

## **Solicitation AS16040**

### **NASPO ValuePoint Walk-In Building Supplies and related material**

**Bid Designation: Public**

State of Utah



**State of Utah**

## Bid AS16040

### NASPO ValuePoint Walk-In Building Supplies and related material

Bid Number **AS16040**  
 Bid Title **NASPO ValuePoint Walk-In Building Supplies and related material**

Bid Start Date **Jun 6, 2016 12:45:43 PM MDT**  
 Bid End Date **Aug 3, 2016 2:00:00 PM MDT**  
 Question & Answer End Date **Jun 22, 2016 2:00:00 PM MDT**

Bid Contact **Ann Schliep**  
**Purchasing Agent 1**  
**DAS**

Contract Duration **5 years**  
 Contract Renewal **Not Applicable**  
 Prices Good for **Not Applicable**

**Bid Comments**      **The State of Utah, Division of Purchasing is requesting proposals for Walk-In Building Supplies and related material/Walk-In Carpentry Supplies/Walk-In Home Improvement Supplies on behalf of NASPO ValuePoint and all participating States.**  
**ALL questions concerning this solicitation must be submitted through the BidSync system. Only answers issued through the BidSync system or issued via an authorized and properly issued addendum shall be the official position of the State.**  
**Any modification to this procurement effort shall be made by addendum issued by the State Division of Purchasing. Only authorized and properly issued addenda shall constitute the official position of the State and shall be binding.**  
**Anyone submitting a response to this solicitation, with basis in or other communication or information received from sources other than through official addendum, assumes full risk including the possibility of a determination of non-responsiveness and may be rejected at the sole discretion of the State.**  
**Responses submitted in BidSync are completely secure. NO ONE can see them until after the solicitation deadline. Therefore you do not have to wait until the last minute to submit; and you may change your submission any time until the solicitation closes. If you have not completed the submission by the deadline, BidSync will reject your submission. Please plan well.**  
**Please enumerate all costs on Attachment C: Price Proposal Form. Please do not include any costs in the actual proposal response.**  
 -----  
**If you have any trouble submitting your response or attaching documents in the BidSync System, please contact Vendor Customer Support at (801) 765-9245 .**  
 -----  
**Exceptions to the Standard Terms and Conditions MUST be submitted with the proposal response. Exceptions submitted after the date and time for receipt of proposals will NOT be considered.**  
**The State retains the right to refuse to negotiate on exceptions should the exceptions be excessive, not in the best interest of the State, could result in excessive costs to the state, or could adversely impact existing time constraints.**  
**In a multiple award situation, the State reserves the right to negotiate exceptions to terms and conditions based on the offer with the least to the most exceptions taken. Contracts may become effective as negotiations are completed.**  
  
**Added on Jun 29, 2016:**  
**Addendum - Added Attachment K - Walkin Building Supplies - ITP (Intent to Participate) - State of Virginia**  
**Added on Jul 6, 2016:**  
**Updated title of bid.**

Previous Title	<b>Walk-In Building Supplies and related material</b>	New Title	<b>NASPO ValuePoint Walk-In Building Supplies and related material</b>
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**Item Response Form**

Item **AS16040--01-01 - Walk-in Building Supply and related material**

Quantity **1 contract**

Prices are not requested for this item.

Delivery Location **State of Utah**

No Location Specified

**Qty 1**

**Description**

Refer to attachments for further information.

# STATE OF UTAH



## **SOLICITATION NO. AS16040**

NASPO ValuePoint Walk-In Building Supplies and related material

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RESPONSES DUE NO LATER THAN:

Aug 3, 2016 2:00:00 PM MDT

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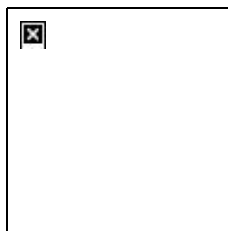
RESPONSES MAY BE SUBMITTED ELECTRONICALLY TO:

[www.bidsync.com](http://www.bidsync.com)

RESPONSES MAY BE MAILED OR DELIVERED TO:

State of Utah  
Division of Purchasing  
3150 State Office Building, Capitol Hill  
Salt Lake City, Utah 84114-1061

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# State of Utah

## Request for Proposal

### State Cooperative Contract

Legal Company Name (include d/b/a if applicable) <input type="text"/>	Federal Tax Identification Number <input type="text"/>	State of Utah Sales Tax ID Number <input type="text"/>	
Ordering Address <input type="text"/>	City <input type="text"/>	State <input type="text"/>	Zip Code <input type="text"/>
Remittance Address (if different from ordering address) <input type="text"/>	City <input type="text"/>	State <input type="text"/>	Zip Code <input type="text"/>
Type <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship <input type="checkbox"/> Government	Company Contact Person <input type="text"/>		
Telephone Number (include area code) <input type="text"/>	Fax Number (include area code) <input type="text"/>		
Company's Internet Web Address <input type="text"/>	Email Address <input type="text"/>		
Discount Terms (for prompt payment discounts): <input type="text"/>	Days Required for Delivery After Receipt of Order (see attached for any required minimums) <input type="text"/>		

By submitting a proposal in response to this RFP, the Offeror acknowledges and agrees that the specifications, terms and conditions, or other elements of the RFP are not ambiguous, confusing, contradictory, unduly restrictive, erroneous, or anticompetitive. The Offeror further acknowledges that it has read this RFP, along with any attached or referenced documents, and this document, including the General Provisions.

Offeror's Authorized Representative's Signature <input type="text"/>	Date <input type="text"/>
Type or Print Name <input type="text"/>	Position or Title <input type="text"/>

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## NOTICE

When submitting a proposal electronically through BidSync, it is the sole responsibility of the Offeror to ensure that the proposal is received by BidSync prior to the closing date and time. Each of the following steps in BidSync MUST be completed in order to place an offer:

- A. Login to [www.bidsync.com](http://www.bidsync.com);
- B. Locate the bid (solicitation) to which you are responding;
  - a. Click the "Search" tab on the top left of the page;
  - b. Enter keyword or bid (solicitation) number and click "Search";
- C. Click on the "Bid title/description" to open the Bid (solicitation) Information Page;
- D. "View and Accept" all documents in the document section;
- E. Select "Place Offer" found at the bottom of the page;
- F. Enter your pricing, notes, and other required information and upload attachments to this page;
- G. Click "Submit" at the bottom of the page;
- H. Review Offer(s); and
- I. Enter your password and click "Confirm".

Note that the final step in submitting a proposal involves the Offeror's acknowledgement that the information and documents entered into the BidSync system are accurate and represent the Offeror's actual proposal. This acknowledgement is registered in BidSync when the Offeror clicks "Confirm". BidSync will post a notice that the proposal has been received. This notice from BidSync MUST be recorded prior to the closing date and time or the proposal will be considered late and will not be accepted.

Be aware that entering information and uploading documents into BidSync may take considerable time. Please allow sufficient time to complete the online forms and upload documents. Offerors should not wait until the last minute to submit a proposal. It is recommended that Offerors submit proposals a minimum of 24 hours prior to the closing date and time. The deadline for submitting information and documents will end at the closing time indicated in the solicitation. All information and documents must be fully entered, uploaded, acknowledged (Confirm) and recorded into BidSync before the closing date and time or the system will stop the process and the proposal will be considered late and will not be accepted.

Proposals submitted in BidSync are completely secure. No one (including the Division of Purchasing) can see proposals until after the closing date and time. Offerors may modify or change their proposals at any time prior to the closing date and time. However, all modifications or changes must be completed and acknowledged (Confirm) in the BidSync system prior to the closing date and time. BidSync will post a notice that the modification/change (new offer) has been received. This notice from BidSync MUST be recorded prior to the closing date and time or the response will be considered late and will not be accepted.

Section 46-4-402(2) of the Utah Code provides that unless otherwise agreed between a sender (Offeror) and the recipient (Division of Purchasing), an electronic record is received when: (a) it enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and (b) it is in a form capable of being processed by that system.

## GENERAL PROVISIONS

- 1. GOVERNING LAWS:** All purchases made under this Request for Proposals (RFP) are subject to the Utah Procurement Code and the applicable State of Utah Administrative Code. These are available at [www.purchasing.utah.gov](http://www.purchasing.utah.gov). By submitting a proposal, the Offeror warrants that it and the procurement item(s) purchased under this RFP comply fully with all applicable Federal and State laws and regulations, including applicable licensure and certification requirements.
- 2. SUBMITTING A PROPOSAL:** By submitting a proposal in response to this RFP, the Offeror acknowledges that the minimum requirements, technical specifications, scope of work, and the evaluation process, outlined in this RFP are fair, equitable, not unduly restrictive, and understood. Any exceptions to the content of this RFP, including the specifications and minimum requirements, must be addressed during the Question and Answer period or protested in writing to the Division of Purchasing before the closing date and time.
- 3. EVALUATION:** The evaluation of the Offeror's proposal shall be conducted in accordance with Part 7 of the Utah Procurement Code. An evaluation committee may ask questions of Offerors to clarify proposals provided the questions are submitted and answered in writing. The record of questions and answers shall be maintained in the file.
- 4. BEST AND FINAL OFFERS:** At any time during the evaluation process, the evaluation committee, with the approval of the director or head of the issuing procurement unit, may request best and final offers from responsible and responsive offerors in accordance with Part 7 of the Utah Procurement Code and applicable administrative rules, and evaluate those offers. If an offeror chooses not to participate in discussion or does not make a timely best and final offer, its immediately previous proposal will be treated as the offeror's best and final offer.
- 5. BRAND NAME OR EQUAL SPECIFICATION:** Wherever in this RFP an item is defined by using a trade name, brand name, or a manufacturer and/or model number, it is intended that the words, "or equivalent" apply; and invites the submission of equivalent products by the Offerors.
- 6. SAMPLES:** Samples of item(s) specified in this offer, brochures, etc., when required by this RFP, must be furnished free of expense to the State of Utah. Any item not destroyed by tests may, upon request made at the time the sample is furnished, be returned at the Offeror's expense.
- 7. DEBRIEFING OF UNSUCCESSFUL OFFERORS:** The Utah Division of Purchasing **does not** conduct debriefings nor collect detailed explanations of evaluator's scores.
- 8. DEBARMENT:** By submitting a proposal, the Offeror 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. If the Offeror cannot certify this statement, attach a written explanation for review by the State.
- 9. ENERGY CONSERVATION AND RECYCLED PRODUCTS:** The Offeror is encouraged to offer Energy Star certified products or products that meet Federal Energy Management Program (FEMP) standards for energy consumption. The State also encourages contractors to offer products that are produced with recycled materials, where appropriate, unless otherwise requested in this RFP.
- 10. SALES TAX ID NUMBER:** Utah Code Annotated (UCA) 59-12-106 requires anyone filing a proposal with the state for the sale of tangible personal property or any other taxable transaction under UCA 59-12-103(1) to include their Utah sales tax license number with their proposal. For information regarding a Utah sales tax license see the Utah State Tax Commission's website at [www.tax.utah.gov/sales](http://www.tax.utah.gov/sales). The Tax Commission is located at 210 North 1950 West, Salt Lake City, UT 84134, and can be reached by phone at (801) 297-2200.
- 11. PROTESTS:** Pursuant to Utah Code §63G-6a-1602, an Offeror may: (1) protest the rejection of their proposal; (2) protest an alleged grievance in connection with the procurement process; or (3) protest an alleged grievance in connection with the award of a contract. Protests must be made to the State of Utah Chief Procurement Officer. A notice of protest must be submitted either: (1) before the closing of date of the proposals, as provided on Bidsync; or (2) if the person filing the protest did not know and should not have known of the facts giving rise to the protest before the closing date for proposals, within seven days after the day on which the person knows or should have known of the facts giving rise to the protest. All protests must be submitted in accordance with Part 16 of Utah Procurement Code and applicable administrative rules.

In accordance with the requirements set forth in Section 63G-6a-1602(2)(b), a person filing a protest must include a concise statement of the grounds upon which the protest is made. A concise statement of the grounds for a protest should include the relevant facts leading a protestor to contend that a grievance has occurred, including but not limited to specifically referencing: (i) an alleged violation of Utah Procurement Code 63G-6a; (ii) an alleged violation of Administrative Rule R33 or other applicable rule; (iii) a provision of the request for proposals, invitation for bids, or other solicitation allegedly not being followed; (iv) a provision of the solicitation alleged to be: ambiguous, confusing, contradictory, unduly restrictive, erroneous, anticompetitive, or unlawful; (v) an alleged error made by the evaluation committee or conducting procurement unit; (vi) an allegation of bias by the committee or an individual committee member; or (vii) a scoring criteria allegedly not being correctly applied or calculated.

None of the following qualify as a concise statement of the grounds for a protest:

- (i) claims made after the opening of bids or closing date of proposals that the specifications, terms and conditions, or other elements of a solicitation are ambiguous, confusing, contradictory, unduly restrictive, erroneous, or anticompetitive;
- (ii) vague or unsubstantiated allegations that do not reference relevant or specific facts including, but not limited to, vague or unsubstantiated allegations by a bidder, offeror, or prospective contractor that: (A) a bidder, offeror, or prospective contractor should have received a higher score or that another bidder, offeror, or prospective contractor should have received a lower score, (B) a service or product provided by a bidder, offeror, or prospective contractor is better than another bidder's, offeror's, or prospective contractor's service or product, (C) another bidder, offeror, or prospective contractor cannot provide the procurement item for the price bid or perform the services described in the solicitation, or (D) any other item that is not relevant or specific; or
- (iii) filing a protest requesting: (A) a detailed explanation of the thinking and scoring of evaluation committee members, beyond the official justification statement described in Section 63G-6a-708, (B) protected information beyond what is provided under the disclosure provisions of the Utah Procurement Code; or (C) other information, documents, or explanations reasonably deemed to be not in compliance with the Utah Code or Administrative Rule R33 by the protest officer.

In accordance with Section 63G-6a-1603(3)(a), a protest officer may dismiss a protest if the concise statement of the grounds for filing a protest does not provide an adequate basis for the protest.

**12. AUDIT:** Pursuant to Administrative Rule R33-12-605, the State may, at reasonable times and places, audit or cause to be audited by an independent third party firm, by another procurement unit, or by an agent of the procurement unit, the book, records, and performance of the Offeror, if awarded a contract under this RFP.

**13. INSPECTIONS:** Pursuant to Utah Administrative Rule R33-12-701, R33-12-702, R33-12-703, and R33-12-704, the State may, at its discretion, perform an inspection of the Offeror's manufacturing/production facility or place of business, or any location where the work is



performed.

**14. MODIFICATION OR WITHDRAWAL OF PROPOSAL:** A proposal may be modified or withdrawn prior to the established closing date and time.

**15. REJECTING A PROPOSAL:** At any time during this RFP, the State may reject a proposal if the State determines that: (a) the person submitting the proposal is not responsible; or (b) the proposal is not responsive or does not meet the mandatory minimum requirements stated in this RFP.

**16. TECHNOLOGY MODIFICATIONS:** The awarded contract(s) may be modified as a result from technological upgrades for the procurement item(s). Any modification for upgraded technology must be substantially within the scope of the original procurement or contract, and if both parties agree to the modification, then the contract may be modified, but not extended beyond the term of the original awarded contract except as provided in the Utah Procurement Code. The awarded contract(s) may be modified for new technology related to the procurement item(s). Any modification for new technology shall not be exercised without: (1) the approval required under Section 63F-1-205 of the Utah Code, (2) the new technology modification has been subject to the review as described in Administrative Rule R33-6-114, and (3) the contracting parties agree to the modification.

**17. PUBLICIZING AWARDS:** The following shall be disclosed after receipt of a proper GRAMA request: (a) the contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that may not be disclosed under Rule R33-7-105; (b) the unsuccessful proposals, except for those portions that are Protected and the Offeror has submitted a proper Business Confidentiality Claim; (c) the rankings of the proposals; (d) the names of the members of any selection committee (reviewing authority); (e) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings; and (f) the written justification statement supporting the selection, except for those portions that may not be disclosed under Rule R33-7-105.

After due consideration and public input, the following has been determined by the Procurement Policy Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, and will not be disclosed by the governmental entity at any time to the public, including under any GRAMA request: (a) the names of individual scorers/evaluators in relation to their individual scores or rankings; (b) any individual scorer's/evaluator's notes, drafts, and working documents; (c) non-public financial statements; and (d) past performance and reference information which is not provided by the offeror and which is obtained as a result of the efforts of the governmental entity. To the extent such past performance or reference information is included in the written justification statement, it is subject to public disclosure.

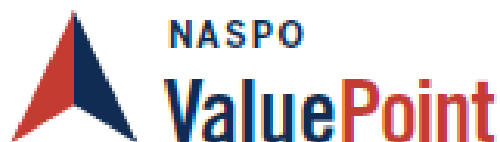
**18. PERFORMANCE AND COST ANALYSIS:** The State reserves the right to review the awarded contract(s) on a regular basis regarding performance and cost, and may negotiate price and service elements during the term of the contract.

**19. AWARDED CONTRACT(S):** Contract(s) awarded from this RFP will include the following documents: the scope of work, the appropriate State of Utah Standard Terms and Conditions, and any other documents listed in this RFP.

(Revision Date: 1 July 2015)

**The State of Utah**  
**Division of Purchasing and General Services**

In conjunction with



**Request for Proposals**

**State of Utah Solicitation Number AS16040**

**NASPO ValuePoint Master Agreement for  
Walk-In Building Supplies and related  
material/Walk-In Carpentry Supplies/Walk-  
In Home Improvement Supplies**

Release Date: June 6, 2016

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**RFP Administrative Information**

RFP Title:	Walk-In Building Supplies and related material/Walk-In Carpentry Supplies/Walk-In Home Improvement Supplies
RFP Project Description: (See Section 1.1)	The State of Utah in conjunction with NASPO ValuePoint, is seeking Contractor(s) to provide Walk-In Building Supplies and related material/Walk-In Carpentry Supplies/Walk-In Home Improvement Supplies as a <b>convenience only for small purchases</b> .
RFP Lead: (See Section 1.2)	Ann Schliep State of Utah, Division of Purchasing aschliep@utah.gov (801)538-3421
Submit sealed proposal (if submitting manually):  MANUAL PROPOSALS MUST BE RECEIVED AT THE PHYSICAL ADDRESS DESIGNATED FOR COURIER SERVICE AND TIME/DATE STAMPED BY THE STATE OF UTAH DIVISION OF PURCHASING PRIOR TO THE CLOSING DATE AND TIME.  Submit electronically via BidSync: (See Section 2.10)	Address for US Mail: State of Utah Division of Purchasing 3150 State Office Building Capitol Hill Complex 450 North State Street Salt Lake City, UT 84114  Electronic Submission <a href="https://www.bidsync.com">https://www.bidsync.com</a>
Deadline To Receive Questions: (See Section 2.1)	1 <sup>st</sup> Round of questions end date: 6/22/2016 2 <sup>nd</sup> Round of questions open date: 7/6/2016 2 <sup>nd</sup> Round of questions end date: 7/12/2016
Question & Answers: See Section 2.1)	All questions, including those about Terms and Conditions, must be submitted through BidSync. Question must be submitted by the question deadline date.
RFP Closing Date: (See Section 1.3)	8/3/2016
Term of Contract: (See Attachment A, Section 3)	The term of the Contract will be five (5) years.
<b>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, INCLUDING THE STATE OF UTAH, MAY NEGOTIATE ADDITIONAL ADMINISTRATIVE FEES IN THEIR PARTICIPATING ADDENDA FOLLOWING AWARD OF A MASTER AGREEMENT.</b>	

**REQUEST FOR PROPOSAL**  
**Walk-In Building Supplies and related material/Walk-In Carpentry**  
**Supplies/Walk-In Home Improvement Supplies**

**Solicitation # AS16040**

This Request for Proposals (“RFP”), having been determined to be the appropriate procurement method to provide the best value to the Conducting Procurement Unit, is designed to provide interested Offerors with sufficient basic information to submit proposals. It is not intended to limit a proposal's content or exclude any relevant or essential data. Offerors are at liberty and are encouraged to expand upon the specifications to evidence service capability. This RFP is issued in accordance with Utah Code Annotated (UCA) Chapter 63G-6a, and applicable Rules found in the Utah Administrative Code (UAC). If any provision of this RFP conflicts with the UCA or UAC, the UCA or UAC will take precedence.

## **Section 1: NASPO ValuePoint Solicitation - General Information**

### **1.1. Purpose**

The State of Utah, Division of Purchasing is requesting proposals for Walk-In Building Supplies and related material/Walk-In Carpentry Supplies/Walk-In Home Improvement Supplies on behalf of NASPO ValuePoint and all participating States. The purpose of this RFP is to establish Master Agreements with qualified offerors to provide Walk-In Building Supplies and related material/Walk-In Carpentry Supplies/Walk-In Home Improvement Supplies as a convenience only for small purchases for all Participating States. The objective of this RFP is to obtain best value, and in some cases 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 5 years with no renewal provisions - **as outlined 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.

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 replacement for expiring contracts Master Agreement for the State of Utah and NASPO ValuePoint.

While the primary purpose of this solicitation is to select an Offeror(s) who can offer the Products or Services for all members participating in the NASPO ValuePoint Cooperative Purchasing Program, it is not intended to replace or supersede any state contract(s) that include

related products, but merely to provide for small purchases of supplies related to building material, carpentry and home improvement. Offerors are permitted to submit a Proposal for national and/or regional coverage. Offerors must clearly describe the geographical limits (e.g. by State name) if proposing a geographical area less than that of all participating 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 as deemed advisable 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 Utah, Division of 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 # AS16040. 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 Utah, Division of Purchasing is:

Ann Schliep, Purchasing Agent  
Division of Purchasing  
3150 State Office Building  
Capitol Hill Complex  
450 North State Street  
Salt Lake City, UT 84114

### **1.3. Definitions**

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

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

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

**Participating Entities (Entity/Entities)** means entities other than the state that are permitted by the state CPO to execute their own Participating Addendum (PA).

**Proposer** has the same meaning as Offeror

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

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

#### **1.4. NASPO ValuePoint Background Information**

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

#### **1.5. 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, Arkansas, Connecticut, Hawaii, Indiana, Louisiana, Massachusetts, Missouri, Montana, Nevada, Ohio, Oklahoma, Oregon, 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 the Offerors 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-J.

#### **1.6. Anticipated Usage**

Attachment D contains the historical usage data from the previous contract and anticipated usage from additional states who have indicated an interest in participating. No minimum or maximum level of sales volume is guaranteed or implied.

## **Section 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 through BidSync. The Lead State will not answer questions submitted via email to the Lead State Contract Administrator. Question must be submitted by the question deadline date and time shown in Section 1.3 (Schedule of Events). Answers will be given via the BidSync site and as soon as possible. Answers disseminated by the Lead State through BidSync shall serve as the official and binding position of the State and will constitute an addendum to this RFP.

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.

Offerors should periodically check BidSync for answered questions and addendums before the closing date. It is the responsibility of the Offerors to submit their proposal as required by this RFP, including any requirements contained in an answered question and/or addendums.

**Notice:** Exceptions to scope/content of the RFP that have not been previously addressed within the Q&A period of the procurement are not allowed and may result in the Offeror's proposal being considered non-responsive.

### **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 addenda 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 Offerors to monitor the BidSync site to obtain RFP addenda or other information relating to the RFP.

After the due date and time for submitting a proposal to this RFP, at the discretion of the Lead State, addenda to this RFP may be limited to the Offerors that have submitted proposals, provided the addenda does not make a substantial change to this RFP that likely would have impacted the number of Offerors responding to the original publication of this RFP, in the opinion of the Lead State.



### **2.3. Proposal Due Date**

Proposals must be received by the posted Closing date and time as described in the RFP Administrative Information. Proposals received after the deadline will be late and rejected.

When submitting a proposal or modification to a proposal electronically, Offerors must allow sufficient time to complete the online forms and upload documents. This RFP will end at the closing time posted in the electronic system. If an Offeror is in the middle of uploading a proposal when the closing time arrives, the electronic system should stop the process and the proposal or modification to a proposal will not be accepted.

### **2.4. 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.

### **2.5. Governing Laws and Regulations**

This procurement is conducted by the Lead State in accordance with the Lead State Procurement Code. These are available at <http://purchasing.utah.gov/>.

This procurement shall be governed by the regulations and laws of the Lead State. Venue for any administrative or judicial action relating to this procurement, evaluation, and award shall be in Salt Lake County.

### **2.6. Firm Offers**

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

### **2.7. 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.

### **2.8. 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.

### **2.9. 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 hard copies to the Lead State on or before the due date and time.

An Offeror shall submit to the Single Point of Contact one (1) original and one (10) copies of the

Proposal (less Proposal Pricing Page) and all required supporting information and documents on or before the Closing Date and Time. Offeror shall submit one (1) original Proposal marked "MASTER." 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 Offeror
- ☒ 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 for 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, Offeror's Proposal may be rejected at the discretion of the Lead State. An Offeror shall also submit on a CD ROM or USB flash drive one electronic copy of its Proposal in MS Word 2003 or higher format.

An Offeror shall submit its 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. Offerors 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.**

Offerors 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.**

## 2.10. Required Format

Proposals should be concise, straightforward and prepared simply and economically. Expensive displays, bindings, or promotional materials are neither desired nor required. However, there is no intent in these instructions to limit an Offeror's proposal's content or to exclude any relevant or essential data.

Organize the proposal using each of the following specific headings. Failure to format the proposal as follows may result in disqualification.

1. **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. In the executive summary the Offeror must identify any conflict or potential conflict of interest.
2. **Mandatory Minimum Requirements.** As described in Section 4.1, Offeror must provide the required narratives that demonstrate compliance with the stated Mandatory

**Minimum Requirements.** Offeror's failure to meet any one of the mandatory requirements will result in the proposal being classified as non-responsive and will be rejected under the provisions of the Utah Procurement Code.

If an Offeror submits a response this section that contains information claimed to be business confidential or protected information, as described in Section 2.12, the Offeror must submit two separate mandatory minimum requirements sections: one redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and one non-redacted version for evaluation purposes, clearly marked as "Protected Business Confidential."

3. **Technical Response.** As described in Section 4.2, this section should constitute the major portion of an Offeror's proposal and must be a concise overview of the Offeror's assessment of the work to be performed, the Offeror's ability and approach, and the resources necessary to fulfill the requirements. This section should demonstrate the Offeror's understanding of the desired overall performance expectations, deliverables, if any, and outcomes. Clearly indicate any options or alternatives proposed. In any case wherein the Offeror cannot comply with an evaluation criterion outlined in Section 4.2, such inability must be stated in response to the applicable requirement. Offerors should reference the Scope of Work in Attachment B in their response.

For ease of evaluation, this section must be a point-by-point response, addressing in detail each area of the evaluation criteria. Proposals will be evaluated against the proposal evaluation criteria described in Section 4.2 and Section 3.4 of this evaluation. Section 3.4 provides the relative weight that will be given to each score for the criteria, and the minimum scoring thresholds associated with the technical evaluation criteria.

If an Offeror submits a response in this section that contains information claimed to be business confidential or protected information, as described in Section 2.12, the Offeror must submit two separate technical response sections: one redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and one non-redacted version for evaluation purposes, clearly marked as "Protected Business Confidential."

4. **Exceptions and/or Additions to the Standard Terms and Conditions.** As described in Section 2.13, proposed exceptions and/or additions to Attachment A must be submitted in this section. Offeror must provide all proposed exceptions and/or additions, including an Offeror's terms and conditions in Microsoft Word format for redline editing. Offeror must also provide the name, contact information, and access to the person(s) that will be directly involved in terms and conditions negotiations.

If there are no exceptions or additions to the Standard Terms and Conditions, write "None" in this section.

5. **Price Proposal.** Price will be evaluated independently from the technical proposal. Please indicate percentage off retail per category on the attached Price Proposal Form. Attachment C

The Price Proposal is to be submitted as a separate document. Inclusion of any price or pricing data within the technical proposal may result in your Proposal being deemed non-responsive. See Section 5 for additional information.

## 2.11. Ownership or Disposition of Proposals and other Materials submitted

All materials submitted become the property of the Lead State. Materials may be evaluated by anyone designated by the Lead State as part of the proposal evaluation committee. Materials submitted may be returned only at the Lead State's option.

## 2.12. Confidential or Proprietary Information

The Government Records Access and Management Act (GRAMA), UCA § 63G-2-305, provides in part that:

*the following records are protected if properly classified by a government entity:*

*(1) trade secrets as defined in Section 13-24-2, the Utah Uniform Trade Secrets Act, if the person submitting the trade secret has provided the governmental entity with the information specified in UCA § 63G-2-309 (Business Confidentiality Claims);*

*(2) commercial information or non-individual financial information obtained from a person if:*

*(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;*

*(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and*

*(c) the person submitting the information has provided the governmental entity with the information specified in UCA § 63G-2-309;*

*\* \* \* \* \**

*(6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties, ...*

**Pricing may not be classified as confidential or protected and will be considered public information after award of the contract.**

**Process for Requesting Non-Disclosure:** Any Offeror requesting that a record be protected shall include with the proposal a Claim of Business Confidentiality. To protect information under a Claim of Business Confidentiality, the Offeror must complete the Claim of Business Confidentiality form with the following information:

1. Provide a written Claim of Business Confidentiality *at the time the information (proposal) is provided to the state*, and
2. Include a concise statement of reasons supporting the claim of business confidentiality (UCA § 63G-2-309(1)).
3. Submit an electronic “redacted” (excluding protected information) copy of the proposal. Copy must clearly be marked “Redacted Version.”

The Claim of Business Confidentiality form may be accessed at:

<http://www.purchasing.utah.gov/contract/documents/confidentialityclaimform.doc>

**An entire proposal cannot be identified as “PROTECTED”, “CONFIDENTIAL” or “PROPRIETARY”, and if so identified, shall be considered non-responsive unless the Offeror removes the designation.**

**Redacted Copy:** If an Offeror submits a proposal that contains information claimed to be business confidential or protected information, the Offeror must submit two separate proposals: one redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and one non-redacted version for evaluation purposes, clearly marked as "Protected Business Confidential."

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.

### **2.13. Offeror Exceptions to Terms and Conditions**

Any contract resulting from this RFP will include, but not be limited to Master Agreement Terms and Conditions (“Attachment A”) and a Participating State's terms and conditions, which will be attached to the Participating Addendum.

Exceptions and/or additions to the Attachment A are strongly discouraged. However, Offerors requesting exceptions and/or additions to Attachment A must be submitted with the proposal. Exceptions and/or additions submitted after the date and time for receipt of proposals will not be considered. Offerors may not submit requests for exceptions and/or additions by reference to a vendor's website or URL. Offerors may submit questions during the Q&A period regarding Attachment A.

The Lead State may refuse to negotiate exceptions and/or additions that are determined to be excessive; that are inconsistent with similar contracts; to warranties, insurance, or indemnification provisions that are necessary to protect the procurement unit after consultation with the Attorney General's Office or other applicable legal counsel; where the solicitation specifically prohibits exceptions and/or additions; or that are not in the best interest of the Lead State.

In a multiple award, the State reserves the right to negotiate exceptions and/or additions to terms and conditions in a manner resulting in expeditious resolutions. This process may include beginning negotiations with the Offeror having the least amount of exceptions and/or additions and concluding with the Offeror submitting the greatest number of exceptions and/or additions. Contracts may be executed and become effective as negotiations are completed.

If negotiations are required, Offeror must provide all documents in Microsoft Word format for redline editing. Offeror must also provide the name, contact information, and access to the person(s) that will be directly involved in legal negotiations.

Any mandatorily required acceptance of an Offeror's terms and conditions may result in the proposal being determined to be non-responsive.

An award resulting from this RFP is subject to successful contract terms and conditions negotiation (if required). The State, at its sole discretion, will determine when contract terms and

conditions negotiations become unproductive and will result in termination of award to that Offeror and the State may move to the next eligible Offeror.

#### **2.14 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 transaction (Master Agreement) by any governmental department or agency. If the Offeror cannot certify this statement, attach a written explanation for review by the Lead State.

#### **2.15. 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.

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).

#### **2.16. Participating State Terms and Conditions**

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

## Section 3: Evaluation and Award

### 3.1. Award of Master Agreement(s)

Award shall be made to the offerors whose proposal is determined to be the best value for the Lead State and NASPO ValuePoint, taking into consideration price and the other evaluation factors set forth in this request for proposals.

### 3.2 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. *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 .....Pass/Fail*
2. *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.....Pass/Fail*
3. *Offeror agrees, by submission of a Proposal, to cooperate with NASPO ValuePoint and BidSync (and any authorized agent or successor entity to BidSync) with providing unique information and ordering instructions. Refer to Appendix A, Section 9, NASPO ValuePoint Master Agreement Terms and Conditions for the prescribed requirements.....Pass/Fail*

Phase 2: Technical Proposal Evaluation (500 points)

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

<u>Evaluation Criteria</u>	<u>Possible Points</u>
Inventory and Store Locations	50 Points
Customer Service / Emergency Service	75 Points
Contract Management	75 Points
Implementation	50 Points

Purchasing Card and Billing	50 Points
Sustainability / Environmental Practices	75 Points
Storage of Electronic Data	50 Points
Return Policy	25 Points
Scope of work	25 Points
Promotion of the NASPO ValuePoint Master Agreement	25 Points
	500 Points Possible

### Phase 3: Price Proposal Evaluation:

Offerors successful in the technical evaluation will advance to the Final State: Price Proposal Evaluation. The Offeror with the lowest total market basket aggregate price will receive the maximum points of 500. Points assigned to each Offeror's price proposal will be based on the lowest proposal price.

The Offeror with the lowest market basket aggregate total will receive 500 points, or 100% of the total price points. All other Offerors will receive a portion of the total market basket aggregate price points based on what percentage higher their total aggregate market basket price is than the total lowest aggregate market basket price. An Offeror whose total aggregate market basket price is more than double (200%) the lowest aggregate market basket proposed price will receive no points. The formula to compute the points is:  $\text{Price Points} \times (2 - \frac{\text{Proposed Price}}{\text{Lowest Proposed Price}})$ .

<u>Evaluation Criteria</u>	<u>Points</u>
PRICING	500 Points Possible

TOTAL COMBINED POINTS	1000 Points Possible
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### 3.5 DETERMINATION OF BEST VALUE

All Offerors that meet a minimum of 300 points for technical and a minimum of 150 points for pricing for a total combined (technical and price scores) minimum score threshold of 450 points have been determined to provide best value to the Lead State. Attachment F – Interactive Score Sheet.

### 3.6 PUBLICIZING AWARD

The issuing procurement unit shall, on the next business day after the award of a contract is announced, make available to each offeror and to the public a written statement that includes:

- (a) the name of the offeror to which the contract is awarded and the total score awarded by the evaluation committee to that offeror;
- (b) the justification statement under UCA § 63G-6a-708, including any required cost-benefit analysis; and
- (c) the total score awarded by the evaluation committee to each offeror to which the contract is not awarded, without identifying which offeror received which score.



## **Section 4: Mandatory Minimum Requirements and Technical Response**

### **4.1. Mandatory Minimum 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. Offerors must provide a point-by-point response to each mandatory minimum requirement listed below.

- 4.1.1 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.
- 4.1.2 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.
- 4.1.3 Offeror agrees, by submission of a Proposal, to cooperate with NASPO ValuePoint and BidSync (and any authorized agent or successor entity to BidSync) with providing unique information and ordering instructions. Refer to Appendix A, Section 9, NASPO ValuePoint Master Agreement Terms and Conditions for the prescribed requirements.

### **4.2. Technical Requirements**

This section contains technical requirements pertaining to the Walk-In Building Supplies and related material/Walk-In Carpentry Supplies/Walk-In Home Improvement Supplies. 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.

#### **4.2.1 Inventory and Store Locations**

The purpose of this contract is for nationwide or regional coverage for walk-in convenience and the purchase of commodities.

- a. Please give the number of stores and their locations for each state that has expressed their intent to participate along with the average inventory in dollars carried by each store.

**4.2.2 Customer Service/Emergency Service**

The Awarded Offeror(s) will be expected to offer adequate customer service to the end users.

- a. Explain your customer service policy.
- b. What are the normal operating hours of your retail outlets?
- c. How will you be able to help the end user who may experience an emergency, disaster or other unusual event?

**4.2.3. Contract Management**

- a. Describe your strategy for contract management and support for all Participating States.
- b. Who will be your main contact for the overall management of this contract?

**4.2.4. Implementation**

Implementation of this contract is vital to the Participating States or other Participating Entities. Describe your implementation program including an estimated time line to include the following points:

Describe your implementation plan including all process steps.

- a. The specific information, resources, and assistance the offeror will require from each Participating State or Participating Entity for implementation.
- b. Describe how soon from execution of the Participating Addendum to the point that end users will be able to utilize the contract.
- c. Describe your experience when implementing customer relationships of equivalent size and complexity.
- d. Describe how you will set up and maintain the customer base and ensure that each end user will be charged the correct price.
- e. Describe any customization abilities that you have for the Participating States or Participating Entity.

**4.2.5 Purchase Card and Billing:**

The successful offeror(s) must offer the capability to accept procurement/purchasing cards from the Participating States or other Participating Entities (usually visa or master card) as acceptable form of payment. Level III reporting is preferred.

- a. Explain in detail the account billing process if procurement/purchase cards are not used.

**4.2.6 Sustainability/Environmental Practices**

Sustainability and sound environmental practices are important to the Participating States.

- a. Describe your sustainability and environmental practices that you currently have in place. Please include the following:
- b. Describe your environmental practices that are applicable to the items you market. Provide links to your published statements or policies.

- c. Provide a list of products for which you provide end of life take-back and recycling (e.g. fluorescent lamps, batteries, solvents, metals, etc.). List any subcontractors if any you use for these services. List any fees or conditions, if any, for these services (e.g. does the item have to have been purchased from your store?).
- d. Describe how the end users can locate and purchase the most environmentally friendly products.

**4.2.7 Storage of Electronic Data**

Describe in detail how the electronic information for each Participating State or Participating Entity shall be stored. Do you have a dual system as a backup in the unlikely event that the main information storehouse becomes unusable? Provide a general description of security protocol including sales and purchasing card data file security.

**4.2.8 Return Policy and Warranties**

- a. What is your standard return policy?
- b. Describe any warranties you offer in addition to manufacturer warranties.

**4.2.9 Scope of Work**

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.

**4.2.10 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,

Briefly describe how you intend to promote the use of the Master Agreement.

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?

How will your company manage due dates for administrative fee payments and usage reports?

Through its Cooperative Development Coordinators and Education & Outreach team, NASPO ValuePoint assists Lead States by engaging vendors in strategies aimed at promoting master agreements. What challenges do you see in working with NASPO ValuePoint staff in this way?

## Section 5: Price Proposal

Price in proposals will be evaluated independent of the technical evaluation. Price proposal must be submitted to the Lead State as a separate document in Offerors Proposal. **Do not embed price proposal in the technical proposal response.**

Offeror shall provide detailed costs for all costs associated with the responsibilities and related services, per Attachment C which consists of a market basket.

Cost for the NASPO ValuePoint Master Agreements shall be based on the following:

Offeror must submit percentage discount on retail price required by Attachment C, Price Proposal and Market Basket. 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.

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.

### 5.1 Price and Rate Guarantee Period

Percentage off offered shall be guaranteed for the term of the Master Agreement. However, the immediate benefit of any increase in allowable discount shall automatically be given.



## 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, who 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 5 years.

### **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. 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](mailto: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: 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 in shown in Attachment E.

c. No personal identification numbers, e.g. employee 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 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.

## **9. NASPO ValuePoint eMarket Center**

In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. whereby SciQuest 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.

The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provided customers information regarding the Contractors website and ordering information. 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.

## **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 term 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 60 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. 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.
- c. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
- d. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.

e. 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 per hour or other pricing elements 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.

f. 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.

g. 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.

h. 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 not accepted at the retail establishment 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 substantially 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.

## **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**

Manufacturer warranties apply in addition to any warranty extended by the Contractor in its retail operations.

## **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 for 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.

e. 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 credit card information 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.

## **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.

## **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 are 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 other 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 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.

### **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.

**(November 2015)**

## Attachment B: Scope of Work

### 4.2.10 SCOPE OF WORK

#### A. Pricing

The pricing will be a percentage off the current retail price at the time of purchase for all items available. If the item purchased is on sale or under another promotional term NASPO ValuePoint will expect to receive the lower of the two prices at the time of purchase. The percentage off will remain constant during the duration of the contract and all renewals. Sales tax or other fees shall be determined by the Participating State or Participating Entity in the Participating Addendum.

#### B. Categories

The RFP consists of 13 categories. This proposal has been divided into categories with items that generally represent those most frequently purchased from qualified offerors that can provide all products at minimum of one entire category listed below and be able to supply the products to a minimum of one entire State.

To better describe each category, the United Nations Standard Products and Services Code (UNSPCSC) code has been used.

<b><u>Category:</u></b>	<b><u>UNSPCSC Code(s)</u></b>
Appliances	5214
Electrical Tools/Supplies	3912
Exterior Finish Materials	3015
Fasteners	3116
Hand Tools	2711
Interior Finishing Materials	3016 and 3017
Lighting, Ballasts/Fixtures	3910 and 3911
Material Handling	2410 and 3019
Outdoor Garden Supplies and Equipment	27112
Paint and Accessories	3121
Plumbing Tools/Supplies	3018 and 4014
Power Sources/Accessories	2610
Power Tools (corded and cordless)	2700 and 2711
Miscellaneous	

#### C. Purchases

Purchases resulting from this contract will be initiated by the end user with the awarded offeror(s). The offeror must generate an invoice with the correct retail price and the appropriate percentage off amount listed. The offeror must be willing to accept the various purchasing cards of the

Participating States or Participating Entities as payment without extra charges or fees. The end user may also choose account billing with the awarded offeror. These details may be negotiated with the Participating States participating addendum.

D.

**Administrative Fee**

The awarded offeror will remit to NASPO ValuePoint a contract administration fee in the amount of one-quarter of one percent (0.25%) of the total sales from this contract.

- a. The pricing listed on the proposal shall include the NASPO ValuePoint administrative fee. **ADMINISTRATIVE FEES SHALL NOT BE ADDED AS A LINE ITEM ON ANY INVOICE.**
- b. A statement verifying the total sales amount for all Participating States or Participating Entities must accompany the remittance. This remittance is due to NASPO ValuePoint no later than 60 days following the end of each calendar quarter.
- c. In addition to the NASPO ValuePoint contract administration fee as stated above, some Participating States or Participating Entities may also require an administrative fee. Specific State Administrative Fees may be added to the price of each item. This remittance is due to the individual state no later than 45 days after the last day of each calendar quarter.

E.

**Contract Participants**

Apart from the Lead State of Utah conducting the solicitation, the States or Entities indicated in Attachment G have signified their intent to enter into a contract. This Intent to Participate is not binding. Other states or entities may use the awards based on this solicitation at any time during the contact period.

E.

**Participating Addendums**

- a. A Participating Addendum must be executed by any State or other Entity that decides to adopt a NASPO ValuePoint contract.
- b. A Participating Addendum shall be executed for each offeror by the individual State or other Entity desiring to use their contract.
- c. Additional States or Entities may be added with the consent of the offeror and the NASPO ValuePoint through execution of Participating Addendums.



- d. A Participating Addendum allows for each Participating State or Entity to add terms and conditions that may be unique to their state.
- e. The Participating State or Entity and the Offeror shall negotiate and agree upon any additional terms and conditions prior to the signing and execution of the Participating Addendum.
- f. States are not mandated to sign a Participating Addendum with all awarded Offerors.

**Attachment C: Price Proposal and Market Basket****Instructions:**

Enter your company name on line number nine. In the Pricing Schedule section, enter the percentage discount off retail pricing you are offering for each category. In the Market Basket section, enter the current retail price for each item in the market basket. The discount percentage will automatically fill in based on the discount percentage entered in the corresponding category of the Pricing Schedule section and the contract price and total aggregate discounted price will automatically calculate.

Name of company submitting pricing: \_\_\_\_\_

**PRICING SCHEDULE**

Appliances	_____	% Off Retail
Electric Tools/Supplies	_____	% Off Retail
Exterior Finish Materials	_____	% Off Retail
Fasteners	_____	% Off Retail
Hand Tools	_____	% Off Retail
Interior Finishing Materials	_____	% Off Retail
Lighting,Ballasts/Fixtures	_____	% Off Retail
Material Handling	_____	% Off Retail
Outdoor Garden Supplies and Equipment	_____	% Off Retail
Paint and Accessories/Supplies	_____	% Off Retail
Plumbing Tools/Supplies	_____	% Off Retail
Power Sources/Accessories	_____	% Off Retail
Power Tools (corded & cordless) and Accessories	_____	% Off Retail

**MARKET BASKET**

Item Description	Brand*	Unit Size	Current Retail Price	% Discount off Retail	Contract Price
12 to 3 black power cord (by the foot)	Southwire	foot		0%	\$0.00
48MM X 50M Clear Packing Tape - 6 count	Scotch	package		0%	\$0.00
5-Gauge 1-inch Zinc-Plated Joint Fastener Nails 30 count	Everbilt	package		0%	\$0.00
60 Watt Equivalent LED Standard Shape A19 Light Bulbs, 3 pack	Sylvania	package		0%	\$0.00
Batteries - AA 24 CT	Duracell	package		0%	\$0.00
20-in X 1000-ft Stretch Wrap	Duck	each		0%	\$0.00
Calcium Chloride Ice Melt - 50lb	Generic	box		0%	\$0.00
Caulk - 10.1 oz clear silicone window and door caulk	GE	each		0%	\$0.00
Door - Interior 30" 6-panel Hollow Molded Prehung	Masonite	each		0%	\$0.00
Drill bit - Hex Shank Titanium 1/4"	DeWalt	each		0%	\$0.00
Drywall - Gypsum 1/2 X 10 X 4	Sheetrock	each		0%	\$0.00
Drywall - Gypsum 1/2 X 8 X 4	Sheetrock	each		0%	\$0.00
Duct Tape - Utility 1.88 X 55 yard	3M	roll		0%	\$0.00
Electrical Box - 1-Gang 20-CU IN PVC Plastic	Carlon	each		0%	\$0.00

## Attachment D

## AS16040 Historical Spend

State	MD	MS	MO	NE	NV																	
84 Lumber Co																						
2016 not available																						
2015	\$ 1,024.00	\$ 86,709.00	\$ 32,888.00	\$ 104,041.00	\$ 16,980.00																	
2014			\$ 24,833.00	\$ 3,539.00																		
2013			\$ 4,689.00																			
2012			\$ 14,719.00																			
2011			\$ 734.00																			
Contract current total	\$ 1,024.00	\$ 86,709.00	\$ 77,863.00	\$ 107,580.00	\$ 16,980.00																	

Attachment E



NASPO Cooperative Purchasing Organization, LLC

## Cooperative Contract Sales Reporting Data Requirements and Data Format

This is the minimally acceptable reporting requirement for NASPO ValuePoint cooperative contracts. These elements are NOT negotiable. The field size of certain elements may be adjusted, with authorization from NASPO ValuePoint Cooperative Development Team to accommodate differences in the Vendor Contract Number size.

Lead zeros should be avoided if possible. Fields should be right justified. Field with no data should be left blank.

Reports should be submitted in Microsoft Excel 97-13 format or an equivalent approved by the NASPO ValuePoint Cooperative Development Team.

Field Name	COL #	Field Description	Data Type	Field Size
VENDOR NAME	A	Name of Vendor		
VENDOR CONTRACT NUMBER	B	Lead State assigned contract number (using Lead State's numbering protocol)	Alpha Numeric	5
STATE	C	State postal abbreviation code (Alaska = AK, Missouri = MO, etc.)	Alpha Numeric	2
CUSTOMER TYPE (SEGMENT)	D	State Gov't, Education-K12, Education-HED, Local Gov't, Medical, Other - are acceptable segments. [determined by industrial practice for each contract - uniform for each contract]	Alpha Numeric	45
BILL TO NAME	E	Customer (agency) Bill to name	Alpha Numeric	60
BILL TO ADDRESS	F	Customer (agency) Bill to address	Alpha Numeric	40
BILL TO CITY	G	Customer (agency) Bill to city	Alpha Numeric	40
BILL TO ZIPCODE	H	Zip code in standard 5-4 format [standard 5 digits is acceptable, formatted as a zip code]	Alpha Numeric	9
SHIP TO NAME	I	Customer (agency) Ship to name	Alpha Numeric	60
SHIP TO ADDRESS	J	Customer (agency) Ship to address	Alpha Numeric	40
SHIP TO CITY	K	Customer (agency) Ship to city	Alpha Numeric	40
SHIP TO ZIPCODE	L	Zip code in standard 5-4 format [standard 5 digits is acceptable, formatted as a zip code]	Alpha Numeric	9
ORDER NUMBER	M	Vendor assigned order number	Alpha Numeric	20
CUSTOMER PO NUMBER	N	Customer provided Purchase Order Number	Alpha Numeric	20
CUSTOMER NUMBER	O	Vendor assigned account number for the purchasing entity	Alpha Numeric	20
ORDER TYPE	P	Sales order, Credit/Return, Upgrade/Downgrade, etc. [determined by industrial practice for each contract - uniform for each contract]	Alpha Numeric	35
PO DATE (ORDER DATE)	Q	(mm/dd/ccyy)	Numeric	8
SHIP DATE	R	(mm/dd/ccyy)	Numeric	8
INVOICE DATE	S	(mm/dd/ccyy)	Numeric	8
INVOICE NUMBER	T	Vendor assigned Invoice Number	Alpha Numeric	20
PRODUCT NUMBER	U	Product number of purchased product	Alpha Numeric	25
PRODUCT DESCRIPTION	V	Product description of purchased product	Alpha Numeric	60
UNSPSC	W	Commodity-level code based on UNSPSC code rules	Alpha Numeric	8
LIST PRICE/MSRP/CATALOG PRICE	X	List Price - US Currency (\$99999.999) [determined by industrial practice for each contract - uniform for each contract]	Numeric	10
UNIT PRICE	Y	Unit Price - US Currency (\$99999.999)	Numeric	10
QUANTITY	Z	Quantity Invoiced (99999.999)	Numeric	11
TOTAL PRICE	AA	Extended Price (unit price multiplied by the quantity invoiced) - US Currency (\$99999999.999)	Numeric	13
NASPO VALUEPOINT ADMIN FEE	AB	Administrative Fee based on Total Price - US Currency (\$999999.999)	Numeric	13
VAR/Reseller/Distributor	AC	If a VAR/Reseller/Distributor, name of VAR/Reseller/Distributor and state where located (may be a code with a cross reference sheet provided)	Alpha Numeric	30
Energy Star Compliant	AD	Yes = 1 No = 2 Energy Star Does not Apply = 0	Numeric	1
EPEAT Compliant	AE	Gold = 1 Silver = 2 Bronze = 3 EPEAT Does not Apply = 0	Numeric	1
Optional	AF		Alpha Numeric	60
Optional		[ADDITIONAL OPTIONAL COLUMNS MAY BE ADDED BASED ON APPROVAL FROM WNCDT]	Alpha Numeric	60

August 14, 2009

7/8/2018 8:44

Month      Year

### Optional Columns

2014/01/01														Energy Bar										Gold-1		Optional -									
Vendor	Contract	State	Part Officer	Customer	Bill to Name	Bill to Address	Bill to City	Bill to Zipcode	Ship to Name	Ship to Address	Ship to City	Ship to Zipcode	Order Number	Customer PO Number	Customer Number	Order Type	PO Date	Ship Date	Invoice Date	Invoice Number	Product Number	Product Description	Commodity	UNSPSC	List	Yrs-MBSP	Unit Price	Quantity	Total Price	Admin Fee	VAH/Ream	Compliant	Order-1	Optional -	
Vendor Name	Contract Number	State	(1st office)	Type	Bill to Name	Address	City	Zipcode	Ship to Name	Address	City	Zipcode	Order Number	Customer PO Number	Customer Number	Order Type	PO Date	Ship Date	Invoice Date	Invoice Number	Product Number	Product Description	Commodity	UNSPSC	List	Yrs-MBSP	Unit Price	Quantity	Total Price	Admin Fee	or NAME	NO	Invoice-1	Category	Class Detail

## Walk-in Building Supply SOLICITATION #AS16040

### RFP EVALUATION SCORESHEET

**DRAFT:** This document is intended to be a draft and should not be returned to the Division of Purchasing. Please return this document to the evaluation. This document is not subject to GRAMA pursuant to Utah Administrative Code R33-7-702(2).

**Firm Name:** \_\_\_\_\_

**Evaluator:** \_\_\_\_\_

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

**Score will be assigned as follows:**

- 1 = Poor, fails to address the requirements in the RFP
- 2 = Fair, addresses the requirements in the RFP unsatisfactorily
- 3 = Good, addresses all requirements in the RFP satisfactorily
- 4 = Very Good, addresses all requirements in the RFP and may exceed some
- 5 = Superior, addresses all requirements in the RFP and exceeds them

Minimum Mandatory Requirements		RFP Section	Evaluation (Pass/Fail)
1	Insurance requirements	4.1.1	
2	NASPO ValuePoint Administrative Fee	4.1.2	
3	NASPO ValuePoint Administrative Fee/SciQuest	4.1.3	

Scoreable Technical Criteria		RFP Section	Evaluator Score (1-5)	Criteria Weight	% of Tech Criteria	Points Possible	Points Earned
1	Inventory and Store Locations	4.2.1		10	10.0%	50.0	0.0
2	Customer Service/Emergency Service	4.2.2		15	15.0%	75.0	0.0
3	Contract Management	4.2.3		15	15.0%	75.0	0.0
4	Implementation	4.2.4		10	10.0%	50.0	0.0
5	Purchase Card and Billing	4.2.5		10	10.0%	50.0	0.0
6	Sustainability/Environmental Practices	4.2.6		15	15.0%	75.0	0.0
7	Storage of Electronic Data	4.2.7		10	10.0%	50.0	0.0
8	Return Policy	4.2.8		5	5.0%	25.0	0.0
9	Scope of Work	4.2.9		5	5.0%	25.0	0.0
10	Promotion of the NASPO ValuePoint Master Agreement	4.2.10		5	5.0%	25.0	0.0
					<b>100.0%</b>	<b>500.0</b>	<b>0.0</b>

Required Technical Point Threshold	RFP Section	Min Percent	Min Points Required	Points Earned	Percent Earned	Evaluation
	3.4	50%	300.0			

Cost	RFP Section	Low Cost Option	Offered Cost	Percent of Total	Points Possible	Points Earned
	3.4			30%	500.0	0.0

\* Purchasing will use the following cost formula: The points assigned to each offerors cost proposal will be based on the lowest proposal price. The offeror with the lowest Proposed Price will receive 100% of the price points. All other offerors will receive a portion of the total cost points based on what percentage higher their Proposed Price is than the Lowest Proposed Price. An offeror whose Proposed Price is more than double (200%) the Lowest Proposed Price will receive no points. The formula to compute the points is: Cost Points x (2- Proposed Price/Lowest Proposed Price).

Total Evaluation Points	Percent of Total	Points Possible	Points Earned
Total Technical Evaluation Points	70%	500.0	0.0
Total Cost Evaluation Points	30%	500.0	0.0
<b>Total Evaluation Points</b>	<b>100%</b>	<b>1,000.0</b>	<b>0.0</b>

Signatures:	Date:
Evaluator 1	_____
Evaluator 2	_____
Evaluator 3	_____
Evaluator 4	_____
Evaluator 5	_____

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**AS16040 Walk-in Building Supply****Instructions:**

**Important Note: Do not post this entire document to Bid Sync. This serves as a guide only. Develop a separate document to post on Bid Sync so that the other Worksheet tabs are NOT included on your Bid Sync Posting.**

Enter the solicitation number and name.

Enter the name of the winning firm, but all other Offeror names will be labeled alphabetically.

Enter the Grand Total Score (includes technical, interview, cost and all other scores combined) for each Offeror.

Do not include the scores of Offerors who have been disqualified.

Offeror	Total Score
Company ABC	
Offeror A	
Offeror B	
Offeror C	



## Attachment G

These states have signified their intent to participate in this contract.

<b>State</b>	<b>Estimated Volume per Year</b>
Alaska	\$700,000.00
Arkansas	\$898,885.00
Connecticut	\$450,000.00
Hawaii	\$250,000.00
Indiana	\$986,502.00
Louisiana	N/A
Massachusetts	\$4,300,000.00
Missouri	\$4,200,000.00
Montana	\$50,000.00
Nevada	\$3,157,000.00
Ohio	\$1,153,246.77
Oklahoma	\$1,500,000.00
Oregon	\$858,510.00
Utah	\$664,806.00
Vermont	Unknown
Washington	\$18,004,393.00

**Attachment H****Participating Addendum for the State of Oregon****PARTICIPATING ADDENDUM  
("Addendum")  
NASPO ValuePoint****FOR  
WALK-IN BUILDING SUPPLIES AND RELATED MATERIAL/WALK-IN CARPENTRY  
SUPPLIES/WALK-IN HOME IMPROVEMENT SUPPLIES UNDER REQUEST FOR  
PROPOSAL (RFP) #AS16040****Administered by the State of Utah (hereinafter "Lead State")****MASTER AGREEMENT  
[Contractor Name xxxxxx]  
Master Agreement No: xxxxxx  
(hereinafter "Contractor")****And****STATE OF OREGON****(hereinafter "Participating State")**

**1. Scope; Order of Precedence:** This Addendum covers the **Walk-In Building Supplies and related material/Walk-In Carpentry Supplies/Walk-In Home Improvement Supplies under Request for Proposal (RFP) #AS16040** led by the State of Utah for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts with the prior approval of the state's chief procurement official.

This Addendum establishes an agreement to agree between Contractor and Participating State pursuant to ORS 279B.140. All supplies and services offered under the Master Agreement may be procured under this Addendum. This Addendum contains additional terms and conditions specifically applicable to individual Contracts between Contractor and Authorized Purchasers. In the event of a conflict between the terms and conditions of this Addendum and the Master Agreement, the following order of precedence applies:

- (1) this Addendum, less its exhibits;
- (2) Exhibit No. 1 of the Addendum (State Specific Terms and Conditions);
- (3) Exhibit No. 2 of the Addendum (Insurance);
- (4) Exhibit No. 3 of the Addendum (Tax Certification);
- (5) any Purchase Order issued by an Authorized Purchaser pursuant to this Addendum; and
- (6) the Master Agreement, including its attachments.

**2. Participation:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an Participating State's

statutes to use state contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

**3. Participating State Modifications or Additions to Master Agreement:**

(These modifications or additions apply only to actions and relationships within the Participating State.)

Participating State to check one box.

☐ No changes to the terms and conditions of the Master Agreement are required

☒ Please see the attached Exhibit No. 1 for changes modifying or supplementing the Master Agreement terms and conditions.

**4. Authorized Purchaser - Contractor Selection:**

This Addendum is not exclusive. Authorized Purchasers may acquire supplies and services from other contractors. Notwithstanding any presumption that an Awardee who has met the point thresholds set forth in Section 3.5 of the RFP has been determined to provide 'best value' to the State of Utah, in the event DASPS awards Addenda to more than one contractor under this solicitation, Authorized Purchasers who are State Agencies shall follow the selection process below:

**Large Purchases, Selection Process for State Agencies.** From time to time, Authorized Purchasers (or Purchasing Entities), *who are state agencies*, may purchase Products or Services from Contractor or other contractors and shall use one of the following three selection processes:

**1) Highest Ranked Proposer in RFP #AS16040:** Authorized Purchaser may issue purchase orders or contracts for Products or Services to the Awardee who received the highest total points in **RFP #AS16040**.

OR

**2) Highest Ranked Proposer in Market Basket Comparison:** Authorized Purchaser, on an annual basis (beginning upon the Effective Date of the Addendum and then on each anniversary date thereafter) may make a selection to be effective for the entire contract year period, as follows:

- (a) Authorized Purchaser may create its own market basket comprised of up to 200 most used Products or Services;
- (b) Authorized Purchaser may then define the criteria most important to it in the selection of a provider, such as: price, functionality, accounting/invoicing issues, use, availability, past performance;
- (c) Authorized Purchaser shall request quotes from each of the providers for the upcoming contract year period;
- (d) Authorized Purchaser shall then evaluate and score the market basket from each provider; and
- (e) Authorized Purchaser shall acquire the Supplies and Services from the highest ranking provider from its market basket scoring.

OR

**3) Cost Comparison:** Authorized Purchaser may conduct a Product or Service specific comparison based upon price.

**Small Purchases, Contractor Selection Process:** For purchases under \$10,000, Authorized Purchaser may select the Contractor of its choice in compliance with applicable statute and rule.

5. Contractor Selection for Authorized Purchasers who are not State Agencies. Authorized Purchasers who are not State Agencies shall follow their own procurement statutes, rules, ordinances or other laws.

6. Primary Contacts: The primary contact individuals for this Addendum are as follows (or their named successors):

<u>Contractor</u>	
Name	
Address	
Telephone	
Fax	
E-mail	

<u>Participating State</u>	
Name	Shirley A. Smith
Address	1225 Ferry St. SE U140 Salem, Oregon 97301
Telephone	(503) 378-5395
Fax	(503) 373-1626
E-mail	Shirley.smith@oregon.gov

7. Subcontractors: All Contractor dealers and resellers authorized in the State of Oregon, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The Contractor's dealer's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

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

9. Tax Compliance: As set forth on Exhibit No. 3, Contractor has complied with the tax laws of this State and the applicable tax laws of any political subdivision of this State. Contractor shall, throughout the duration of this Addendum and any extensions, comply with all tax laws of this State and all applicable tax laws of any political subdivision of this State. For the purposes of this Section, "tax laws" includes: (i) All tax laws of this State, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of this State that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to supplies, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Any violation of this Section 9 constitutes a material breach of this Addendum and any Contract issued under this Addendum. Further, any violation of Contractor's warranty set forth in Exhibit No. 3 also shall constitute a material breach of this Addendum and any Contract issued under this Addendum. Any violation shall entitle DASPS or Authorized Purchaser to terminate this Addendum

or the applicable Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Addendum or the applicable Contract, and to pursue any or all of the remedies available under this Addendum, a Contract, at law, or in equity, including but not limited to:

- Termination of this Addendum or the applicable Contract, in whole or in part;
- Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to Authorized Purchaser's setoff right, without penalty; and
- Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. DASPS or Authorized Purchaser may recover any and all damages suffered as the result of Contractor's breach of this Addendum or the applicable Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Supplies or Services or both.

These remedies are cumulative to the extent the remedies are not inconsistent, and DASPS or Authorized Purchaser may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

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

Participating State: STATE OF OREGON, acting by and through the Department of Administrative Services, Procurement Services	Contractor:
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:
	FEID:

[Additional signatures as required by Participating State]

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator	Shannon Berry
Telephone	775-720-3404
E-mail	sberry@naspovaluepoint.org

**[Please email fully executed PDF copy of this document to [PA@naspovaluepoint.org](mailto:PA@naspovaluepoint.org) to support documentation of participation and posting in appropriate data bases]**

**EXHIBIT NO. 1****Changes to Master Agreement State-Specific Constitutional, Statutory and Other Requirements**

**1. Definitions.** The following terms have the meanings set forth below. Capitalized terms not defined in this Addendum have the meaning ascribed to them in the Master Agreement and its exhibits.

“Authorized Purchaser” means an agency of the State of Oregon or any ORCPP member that submits a Purchase Order to Contractor. For purposes of this Addendum, a Purchasing Entity is an Authorized Purchaser.

“Contract” means the agreement between Authorized Purchaser and Contractor formed by the Authorized Purchaser’s issuance of a Purchase Order that incorporates by reference the terms and conditions of the Master Agreement and this Addendum.

“DASPS” means the State of Oregon acting by and through the Department of Administrative Services, Procurement Services.

“ORCPP” means the Oregon Cooperative Purchasing Program, which recognizes certain agencies and organizations within the State of Oregon as authorized to purchase the supplies and services available under a price agreement entered into by the State.

“Master Agreement” means the State of Oregon Master Agreement # \_\_\_\_\_ between Contractor and the State of Utah, on behalf of the member states of the National Association of State Procurement Officials and the Western States Contracting Alliance, and its attachments, which together with this Addendum sets forth terms, conditions and requirements for purchase by Authorized Purchasers of the supplies and services described therein.

“Purchase Order” means the purchase order document submitted to Contractor by an Authorized Purchaser that incorporates this Addendum by reference and specifies the quantity and type of supplies or services that Contractor will provide to the Authorized Purchaser under the terms of the Master Agreement and this Addendum.

“State”, for the purposes of this Addendum, means the State of Oregon.

**2. Purchase Orders.**

**2.1 Purchase Orders.** Authorized Purchasers may use their own forms for Purchase Orders. State agencies may also use the general State-approved Purchase Order referencing the Master Agreement Number. To the extent that the terms of any form differ from the terms of this Addendum, the terms of this Addendum supersede such contrary terms. Each Purchase Order from an Authorized Purchaser that is not a State agency must contain, on the front page, the following language:

**THIS PURCHASE IS PLACED AGAINST THE STATE OF OREGON MASTER AGREEMENT NO. \_  
\_\_\_\_\_. THE TERMS AND CONDITIONS OF THE MASTER AGREEMENT AND THE ASSOCIATED  
PARTICIPATING ADDENDUM ENTERED INTO BY THE STATE OF OREGON, CONTRACT NO.**

**\_\_\_\_\_ APPLY TO THIS PURCHASE AND SUPERSEDE ALL CONFLICTING TERMS AND CONDITIONS, EXPRESS OR IMPLIED.**

**2.2 Effect of Purchase Orders.** The State is only liable for purchases made by State of Oregon agencies that issue Purchase Orders. Other Authorized Purchasers are responsible for any purchases under Purchase Orders they issue. The State expressly disclaims any liability for purchases made by non-State agency Authorized Purchasers or any other entity.

**2.3 Verification of Authorized Purchasers.** Contractor is responsible for verifying that it provides supplies and services under this Addendum only to Authorized Purchasers. Contractor may verify that a particular entity is an ORCPP member on-line at <http://www.oregon.gov/DAS/PFSS/SPO/coop-menu.shtml> or by using the Oregon Procurement Information Network (ORPIN) at <http://orpin.oregon.gov/open.dll/welcome>.

**3. Payment Provisions.** All payments are subject to ORS 293.462.

**4. Funds available and authorized/non-appropriation.** The State of Oregon's and its agencies' payment obligations under this Addendum are conditioned upon Authorized Purchaser's receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under any Contract issued under this Addendum. Contractor is not entitled to receive payment under this Addendum or any Contract from any part of Oregon state government other than Authorized Purchaser. Nothing in this Addendum or Contract is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. Authorized Purchaser represents that it has sufficient appropriations and limitation for the current biennium to make payments under any Contract issued under this Addendum.

**5. Volume Sales Reports (VSRs) / Vendor Collected Administrative Fee (VCAF)**

**5.1 Volume Sales Reports (VSRs):**

**5.1.1** Contractor shall submit a Volume Sales Report (VSR) no later than thirty (30) calendar days from the end of each calendar quarter, which contains:

Complete and accurate details of all receipts (sales and refunds) for the reported period;  
The information as identified in the DASPS document titled Volume Sales Report Template - Data Requirement, Format and Layout; and Such other information as DASPS may reasonably request.

Contractor shall send a VSR to DASPS each quarter, whether or not there are sales. When no sales have been recorded for the quarter a report must be submitted stating "No Sales for the Quarter."

**5.1.2 Data Medium and Delivery Medium:** Contractor shall provide VSRs in MS Excel (.xls) format. VSRs must be submitted by e-mail. Delivered print outs of VSRs are not acceptable. Hard copies of VSRs on CDs are only acceptable if the size of the file precludes transmission by email. Approval from the Contract Administrator must be obtained for deviations from these requirements.

**5.1.3 Receipt/Acceptance:** The first VSR submitted by the Contractor must be submitted to the DAS PS Contract Administrator for review and approval. Approved first VSRs and subsequent VSRs must be submitted to [VCAF.REPORTING@oregon.gov](mailto:VCAF.REPORTING@oregon.gov). A separate section follows describing the administrative charge if it is applicable. The Contract Administrator's receipt or acceptance of any of the VSRs furnished pursuant to this Addendum shall not preclude DASPS from challenging the validity thereof at any time.

**5.1.4** DASPS reserves the right to terminate this Addendum if volume sales reports are not received as scheduled on in the prescribed format.

## **5.2 Vendor Collected Administrative Fee (VCAF):**

### **5.2.1 Vendor Collected Administrative Fee (VCAF) PERCENTAGE:**

The Vendor Collected Administrative Fee (VCAF), is a charge equal to One Percent (1.0 %) of Contractor's Gross total sales, less any credits, made to Authorized Purchasers during the calendar quarter.

**5.2.2 VCAF Amount / Payment Due Date:** During the term of this Addendum and for the sales during the last calendar quarter of the term of this Addendum, the Contractor shall remit VCAF payment to DAS PS within forty-five (45) calendar days after the end of each calendar quarter.

**5.2.3** Contractors may not reflect the VCAF fee as a separate line item charge to Authorized Purchasers. Contractor's proposed prices shall reflect all Contractor's charges to Authorized Purchasers. For the purposes of this Addendum, quarters end March 31, June 30, September 30, and December 31. DASPS will invoice the Contractor for the VCAF on a State generated invoice from the information submitted on the VSR. Contractor is responsible for timely reporting and payment, regardless of entity that actually reports or makes VCAF payment to DASPS.

**5.2.3.1 Payment Format:** The fee shall be in the form of a check remitted to:

State of Oregon  
Department of Administrative Services  
Attn: Shared Financial Services/PS  
155 Cottage Street NE  
Salem, Oregon 97301

Any other form of payment must be specifically approved by the Contract Administrator.

**5.2.3.2 Interest:** Any payments Contractor makes or causes to be made to DASPS after the due date as indicated on the invoice shall accrue interest at a rate of 18% per annum or the maximum rate permitted by law, whichever is less, until such overdue amount shall have been paid in full. DASPS' right to interest on late payments shall not preclude DASPS from exercising any of its other rights or remedies pursuant to this Addendum or otherwise with regards to Contractor's failure to make timely remittances.

**5.3 Audit:** DASPS, as its own expense (except as provided herein), shall have the right during regular business hours, at Contractor's premises, and upon reasonable notice, by itself or by a person authorized by it, to audit Contractor's Records, as defined herein, and other pertinent data,



to determine and verify the figures reported in any VSRs furnished by Contractor. In the event that any such audit reveals underpayment of administrative fees, Contractor shall immediately pay the amount of deficiency, together with interest thereon at the rate provided in Section 5.2.3.2. At DASPS' request, Contractor shall pay the reasonable cost of an audit, but only if such audit reveals that an underpayment may exist as determined by DASPS.

**5.4 Limitation of Liability:** Contractor acknowledges and agrees that the State shall bear no liability on Contracts entered into for purchases by non-State Agencies, which liability the State expressly disclaims. With regard to non-State Agencies, Contractor agrees to look solely to the respective contracting party for any rights and remedies Contractor may have at law or in equity arising out of the sale and purchase of Contractor's Supplies or Services and the resulting contractual relationship, if any, with each such contracting party.

**6. Warranties.** Authorized Purchasers are entitled to the warranties, rights, remedies, and benefits under the Master Agreement and this Addendum for any purchases made by such Authorized Purchasers pursuant to Purchase Orders. Without limiting the generality of the warranty provisions of the Master Agreement, Contractor represents and warrants to Authorized Purchaser that:

6.1. Contractor has the power and authority to enter into and perform this Addendum and that this Addendum, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms;

6.2. Supplies or Products will be new, unused, current production models, where applicable, and will be free from defects in materials, design and manufacture for manufacturer's standard warranty period. Where specifications have been made a part of the RFP, Contractor further warrants that all Supplies or Products conform to the specifications and meet or exceed all quality and safety standards set in the RFP;

6.3. all Services to be performed under this Addendum will be performed in accordance with the highest applicable professional or industry standards, and that only workmanship of the first quality shall be employed in the performance of this Addendum;

6.4. Contractor shall transfer to Authorized Purchaser all manufacturer warranties covering Supplies or Products, if any at time of delivery at no charge, and

6.5. all Supplies or Products, if any, are free and clear of any liens or encumbrances, and that Contractor has full legal title to such Supplies or Products, and that no other person has any right, title or interest in the Supplies or Products which is superior to or infringe upon the rights granted to Authorized Purchaser hereunder.

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided in the Master Agreement. All warranties provided in this Addendum are cumulative and will be interpreted expansively so as to afford Authorized Purchaser the broadest warranty protection available.

## **7. Indemnities.**

**7.1 General Indemnity.** Contractor will defend, save, hold harmless and indemnify the Authorized Purchaser and the State of Oregon and their agencies, subdivisions, officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of or relating to the activities of Contractor or its officers, employees, subcontractors or agents under the Addendum.

**7.2 Infringement Indemnity.** Contractor will, at Contractor's sole expense, defend, save, hold harmless and indemnify Authorized Purchasers and the State of Oregon and their agencies, subdivisions, officers, employees and agents from and against any and all costs, damages, attorneys' fees, and any and all costs incurred in any settlement negotiation or final settlement agreement resulting from, relating to, or arising out of a claim that any aspect of the supplies or services furnished under a Purchase Order infringes a patent, utility model, industrial design, copyright, mask work, trademark, trade dress, or any other legally cognizable intellectual property right of any third party (an "Infringement Claim").

**7.3 Participation.** Control of Defense and Settlement. Contractor's obligation to indemnify Authorized Purchaser as set forth in Sections 7.1 and 7.2 is conditioned on Authorized Purchaser providing to Contractor prompt notification of any claim or potential claim of which Authorized Purchaser becomes aware that may be the subject of those Sections. Contractor shall have control of the defense and settlement of any claim that is subject to Section 7.1 or Section 7.2; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any Authorized Purchaser of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Attorney General, nor shall Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

**7.4 Remedies.** If any supplies or services furnished by Contractor are, in Contractor's opinion, likely to become the subject of an Infringement Claim, or if an Authorized Purchaser is prevented from exercising its rights under this Addendum based on any Infringement Claim or court order arising from any Infringement Claim, then Contractor may, at its option and expense, procure for the Authorized Purchaser the right to continue using the allegedly infringing supplies or services, or replace or modify the supplies or services so that they become non-infringing; provided that the replacement or modified good or service meets the specifications set forth in the applicable Purchase Order to the satisfaction of the Authorized Purchaser. If the foregoing remedies are not available, then Authorized Purchaser will return the allegedly infringing supplies or terminate the allegedly infringing services, and Contractor will refund Authorized Purchaser's payments, in full, for the allegedly infringing supplies or services.

## **8. Term and Termination of Addendum.**

**8.1 Term.** This Addendum remains in effect until the earlier of (a) the expiration or termination of the Master Agreement, or (b) termination of this Addendum in accordance with its terms.

**8.2 Termination.** DAS PS may terminate this Addendum, in whole or in part, at any time upon thirty (30) days prior notice to Contractor. In addition, DAS PS may terminate this Addendum, in whole or in part, immediately upon notice to Contractor, or at such later date as DAS PS may establish in such notice, for any reason, or upon the occurrence of any of the following events:

8.2.1. State fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the supplies to be purchased under the Addendum; or

8.2.2. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of supplies under this Addendum is prohibited or the State is prohibited from paying for such supplies from the planned funding source.

Upon receipt of written notice of termination, Contractor will stop performance under all Purchase Orders as directed by State.

**8.3** Termination under any provision of this Addendum does not extinguish or prejudice State's or an Authorized Purchaser's right to enforce this Addendum or a Purchase Order with respect to Contractor's breach of any warranty or any defect in or default of Contractor's performance that has not been cured, including any right of the State or an Authorized Purchaser to indemnification by Contractor. If this Addendum or a Purchase Order is so terminated, the State or an Authorized Purchaser will pay Contractor in accordance with the terms of this Addendum for supplies delivered and accepted by the Authorized Purchaser.

## **9. Termination of Individual Purchase Orders.**

**9.1** Individual Purchase Orders may be terminated at any time by written consent of Authorized Purchaser and Contractor or Authorized Purchaser may, at its sole discretion, terminate individual Purchase Orders, in whole or in part, upon 30 days written notice to Contractor.

**9.2** Authorized Purchaser may terminate individual Purchase Orders, in whole or in part, immediately upon notice to Contractor, or at such later date as Authorized Purchaser may establish in such notice, upon the occurrence of any of the following events:

9.2.1. Authorized Purchaser fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the supplies to be purchased under the Purchase Order;

9.2.2. Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of supplies under the Purchase Order is prohibited or Authorized Purchaser is prohibited from paying for such supplies from the planned funding source; or

9.2.3. Contractor commits any material breach of this Addendum or a Purchase Order

**9.3** Upon receipt of written notice of termination, Contractor will stop performance under the Purchase Order as directed by Authorized Purchaser.

**9.4** Termination of a Purchase Order does not extinguish or prejudice Authorized Purchaser's right to enforce the Purchase Order with respect to Contractor's breach of any warranty or any defect in or default of Contractor's performance that has not been cured, including any right of Authorized Purchaser to indemnification by Contractor. In addition, termination of a Purchase Order does not extinguish or prejudice Authorized Purchaser's right to enforce the warranty, indemnification, governing law, venue and consent to jurisdiction provisions of this Addendum. If a Purchase Order is so terminated, Authorized Purchaser will pay Contractor in accordance with the terms of this Addendum for supplies delivered and accepted by Authorized Purchaser.

**10. Compliance with Applicable Law.** Contractor will comply with all federal, state and local laws, rules, regulations, executive orders and ordinances applicable to the Work under this Contract, and an Authorized Purchaser's performance under a Purchase Order is conditioned on Contractor's compliance with the provisions of ORS 279B.220, 279B.235, 279B.230. and 279B.270. In addition, Contractor warrants good and services provided under this Addendum will comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Workers' Compensation Division. Contractor also agrees to comply with (a) Title VI of the Civil Rights Act of 1964, (b) Section v of the Rehabilitation Act of 1973, (c) the Americans with Disabilities Act of 1990 and ORS 659.425, (d) all regulations and administrative rules established pursuant to the foregoing laws and (e) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

**11. Application of Public Records Law.** Contractor acknowledges that any disclosures Contractor makes to Authorized Purchaser under this Addendum are subject to application of the Oregon Public Records Law, including but not limited to ORS 192.410 – 192.505, the provisions for the Custody and Maintenance of Public Records, ORS 192.005 – 192.710, and of ORS 646.461 - 646.475. The non-disclosure of documents or of any portion of a document submitted by Contractor to Authorized Purchaser may depend upon official or judicial determinations made pursuant to the foregoing laws. Contractor will be notified prior to Authorized Purchaser's release of documents to Entities other than participating agencies or other State agencies. Contractor shall be exclusively responsible for defending Contractor's position concerning the confidentiality of the requested documents, at its own expense,

**12. Recycled Products.** Contractor will use, to the maximum extent economically feasible in the performance of this Contract, recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

**13. Notices.** Except as otherwise provided in a Purchase Order, any formal communications between the parties to or notices to be given under a Purchase Order will be given in writing by personal delivery of a facsimile transmission or the notice or mailing the notice, postage prepaid, at the address or number set forth on the Purchase Order. Any communication so addressed and mailed will be deemed to have been received five (5) calendar days after mailing. Any communication delivered by facsimile will be deemed to be given when a confirming report for the transmission is generated by the transmitting machine. To be effective against the receiving party, such facsimile transmission must be confirmed by telephone notice to the receiving party's authorized representative, as set forth in the Purchase Order. Any communication or notice by personal delivery will be deemed to be given when actually received by the appropriate authorized representative.

As between Contractor and State with respect to this Addendum, the Primary Contacts of Contractor and State are set forth above.

**14. Governing Law.** This Addendum and resulting Contracts are governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws.

**15. Jurisdiction and Venue.** Any claim, action, suit or proceeding (collectively, "Claim") between State or any other agency or department of the State of Oregon, and Contractor, that

arises from or relates to this Addendum or a Purchase Order under this Addendum, will be brought and conducted solely and exclusively in the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively in the United States District Court of the District of Oregon. CONTRACTOR, BY EXECUTION OF THIS ADDENDUM OR ACCEPTANCE OF A PURCHASE ORDER SUBMITTED PURSUANT TO THIS ADDENDUM HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing in this section will be construed as a waiver of the State of Oregon's sovereign immunity with respect to any Claim, whether brought under State or Federal law, or in State or Federal Court.

Any Claims between Contractor and an Authorized Purchaser other than the State of Oregon or State agency that arise from or are related to individual Purchase Orders or this Addendum will be brought and conducted solely and exclusively within the Circuit Court of the county in the State of Oregon in which such Authorized Purchaser resides or has its principal office, or at Authorized Purchaser's option, within such other county as Authorized Purchaser will be entitled to proceed under the venue laws of Oregon to bring or defend Claims. If any such Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

**16. Foreign Contractor.** If Contractor is not domiciled in or registered to do business in the State of Oregon as of the effective date of this Addendum, Contractor will promptly provide to the Oregon Department of Revenue all information required by that Department relative to the Contract. An Authorized Purchaser may withhold final payment under a Purchase Order until Contractor has provided the Oregon Department of Revenue with the required information.

**17. Merger Clause; Waiver.** This Addendum, including the Master Agreement and the exhibits attached to this Addendum, constitutes the entire agreement between the parties on the subject matter hereof, and supersede all prior agreements, oral or written. There are no understandings, agreements, or representations, oral or written, between these parties that are not specified in this Addendum. No waiver, consent, modification or change of terms of this Addendum binds either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made is effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Addendum does not constitute a waiver by the State of that or any other provision.

**18. Independent Contractor.** Contractor shall act at all times as an independent contractor and not as an agent or employee of Authorized Purchaser. Contractor has no right or authority to incur or create any obligation for or legally bind Authorized Purchaser in any way. Contractor is not an "officer", "employee", or "agent" of Authorized Purchaser (or any other agency, office, or department of the State of Oregon), as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary. Neither party shall make any statements, representations, or commitments of any kind or to take any action binding on the other except as provided for herein or authorized in writing by the party to be bound.

**19. Access to Records.** Contractor will maintain all fiscal records relating to Purchase Orders in accordance with generally accepted accounting principles and will maintain any other records relating to Purchase Orders in such a manner as to clearly document Contractor's performance thereunder. The Authorized Purchaser, the State and its agencies, the Oregon Secretary of State Audits Division and their duly authorized representatives will have access to such fiscal records

and to all other books, documents, papers, plans and writings of Contractor which relate to this Addendum to perform examination and audits and make excerpts and transcripts. To the extent provided by law, the federal government will be entitled to the same access as the State of Oregon and Authorized Purchasers. Contractor will retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six years, or such longer period as may be required by applicable law following final payment and termination of this Addendum, or until the conclusion of any audit, controversy or litigation arising out of or related to this Addendum, whichever date is later.

**20. Severability.** If any term or provision of this Addendum is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Addendum did not contain the particular term or provision held to be invalid.

**21. Survival.** Any terms of this Addendum, which by their nature are intended to survive termination or expiration including but not limited to warranty, indemnification, access to records, governing law, venue, consent to jurisdiction, termination and remedies provisions survive the termination or expiration of this Addendum.

**22. Insurance.** Within ten (10) days of the Effective Date, Contractor must provide insurance as set forth on Exhibit No. 2. No Purchase Orders may be placed or accepted until proof is provided that these requirements have been met.

**23. Anticipated Amendments.** The parties may need to amend this Addendum to modify selected terms, conditions, and price(s). This Addendum maybe modified by written document only.

**Exhibit No. 2 - INSURANCE**

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit No. 2 prior to performing under this Addendum and shall maintain it in full force and at its own expense throughout the duration of this Addendum and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to DAS PS. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

**WORKERS' COMPENSATION & EMPLOYERS' LIABILITY**

All employers, including Contractor, shall provide workers' compensation insurance as required by applicable workers' compensation laws for persons performing work under this contract including Employers' Liability Insurance with limits not less than \$500,000 each accident. Contractor shall require and ensure that each of its subcontractors complies with these requirements.

**COMMERCIAL GENERAL LIABILITY:**

☒ Required by DASPS ☐ Not required by DASPS.

Commercial General Liability Insurance covering bodily injury, death and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

**AUTOMOBILE LIABILITY INSURANCE:**

☐ Required by DASPS ☒ Not required by DASPS.

Automobile Liability Insurance covering all owned, non-owned, or hired vehicles with a combined single limit of not less than \$\_\_\_\_\_ for bodily injury and property damage.

**PROFESSIONAL LIABILITY:**

☐ Required by DASPS ☒ Not required by DASPS.

Professional Liability insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract in an amount not less than \$\_\_\_\_\_ per occurrence. Annual aggregate limit shall not be less than \$\_\_\_\_\_. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Contractor shall provide Tail Coverage as stated below.

**ADDITIONAL INSURED:**

The Commercial General Liability insurance and Automobile Liability insurance required under this Contract shall include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract.

**TAIL COVERAGE:**

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and DASPS' acceptance of all Services required under this Contract, or, (ii) The expiration of all warranty periods provided under this Contract.

**CERTIFICATE(S) AND PROOF OF INSURANCE:**

Contractor shall provide to DASPS Certificate(s) of Insurance for all required insurance before delivering any Supplies and performing any Services required under this Contract. **The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as Additional Insured,** specify that Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any, that all coverage shall be primary and non-contributory with any other insurance and self-insurance, and confirm that either an extended reporting period of at least 24 months is provided on all claims made policies or that tail coverage is provided. As proof of insurance DASPS has the right to request copies of insurance policies relating to the insurance requirements in this Contract.

**NOTICE OF CHANGE OR CANCELLATION:**

The contractor or its insurer must provide at least 30 days' written notice to DASPS before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**INSURANCE REQUIREMENT REVIEW:**

Contractor agrees to periodic review of insurance requirements by DASPS under this agreement and to provide updated requirements as mutually agreed upon by Contractor and DASPS.



**EXHIBIT NO. 3****CONTRACTOR TAX CERTIFICATION**

The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury to the best of the individual's knowledge that:

1. The number shown on this form is Contractor's correct taxpayer identification;

Federal Tax Number \_\_\_\_\_

Oregon Tax Number \_\_\_\_\_

2. Contractor is not subject to backup withholding because:

- (i) Contractor is exempt from backup withholding,
- (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or
- (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding.

3. S/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes,

4. For a period of no fewer than six calendar years preceding the Effective Date of this Addendum and any Contract, Contractor faithfully has complied with:

- (i) All tax laws of this State, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of this State that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;
- (iii) Any tax provisions imposed by a political subdivision of this State that applied to Contractor, or to supplies, services, or property, whether tangible or intangible, provided by Contractor; and
- (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_

**PARTICIPATING ADDENDUM***(hereinafter "Addendum")*

For

**NASPO VALUEPOINT** Add description of goods & services**MASTER AGREEMENT NO.** Add contract no.*(hereinafter "Master Agreement")*

Between

Insert Contractor Name

*(hereinafter "Contractor")*

and

State of Hawaii

*(hereinafter "Participating State")***State of Hawaii, State Procurement Office (SPO) Price List Contact No.** add PL No.

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

## 1. Scope:

This addendum covers NASPO ValuePoint describe services lead by insert lead State for use by state agencies and other entities located in the Participating State authorized by the state's statutes to utilize state contracts.

## 2. Participation:

All jurisdictions located within the State of Hawaii, which have obtained prior written approval by its Chief Procurement Officer, will be allowed to purchase from the Master Agreement. Private nonprofit health or human services organizations with current purchase of service contracts governed by Hawaii Revised Statutes (HRS) chapter 103F are eligible to participate in the SPO price/vendor list contracts upon mutual agreement between the Contractor and the non-profit. (Each such participating jurisdiction and participating nonprofit is hereinafter referred to as a "Participating Entity"). Issues of interpretation and eligibility for participation are solely within the authority of the Administrator, State Procurement Office.

## 3. Changes: Replace with specific changes or statements that no changes are required

A. Usage Reports. Contractor shall submit a quarterly State of Hawaii gross sales report to the Participating State contact person listed in Paragraph 5 (or as amended), below, in accordance with the following schedule (or as required):

<u>Quarter Ending</u>	<u>Report Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

The quarterly report will be subtotaled by each Purchasing Entity. The quarterly report shall also include any adjustments from prior periods.

- B. The validity of this Addendum, any of its terms or provisions, as well as the right and duties of the parties in this Addendum, shall be governed by the laws of the State of Hawaii. A copy of the Attorney General's General Conditions can be found at <http://spo.hawaii.gov/wp-content/uploads/2014/02/103D-General-Conditions.pdf>. Any action at law or in equity to enforce or interpret the provisions of this Addendum shall be brought in a court of competent jurisdiction in Honolulu, Hawaii.
- C. Inspection of Facilities. Pursuant to HRS § 103D-316, the Participating State, at reasonable times, may inspect the part of the plant or place of business of the Contractor or any subcontractor that is related to the performance of a Master Agreement and this Addendum.
- D. Campaign Contributions. The Contractor is notified of the applicability of HRS § 11-355, which prohibits campaign contributions from Contractor during the term of the Addendum if the contractor is paid with funds appropriated by the Hawaii State Legislature.
- E. Purchases by State of Hawaii government entities under this Master Agreement is not mandatory. This Addendum is secondary and non-exclusive.
- F. The State of Hawaii's purchasing card (pCard) is required to be used by the States executive departments/agencies (excluding the Department of Education, the Hawaii Health System Corporation, the Office of Hawaiian Affairs, and the University of Hawaii) for all orders totaling less than \$2,500. For purchases of \$2,500 or more, agencies may use the pCard, subject to its credit limit or issue a purchase order.

Contractor(s) shall forward original invoice(s), directly to the ordering agency. General excise tax shall not be applied to the delivery charge.

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

- G. Pursuant to HRS §103D-310(c), if Contractor is doing business in the Participating State, Contractor is required to comply with all laws governing entities doing business in the Participating State, including the following HRS chapters.
1. Chapter 237, General Excise Tax Law;
  2. Chapter 383, Hawaii Employment Security Law;
  3. Chapter 386, Workers' Compensation;
  4. Chapter 392, Temporary Disability Insurance;
  5. Chapter 393, Prepaid Health Care Act; and
  6. Certificate of Good Standing for entities doing business in the State.

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

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

4. Lease Agreements:

Leasing is not authorized by this Addendum

5. Primary Contact:

The primary contact individual for this Addendum are as follows (or their named successors:

Participating State

Name:

Name of purchasing specialist

Address:

State Procurement Office  
1151 Punchbowl Street, Room 416  
Honolulu, HI 96813

Telephone:

phone number

Fax:

(808) 586-0570

E-Mail:

specialist e-mail address

Contractor

Name:

Address:

Telephone:

Fax:

E-Mail:

6. Subcontractors:

Subcontractors are (or are not) allowed under this Addendum.

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

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

8. Purchase Order and Payment Instructions:

All purchase orders issued by Participating Entities under this Addendum shall include the Participating State contract number and Price List Contract Number.

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

9. Participating Entity as Individual Customer:

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

Each Participating Entity will have the same rights to any indemnity or to recover any costs allowed in the Master Agreement for their purchases. The Contractor will apply the charges to each Participating Entity individually.

10. Entire Contract:

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

Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Agreement, that are included in any purchase order or otherwise shall be void. The terms and conditions of this Addendum and the Master Agreement shall govern in the case of any such inconsistent, contrary, or

IN VIEW OF THE ABOVE, the parties execute this Addendum by their signatures, on the dates below.

Participating State: STATE OF HAWAII	Contractor:
Signature:	Signature:
Name: SARAH ALLEN	Name:
Title: Administrator, SPO	Title:
Date:	Date:

**APPROVED AS TO FORM:**

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Deputy Attorney General

**Attachment J**  
**SAMPLE CONTRACT**

**EDS #** \_\_\_\_\_

This Contract ("this Contract"), entered into by and between \_\_\_\_\_ (the "State") and \_\_\_\_\_ (the "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

**1. Duties of Contractor.**

The Contractor shall provide the following services relative to this Contract:

**2. Consideration.**

The Contractor will be paid at the rate of \_\_\_\_\_ for performing the duties set forth above. Total remuneration under this Contract shall not exceed \$ \_\_\_\_\_.

**3. Term.**

This Contract shall be effective for a period of \_\_\_\_\_. It shall commence on \_\_\_\_\_ and shall remain in effect through \_\_\_\_\_.

**4. Access to Records.** The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

**5. Assignment; Successors.** The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

**6. Assignment of Antitrust Claims.**

As part of the consideration for the award of this Contract, the Contractor assigns to the State all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

**7. Audits.** The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

The State considers the Contractor to be a “Contractor” under 2 C.F.R. 200.330 for purposes of this Contract. However, if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), Contractor shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq.*

**8. Authority to Bind Contractor.** The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.

**9. Changes in Work.**

The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

**10. Compliance with Laws.**

A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6, *et seq.*, IC §4-2-7, *et seq.* and the regulations promulgated thereunder. **If the Contractor has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this contract.** If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General’s website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC §5-17-5.

F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC §5-22-3-7:

(1) The Contractor and any principals of the Contractor certify that:

(A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:

(i) IC §24-4.7 [Telephone Solicitation Of Consumers];

(ii) IC §24-5-12 [Telephone Solicitations]; or

(iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(B) the Contractor will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor, except for de minimis and nonsystematic violations,

(A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

**11. Condition of Payment.** All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of and federal, state or local statute, ordinance, rule or regulation.

**12. Confidentiality of State Information.** The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material, and information gathered, based upon or disclosed to the



Contractor for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC §4-1-10 and IC §4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

### **13. Continuity of Services.**

A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another contractor, may continue them. The Contractor agrees to:

1. Furnish phase-in training; and
2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

B. The Contractor shall, upon the State's written notice:

1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires; and
2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

### **14. Debarment and Suspension.**

A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment,

penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

**15. Default by State.** If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute measures to collect monies due up to and including the date of termination.

**16. Disputes.**

A. Should any s arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs.

C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within 30 business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner's decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten business days after receipt of the Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within 30 business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.

D. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

E. With the written approval of the Commissioner of the Indiana Department of Administration, the parties may agree to forego the process described in subdivision C. relating to submission of the dispute to the Commissioner.

F. This paragraph shall not be construed to abrogate provisions of Ind. Code 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of the State as described in that statute. In particular, releases or settlement agreements involving releases of legal claims or potential

legal claims of the state should be processed consistent with Ind. Code 4-6-2-11, which requires approval of the Governor and Attorney General.

#### **17. Drug-Free Workplace Certification.**

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

#### **18. Employment Eligibility Verification.**

As required by IC §22-5-1.7, the Contractor swears or affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien. The Contractor further agrees that:

- A. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC §22-5-1.7-3. The Contractor is not required to

participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.

B. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

C. The Contractor shall require his/her/its subcontractors, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

**19. Employment Option.** If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-competition agreements that may be in effect. This release will be at no cost to the State or the employee.

**20. Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

## **21. Funding Cancellation.**

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

## **22. Governing Law.**

This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

**23. HIPAA Compliance.** If this Contract involves services, activities or products subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Contractor covenants that it will appropriately safeguard Protected Health Information (defined in 45 CFR 160.103), and agrees that it is subject to, and shall comply with, the provisions of 45 CFR 164 Subpart E regarding use and disclosure of Protected Health Information.

## **24. Indemnification.**

The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all third party claims and suits including court costs, attorney's fees, and other expenses

caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State shall not provide such indemnification to the Contractor.

## **25. Independent Contractor; Workers' Compensation Insurance.**

The Contractor is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Contractor shall provide all necessary unemployment and workers' compensation insurance for the Contractor's employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

## **26. Information Technology Enterprise Architecture Requirements.**

If the Contractor provides any information technology related products or services to the State, the Contractor shall comply with all IOT standards, policies and guidelines, which are online at <http://iot.in.gov/architecture/>. The Contractor specifically agrees that all hardware, software and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC §4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate this Contract for default if the Contractor fails to cure a breach of this provision within a reasonable time.

## **27. Insurance.**

A. The Contractor and their subcontractors ( if any) shall secure and keep in force during the term of this Contract the following insurance coverages (if applicable) covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
2. Automobile liability for owned, non-owned and hired autos with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis.
3. Errors and Omissions liability with minimum liability limits of \$1,000,000 per claim and in the aggregate. Coverage for the benefit of the State shall continue for a period of two (2) years after the date of service provided under this Contract.
4. Fiduciary Liability is required if the Contractor is responsible for the management and oversight of various employee benefit plans and programs such as pensions, profit-sharing and savings, among others. These contractors face potential claims for mismanagement brought by plan members. Limits should be no less than \$700,000 per cause of action and \$5,000,000 per occurrence.

5. Valuable Papers coverage, available under an Inland Marine policy, is required when any plans, drawings, media, data, records, reports, billings and other documents are produced or used under this agreement. Insurance must have limits sufficient to pay for the re-creation and reconstruction of such records.
  6. The Contractor shall secure the appropriate Surety or Fidelity Bond(s) as required by the state department served or by applicable statute.
  7. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of workers' compensation coverage meeting all statutory requirements of IC §22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.
- B. The Contractor's insurance coverage must meet the following additional requirements:
1. The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.
  2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
  3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.
  4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.
  5. The Contractor waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.
- C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

## **28. Key Person(s).**

- A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days' prior written notice.
- B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the State.

Nothing in sections A and B, above shall be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person.

Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person(s) to this Contract is/are \_\_\_\_\_

**29. Licensing Standards.** The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

**30. Merger & Modification.** This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

**31. Minority and Women's Business Enterprises Compliance.** Award of this Contract was based, in part, on the MBE/WBE participation plan. The following certified MBE or WBE subcontractors will be participating in this Contract:

MBE/WBE	PHONE	COMPANY NAME	SCOPE OF PRODUCTS and/or SERVICES	UTILIZATION	DATE	PERCENT

A copy of each subcontractor agreement must be submitted to IDOA's MBE/WBE Division within thirty (30) days of the effective date of this Contract. Failure to provide a copy of any subcontractor agreement will be deemed a violation of the rules governing MBE/WBE procurement, and may result in sanctions allowable under 25 IAC 5-7-8. Failure to provide any subcontractor agreement may also be considered a material breach of this Contract. The Contractor must obtain approval from IDOA's MBE/WBE Division before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to MBE/WBE Division subcontractors under this Contract on a monthly basis. Monthly reports shall be made using the online audit tool, commonly referred to as "Pay Audit." MBE/WBE Division subcontractor payments shall also be reported to the Division as reasonably requested and in a format to be determined by Division.

### **32. Nondiscrimination.**

Pursuant to the Indiana Civil Rights Law, specifically including IC §22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Contractor certifies compliance with applicable federal laws, regulations,

and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

The State is a recipient of federal funds, and therefore, where applicable, Contractor and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

**33. Notice to Parties.** Whenever any notice, statement or other communication is required under this Contract, it shall be sent by first class mail or via an established courier / delivery service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to: **(Include contact name and/or title, name of agency & address)**

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B. Notices to the Contractor shall be sent to: **(Include contact name and/or title, name of vendor & address)**

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As required by IC §4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

**34. Order of Precedence; Incorporation by Reference.**

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Contract, (2) attachments prepared by the State, (3) RFP#\_\_\_\_\_, (4) Contractor's response to RFP#\_\_\_\_\_, and (5) attachments prepared by the Contractor. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference.

**35. Ownership of Documents and Materials.**

A. All documents, records, programs, applications, data, algorithms, film, tape, articles, memoranda, and other materials (the "Materials") not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor hereby transfers and assigns any ownership claims to the State so that all Materials will be the property of the State. If ownership interest in the Materials cannot be assigned to the State, the Contractor grants the State a non-exclusive, non-cancelable, perpetual, worldwide royalty-free license to use the Materials and to use, modify, copy and create derivative works of the Materials.

B. Use of the Materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to the Materials developed for or supplied by the State and used to develop or assist in the services provided while the Materials are in the possession of the Contractor.



Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide the State full, immediate, and unrestricted access to the Materials and to Contractor's work product during the term of this Contract.

### **36. Payments.**

A. All payments shall be made 35 days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC §4-13-2-20.

B. The State Budget Agency and the Contractor acknowledge that Contractor is being paid in advance for the maintenance of equipment and / or software. Pursuant to IC §4-13-2-20(b)(14), Contractor agrees that if it fails to perform the maintenance required under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

**37. Penalties/Interest/Attorney's Fees.** The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC §5-17-5, IC §34-54-8, IC §34-13-1 and IC § 34-52-2-3.

Notwithstanding the provisions contained in IC §5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

### **38. Progress Reports.**

The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

### **39. Public Record.**

The Contractor acknowledges that the State will not treat this Contract as containing confidential information, and will post this Contract on its website as required by Executive Order 05-07. Use by the public of the information contained in this Contract shall not be considered an act of the State.

### **40. Renewal Option.**

This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC §5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract.

**41. Severability.** The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

**42. Substantial Performance.** This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

**43. Taxes.** The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

**44. Termination for Convenience.**

This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to the Indiana Department of Administration and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that the Indiana Department of Administration shall be deemed to be a party to this agreement with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

**45. Termination for Default.**

A. With the provision of thirty (30) days' notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

**46. Travel.** No expenses for travel will be reimbursed unless specifically permitted under the scope of services or consideration provisions. Expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

**47. Indiana Veteran's Business Enterprise Compliance.** Award of this Contract was based, in part, on the Indiana Veteran's Business Enterprise ("IVBE") participation plan. The following IVBE subcontractors will be participating in this Contract:

VBE	PHONE	COMPANY NAME	SCOPE OF PRODUCTS and/or SERVICES	UTILIZATION	DATE	PERCENT
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A copy of each subcontractor agreement shall be submitted to IDOA within thirty (30) days of the request. Failure to provide any subcontractor agreement may also be considered a material breach of this Contract. The Contractor must obtain approval from IDOA before changing the IVBE participation plan submitted in connection with this Contract.

The Contractor shall report payments made to IVBE subcontractors under this Contract on a monthly basis. Monthly reports shall be made using the online audit tool, commonly referred to as "Pay Audit." IVBE subcontractor payments shall also be reported to IDOA as reasonably requested and in a format to be determined by IDOA.

**48. Waiver of Rights.** No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.

**49. Work Standards.** The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

**50. State Boilerplate Affirmation Clause.** I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's Boilerplate contract clauses (as contained in the 2015 OAG/ IDOA *Professional Services Contract Manual*) in any way except for the following clauses which are named below: \_\_\_\_\_

### Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

**In Witness Whereof**, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

[Contractor]

[Indiana Agency]

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

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

\_\_\_\_\_  
Name and Title, Printed

\_\_\_\_\_  
Name and Title, Printed

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

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

**Approved by:**

Indiana Department of Administration

**Approved by:**

State Budget Agency

By: \_\_\_\_\_ (for)

Jessica Robertson, Commissioner

By: \_\_\_\_\_ (for)

Brian E. Bailey, Director

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

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

**APPROVED as to Form and Legality:**

Office of the Attorney General

\_\_\_\_\_  
(for)

Gregory F. Zoeller, Attorney General

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

**Approved by:**

Indiana Office of Technology

By: \_\_\_\_\_ (for)

Paul Baltzell, Chief Information Officer

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



**INTENT TO PARTICIPATE**  
**NASPO ValuePoint Cooperative Contract(s) for**  
**Walk-In Home Improvement Building Materials and**  
**Supplies**  
**By the Commonwealth of Virginia**  
**("Commonwealth" or "CoVA" or "Participating State")**  
**With the State of Utah as "Lead State"**  
**Request for Proposal (RFP) # AS16040**



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**I. PURPOSE:**

The purpose of this Intent to Participate Agreement is to provide the members of the National Association of State Procurement Officials (NASPO) with the opportunity to participate in the multi-state cooperative contract(s) for Walk-In Building Supplies and related material/Walk-In Carpentry Supplies/Walk-In Home Improvement Supplies\*.

The State of Utah is the lead state (Lead State) for the procurement and resulting contract(s).

**II. SCOPE OF THE CONTRACT(S)**

The Lead State is authorized by the NASPO Cooperative Purchasing Organization and by agreement of the NASPO member state participants to act as the procurement officer in developing multi-state cooperative contract(s) for Walk-In Building Supplies and related material/Walk-In Carpentry Supplies/Walk-In Home Improvement Supplies.

The resulting contracts will be permissive contracts.

It is the intent of the Commonwealth to participate in this joint procurement through NASPO in order to obtain cost savings or reduction in administrative expense.

Subject to the participation by the Commonwealth's Department of General Services (DGS), any contract awarded shall be available to all Commonwealth public bodies including counties, cities and towns as defined by the Code Of Virginia, § 2.2-4304 and referenced in § 2.2-2012, and in accordance with Virginia law and the requirements governing this procurement.

**Administrative Fee**

A NASPO administrative fee of one-quarter of one percent (0.25%) will be assessed centrally for purchases under the contract(s).

The Commonwealth's administrative fee/s, if any, and processes for managing, administering, and recording such fee payments shall be added at such time that a Participating Addendum may be executed by the Commonwealth.

DGS will add any additional contractual terms, conditions, fees, or other requirements at the appropriate time that a Participating Addendum may be executed.

**\*NIGP COMMODITY CODES:** 03100 – Air Conditioning, Heating, and Ventilating Equipment, Parts and Accessories; 15000 – Builder's Supplies; 28500 – Electrical Equipment and Supplies; 28000 – Electrical Cables and Wires; 32000 – Fasteners; 40531 – Lubricants; 44500 – Hand Tools, Accessories and Supplies; 45000 – Hardware and Related Items; 46000 – Hose, Accessories and Supply; Industrial, Commercial and Garden; 54000 – Lumber, Siding, and Related Products; 56000 – Material Handling, Conveyors, Storage Equipment and Accessories; 63000 – Paint, Protective Coatings and Related Products; 67000 – Plumbing Equipment, Fixtures and Supplies; 69000 – Power Generation Equipment, Accessories and Supplies; 89500 – Welding Equipment and Supplies.



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**III. TERM OF THE CONTRACT**

The initial term of the contract will be established for five (5) years from the date of award with no renewal options.

**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

Offerors will be given at least forty (40) days after the Release Date (June 6, 2016) to submit proposals. Refer to the RFP posted on the Lead State website for Schedule of Events.

Solicitation Type and Evaluation Criteria

This RFP will be issued and evaluated in concert with the NASPO Cooperative Purchasing Organization guidance and the procurement laws and rules of the Lead State by a sourcing team composed of members from several states.

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

Additional Requested Information of the Participating State:

Participating State 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).

- Participating State Annual Spend \$ Unknown at this time
- Participating State Annual Political Subdivision Spend \$ Unknown at this time

Participating State Specific Terms and Conditions:

**The following contractual terms are applicable to the Commonwealth of Virginia's participation in this procurement.**

**1. VIRGINIA PUBLIC PROCUREMENT ACT**

The Virginia Public Procurement Act ("VPPA", § 2.2-4300 et seq. of the Code of Virginia), including Article 6 (Ethics in Public Contracting), applies to any contract entered into between a vendor and a Virginia public body under this solicitation.

**2. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH**

A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a limited liability partnership shall be authorized to



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transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with a public body shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section, in addition to any other available remedy.

### **3. NON-DISCRIMINATION**

- a. During the performance of this contract, the contractor agrees as follows:
  - i. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. It will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - ii. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
  - iii. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- b. The contractor will include the provisions of the foregoing paragraphs i, ii and iii in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- c. In accordance with Section 2.2-4343 of the Code of Virginia, public bodies do not discriminate against faith-based organizations, , or against any bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by Virginia law.

### **4. IMMIGRATION REFORM AND CONTROL ACT OF 1986**

By entering into a written contract with the Commonwealth of Virginia, the contractor certifies that it does not, and shall not, during the performance of this contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.



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**5. DEBARMENT STATUS**

By participating in this contract, the contractor certifies that it is not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods or services covered by this contract. The contractor further certifies that it is not debarred from filling any order or accepting any resulting order, and that it is not an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

**6. DRUG-FREE WORKPLACE**

During the performance of this contract, the contractor agrees to:

- a. provide a drug-free workplace for its employees;
- b. post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- c. state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and
- d. include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor.
- e. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

**7. ASSIGNMENT OF CONTRACT**

Contracts and purchase orders with Virginia agencies shall not be assignable by the contractor in whole or in part without the written consent of that agency.

**8. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS**

All contractors providing goods or services to the Commonwealth of Virginia shall participate in the eVA Internet e-procurement solution by completing the free eVA Vendor Registration. All contractors must register in eVA and pay the Vendor Transaction Fees specified below before they may fulfill any order. Vendor transaction fees are determined by the current fees, as follows:

- a. DSBSD-certified Small Businesses: 1%, capped at \$500 per order.
- b. Businesses that are not DSBSD-certified Small Businesses: 1%, capped at \$1,500 per order.





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**9. PAYMENT****a. To Prime Contractor:**

- i. Contractor shall submit invoices for items ordered, delivered and accepted directly to the payment address shown on the purchase order or contract. All invoices shall show the state contract number, purchase order number, and social security number (for individual contractors) or federal employer identification number (for proprietorships, partnerships, and corporations).
- ii. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- iii. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- iv. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- v. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, final payment in full is contingent on a determination that all invoiced charges are reasonable. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (Code of Virginia, § 2.2-4363).

**b. To Subcontractors:**

- i. A contractor awarded a contract under this solicitation is hereby obligated to pay the subcontractors within seven days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractors under the contract; or to notify the agency and the subcontractors, in writing, of the contractor's intention to withhold payment and the reason.
- ii. The contractor is obligated to pay the subcontractors interest at the rate of one percent per month (unless otherwise provided in this contract) on all amounts owed by the contractor that remain unpaid seven days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (i) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A



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contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

## **10. MODIFICATIONS**

This contract may be modified in accordance with §2.2-4309 of the Code of Virginia. No modifications shall be effective unless it is in writing and signed by the duly authorized representative of the Commonwealth. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing. Any contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor or his authorized designee. In no event may the amount of the contract be increased without adequate consideration. The unauthorized approval of a modification cannot be the basis of a contractual claim as set forth in § 2.2-4363.

## **11. APPLICABLE LAWS AND COURTS**

This contract shall be governed in all respects by the laws of Virginia, without reference to its choice of law rules. Any litigation involving a Virginia public body shall be brought in the Circuit Court for the City of Richmond. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

## **12. VENDORS MANUAL**

This solicitation is subject to the provisions of the Commonwealth of Virginia Vendors Manual and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the Vendors Manual. A copy of the Vendors Manual is available for review at the purchasing office and is also accessible on the Internet at [www.eva.virginia.gov](http://www.eva.virginia.gov) under the "I Sell to Virginia" tab.

## **13. ALTERNATIVE DISPUTE RESOLUTION**

The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (Code of Virginia, § 2.2-4366). ADR procedures are described in Chapter 9 of the Vendors Manual.

## **14. ETHICS IN PUBLIC CONTRACTING**

By fulfilling an order placed by a Virginia buyer, the contractor certifies that they have not engaged in collusion or fraud in relation to any aspect of this contract, or its contract with the lead state or other entity that conducted the procurement upon which this contract is based, and that it has not offered or received any kickbacks or inducements to or from any other bidder, offeror, supplier, manufacturer, or subcontractor in connection with this contract or procurement. The contractor also certifies that it has not conferred on any public employee having



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responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

**THE COMMONWEALTH RESERVES THE RIGHT TO NEGOTIATE ADDITIONAL REQUIRED CONTRACTUAL PROVISIONS AT SUCH TIME THAT A PARTICIPATING ADDENDUM MAY BE EXECUTED, IF ANY.**

**SIGNATURE/S**

- Commonwealth of Virginia / Department of General Services / Division of Purchases and Supply (DGS/DPS)**

**Robert E. Gleason, Director, DGS/DPS**

Printed Name and Title



Signature

**6/8/2016**

Date

- Commonwealth of Virginia / Virginia Information Technologies Agency / Supply Chain Management (DGS/SCM)**

**NA**

Printed Name and Title

**NA**

Signature

**NA**

Date

Scan and email the signed "Intent to Participate" to the NASPO ValuePoint Cooperative Development Coordinator Shannon Berry ([sberry@naspovaluepoint.org](mailto:sberry@naspovaluepoint.org))

## Question and Answers for Bid #AS16040 - NASPO ValuePoint Walk-In Building Supplies and related material

### Overall Bid Questions

#### Question 1

General Provisions Section 18 Performance and Cost Analysis: The State reserves the right to review the awarded contract(s) on a regular basis regarding performance and cost, and may negotiate price and service elements during the term of the contract.

â€¢ What would be the triggers of performance and/or cost that would prompt negotiation of price and service?

(Submitted: Jun 22, 2016 11:03:06 AM MDT)

#### Answer

- Which document or attachment are you referring? (Answered: Jun 22, 2016 11:32:36 AM MDT)

#### Question 2

NASPO ValuePoint Master Agreement Terms and Conditions General Provisions 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.

â€¢ What is the process if the Lead State does not approve of a personnel change? (Submitted: Jun 22, 2016 11:04:03 AM MDT)

#### Answer

- The State won't know who the key personnel is until we receive the proposals. In the event that during the term of the contract the State finds that the contract administrator is not responding to questions or issues, the State would request the vendor identify a new contract administrator who would be responsive. (Answered: Jun 23, 2016 1:08:56 PM MDT)

#### Question 3

NASPO ValuePoint Master Agreement Terms and Conditions General Provisions 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 (â€œPre-existing Intellectual Propertyâ€). The Contractor shall be responsible for ensuring that this license is consistent with any third party rights in the Pre-existing Intellectual Property.

â€¢ Is this negotiable? (Submitted: Jun 22, 2016 11:05:27 AM MDT)

#### Answer

- The treatment of exceptions to the terms and conditions is discussed in RFP sections 2.10.4 and 2.13. (Answered: Jun 23, 2016 1:08:56 PM MDT)

#### Question 4

NASPO ValuePoint Master Agreement Terms and Conditions General Provisions 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.

â€¢ Is this negotiable? (Submitted: Jun 22, 2016 11:12:46 AM MDT)

#### Answer

- The treatment of exceptions to the terms and conditions is discussed in RFP sections 2.10.4 and 2.13. (Answered: Jun 23, 2016 1:08:56 PM MDT)

#### Question 5

Attachment E

Cooperative Contract Sales Reporting Data Requirement and Data Format

If the contractor can't supply all of the required fields for reporting, will you accept an N/A in those fields?

(Submitted: Jun 22, 2016 12:09:12 PM MDT)

#### Answer

- Yes (Answered: Jun 22, 2016 1:03:29 PM MDT)

**Question 6**

NASPO ValuePoint Program Provisions (Pg. 34)

Section 9. NASPO ValuePoint eMarket Center

Since this is a walk in based contract can you give us more details around the online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts? (Submitted: Jun 22, 2016 12:14:19 PM MDT)

**Answer**

- Due to the fact this is a small purchase walk-in for convenience contract, the link to NASPO ValuePoint eMarket Center will indicate that fact and will not have any links to be able to "shop on-line" or to view a catalog. (Answered: Jun 22, 2016 1:03:29 PM MDT)

**Question 7**

Page 9, General Provision #18: Performance and Cost Analysis: The State reserves the right to review the awarded contract(s) on a regular basis regarding performance and cost, and may negotiate price and service elements during the term of the contract.

â€¢ What would be the triggers of performance and/or cost that would prompt negotiation of price and service? (Submitted: Jun 22, 2016 1:44:45 PM MDT)

**Answer**

- During the term of the contract, the State reserves the right to evaluate cost of items to determine if price is within the acceptable market price. This may or may not apply to this contract as it is a percentage off retail prices.

(Answered: Jun 22, 2016 2:03:30 PM MDT)

**Question Deadline: Jun 22, 2016 2:00:00 PM MDT**