

**STANDARD CONTRACT TERMS AND CONDITIONS
NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS (NASPO)
AND
WESTERN STATES CONTRACTING ALLIANCE (WSCA)**

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PARTICIPANTS: The National Association of State Procurement Officials (“NASPO”) is a national association of Chief Procurement Officers that has established a procurement cooperative for state government departments, institutions and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the NASPO Member States and territories of the United States.

The Western States Contracting Alliance (WSCA) is fifteen members of NASPO who have focused on creating and managing multi-state cooperative contracts since 1993.

Obligations under contracts that result from this cooperative procurement are limited to those states and other eligible purchasing entities that execute a Participating Addendum.

Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds.

Participating States incur no financial obligations on behalf of political subdivisions.

Unless otherwise specified in the solicitation, the resulting master price agreement(s) will be permissive.

DEFINITIONS:

“**Lead State**” means the State conducting this cooperative solicitation and centrally administering any resulting master price agreement with the permission of the Signatory States.

“**Master Price Agreement**” means this cooperative solicitation and contract, between the designated Lead State and the awarded contractors.

“**Offer**” or “**Bid**” or “**Proposal**” refers to the offer submitted in response to a solicitation, whether denominated as an invitation to bid, invitation for bid, request for proposal, or otherwise. “**Bidder**” or “**Offeror**” similarly refers to the person, company, or other entity submitting the bid or proposal that constitutes an offer capable of acceptance, regardless of the solicitation method used.

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“Permissive Price Agreement” means that placement of orders through the price agreement is discretionary with Purchasing Entities. They may satisfy their requirements through the master price agreement without using statutory or regulatory procedures (e.g. invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the master price agreement so long as applicable procurement statutes and rules are followed.

“Participating Addendum” means a bilateral agreement executed by a contractor and a Participating State (or a political subdivision with the consent of its state’s chief procurement officer) that clarifies the operation of the master price agreement for the State concerned, e.g. ordering procedures specific to a State, and may add other state-specific language or other requirements.

“Participating State” means a Signatory State that has indicated its intent to participate in a specific cooperative procurement/master price agreement by executing an Intent to Participate, or who has subsequently executed a Participating Addendum where required.

“Purchasing Entity” means a Participating State, or other legal entity, properly authorized by a Participating State to enter into a contract for the purchase of goods and/or services described in the cooperative procurement. Unless otherwise limited in the cooperative procurement or in a Participating Addendum, political subdivisions of Participating States are deemed Purchasing Entities.

QUANTITY ESTIMATES: Estimated quantities are informational and not to be construed as a warranty of accuracy of historical or anticipated volumes or a guarantee to purchase any amount.

SPECIFICATIONS: Any deviation from specifications must be clearly indicated by offeror, otherwise, it will be considered that the proposal is in strict compliance. When BRAND NAMES or manufacturers’ numbers are stated in the specifications they are intended to establish a standard only and are not restrictive unless the solicitation says “no substitute.” Offers will be considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate proposals offering lower quality or inferior performance will not be considered.

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ACCEPTANCE OR REJECTION OF BIDS AND PROPOSALS: The Lead State reserves the right to accept or reject any or all bids or proposals, or parts of bids or proposals, and to waive informalities therein.

SAMPLES: Generally, when required, samples will be specifically requested in the solicitation. Samples, when required, are to be furnished free of charge. Except for those samples destroyed or mutilated during testing, samples will be returned at an offeror's request, transportation collect.

CASH DISCOUNT TERMS: Offeror may quote a cash discount based upon early payment; however discounts offered for less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise.

TAXES: Offered prices shall be exclusive of state sales and federal excise taxes. Where the state government entities are not exempt from sales taxes on sales within their state, the contractor shall add the sales taxes on the billing invoice as a separate entry.

MODIFICATION OR WITHDRAWAL OF BIDS AND PROPOSALS: Bids and proposals may be modified or withdrawn prior to the time set for receipt of bids or proposals. After the time set for receipt of bids or proposals, no proposal may be modified or withdrawn.

PATENTS, COPYRIGHTS, ETC: The Contractor shall release, defend, indemnify, and hold harmless NASPO, the Participating States, and the Purchasing Entities, as well as the officers, agents and employees of NASPO, the Participating States and the Purchasing Entities, from liability of any kind or nature, including the Contractor's use of any copyrighted or uncopyrighted composition, process, patented or unpatented invention, article or appliance furnished or used in performance of this contract.

AWARD: Multiple master price agreements may be awarded as a result of this solicitation. Awards in requests for proposals (competitive sealed proposals) shall

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be made to the responsible offeror(s) whose proposals are determined to be the most advantageous to the Participating States, taking into consideration price and the other evaluation factors set forth in the solicitation. Unless otherwise stated in the solicitation, an award in a solicitation denominated as an invitation to bid will be made to the lowest responsive and responsible bidder(s) meeting specifications and all bid terms and conditions. The Participating States reserve the right to award items separately or by grouping items, or by total lot.

NON-COLLUSION: By signing the proposal the offeror certifies that the proposal submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the solicitation, designed to limit independent bidding or competition.

TERMINATION: Unless otherwise stated in the solicitation, any master price agreement entered into as a result of this solicitation may be terminated by either party upon 60-days notice, in writing, prior to the effective date of the termination. Further, any Participating State may terminate its participation upon 30-days written notice, unless otherwise limited or stated in the special terms and conditions of the solicitation. Any termination under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of any Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order.

DEFAULT AND REMEDIES:

A. Any of the following shall constitute cause to declare the master price agreement or any order under this master price agreement in default:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this master price agreement.

B. A written notice of default, and an opportunity to cure, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the master price agreement), a Participating State (in the case of a breach of the Participating Addendum), the Purchasing Entity (with respect to any order), or the Contractor.

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Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.

C. If the default remains after the opportunity for cure, the non-defaulting party may:

- (1) Exercise any remedy provided by law or equity;
- (2) Terminate the master price agreement or any portion thereof, including any orders issued against the master price agreement;
- (3) Impose liquidated damages, as specified in the solicitation or master price agreement;
- (4) In the case of default by the contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend contractor from receiving future solicitations.

LAWS AND REGULATIONS: Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

CONFLICT OF TERMS: In the event of any conflict between these standard terms and conditions and any special terms and conditions in the solicitation, the special terms and conditions shall govern.

REPORTS: The contractor shall submit quarterly reports to the Lead State contract administrator, and upon request to any Participating State, showing the quantities and dollar volume of purchases by each Purchasing Entity.

HOLD HARMLESS: The contractor shall release, defend, indemnify and hold harmless NASPO, the Participating States, and the Purchasing Entities, as well as the officers, agents and employees of NASPO, the Participating States and the Purchasing Entities, from and against any damage, cost or liability, including reasonable attorneys fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, its employees or subcontractors or volunteers.

ORDER NUMBERS: Master price agreement numbers and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

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GOVERNING LAW AND VENUE: This procurement shall be governed and the resulting master price agreement construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against the master price agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's State. Venue for any claim, dispute or action concerning the construction and effect of the master price agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against the master price agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

DELIVERY: The prices offered shall be the delivered price to any NASPO state agency or purchasing entity. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor 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 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.

WARRANTY: The contractor acknowledges that the Uniform Commercial Code applies to this master price agreement. In general, the contractor warrants that: (a) the product will do what the salesperson said it would do, (b) the product will live up to all specific claims that the manufacturer makes in their advertisements, (c) the product will be suitable for the ordinary purposes for which such product is used, (d) the product will be suitable for any *special purposes* that the Purchasing Entity has relied on the contractor's skill or judgment to consider when it advised the Purchasing Entity about the product, (e) the product has been properly designed and manufactured, and (f) the product is free of significant defects or unusual problems about which the Purchasing Entity has not been warned.

The contractor agrees to warrant and assume responsibility for each hardware, firmware, and/or software product (hereafter called the product) that it licenses, or sells, to the Purchasing Entity under this master price agreement. When applicable, Contractor warrants that product(s) furnished pursuant to this contract

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shall, when used in accordance with the product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a contractor proposes or an acquisition requires that specific products must perform as a package or system, this warranty shall apply to the products as a system.

Where contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting there from, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the contractor's or product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this contract for breach of warranty.

AMENDMENTS: The terms of this master price agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Master Price Agreement Administrator of the Lead State.

ASSIGNMENT/SUBCONTRACT: Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this master price agreement, in whole or in part, without the prior written approval of the Master Price Agreement Administrator of the Lead State.

NONDISCRIMINATION: The offeror agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant

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or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. The offeror further agrees to furnish information and reports to Participating State(s), upon request, for the purpose of determining compliance with these statutes. Offeror agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This master price agreement may be canceled if the offeror fails to comply with the provisions of these laws and regulations. The offeror must include this provision in every subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

SEVERABILITY: If any provision of this master price agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the master price agreement did not contain the particular provision held to be invalid.

INSPECTIONS: Goods furnished under this master price agreement shall be subject to inspection and testing by the Purchasing Entity after delivery and upon completion of installation at times and places determined by the Purchasing Entity. Inspection and testing shall be in accordance with mutually agreed upon acceptance specifications between the Contractor and Purchasing Entity. If the Purchasing Entity finds goods furnished to be ~~incomplete or~~ not in compliance with ~~proposal the~~ acceptance specifications, the Contractor shall have thirty (30) days to modify, adjust, repair or replace the Product or components thereof to meet the Acceptance Specifications. After adjustment, modification, repair, or replacement, the tests described above shall be run again during the next thirty (30) days, and if during which the Product fails to meet the Acceptance Specifications, it shall be deemed to be nonconforming. In such event, the Purchasing Entity shall have the right to continue testing for a mutually agreed upon period of time or terminate this Agreement and return the Product to BBH without any liability to BBH for the purchase price or may reject the goods and require Contractor to either correct them without charge or deliver the Product at a reduced price, which is equitable under the circumstances if the failure to meet the Acceptance Specifications is

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~~solely the fault of the Contractor.- If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Purchasing Entity, the Purchasing Entity may cancel the order in whole or in part.~~ Nothing in this paragraph shall adversely affect the Purchasing Entity's rights including the rights and remedies under the Uniform Commercial Code.

BBH comment: BBH is seeking to add clarification to the scope of testing and provide additional recourse options for nonconformity.

PAYMENT: Payment for completion of a master price agreement order 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. The Contractor may assess overdue account charges on the outstanding balance in accordance with, and up to the maximum allowed by, the laws of the participating state. Payments may be remitted by mail or electronic funds transfer. Payments may also be made via a Purchasing Entity's "Purchasing Card".

FORCE MAJEURE: Neither party to this master price agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The Lead State may terminate this master price agreement after determining such delay or default will reasonably prevent successful performance of the master price agreement.

HAZARDOUS CHEMICAL INFORMATION: The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the Purchasing Entity agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

FIRM PRICE: Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of receipt of bids or proposals. Prices must remain firm for the full term of the master price agreement.

EXTENSION OF PRICES: In the case of error in the extension of prices in the proposal, the unit prices will govern.

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PROPOSAL PREPARATION COSTS: NASPO and the lead state are not liable for any costs incurred by the offeror in preparation of the bid or proposal.

CERTIFICATION REGARDING CONFLICT OF INTEREST: Contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any Participating State to any officer or employee of NASPO or Participating States to secure favorable treatment with respect to being awarded this contract.

INDEPENDENT CONTRACTOR: Contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind the Participating States to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for NASPO or the states, except as expressly set forth herein.

POLITICAL SUBDIVISION PARTICIPATION: Participation under this master price agreement by political subdivisions (i.e., statutorily eligible colleges, school districts, counties, cities, etc.) of the NASPO participating states shall be voluntarily determined by the political subdivision.

After the solicitation has closed, and an award has been made, additional non-NASPO purchasing entities in non-Participating States may be added with the consent of the chief procurement official in the non-Participating State, the contractor and the Lead State (on behalf of the NASPO Participating States) through the execution of an agreement as required by the lead state, and the execution of a Participating Addendum.

The contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

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

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RECORDS ADMINISTRATION: The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this master price agreement. These records will be retained by the Contractor for at least four years after the master price agreement terminates, or until all audits initiated within the four years have been completed, whichever is later.

AUDIT OF RECORDS: The Contractor agrees to allow NASPO, State and Federal auditors, and state agency staff access to all the records related to this master price agreement, and the right to copy those records, for audit, inspection and monitoring of services. Such access will be during normal business hours, or by appointment.

PRICES AS CEILING:

Master Price Agreement prices represent ceiling prices for the supplies and services priced in the master price agreement.

The vendor shall report to the Lead State any price reduction or discount, or other more favorable terms, offered to any Purchasing Entity.

In instances NOT related to the established standards, committed volumes or volume bulk purchases of a participating state or states, the awarded vendor agrees to negotiate in good faith to reestablish ceiling prices or other more favorable terms and conditions applicable to future orders.

STATE PARTICIPATION/UNIQUE TERMS AND CONDITIONS:

Apart from the Lead State conducting the solicitation, the States indicated on Attachment A have signified their initial intent to participate in a Master Price Agreement resulting from this Solicitation. Attachment A of the Solicitation includes any significant modifications to these terms and conditions or State-specific provisions required by the laws, regulations, or procurement practices of the State(s). Final participation in the Master Price Agreement by the State(s) shall be signified through the execution of a Participating Addendum.

After the solicitation has closed and an award has been made, additional NASPO Procurement Cooperative member States may be added with the consent of the

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contractor and the Lead State (on behalf of the NASPO Participating States) through execution of a Participating Addendum.

RENTAL AND LEASES:

Rental:

Individual Participating States and Participating Entities may enter in to rental agreements for the products covered in the contracts resulting from the RFP, if they have the legal authority to enter into these types of agreements without going through a competitive process. Responders who wish to participate in rental agreements with these individual states/entities must submit copies of all of their rental agreements with their responses to this RFP. The rental agreements will not be reviewed or evaluated as part of the RFP evaluation process defined in this RFP. The agreements will simply be made available to any state or entity who wishes to negotiate a rental agreement with a Contractor.

Leases:

Individual Participating States and Participating Entities may enter in to lease agreements for the products covered in the contracts resulting from the RFP, if they have the legal authority to enter into these types of agreements without going through a competitive process. Responders who wish to participate in lease agreements with these individual states/entities must submit copies of all of their lease agreements with their response to this RFP. The lease agreements will not be reviewed or evaluated as part of the RFP evaluation process defined in this RFP. The agreements will simply be made available to any state or entity who wishes to negotiate a lease agreement with a Contractor.

COMPREHENSIVE FINANCIAL OPTIONS THAT SHOULD BE INCLUDED:

- Purchase
- Operational Leases - with varying buyout ownership options at end of term including no ownership option
- Capital Leases – Traditional financing with ownership at end of term (software, buyouts of existing leases)
- Cancelable Rentals – Cancel with four month penalty on rental payment
 - All leases and rentals must have a non appropriations clause

NON-APPROPRIATION:

The terms of the Agreement and any purchase order issued for multiple years

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under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the goods or services due for multiple year agreements, or if operations of the paying entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order.