:

- (1) The requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414);
- (2) Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relates generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder;
- (3) The Resources Conservation and Recovery Act (RCRA);
- (4) The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);
- (5) The National Environmental Policy Act (NEPA);
- (6) The Solid Waste Disposal Act (SWDA);
- (7) The applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at 40 CFR Part 31;
- (8) To identify any impact this contract may have on the quality of the human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and any applicable federal, state or local environmental regulation.

b. In accordance with the EPA rules, the parties further agree that the Contractor shall also identify to the state any impact this contract may have on:

- (1) The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C 4321, et seq.) and to prepare Environment Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.
 - (2) Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.
 - (3) Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.
 - (4) Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.
 - (5) Any existing or proposed component of the National Wild and Scenic Rivers System, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).
- Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3).
- (6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking work source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3)

5. USE OF UNITED STATES FLAG VESSELS

a. The Contactor agrees that travel under this contract shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

b. The Contactor agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

6. DEBARMENT AND SUSPENSION

a. The Contractor shall not make any award or permit any award (sub-contract or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension.

b. The Contractor agrees to comply with the requirements regarding debarment and suspension in Subpart C of the OMB guidance in 2 CFR part 180, as implemented by the DoD in 2 CFR part 1125. The Contractor shall comply with 2 CFR Part 1125 by checking the Excluded Parties List System (EPLS) at www.sam.gov to verify Contractor eligibility to receive contracts and subcontracts resulting from this Agreement. The Contractor shall not solicit offers from, nor award contracts to Contractors listed in EPLS. This verification shall be documented in the Contractor's contract files, and shall be subject to audit by federal/State audit agencies

The Contractor agrees to communicate the requirement to comply with Subpart C to persons at the next lower tier with whom the Contractor enters into transactions that are "covered transactions" under Subpart B of 2 CFR part 180 and the DoD implementation in 2 CFR part 1125.

7. BUY AMERICAN ACT

The Contractor agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10a et seq). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EEC and NAFTA end products and construction materials are exempted from application of the Buy American Act.

8. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY POLICES

The Contractor agrees that it will comply with CFR 49 part 24, which implements the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

9. COPELAND "ANTI-KICKBACK" ACT

The Contractor agrees that it will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this contract, the Copeland "Anti-Kickback" Act makes it unlawful to induce, by force, intimidation, threat or procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

10. CONTRACT WORK HOURS AND SAFETY STANDARDS

The Contractor agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act.(40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR

Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1 1/2 times the basic rate of pay.

11. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

Any discovery or invention that arises during the course of the contract shall be reported to the non-Federal entity. Contractor must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

12. CLEAN AIR ACT (42 U.S.C. 7401-7671q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251-1387), AS AMENDED

Any Contract or subcontract in excess of \$150,000 must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the State who in turn will report to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

13. BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352)

Contractors that bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

14. PROCUREMENT OF RECOVERED MATERIALS

Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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

This is a State of Utah Cooperative Contract ("State Cooperative Contract") for goods meaning all things (including specially manufactured goods) which are tangible and usually movable. This State Cooperative Contract is the result of a cooperative procurement for the benefit of Eligible Users and may be used by Eligible Users.

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 Users shall have the right to identify, during and after this Contract, additional types of categories of information that must be kept confidential under federal and state laws by Contractor.
 - b) **"Contract"** means either: (i) the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference, or (ii) the Solicitation and the Proposal when accepted and signed by the Division. The format of the Contract, as described in the prior sentence, will be at the sole option of the Division. Additionally, the term "Contract" may include any purchase orders issued by the Division that result from this Contract.
 - c) **"Contract Signature Page(s)"** means the State of Utah cover page(s) that the Division and Contractor sign.
 - d) **"Contractor"** means the individual or entity delivering the Goods identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
 - e) **"Division"** means the State of Utah Division of Purchasing.
 - f) **"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.
 - g) **"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.
 - h) **"Goods"** means all types of tangible personal property (commodities), including but not limited to materials, supplies, and equipment that Contractor is required to deliver to the State Entity under this Contract. To the extent this Contract entails delivery or performance of services (including maintenance, installation, or product support), such services will be deemed "Goods" within the meaning of the Utah Uniform Commercial Code when reasonable to do so.
 - i) **"Proposal"** means Contractor's response to the Division's Solicitation.
 - j) **"Solicitation"** means the documents used by the Division to obtain Contractor's Proposal.
 - k) **"State of Utah"** means the State of Utah, in its entirety, including its departments, institutions, agencies, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - l) **"Subcontractors"** means subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Contractor, and includes all independent contractors, agents, employees, authorized resellers, or anyone else for whom the Contractor may be liable at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.
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. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This "Status Verification System" requirement, also referred to as "E-Verify", only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
 1. 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.
 2. 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.
 3. Contractor's failure to comply with this section will be considered a material breach of this Contract.

6. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the Division or of the State of Utah, unless disclosure has been made to the Division.
7. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of the State Entity or the State of Utah.
8. **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 caused by any intentional 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 sole fault of the Division, Eligible Users, or the State of Utah. 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.
9. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following employment laws: (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, dated December 13, 2006, 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.
10. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the Division and Contractor, which amendment will be attached to this Contract. Automatic renewals will not apply to this Contract, even if identified elsewhere in this Contract.
11. **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 State Entity 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.
12. **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 Goods ordered prior to date of termination. In no event shall the Division or Eligible Users be liable to the Contractor for compensation for any Good neither requested nor accepted by the Eligible Users. 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 Division or the Eligible Users for any damages or claims arising under this Contract.
13. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the Division, if the Division 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 the Divisions or the Eligible User's ability to pay Contractor. 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.

If a written notice is delivered, the Eligible User will reimburse Contractor for the Goods properly ordered until the effective date of said notice. The Division, the Eligible User, and the State of Utah will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
14. **SALES TAX EXEMPTION:** The Goods under this Contract will be paid for from the Eligible User's funds and may be used in the exercise of the Eligible User's essential functions. Upon request, the Eligible User will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the 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.
15. **WARRANTY:** Contractor warrants, represents and conveys full ownership, and clear title, free of all liens and encumbrances to the Goods delivered to the Eligible Users under this Contract. Contractor warrants for a period of one (1) year that: (i) the Goods perform according to all specific claims that Contractor made in its Proposal to the Solicitation; (ii) the Goods are suitable for the ordinary purposes for which such Goods are used; (iii) the Goods are suitable for any special purposes identified in the Proposal and the Solicitation; (iv) the Goods are designed and manufactured in a commercially reasonable manner; (v) the Goods are manufactured and in all other respects create no harm to persons or property; and (vi) the Goods are free of defects. Unless otherwise specified in the Contract, all Goods provided shall be new and unused of the latest model or design.

Remedies available to Eligible Users under this section include, but are not limited to, the following: Contractor will repair or replace Goods (at no charge to the Eligible User) within ten (10) days of any written notification informing Contractor of the Goods not

performing as required under this Contract. If the repaired and/or replaced Goods 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 the Eligible User may otherwise have under this Contract.

16. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:
- 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.
 - 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 per occurrence.
 - 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.
 - 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.

17. **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.
18. **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 Goods based upon the same terms, conditions, and prices of this Contract.
19. **INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Goods from this Contract will be treated as if they were 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.
20. **QUANTITY ESTIMATES:** The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for Solicitation purposes only and are not to be construed as a guarantee.
21. **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 State Entity 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 State of Utah Division of Purchasing and General Services, Contractor also agrees that the Contractor's Proposal to the Solicitation will be a public document, and copies may be given to the public as permitted under GRAMA. The State Entity 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.
22. **DELIVERY:** Time is of the essence for all deliveries made under this Contract. 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 the Eligible User, except as to latent defects, fraud, or Contractor's warranty obligations. Contractor's failure to provide the Goods by the required delivery date is deemed a material breach of this Contract. Contractor shall be responsible for the customary industry standard in packing and shipping the Goods.
23. **REPORTS AND FEES:**
- Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the State in the form of a Check or EFT payment. The fee will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, 3150 State Office Building, Capitol Hill, PO Box 141061, Salt Lake City, UT 84114. The Administrative Fee will be one-half of one percent (.50%) and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.
 - 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 quantities and dollar volume of purchases by each agency and political subdivision. The quarterly report will be provided in secure electronic format and/or submitted electronically to the Utah reports email address: salesreports@utah.gov.
 - Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Reports Due</u>
March 31	April 30

June 30	July 31
September 30	October 31
December 31	January 31

4. **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.
5. **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.
24. **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.
25. **ACCEPTANCE AND REJECTION:** The Eligible User shall have thirty (30) days after delivery of the Goods to perform an inspection of the Goods to determine whether the Goods conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Goods by the Eligible User.

If Contractor delivers nonconforming Goods, the Eligible User may, at its option and at Contractor's expense: (i) return the Goods for a full refund; (ii) require Contractor to promptly correct or replace the nonconforming Goods; or (iii) obtain replacement Goods from another source, subject to Contractor being responsible for any cover costs. Contractor shall not redeliver corrected or rejected Goods without: first, disclosing the former rejection or requirement for correction; and second, obtaining written consent of the Eligible User to redeliver the corrected Goods. Repair, replacement, and other correction and redelivery shall be subject to the terms of this Contract.
26. **INVOICING:** Contractor will submit invoices within thirty (30) days after the delivery date of the Goods 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.
27. **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 by a Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by the 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 Division, the Eligible User, and the State of Utah from all claims and all liability to the Contractor. The Eligible User's payment for the Goods shall not be deemed an acceptance of the Goods and is without prejudice to any and all claims that the Division, Eligible User, or the State of Utah may have against Contractor. The State of Utah, the Division, and the Eligible User will not allow the Contractor to charge end users electronic payment fees of any kind.
28. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the Division, the Eligible User, 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.
29. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The Division, the Eligible User, and Contractor agree that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All Goods, 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.
30. **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.
31. **REMEDIES:** Any of the following events will constitute cause for the Division 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. The Division 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, the Division 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 the State of Utah; or (v) demand a full refund of any payment that an Eligible User has made to Contractor under this Contract for Goods that do not conform to this Contract.
32. **FORCE MAJEURE:** Neither party to this Contract 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. The Division may terminate this Contract after determining such delay will prevent successful performance of this Contract.
33. **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 the Division and the relevant 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 Division, the Eligible User, and the State of Utah, including anyone for whom the Division, the Eligible User, or the State of Utah 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.

34. **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 done in writing.
35. **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.
36. **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.
37. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
38. **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.
39. **LOCAL WAREHOUSE AND DISTRIBUTION:** If required under the Solicitation, Contractor will maintain a reasonable amount of stock warehoused in the State of Utah for immediate or emergency shipments. Shipments are to be made in the quantities as required by the various ordering agencies. Orders for less than the minimum specified amount will have transportation charges prepaid by the Contractor and added as a separate item on the invoice.
40. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The Division, after consultation with the Eligible User and Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the Division appoints such an expert or panel, 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.
41. **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); (v) Contractor's terms and conditions that are attached to this Contract, if any; and (vi) Contractor's attachments, if any. Any provision attempting to limit the liability of Contractor or limit the rights of the Division, Eligible Users, or the State of Utah must be in writing and attached to this Contract or it is rendered null and void. Contractor's terms and conditions on its Sales Orders, Invoices, website, etc., will not apply to this Contract.
42. **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.
42. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the Division's or the Eligible User's right to enforce this Contract with respect to any default of this Contract or defect in the Goods.
43. **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.
44. **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.

Revised 14 July 2017



**NASPO ValuePoint
INTENT TO PARTICIPATE
Cooperative Contract(s) for
Professional Grade Tools and Diagnostic Equipment**

I. PURPOSE:

The purpose of this Agreement is to provide interested NASPO states with the opportunity to participate in multi-state cooperative contract(s) for *Professional Grade Tools and Diagnostic Equipment*.

II. SCOPE OF THE CONTRACT(S)

The State of Oklahoma is authorized by agreement of the participants to act as the procurement officer in developing multi-state cooperative contract(s) for *Professional Grade Tools and Diagnostic Equipment*.

The resulting contracts will be permissive contracts.

Administrative Fee

There will be a 0.25% NASPO ValuePoint administrative fee associated with these contracts. It is anticipated that the individual states will be able to add an administrative fee when the state executes its Participating Addendum.

III. TERM OF THE CONTRACT

The initial term of the contract will be established for 1 year with options to renew up to a cumulative maximum of five (5) years from the date of award with options to extend the contract.

IV. SOLICITATION AND CONTRACT DEVELOPMENT/ADDITIONAL INFORMATION

The solicitation and contract development shall be accomplished in compliance with the NASPO ValuePoint Process Guide and the NASPO Memorandum of Agreement for the NASPO cooperative purchasing program, incorporated herein by reference.

Solicitation Publication Period

Bidders/Offerors will be given at least 40 days after publication to submit proposals.

Solicitation Type and Evaluation Criteria

This RFP will be issued and evaluated in concert with the procurement laws and rules of the State of Oklahoma by a sourcing team comprised of members from several states.

Award(s): The solicitation will permit multiple awards.

Additional Requested Information

State Specific Terms and Conditions: If the participating state wishes to include any State specific terms and conditions with the release of this RFP, please attach those with this Intent to Participate.

See attached State of Vermont Additional Terms and Conditions to the NASPO Terms and Conditions and Required Forms Cooperative Procurements (Exhibit C)

Annual Estimated Volume: If your State has an existing contract for this commodity or service, please indicate your annual volume of spend (including any potential political subdivision usage if available).

Annual State Spend \$5,000.00


Annual Political Subdivision Spend \$5,000.00

DIRECTOR SIGNATURE

State of Vermont

Deborah Damore, Director of Purchasing & Contracting

Printed name and Title


Signature and Date

802-828-2211. Deborah.Damore@Vermont.gov

Phone and email

State point of contact for this commodity/service

Steven Smith, Purchasing Agent

Printed name and Title

802-828-4681. Steven.smith@Vermont.gov

Phone and email

Please scan and email the signed "Intent to Participate" document no later than **November 21, 2017** to:

Shannon Berry

Cooperative Development Coordinator

NASPO ValuePoint

sberry@naspovaluepoint.org

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED JULY 1, 2016**

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 the 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. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party's indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

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 in the event that 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.

The Party agrees that in no event shall the terms of this Agreement nor any document required by the Party in connection with its performance under this Agreement obligate the State to defend or indemnify the Party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party except to the extent awarded by a court of competent jurisdiction.

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 the 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 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 the Contract, 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. Federal Requirements Pertaining to Grants and Subrecipient Agreements:

A. Requirement to Have a Single Audit: In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, 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 the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, 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 the case that this Agreement is a Grant funded in whole or in part by Federal funds, in accordance with 2CFR 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.

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 the 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 the 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 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 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

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. Certification Regarding Use of State Funds: In the case that 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.

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

25. 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.

26. 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.

27. 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.

28. Termination: In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:

- 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. No Implied Waiver of Remedies:** A 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.

29. 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.

30. 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.

31. 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.

32. 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 continental United States, except with the express written permission of the State.

(End of Standard Provisions)

TOWNS AND SCHOOLS QUESTIONNAIRE

PROVISIONS FOR THE PURCHASE OF SUPPLIES, MATERIALS, AND EQUIPMENT FOR TOWNS, SCHOOLS, POLITICAL SUBDIVISIONS, AND INDEPENDENT COLLEGES¹ OF THE STATE OF VERMONT.

The Office of Purchasing & Contracting keeps a current file of the contracts that are available to the political subdivisions and colleges. We are continually interested in expanding this file and would appreciate a positive response to the following questions:

1. Will you furnish these products and services to the political subdivisions of the State of Vermont at the same prices, terms and conditions as you quoted in this response? Yes _____ No _____

If no, kindly outline below the prices, terms, and conditions under which you will agree to supply these needs.

2. Will you furnish these products and services to the independent colleges of the State of Vermont at the same prices, terms and conditions as you quoted in this response? Yes _____ No _____

If no, kindly outline below the prices, terms, and conditions under which you will agree to supply these needs.

It should be noted that if you agree to extend these contract terms and prices to the political subdivisions or to independent colleges, all such items furnished will be billed directly to and paid for by the political subdivision or college and neither the State of Vermont, nor its Commissioner of Buildings and General Services, personally or officially, assumes any responsibility.

RESPONSE TITLE:

FIRM NAME:

DATE:

BY:

¹Independent Colleges are "any institution of higher education chartered in VT and accredited or holding a certificate of approval from the State Board of Education."