

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

In conjunction with



Request for Proposal

State of Utah Solicitation Number: CT22-79

NASPO ValuePoint Master Agreement for Office Furniture and Related Services

March 16, 2022

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RFP Administrative Information

RFP Title:	Office Furniture and Related Services
RFP Project Description: (See Section 1.1)	The State of Utah in conjunction with NASPO ValuePoint, is seeking Offerors(s) to provide office furniture and related services as described within this RFP.
RFP Lead: (See Section 1.2)	Cat Turner, State Contract Analyst State of Utah, Division of Purchasing Caturner@utah.gov (801)957-7128
Electronic Submission: Submit electronically via Jaggaer: (See Section 2.10)	Proposals must be submitted electronically via Jaggaer (the Utah Public Procurement Place) here: http://purchasing.utah.gov/currentbids Hard copy submissions will not be accepted. From the Jaggaer link type "CT22-79" into the search bar, and click the search icon. The "Office Furniture and Related Services" posting will appear.
Deadline to Receive Questions: (See Sections 2.1)	See dates in the posting in Jaggaer.
Question & Answers: (See Section 2.1)	All questions, including those about Terms and Conditions, must be submitted through Jaggaer. Question must be submitted by the question deadline date.
RFP Closing Date and Time:	See dates in the posting in Jaggaer.
Initial Term of Contract and Renewals: (See Attachment A, Section 2)	The contract resulting from this RFP will be for five (5) years.
TAKE NOTE OF THE 0.25% NASPO VALUEPOINT ADMINISTRATIVE FEE DETAILED IN SECTION 5 OF THE NASPO VALUEPOINT MASTER TERMS AND CONDITIONS, WHICH MUST BE INCORPORATED INTO OFFEROR'S BASE PRICE. OTHER PARTICIPATING ENTITIES MAY NEGOTIATE ADDITIONAL ADMINISTRATIVE FEES IN THEIR PARTICIPATING ADDENDA FOLLOWING AWARD OF A MASTER AGREEMENT.	

REQUEST FOR PROPOSALS
Office Furniture and Related Services

Solicitation # CT22-79

This Request for Proposals (RFP), having been determined to be the appropriate procurement method to provide the best value to the Lead State, 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 State of Utah Procurement Code, Utah Code Annotated (UCA), 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 and General Services (Lead State) is requesting Proposals for office furniture and related services in furtherance of the NASPO ValuePoint Cooperative Purchasing Program. The purpose of this Request for Proposals (RFP) is to establish Master Agreements with qualified Original Equipment Manufacturers (OEM or Offerors) and their authorized dealers to provide office furniture products and related services for all Participating Entities.

The solicitation does not allow for sister companies to team and submit offers with the exception of the architectural products and accessories category. 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 RFP 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 chief procurement official and compliance with local statutory and regulatory provisions. The term of the Master Agreement shall be five (5) years as outlined in Section 2 in Attachment A - NASPO ValuePoint Master Agreement Terms and Conditions.

It is anticipated that this RFP may result in Master Agreement awards to multiple Offerors in the Lead State's discretion.

The resulting Master Agreement(s) will be awarded with the understanding and agreement that it is for the sole convenience of the Participating Entities. The Participating Entities reserve the right to obtain like goods or services from other sources when necessary.

This will be a replacement for expiring Master Agreements for the State of Utah and NASPO ValuePoint. The current Master Agreements expire January 21, 2023. The current Participating Entities are as follows: State of Alaska, State of Hawaii, State of Iowa, State of Idaho, State of Louisiana, State of Minnesota, State of North Dakota, State of Nevada, State of Oregon, State of South Dakota, and State of Utah.

The sales reported are as follows:

Reported Sales by State				
State	2018	2019	2020	2021
Alaska	\$3.14 M	\$2.75 M	\$1.96 M	\$1.43 M
Hawaii	\$1.23 M	\$2.72 M	\$1.67 M	\$938,537.00
Iowa	\$0.00	\$317,613.00	\$616,803.00	\$399,896.00
Idaho	\$2.37 M	\$4.48 M	\$3.88 M	\$1.97 M
Illinois	\$0.00	\$1.25 M	\$286,157.00	\$0.00
Kentucky	\$90,324.00	\$0.00	\$0.00	\$0.00
Louisiana	\$1.78 M	\$4.69 M	\$3.76 M	\$3.97 M
Minnesota	\$8.58 M	\$11.29 M	\$7.53 M	\$3.57 M
Montana	\$1.19 M	\$2.62 M	\$2.57 M	\$2.31 M
North Dakota	\$0.00	\$0.00	\$369,487.00	\$543,143.00
Nevada	\$2.64 M	\$3 M	\$3.97 M	\$2.37 M
Oregon	\$1.68 M	\$6.53 M	\$6.04 M	\$6.77 M
South Dakota	\$0.00	\$0.00	\$0.00	\$0.00
Utah	\$25.92 M	\$23.47 M	\$16.37 M	\$9.37 M
Virginia	\$150,490.00	\$0.00	\$0.00	\$0.00
Total Spend per Year	\$48,850,618.88	\$63,170,952.27	\$49,045,188.90	\$33,644,664.04

1.2. Lead State, Solicitation Number and Lead State Contract Administrator

The State of Utah, Division of Purchasing and General Services 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 #CT22-79. 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 must submit 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 through Jaggaer as further described in Section 2.1. The Lead State Contract Administrator designated by the State of Utah, Division of Purchasing and General Services is:

Cat Turner, State Contract Analyst
State of Utah, Division of Purchasing and General Services

1.3 Reserved

1.4. Definitions

The following definitions apply to this RFP. Attachment A – NASPO ValuePoint Master Agreement Terms and Conditions also contains definitions of terms used in this RFP.

- **ANSI:** A source for standards and conformity assessments by the American National Standards Institute. See www.ansi.org for more information.
- **ANSI/BIFMA:** Safety and performance standards developed by The Business and Institutional Furniture Manufacturers Association (BIFMA) engineering committee. See www.bifma.org for more information.

- **ASTM:** American Society for Testing and Material that develops international standards for materials, products, systems and services used in construction, manufacturing and transportation. See www.astm.org for more information.
- **Authorized Dealer:** A qualified firm that has been designated by the OEM as authorized to sell products and perform services under the resulting Master Agreement(s).
- **Bariatric:** Furniture constructed to provide support and comfort for larger individuals. Large Occupant may also be used to describe bariatric furniture.
- **BIFMA:** The Business and Institutional Furniture Manufacturers Association. See www.bifma.org for more information.
- **Contract Price:** The price to the Purchasing Entity (Published Commercial Price List + Minimum Percentage Discount).
- **Ergonomic:** The science of designing office furniture to fit the user and optimize human well-being and overall office furniture performance.
- **Lead State** means the state conducting this solicitation.
- **Lead State Contract Administrator** is the single point of contact during this solicitation and throughout the term of the Master Agreements.
- **Mandatory Minimum Requirements:** Requirements that must be met in order to be considered for further evaluation. Mandatory minimum requirements are non-negotiable. An offer that does not meet the mandatory minimum requirements will be disqualified from further consideration.
- **Master Agreement:** The underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint and the awarded Offeror, as now or hereafter amended.
- **OEM:** Original Equipment Manufacturer of office furniture.
- **Offeror** means the company or firm who submits a Proposal in response to this Request for Proposal.
- **Participating Addendum:** A Participating Addendum must be executed by any state that decides to adopt a NASPO ValuePoint Master Agreement. A Participating Addendum must be executed for each awarded Offeror by the individual Participating Entity desiring to use their contract. A Participating Addendum allows for each Participating Entity to add terms and conditions that may be unique to their entity.

The Participating Entity and the awarded Offeror must negotiate and agree upon any additional terms and conditions prior to the signing and execution of the Participating Addendum. Participating Entities are not mandated to sign a Participating Addendum with all awarded Offerors.

- **Participating Entity:** A state, or other legal entity, properly authorized to enter into a Participating Addendum.
- **Proposal** means the official written response submitted by an Offeror in response to this Request for Proposal.
- **Published Commercial Price List:** Manufacturer's Price list, also known as the list price.
- **Purchasing Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.
- **Request for Proposal or "RFP"** means the entire solicitation document, including all parts, sections, exhibits, attachments, and addenda.
- **Usage Report Administrator:** An individual responsible for the quarterly sales reporting and payments.

1.5. NASPO ValuePoint Background Information

NASPO ValuePoint is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) limited liability company dedicated to strengthening the procurement community through education, research, and communication. NASPO 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 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. For more information please see: www.naspovaluepoint.org and www.naspo.org.

1.6. Participating States

In addition to the Lead State conducting this RFP, the following states have requested to be named in this RFP as potential users of the resulting Master Agreement: Colorado, Connecticut, Hawaii, Maine, **Montana**, Nevada, New Mexico, Rhode Island, and South Dakota. 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, which are included in Attachments H-N and are being provided as a courtesy to Offerors to indicate which additional terms and conditions may be incorporated into the state's Participating Addendum after award of the Master Agreement. The Lead State will not address questions or concerns or negotiate other Participating Entities' terms and conditions. The Participating Entities shall negotiate these terms and conditions directly with the awarded Offeror.

1.7. Anticipated Usage

Section 1.1 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 Jaggaer (<http://purchasing.utah.gov/currentbids>). Questions must be submitted by the deadline for questions shown in Jaggaer. Answers will be given via Jaggaer (<http://purchasing.utah.gov/currentbids>) as soon as possible.

The Lead State may refuse to answer questions received after the deadline to receive questions.

2.2 RFP Addenda

Formal changes to this RFP including but not limited to contractual terms and procurement requirements shall only be changed via formal written 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 prospective Offeror to monitor the Jaggaer site (<http://purchasing.utah.gov/currentbids>) to obtain addenda or other information relating to the RFP.

2.3 Reserved

2.4 Proposal Due Date

Proposals must be received by the posted closing date and time as show in Jaggaer. Proposals received after the deadline will be late and rejected.

2.5 Cancellation of Procurement

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

2.6 Governing Laws and Regulations

This procurement is conducted by the State of Utah Division of Purchasing & General Services, in accordance with the Lead State Procurement Code. These are available at <https://purchasing.utah.gov/code-and-rule/>.

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 the State of Utah. The provisions governing choice of law and venue for issues arising after award and during contract performance are specified in Section 14.12 of Attachment A - NASPO ValuePoint Master Agreement Terms and Conditions.

2.7 Firm Offers

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

2.8 Right to Accept All or Portion of Proposal

Unless otherwise specified in the solicitation, the Lead State may accept any item or combination of items as specified in the solicitation or of any proposal unless the Offeror expressly restricts an item or combination of items in its Proposal and conditions its response on receiving all items for which it

provided a Proposal. In the event that the Offeror so restricts its Proposal, the Lead State may consider the Offeror's restriction and evaluate whether the award on such basis will result in the best value to the Lead State and the NASPO ValuePoint cooperative purchasing program. The Lead State may otherwise determine at its sole discretion that such restriction is non-responsive and renders the Offeror ineligible for further evaluation.

2.9 Proposal Content and Format Requirements

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

2.10 Proposal Submission Instructions

By submitting a proposal to this RFP, the Offeror acknowledges and agrees that the requirements, scope of work, and the evaluation process outlined in this RFP are understood, fair, equitable, and are not unduly restrictive. Any exceptions to the content of this RFP must be addressed within the question and answer period. The Offeror further acknowledges that it has read this RFP. More information regarding submittal requirements are provided within the RFP documents.

All costs incurred by an Offeror in the preparation and submission of a proposal, including any costs incurred during interviews, oral presentations, and/or product demonstrations are the responsibility of the Offeror and will not be reimbursed.

The cost proposal will be evaluated independently from the evaluated qualifications, pursuant to Utah Code Annotated (UCA) § 63G-6a Part 7, and as such, **must** be submitted separate from the technical proposal. Separate, for the purposes of this solicitation, means that a separate document is submitted with the labeling instructions provided in this RFP document. Failure to submit cost or pricing data separately may result in Offeror's Proposal being judged as non-responsive and ineligible for contract award. For electronic submissions, submitting the cost schedule as a separate document is considered separate.

Proposals must be received by the posted due date and time posted on Jaggaer. Proposals received after the deadline will be late and ineligible for consideration. Should there be a difference between the due date and time posted in Jaggaer and the date and time in this document, or elsewhere, the time and date posted in Jaggaer will control.

Proposals shall be submitted electronically through Jaggaer. The Lead State will not accept Proposals submitted through any other means. For ease in distributing proposals for evaluation the Lead State must have electronic copies received through Jaggaer only.

Electronic submission instructions: When submitting a proposal electronically through Jaggaer, allow sufficient time to complete the online forms and to upload proposal documents. The RFP will end at the deadline. If an Offeror is in the middle of uploading a proposal when the deadline arrives, the system will stop the upload process and the proposal will not be accepted by Jaggaer, and the attempted submission will be considered late and ineligible for consideration.

Electronic proposals may require uploading of electronic attachments. Jaggaer will accept a wide variety of document types as attachments. However, the Lead State is unable to view certain documents. All documents must be uploaded in Jaggaer as separate files.

2.11 Required Format

All Proposals must be submitted in the format outlined below. Offerors must title each document utilizing the names listed below. Proposals must be submitted as separate, individual documents pursuant to the titles listed below. The Jaggaer site will outline where certain documents are to be submitted within the portal. All other documents may be submitted within the Supplier Attachments section of the Jaggaer site.

2.11.1 Business Proposal Response

Offerors shall submit a point by point response to the items in Section 4 below. The response should use the same section title and subsection number for ease in finding information during evaluation.

Title this document upload – **[Offeror Name] Business Proposal Response**

2.11.2 OEM Mandatory Minimum Requirements

Offerors must complete Attachment C – OEM Mandatory Minimum Requirements pertaining to the Offeror’s firm and products and the ability to meet the mandatory minimum requirements listed in Attachment C – OEM Mandatory Minimum Requirements.

Title this document upload – **[Offeror Name] – OEM Mandatory Minimum Requirements**

If Offeror is proposing optional services, upload the document in the Supplier’s Attachment section.

Title this document upload - **[Offeror Name] - Optional Services**

2.11.3 OEM Evaluated Qualifications

Offerors shall submit a point by point response to the OEM Evaluated Qualifications. The response should use the same section title and subsection numbering for ease in finding information during evaluation.

Title this document upload – **[Offeror Name] OEM Evaluated Qualifications**

2.11.4 Product Mandatory Minimum Requirements and Evaluated Qualifications

2.11.4.1 Product Mandatory Minimum Requirements

Offerors shall submit a point by point response to the Product Mandatory Minimum Requirements to demonstrate product compliance with the stated product mandatory minimum requirements. Within each product category, Offerors shall, at a minimum, provide the products listed in the Product Mandatory Minimum Requirements.

Title this document upload – **[Offeror Name] - Product Mandatory Minimum Requirements.**

2.11.4.2 Product Evaluated Qualifications

Offerors shall submit a point by point response to the Product Evaluated Qualifications. The response should use the same section title and subsection numbering for ease in finding information during evaluation.

Title this document upload – **[Offeror Name] - Product Evaluated Qualifications.**

2.11.5 Confidential, Protected or Proprietary Information & Redacted Copy

Pricing may not be classified as confidential or protected and will be considered public information.

Process for Requesting Non-Disclosure: To protect information under a claim of business confidentiality, an Offeror must complete Attachment F - Claim of Business Confidentiality form, at the time the Proposal is submitted, with the following information:

- Include a concise statement of reasons supporting the claim of business confidentiality (Subsection 63G-2-309(1)).
- Submit an electronic “redacted” (excluding protected information) copy of the Proposal. Copy must clearly be marked “Redacted Version.”

An entire proposal cannot be identified as **“PROTECTED”, “CONFIDENTIAL” or “PROPRIETARY”**.

Redacted Copy: If an Offeror submits a proposal that contains information claimed to be confidential or protected, 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."

As provided above, this document is to constitute Offeror’s redacted proposal along with Attachment F.

If there is no protected/redacted information, provide a document labeled as indicated below with “None” in the body of the document.

Failure to comply with this section of the RFP releases the Lead State, NASPO ValuePoint, and Participating Entities from any obligation or liability arising from the inadvertent release of Offeror information.

Title this document upload – **[Offeror Name] Redacted Proposal**

2.11.6 Exceptions and/or Additions to Attachment A – NASPO ValuePoint Master Agreement Terms and Conditions.

The Lead State discourages exceptions to contract terms and conditions in the RFP and the NASPO ValuePoint Master Agreement Terms and Conditions. Exceptions may cause a Proposal to be rejected as nonresponsive when, in the sole judgment of the Lead State (and its evaluation committee) the Proposal appears to be conditioned on the exception or correction of what is deemed to be a deficiency or unacceptable exception and would

require a substantial proposal rewrite to correct.

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

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

Proposed exceptions and/or additions to Attachment A – NASPO ValuePoint Master Agreement Terms and Conditions, including the exhibits, must be submitted in this section. Offeror must provide all proposed exceptions and/or additions, including an Offeror's terms and conditions, license agreements, or service level agreements in Microsoft Word format for redline editing. Offeror must also provide the name, contact information, and access to the individual(s) that will be directly involved in terms and conditions negotiations.

If there are no exceptions or additions to Attachment A – NASPO ValuePoint Master Agreement Terms and Conditions, provide a document with "None" in the body.

Title this document – **[Offeror Name] Exceptions Additions to T&Cs**

2.11.7 Cost Proposal

Cost will be evaluated independently from the evaluated qualifications. The Attachment D - Cost Proposal is to be submitted as a separate document. Inclusion of any cost or pricing data within the evaluated qualifications may result in the proposal being deemed non-responsive.

Title this document – **[Offeror Name] Cost Proposal**

2.12 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 evaluation committee. Materials submitted may be returned only at the state's option.

Section 3: Evaluation and Award

3.1 Right to Waive Minor Irregularities

The Lead State in its sole discretion reserves the right to waive minor irregularities in the Proposal, which include but are not limited to corrections of deficiencies or clarification of ambiguities that in the judgment of the Lead State do not require a comprehensive Proposal rewrite. The Lead State also reserves the right in its sole discretion to waive certain mandatory requirements provided that all of the otherwise responsive Proposals fail to meet the same mandatory requirements and the failure to do so does not materially affect the RFP.

3.2 Discussions with Offerors – Oral Presentations

The Lead State does not intend to conduct interviews or presentations but the Lead State reserves the right to do so if it is determined to be in the best interest of the Lead State. The Lead State shall establish a date and time for the interviews or presentations and shall notify eligible Offerors of the procedures. Representations made by an Offeror during interviews or presentations shall become an addendum to the Offeror's proposal and shall be documented. Representations must be consistent with the Offeror's original proposal and may only be used for purposes of clarifying or filling in gaps in the Offeror's proposal. Interviews and presentations will be at the Offeror's expense.

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

3.3 Award of Master Agreement(s)

It is anticipated that this RFP will result in multiple contract awards. The methodology or formula that will be used to determine the number of contract awards is: if the Offeror scores 750 points (combination of points earned from OEM Evaluated Qualifications, Product Evaluated Qualifications, and Cost Proposal Evaluation), the Offeror will be awarded a contract.

3.4 Evaluation Process

Stage 1: OEM Mandatory Minimum Requirements

In the initial stage of the evaluation process, the Lead State will review all Proposals timely received. Non-responsive proposals not conforming to RFP requirements will be eliminated from further consideration.

Failure to meet any one of the OEM Mandatory Minimum Requirements will result in the Offeror being rejected and the Offeror shall not move forward in the evaluation process. All of the OEM Mandatory Minimum Requirements are non-negotiable.

Stage 2: OEM Evaluated Qualifications

Responsive Proposals will be evaluated by an evaluation committee against the OEM evaluated qualifications. Proposals will be evaluated against the OEM evaluated qualifications as follows:

OEM Evaluated Qualification 1 - Warranty (40 Points)
OEM Evaluated Qualification 2 – Website (40 Points)
OEM Evaluated Qualification 3 – Customer Service Capabilities (50 Points)
OEM Evaluated Qualification 4 – Delivery (40 Points)
OEM Evaluated Qualification 5 – Authorized Dealer Relationship (20 Points)
OEM Evaluated Qualification 6 - Environmental (60 Points)

There are 250 OEM evaluated qualifications points possible. Offerors that achieve a minimum score threshold of 187.5 points will proceed to Stage 3: Product Mandatory Minimum Requirements and Evaluated Qualifications. Offerors with a score of less than the minimum required OEM evaluated qualifications points will be deemed non-responsive and ineligible for further consideration.

Stage 3: Product Mandatory Minimum Requirements and Evaluated Qualifications

Offerors may respond to one (1) or more of the product categories. Each proposal that meets the minimum score threshold described in the previous stage, will be further evaluated. Each product category has a series of product mandatory minimum requirements and a series of product related evaluated qualifications. Failure to include an offer on all mandatory products within the product category listed in Attachment B - Scope of Work will disqualify the product category from consideration.

Stage 3a: Product Mandatory Minimum Requirements:

Offeror's failure to meet any of the product mandatory minimum requirements will result in the product category portion of the proposal being rejected, and the Offeror shall not move forward in the product category evaluation process. All of the category mandatory minimum requirements are non-negotiable.

Stage 3b: Product Evaluated Qualifications:

Responsive Proposals will be evaluated by an evaluation committee against the Product Evaluated Qualifications included in Section 7 of this RFP. Proposals will be evaluated against the OEM Evaluated Qualifications as follows:

- Product Evaluated Qualifications 1 – Category Capabilities, Components, and Finishes (100 Points)
- Product Evaluated Qualifications 2 – ANSI/BIFMA (100 Points)
- Product Evaluated Qualifications 3 – Versatility (100 Points)
- Product Evaluated Qualifications 4 – Mandatory Products (100 Points)
- Product Evaluated Qualifications 5 – Accessories (50 Points)

There are 450 Product Evaluated Qualifications points possible per category. Offerors that achieve a minimum score threshold of 337.5 points per category will proceed to Stage 4: Cost Proposal Evaluation. Offerors with a score of less than the minimum required Product Evaluated Qualifications points will be deemed non-responsive and ineligible for further consideration for that product category.

Stage 4: Cost Proposal Evaluation

Offerors successful in the Product Mandatory Minimum Requirements and Evaluated Qualifications will advance to Stage 4: Cost Proposal Evaluation. The Lead State shall use the following cost formula: The Offeror with the lowest total cost per product category shall receive 300 points per product category (100% of the total cost points). Other Offerors will receive a portion of the cost points based on what ratio higher their total cost is than the lowest proposed total cost.

It is anticipated that this RFP will result in multiple contract awards. The methodology or formula that will be used to determine the number of contract awards is: if the Offeror scores 750 points in a product category (combination of points earned from OEM Evaluated Qualifications, Product Evaluated Qualifications, and Cost Proposal Evaluation), the Offeror will be awarded a contract for that product category.

3.5 Notice of Intent to Award

After a final award(s) is made, the Lead State will issue an intent to award announcement on its electronic procurement system.

3.6 Protest

Offerors are directed to Utah Code Part 16 and Utah Administrative Code Rule R16 available at <http://le.utah.gov/xcode/Title63G/Chapter6a/63G-6a-S1601.html> and <https://rules.utah.gov/publicat/code/r033/r033-016.htm> for available protest processes.

3.7 Post Award Formalization of the Master Agreement

The Lead State reserves the right during contract negotiation of the Master Agreement to adjust terms and conditions that would not (in the Lead State's judgment) have a material effect on price, schedule, scope of work, or risk to the Lead State and Participating Entities, with materiality defined in terms of the effect on the evaluation and award. The Lead State reserves the right to accept contract or pricing changes that are more favorable to the Lead State.

The 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, Attachment A - NASPO ValuePoint Master Agreement Terms and Conditions and Lead State specific terms and conditions required to execute a Master Agreement, the scope of work and selected portions of the Offeror's Proposal.

Section 4: Business Proposal Form

The response to this section shall not exceed three (3) pages in length. If pages submitted exceed the amount indicated, the response to this section shall be discarded.

4.1 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.

- 4.1.1** Describe specifically what makes Offeror a stable, long term partner for NASPO ValuePoint.
- 4.1.2** Describe how Offeror intends to promote and market the use of the Master Agreement to Participating Entities. As many Participating Entities' chief procurement officials must permit the use of the Master Agreement, how will Offeror integrate the approval of the chief procurement official into Offeror's plan for promoting the Master Agreement?
- 4.1.3** Through its Cooperative Development Coordinators, Supplier Development Director and Education & Outreach team, NASPO ValuePoint assists Lead States by engaging contractors in strategies aimed at promoting master agreements. What opportunities and/or challenges does Offeror see in working with NASPO ValuePoint staff in this way?
- 4.1.4** Does Offeror participate in any other public procurement cooperatives? If yes, explain any restrictions or requirements that other cooperatives place on Offeror for participating with NASPO ValuePoint. If Offeror is contractually unable to fulfill this request, provide a statement.

4.2 Administrative Fee and Reporting Plan

Offeror shall include a plan for meeting the administrative fee and reporting requirements of NASPO ValuePoint and Participating Entities. All information within the plan must be kept current, with NASPO ValuePoint and the Lead State Contract Administrator being notified of any changes to the administrative fee and reporting plan immediately.

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

- 4.2.1** Offeror shall identify the individual responsible for providing the mandatory usage reports.
- 4.2.2** Offeror shall identify the method and frequency in which usage data will be collected from authorized distributors.
- 4.2.3** Offeror shall identify the method in which administrative fees will be distributed to NASPO ValuePoint and applicable Participating Entities.
- 4.2.4** Offeror shall identify the method in which up-to-date information will be provided to NASPO ValuePoint and the Lead State Contract Administrator.

4.3 Offeror Profile

Provide the following information specific to Offeror:

- 4.3.1** Offeror's full legal name
- 4.3.2** Primary business address
- 4.3.3** Describe Offeror's ownership structure
- 4.3.4** Employee size (number of employees)
- 4.3.5** Website
- 4.3.6** Sales contact information
- 4.3.7** Client retention rate during the past three (3) years
- 4.3.8** A brief history of Offeror and the year it was founded
- 4.3.9** Describe Offeror's growth during the past three (3) years.

Section 5: OEM Mandatory Minimum Requirements

5.1 See Attachment C – OEM Mandatory Minimum Requirements.

Section 6: OEM Evaluated Qualifications

Offerors are required to submit a point by point response to the following items. Offerors shall provide a detailed description of how Offeror can provide the following criteria. Offerors should not submit a full catalog or generic literature.

6.1 Warranty

- 6.1.1 Describe how Offeror's standard warranty for each product category exceeds the minimum warranty requirements stated in Attachment C – OEM Mandatory Minimum Requirements Section 8 Warranty. Describe Offeror's warranty and period of time for textiles, color fastness, electrical components, pneumatic cylinders and other moving parts.
- 6.1.2 Describe how Offeror provides warranty documents or information to Participating Entities.
- 6.1.3 Provide the number of warranty claims and the percentage of warranty claims for each product category for which Offeror is submitting that illustrates the ratio between the total number of claims and total units shipped for calendar year 2021.
- 6.1.4 Describe Offeror's policy in regards to how warranty applies to products that have been discontinued.
- 6.1.5 To what extent beyond ten (10) years or the warranty expiration period as defined in Attachment C - OEM Mandatory Minimum Requirements Section 8 Warranty are parts and components available for products that have been discontinued?
- 6.1.6 Provide a copy of the Offeror's standard warranty for each product category for which Offeror is submitting.

6.2 Website

The response to this section shall not exceed seven (7) pages in length including images to illustrate website capabilities. **If pages submitted exceed the amount indicated, the response shall be discarded and not evaluated.**

- 6.2.1 Describe in detail the features, benefits, and capabilities of Offeror's website.
- 6.2.2 To what extent does Offeror's website provide detailed information on product offering, color and fabric options, pricing, and product capability?
- 6.2.3 Describe the website's ability to search Authorized Dealers in the geographic area of each Participating Entity.
- 6.2.4 Describe website training offered by Offeror.
- 6.2.5 Describe how environmental products are identified or searchable to Participating Entities on the website.
- 6.2.6 Describe the accessibility, functionality, or level of website compliance with Web Content Accessibility Guidelines.

6.3 Customer Service Capabilities

The response to this section shall not exceed fifteen (15) pages in length. **If pages submitted exceed the amount indicated, the response shall be discarded and not evaluated.**

- 6.3.1** Describe how Offeror proposes to provide satisfactory product representation and sales support to Participating Entities and how the Participating Entity will be notified of changes to the representative contact information.
- 6.3.2** Provide the Offeror's proposed OEM Contract Administrator's number of years' experience in the office furniture industry.
- 6.3.3** To what extent are Offeror's service centers and/or Authorized Dealers service centers available beyond the minimum mandatory requirements described in Attachment C - OEM Mandatory Minimum Requirements Section 19 - Customer Service.
- 6.3.4** Describe the ordering options available from the Offeror, Authorized Dealer(s), and the website.
- 6.3.5** Describe the process that will be used to ensure that a customer service representative will respond to all inquiries within one (1) business day.
- 6.3.6** Describe the Design Services available through Offeror's Authorized Dealer(s).
- 6.3.7** Describe the Installation Services available through Offeror's Authorized Dealer(s).
- 6.3.8** Describe the Customer Service available through Offeror's Authorized Dealer(s).
- 6.3.9** Describe Offeror's process for Customer Owned Material (COM).
- 6.3.10** Describe the process Offeror uses to track and respond to issues and concerns from both the Authorized Dealer(s) and Participating Entities.
- 6.3.11** Describe how Offeror assesses customer satisfaction.
- 6.3.12** Describe Offeror's quality assurance measures.
- 6.3.13** Describe Offeror's ability and process to support a decentralized system of orders submitted from many Purchasing Entities in multiple states and locations.
- 6.3.14** Describe Offeror's return and restocking policy and procedure when the Participating Entity orders in error.

6.4 Delivery

The response to this section shall not exceed two (2) pages in length. **If pages submitted exceed the amount indicated, the response shall be discarded and not evaluated.**

- 6.4.1** Describe how Offeror processes emergency or rush deliveries that are requested by a Participating Entity.

- 6.4.2 Describe the standard lead time for shipping for each of the shipping methods defined in Attachment C - OEM Mandatory Minimum Requirements Section 11 Freight and Delivery.
- 6.4.3 Describe Offeror's short lead time or express delivery products program.
- 6.4.4 Describe Offeror's standard lead time from the time the order is placed until delivery.

6.5 Authorized Dealer Relationship

The response to this section shall not exceed five (5) pages in length. **If pages submitted exceed the amount indicated, the response shall be discarded and not evaluated.**

- 6.5.1 Describe what Offeror requires from potential dealers to become an Authorized Dealer including any requirements for a show room.
- 6.5.2 Describe how Offeror currently measures Authorized Dealer performance.
- 6.5.3 Describe Offeror's process for revoking a dealership from an Authorized Dealer for issues related to customer service, lack of inventory, poor design service, late deliveries, and other Authorized Dealer performance related issues, and how the escalation process will be handled.
- 6.5.4 Describe how Offeror will support and assist an Authorized Dealer in improving their performance and the corrective action process.
- 6.5.5 Describe Offeror's process for tracking and responding to issues and concerns from both Authorized Dealers and Participating Entities. Describe how Offeror would resolve a dispute between a Purchasing Entity and an Authorized Dealer.
- 6.5.6 Describe how Offeror will train Authorized Dealers on implementing and marketing the Master Agreement. Describe how Offeror will train Authorized Dealers as to the scope of the Master Agreement to ensure that only the product categories awarded will be promoted and marketed to the Purchasing Entity.

6.6 Environmental

The response to this section shall not exceed twenty-three (23) pages in length. **If pages submitted exceed the amount indicated, the response shall be discarded and not evaluated.**

Participating Entities reserve the right to request evidence that the Offeror achieves, demonstrated, or provides the environmental sustainability attributes stated. Acceptable evidence that may be requested consists of published literature, catalogs, production specifications, sales brochures, and/or independent laboratory test results showing that the environmental sustainability attribute is achieved, demonstrated, or provided. Do not submit independent test data or published literature; however, Participating Entities reserve the right to request second party testing data at any time.

- 6.6.1 Commitment to Environment and Sustainability
 - 6.6.1.1 Provide a website link to Offeror's current environmental sustainability, if available.

- 6.6.1.2** Provide a website link to Offeror’s most recent annual sustainability report, if available.
- 6.6.1.3** Describe any sustainable transportation practices Offeror has put in place.
- 6.6.1.4** Describe any sustainable packaging services Offeror provides.
- 6.6.1.5** Describe information about how Offeror has improved the sustainability of its operations.
- 6.6.1.6** Describe information about how Offeror labels its environmentally preferable products in Offeror’s catalog and/or online ordering system so they can easily be identified. Environmentally preferable products are defined as those meeting the criteria below.
- 6.6.1.7** Describe any environmental certifications and/or awards Offeror has received in the past five (5) years.
- 6.7** Offeror shall provide a list of Offeror’s proposed products that meet the standards below.
- 6.7.1** ANSI/BIFMA e3-2019 Furniture Sustainability at level® 1 or higher.
- 6.7.2** Cradle to Cradle (Bronze, Silver, or Gold).
- 6.7.3** UL2818 GREENGUARD (Standard for Chemical Emissions) (Basic or Gold).
- 6.7.4** SCS Indoor Air Advantage (Basic or Gold).
- 6.7.5** ANSI/BIFMA Furniture Emission Standards (M7.1/X7.1 1-2011)
- 6.7.6** Flame Retardant Free
- 6.7.6.1** Does Offeror label all upholstered seating products that meet Technical Bulletin 117-2103 in accordance with the manner described in Section 19094 of the California Business and Professions Code?
- 6.7.6.2** Are all upholstered seating products that meet TB 117-2013 labeled “as not containing flame retardant chemicals”?
- 6.7.7** Environmental Product Declaration (EPD) or Health Product Declaration (HPD). Include an example, if available.
- 6.7.8** At least 30% post-consumer recycled material and/or 50% total recycled content (Total recycled is the amount of post-consumer recycled content and post-industrial recycled content that the product contains).
- 6.7.9** List any additional environmental attributes of Offeror’s products such as bio-based content or FSC certified wood.

6.7.10 Principles for Safer Chemicals: Offerors that participated in the Chemical Footprint Project need only complete question 6.7.10.1 of this section and may skip questions 6.7.10.2-4.

6.7.10.1 Has Offeror participated in the Chemical Footprint Project? If yes, provide Offeror's responses to the survey and skip questions ii-iv. If no, respond to questions 6.7.10.2-4 below.

6.7.10.2 Does Offeror have a chemicals policy that aims to avoid chemicals of high concern? Yes/No. If yes, provide Offeror's policy and note whether it is available on Offeror's website. If no, skip to question iv below.

6.7.10.3 Does Offeror have a chemicals policy that in addition to avoiding chemical of high concern includes an explicit reference for the use of safer alternatives? Yes/No. If yes, note whether Offeror's policy focus on chemicals in Offeror's products, manufacturing operations, supply chains, and/or primary packaging? In addition, if yes, note whether Offeror's chemicals policy publicly. If no, answer question iv below.

6.7.10.4 What chemical information does Offeror collect from suppliers? Response Options. List all that supply. Offeror:

6.7.10.4.1 Requires suppliers to provide chemical information as delineated in our Legally Restricted Substances List.

6.7.10.4.2 Requires suppliers to provide chemical information as delineated in our Beyond Restricted Substances List.

6.7.10.4.3 Requires suppliers to provide chemical information on the EU's list of Candidate Substances of Very High Concern.

6.7.10.4.4 Requires supplies to provide full chemical ingredient information.

6.7.10.4.5 None of the above.

6.8 Other Applicable Standards.

6.9 Has Offeror had any breaches of environmental, health, or safety standards within the past twelve (12) months? This includes fires, explosions, industrial accidents, hazardous releases, or other health and safety incidents at any of the Offeror's facilities. If so, provide details (including but not limited to date of event, quantitative extent of damage, environmental effects, and corrective action plan and success rate) of all breaches.

Section 7: Product Mandatory Minimum Requirements and Evaluated Qualifications

Offerors are required to submit a point by point response to the following questions for each product category for which Offeror is responding to. Offerors shall submit information for mandatory and optional product offerings in separate sections of their response to this section. Offerors shall not submit a full catalog or generic literature.

The Participating Entities reserve the right to request second party testing data. Do not submit independent test data or published literature; however, the Participating Entities reserve the right to request second party testing data at any time.

Offeror's failure to meet any one (1) of the product mandatory minimum requirements will result in the product category portion of the Offeror's proposal being classified as non-responsive and will be rejected. Within each product category, Offerors shall, at a minimum, provide the mandatory products listed below.

Offerors may not team with other manufacturers in order to provide all mandatory products within a category except the architectural products and accessories category. If an Offeror elects to team with another manufacturer to provide the architectural products and accessories category, the Offeror that submits the response must submit a Proposal on behalf of the manufacturer of the architectural products and accessories and will be considered legally responsible for the Proposal and the Master Agreement, if awarded.

7.1 Office Seating and Accessories

7.1.1 Office Seating and Accessories Mandatory Minimum Requirements

7.1.1.1 All products offered in response to each product category shall be standard catalog products for which literature and specifications are available including any certified test results if available.

7.1.1.2 All products must have an identification tag/sticker, which must include the following information: manufacturer's name, model number, and year built excluding accessories.

7.1.1.3 All products must be designed in a manner that allows assembly and disassembly to occur with minimal disruption, time, noise volume, and space usage.

7.1.1.4 Offerors submitting for the office seating and accessories category must provide in their offering, at a minimum, executive seating, task/work seating, conference room seating and guest/side seating. Optional products include dispatch 24/7 seating, value seating, Bariatric seating, stackable/folding seating, work stools, and tablet arm chairs and stools.

7.1.2 Office Seating and Accessories Evaluated Qualifications

7.1.2.1 Category Capabilities, Components, and Finishes

7.1.2.1.1 Describe fabric grades, standard and up charge categories, soil and fade resistance, recycled content fabric (include recycled content type) for all seating types.

7.1.2.1.2 Describe polyurethane foams and minimum IFD softness for all seating types.

7.1.2.1.3 Describe Offeror's ability to customize products that still maintain the primary product function and warranty.

7.1.2.2 Describe which products, excluding accessories, offered in response to this category meet the most current ANSI/BIFMA X5.1 General - Purpose Office Chairs, and California Technical Bulletin 117-2013, or most current version, Requirements, Test Procedure and Apparatus for Testing and Flame Retardance of Resilient Filling Materials used in upholstered furniture, January 2015 edition, also known as Technical Bulletin 117.

7.1.2.3 Describe the versatility of proposed product and how it can be used collaboratively to form groups, teams, or instruction and movement including how it can be integrated with other proposed product categories (if any).

7.1.2.4 Mandatory Products

7.1.2.4.1 Describe executive seating options including ergonomic, fully adjustability including tilt, height, pneumatic, with multiple seat pan sizes, seat and swivel, multiple styles of casters to include carpet and non-carpet, minimum five-star base, armrests to be height and width adjustable.

7.1.2.4.2 Describe task/work seating options including ergonomic, full adjustability including tilt, height, pneumatic, seat and swivel, multiples styles of casters to include carpet and non-carpet, minimum five-star base, armrests to be height and width adjustable.

7.1.2.4.3 Describe conference room seating options including ergonomic, full adjustability including tilt, height, pneumatic, seat and swivel, multiple styles of casters, bases to include carpet and non-carpet, minimum five-star base, and armrest options.

7.1.2.4.4 Describe guest/side seating options including ergonomic, multiple styles, sizes type of casters, bases, and armrest options.

7.1.2.5 Describe available accessories for this category.

7.1.3 Office Seating and Accessories Optional Products (Not Evaluated)

7.1.3.1 Describe dispatch 24/7 seating options including ergonomic, full adjustability including tilt, height, pneumatic, seat and swivel, multiple styles of casters to include carpet and non-carpet, minimum five-star base, armrests to be height and width adjustable headrest and lumbar support. Include weight rating availability.

7.1.3.2 Describe value seating options (under \$400 net price per chair **after** discount) including ergonomic, full adjustability including tilt, height, pneumatic, seat and swivel, multiple styles of casters, bases to include carpet and non-carpet, minimum five-star base, and armrest options.

7.1.3.3 Describe Bariatric seating options including ergonomic, full adjustability including tilt, height, pneumatic, seat and swivel, multiple styles of casters, bases to include carpet and non-carpet, minimum five-star base, and armrest options. Provide details if Bariatric chairs meet or exceed the most current ANSI/BIFMA X5.11 General - Purpose Large Occupant Office Chairs.

- 7.1.3.4** Describe stackable/foldable seating options including ergonomic, multiples styles of casters and bases, armrest options, alignment devices, ganging, weight and maximum stack height, storage and transportation options.
- 7.1.3.5** Describe work stool options including hard surface types, type of casters, bases, back and arm and footrest options.
- 7.1.3.6** Describe tablet arm chairs including hard surface types, types of casters, bases, and back and arm options.

7.2 Lounge and Public Seating and Accessories

7.2.1 Lounge and Public Seating and Accessories Mandatory Minimum Requirements

- 7.2.1.1** All products offered in response to each product category shall be standard catalog products for which literature and specifications are available including any certified test results if available.
- 7.2.1.2** All products must have an identification tag/sticker which must include the following information: manufacturer's name, model number, and year built excluding accessories
- 7.2.1.3** All products must be designed in a manner that allows assembly and disassembly to occur with minimal disruption, time, noise volume, and space usage.
- 7.2.1.4** Offerors submitting for the Lounge and Public Seating Accessories category must include, at a minimum, single seats reception/lounge seating, multiple seat reception/lounge seating within one unit or ganged seating units, couch seating, and lounge seating. Optional products include collaborative lounge seating, folding chairs, and foot stools.

7.2.2 Lounge and Public Seating and Accessories Evaluated Qualifications

7.2.2.1 Category Capabilities, Components, and Finishes

- 7.2.2.1.1** Describe fabric grades, standard and up charge categories, soil and fade resistance, recycled content fabric (include recycled content type) for all seating types.
- 7.2.2.1.2** Describe polyurethane foams and minimum IFD softness.
- 7.2.2.1.3** Describe Offeror's ability to customize products that still maintain the primary product function and warranty.
- 7.2.2.2** Describe which products, excluding accessories, offered in response to this category meet the most current ANSI/BIFMA X5.1 General Purpose Office Chairs – Tests, ANSI/BIFMA X5.4 Public & Lounge Seating, and/or ANSI/BIFMA X5.41 Large Occupant Public & Lounge Seating – 400 lb user, and California Technical Bulletin 117-2013, or most current version, Requirements, Test Procedure and Apparatus for Testing and Flame Retardance of Resilient Filling Materials used in upholstered furniture.

7.2.2.3 Describe the versatility of proposed product and how it can be used collaboratively to form groups, teams, or instruction and movement including how it can be integrated with other proposed product categories (if any).

7.2.2.4 Mandatory Products

7.2.2.4.1 Describe single seat reception/lounge seating options including ergonomic, multiple styles, sizes, types of casters, bases, and armrest options.

7.2.2.4.2 Describe multiple seat reception/lounge seating options including ergonomic, multiple styles, sizes, types of casters, bases, and armrest options.

7.2.2.4.3 Describe couch seating options including ergonomic, multiple styles, sizes, types of casters, bases, and armrest options.

7.2.2.4.4 Describe lounge seating options including ergonomic, multiple styles, sizes, types of casters, bases, and armrest options.

7.2.2.5 Describe available accessories for this category.

7.2.3 Lounge and Public Seating and Accessories Optional Products (Not Evaluated)

7.2.3.1 Describe collaborative lounge seating options including ergonomic, multiple styles of casters and bases, armrest options, alignment devices, ganging, weight and maximum stack height, storage and transportation options.

7.2.3.2 Describe folding chairs including multiple styles of casters and bases, armrest options, alignment devices, ganging, weight and maximum stack height, storage and transportation options.

7.2.3.3 Describe foot stools including multiple styles or casters and bases, and weight options.

7.2.3.4 Describe Bariatric Lounge and Public Seating.

7.3 Desks, Tables, and Related Products and Accessories

7.3.1 Desks, Tables, and Related Products and Accessories Mandatory Minimum Requirements

7.3.1.1 All products offered in response to each product category shall be standard catalog products for which literature and specifications are available including any certified test results if available.

7.3.1.2 All products must have an identification tag/sticker which must include the following information: manufacturer's name, model number, and year built excluding accessories

7.3.1.3 All products must be designed in a manner that allows assembly and disassembly to occur with minimal disruption, time, noise volume, and space usage.

- 7.3.1.4** Offerors submitting for the Desks, Tables, and Related Products and Accessories category must provide in their offering, at a minimum, free-standing desks, height adjustable desks, and tables. Optional products include small office, side tables, conference room tables, training tables, and mobile and portable workstations.
- 7.3.1.5** Offeror certifies that standard trim for all exposed corners or changes in height, if applicable, must be included in quotes. Offeror must provide standard trim for all exposed ends, junctions, corners, or changes in height.
- 7.3.2** Desks, Tables, and Related Products and Accessories Evaluated Qualifications
- 7.3.2.1** Category Capabilities, Components, and Finishes
- 7.3.2.1.1** Describe work surfaces including standard and up charge laminates, veneers, shapes, depths, edge options, finishes, height adjustability, support methods, and cable management accessibility.
- 7.3.2.1.2** Describe Offeror's ability to customize products that still maintain the primary product function and warranty.
- 7.3.2.2** Describe which products, excluding accessories, offered in response to this category meet or exceed the most current ANSI/BIFMA X5.5 Desks/Tables Products.
- 7.3.2.3** Describe the versatility of proposed product and how it can be used collaboratively to form groups, teams, or instruction and movement including how it can be integrated with other proposed product categories (if any).
- 7.3.2.4** Describe how product offering are designed in a manner that components may be completely removed from one side without disturbing the other workstation when in an open floorplan or collaboration workstation layout.
- 7.3.2.5** Mandatory Products
- 7.3.2.5.1** Describe free-standing desks including sizes, number of drawers, types of finishes and materials (i.e. wood, metal), privacy type panels, base and leg/foot options, locking/security, drawer tracking/glides, and cord management.
- 7.3.2.5.2** Describe height adjustable desks options including, but not limited to, work surface options, sizes, cable management, finishes, options, and the height adjustability mechanisms.
- 7.3.2.5.3** Describe tables including size (height/width/depth), type of legs or bases, types of finishes and materials (i.e. wood, metal), mobility, fold ability, storage, and transportation options.
- 7.3.2.6** Describe available accessories for this category including integrated task lighting.
- 7.3.3** Desks, Tables, and Related Products and Accessories Optional Products (Not Evaluated)

- 7.3.3.1** Describe small office tables including sizes (height/width/depth), type of finishes and materials (i.e. wood, metal), locking/security and bases.
- 7.3.3.2** Describe side tables including sizes (height/width/depth), type of finishes and materials (i.e. wood, metal), locking/security and bases.
- 7.3.3.3** Describe conference room tables including sizes (height, width, depth), types of finishes and materials (i.e. wood, metal), bases, and cabling options for audio/visual/computer/electrical component equipment.
- 7.3.3.4** Describe training tables including sizes (height/width/depth), types of finishes and materials (i.e. wood, metal), bases, mobility, fold ability, nesting, storage and transportation options, and cabling options for audio/visual/computer/electrical component equipment.
- 7.3.3.5** Describe mobile and portable workstations including sizes (height/width/depth), types of finishes and materials (i.e. wood, metal), bases, mobility, fold ability, nesting, storage and transportation options, and cabling options for audio/visual/computer/electrical component equipment.

7.4 Panel Systems and Accessories

7.4.1 Panel Systems and Accessories Mandatory Minimum Requirements

- 7.4.1.1** All products offered in response to each product category shall be standard catalog products for which literature and specifications are available including any certified test results if available.
- 7.4.1.2** All products must have an identification tag/sticker which must include the following information: manufacturer's name, model number, and year built excluding accessories.
- 7.4.1.3** All products must be designed in a manner that allows assembly and disassembly to occur with minimal disruption, time, noise volume, and space usage.
- 7.4.1.4** Offerors submitting for the panel systems and accessories category must provide in their offering, at a minimum, panel systems and overhead storage. Optional products include moveable screens, boundaries, and panels, mobile boards, and shelving.
- 7.4.1.5** Offeror certifies that standard trim for all exposed panel ends, panel junctions, corners or changes in height must be included in quotes.

7.4.2 Panel Systems and Accessories Evaluated Qualifications

7.4.2.1 Category Capabilities, Components, and Finishes

- 7.4.2.1.1** Describe fabric and fabric grades including the variety of options available in standard and up charge category, including soil and fade resistance, recycled content fabric (include recycled content type).

7.4.2.1.2 Describe Offeror's ability to customize products that still maintain the primary product function and warranty.

7.4.2.1.3 Describe Offeror's ability to conceal from view or flush component mounting hardware, safety locking devices, and ability to install or uninstall connectors and fasteners without damage to panels or adjacent surfaces.

7.4.2.2 Describe which products, excluding accessories, offered in response to this category meet or exceed the most current ANSI/BIFMA - X5.6 Panel Systems.

7.4.2.3 Describe the versatility of Offeror's proposed product and how it can be used collaboratively to form groups, teams, or instruction and movement including how it can be integrated with Offeror's other proposed product categories (if any). Describe how product offering are designed in a manner that components may be completely removed from one side without disturbing the other workstation when in an open floorplan or collaboration workstation layout.

7.4.2.4 Mandatory Products

7.4.2.4.1 Describe panel systems including a variety of options that provide privacy without blocking airflow or light, ease of reconfiguration, and cable management, options to support hanging components without counter balancing, and the number of components that can be supported without replacing the load bearing base unit, and the maximum height (if applicable).

7.4.2.4.2 Describe overhead storage units including the variety of options, materials, and widths to match panel dimensions, flexibility in configurations, shelves with integral metal back or back stop, finish, lock availability, and the ability to attach accessories.

7.4.2.5 Describe available accessories for this category including task lighting (mounting, high efficiency, and glare minimizing options) and overhead and high shelf storage accessories.

7.4.3 Panel Systems and Accessories Optional Products (Not Evaluated)

7.4.3.1 Describe moveable screens, boundaries, and panels including sizes, types of finishes and materials, base and leg/foot options, multiple styles of casters to include carpet and non-carpet, and cord management (if applicable).

7.4.3.2 Describe mobile boards including sizes, types of finishes and materials, base and leg/foot options, multiple styles of casters to include carpet and non-carpet, and cord management (if applicable).

7.4.3.3 Describe shelving that attaches to panel systems including types of finishes and materials.

7.5 Storage and Accessories

7.5.1 Storage and Accessories Mandatory Minimum Requirements

- 7.5.1.1** All products offered in response to each product category shall be standard catalog products for which literature and specifications are available including any certified test results if available.
- 7.5.1.2** All products must have an identification tag/sticker which must include the following information: manufacturer's name, model number, and year built excluding accessories.
- 7.5.1.3** All products must be designed in a manner that allows assembly and disassembly to occur with minimal disruption, time, noise volume, and space usage.
- 7.5.1.4** Offerors submitting for the Storage and Accessories category must provide in their offering, at a minimum, file cabinets, free-standing and mobile pedestal file cabinets, and bookcases. Optional items include wardrobes, cabinets, and shelving.

7.5.2 Storage and Accessories Evaluated Qualifications

7.5.2.1 Category Capabilities, Components, and Finishes

- 7.5.2.1.1** Describe surfaces including standard and up charge laminates, veneers, shapes, depths, edge options, finishes, height adjustability, support methods, and cable management accessibility.
- 7.5.2.1.2** Describe Offeror's ability to customize products that still maintain the primary product function and warranty.
- 7.5.2.2** Describe which products, excluding accessories, offered in response to this category meet or exceed the most current ANSI/BIFMA - X5.9 Storage Units.
- 7.5.2.3** Describe the versatility of proposed product and how it can be used collaboratively to form groups, teams, or instruction and movement including how it can be integrated with other proposed product categories (if any).

7.5.2.4 Mandatory Products

- 7.5.2.4.1** Describe file cabinets, sizes, number of drawers, options for lateral, vertical, types of finishes and materials (i.e. wood and metal), ganging, locking/security, counterweights, and drawer tracking/glides.
- 7.5.2.4.2** Describe free-standing and mobile pedestal cabinets including size (height/width/depth), number of drawers, fabric grades, standard and up charge categories, soil and fade resistance, recycled content fabric (include recycled content type), mobility, type of casters, types of finishes and materials (i.e. wood, metal), locking/security.
- 7.5.2.4.3** Describe bookcases including size (height/width/depth), number of shelves and options, types of finishes and materials (i.e. wood, metal), locking/security, and counterweights/mountable options.

7.5.2.5 Describe available accessories for this category.

7.5.3 Storage and Accessories Optional Products (Not Evaluated)

- 7.5.3.1** Describe storage cabinet sizes (height/width/depth), numbers of shelves and options, types of finishes and materials (i.e. wood and metal), locking/security, and counterweights/mountable options.
- 7.5.3.2** Describe wardrobe sizes (height/width/depth), numbers of shelves and options, types of finishes and materials (i.e. wood and metal), locking/security, and counterweights/mountable options.
- 7.5.3.3** Describe wall mounted shelving. This category does not include shelving units that are attached to panel systems or architectural products.

7.6 Architectural Products and Accessories

7.6.1 Architectural Products and Accessories Minimum Mandatory Requirements

- 7.6.1.1** All products offered in response to each product category shall be standard catalog products for which literature and specifications are available including any certified test results if available.
- 7.6.1.2** All products must have an identification tag/sticker which must include or have other means for establishing the following information: manufacturer's name, model number, and year built excluding accessories.
- 7.6.1.3** All products must be designed in a manner that allows assembly and disassembly to occur with minimal disruption, time, noise volume, and space usage.
- 7.6.1.4** Offerors must meet or exceed any Participating Entities' current revision of standard, code, law, requirement and manufacturer recommend installation methods during the term of the contract.
- 7.6.1.5** Offeror must provide training to the Purchasing Entity in maintenance, panel replacement, and **orientation to accessing utilities**.
- 7.6.1.6** Offeror certifies that all miscellaneous required items such as hardware, brackets, clamps, braces, etc. that would be necessary for the installation and layout be included in quotes.
- 7.6.1.7** Offerors submitting for the Architectural Products category must provide in their offering, at a minimum, demountable walls (unitized and modular). Optional items include other types of architectural products, shelving, pods, and other similar products.

7.6.2 Architectural Products and Accessories Evaluated Qualifications

7.6.2.1 Category Capabilities, Components, and Finishes

- 7.6.2.1.1** Describe manufacturing processes including quality assurance programs and any environmentally friendly features and benefits. Describe the structural performance standards used by Offeror and the methods used to ensure compliance and testing methodology.
- 7.6.2.1.2** Describe building materials used and/or provide data sheets or industry recognized equivalent regarding material components.
- 7.6.2.1.3** Describe options available including materials and finishes, door options, sound attenuation qualities, and support of hanging equipment and furniture.
- 7.6.2.1.4** Describe Offeror's ability to customize products that still maintain the primary product function and warranty.
- 7.6.2.2** Describe which products, excluding accessories, offered in response to this category meet or exceed the American Society for Testing and Materials or other industry standards.
- 7.6.2.3** Describe the versatility of proposed product and how it can be used collaboratively to form groups, teams, or instruction and movement including how it can be integrated with other proposed product categories (if any).
 - 7.6.2.3.1** Describe installation processes and procedures including quality assurance program. Include response time to project site if technical assistance is required for maintenance or repair. Describe any quality control processes or procedures that are routinely utilized in the installation of products.
 - 7.6.2.3.2** Describe the method and process required to move or reconfigure walls. Describe the ability and method to access utilities, electrical, data, plumbing or other interior utilities. Describe the ability to change the panel material/type for future updates. Does product need to be completely disassembled to be reconfigured? How does the product adapt to new technology? Describe any other features or benefits of Offeror's product not already covered.
 - 7.6.2.3.3** Provide a list of four (4) projects, in varying degrees of complexity and types, designed and installed by Offeror that demonstrate Offeror's strengths, including a general timeline (total time for project completion), and a complete description of the project scope.
- 7.6.2.4** Mandatory Products
 - 7.6.2.4.1** Describe demountable walls including unitized wall systems including shapes and styles, materials (such as veneer, writeable whiteboard, glass, and upholstery), colors, flexibility, technology integration, acoustics and other capabilities such as types of doors and finish and hardware combinations, if applicable.

7.6.2.4.2 Describe demountable walls including modular systems including shapes and styles, materials (such as veneer, writeable whiteboard, glass, and upholstery), colors, flexibility, technology integration, acoustics and other capabilities such as types of doors and finish and hardware combinations, if applicable.

7.6.2.5 Describe available accessories for this category.

7.6.3 Architectural Products and Accessories Optional Products (Not Evaluated)

7.6.3.1 Describe additional architectural products including shapes and styles, materials (such as veneer, writeable whiteboard, glass, and upholstery), colors, flexibility, technology integration, acoustics and other capabilities such as types of doors and finish and hardware combinations, if applicable.

7.6.3.2 Describe shelving products that integrate with architectural products including styles, materials, flexibility, technology integration and other capabilities, if applicable.

7.6.3.3 Describe pods and similar products for this category including shapes and styles, materials, flexibility, technology integration, acoustics and other capabilities, if applicable.

Section 8: Cost Proposal

8.1 Minimum Discount Percentage Rate and Published Commercial Price List

8.1.1 Minimum Discount percentage rates offered shall be guaranteed for the term of the Master Agreement.

8.1.2 The awarded Offeror may request to update the pricing on their Published Commercial Price List one (1) time every twelve (12) months. Any update must be submitted at least ninety (90) days prior to the effective date and the Lead Contract State Administrator may update the Master Agreement through a written amendment as appropriate.

The requested increase must be based upon a documented cost increase to the awarded Offeror that is directly correlated to the price of the products on the awarded Offeror's Published Commercial Price List that are covered under the Master Agreement. The price adjustment must not produce a higher profit margin than the original contract and must be accompanied by sufficient documentation supporting the request and demonstrating a reasonableness of the adjustment when comparing the current price list to the proposed price list.

Documentation shall include, but not be limited to, the awarded Offeror's national price increase announcement letter, a complete and detailed description of what products are increasing and by what percentage, a complete and detailed description of what raw materials and/or other costs have increased and provide proof of increase, index data, and other information to support and justify the increase. The Lead State Contract Administrator may conduct a thorough investigation of the data provided and substantiate whether the increase is valid or justified.

Any approved Published Commercial Price List price adjustments shall carry a price guarantee period of twelve (12) months and be effective on the date of the Master Agreement amendment or the designated effective date.

Any adjustment or amendment for a price increase to the Master Agreement will not be effective unless approved by the Lead State Contract Administrator. The Purchasing Entity will be given the immediate benefit of any decrease in the market or allowable discount.

No retroactive price adjustments will be allowed for Published Commercial Price List price adjustments.

8.1.3 Price Reductions

In the event of a price decrease in any awarded category at any time during the term of the Master Agreement in an OEM's Published Commercial Price List, the Lead State Contract Administrator shall be notified immediately. All Published Commercial Price List price reductions shall be effective upon the notification provided to the Lead State Contract Administrator.

8.2 Product Line Additions

During the term of the Master Agreement, the awarded Offeror may submit a request to update the awarded product lines within the awarded categories as products are introduced or removed from the market.

The Lead State Contract Administrator may evaluate requests and update the Master Agreement through a written amendment as appropriate. The request must be made at least ninety (90) calendar days prior to the effective date. The awarded Offeror must update the dedicated website, price lists, and catalog to reflect approved changes. Pricing must utilize the same pricing structure as was used for products falling into the same awarded product category.

8.3 Participating Addendum Rates

Design and Installation Services: Hourly rates escalation and reduction process will be negotiated by the Participating Entity and the awarded Offeror and the process and terms shall be documented in the Participating Addendum.

8.4 Categories and Product Lines

If Offeror elects to offer a product line under an awarded category, the Offeror must provide the entire product line within the awarded category.

8.5 Cost Proposal

8.5.1 Offeror shall provide in addition to a completed Attachment D - Cost Proposal, a comprehensive, dated and numbered Published Commercial Price List for all products offered in response to this RFP that includes all products offered.

Title the price lists in the Supplier's Attachments section – **[Offeror Name] – [Product Line] – [Number and Date]**.

8.5.1.1 Architectural Products

8.5.1.1.1 If Offeror does not have a Published Commercial Price List available for the Architectural Products category, Offeror may submit a response to this requirement detailing the method Offeror utilizes to quote projects. The method should be detailed and describe how each element of the project, raw materials, labor, and other applicable components are calculated.

Title this document upload in the Supplier's Attachments section – **[Offeror Name] – Architectural Products Quote Method**.

8.5.1.1.2 Participating Entities may be required to obtain multiple quotes for each project when a Published Commercial Price List is not available. The process that a Participating Entity determines shall be negotiated in the Participating Addendum process.

8.5.2 Discount Percentage

8.5.2.1 Offeror shall provide pricing based on a minimum percentage discount from a Published Commercial Price List, manufacturer's price list, or catalog.

8.5.2.2 Offeror may offer multiple minimum percentage discounts per category and product line if, those different percentages and product types are specified on the corresponding product category detail sheet in Attachment D – Cost Proposal.

8.5.2.2.1 Accessories offered must be included in a specific awarded product line. Accessories from a product line not awarded may not be offered.

8.5.2.3 The minimum percentage discount offered includes Standard Delivery and Dock Delivery to Purchasing Entity.

8.5.2.4 Hardware and related components may have their own minimum percentage discount if specified on the corresponding product category detail sheet in Attachment D – Cost Proposal.

8.5.2.5 The minimum percentage discount offered does not include Installation Services. Installation Services and Design Services rates are negotiated during the Participating Addendum process.

Q&A Board

Subject = Attachment D - AP&Accessories - Item #1 (Trendway Corporation)		Public Thread
Q: Do you have a plan available that shows the correct placement of the walls and doors so we can better understand the application?	Question added by: Melissa Fuller	4/1/2022 3:40 PM MDT
A: No, this cost scenario is for evaluation purposes only.	Answered by: Cat Turner	4/5/2022 1:45 PM MDT
Subject = Attachment D - AP&Accessories #2and#3 (Trendway Corporation)		Public Thread
Q: What does the door height need to be for each of these items?	Question added by: Melissa Fuller	4/1/2022 3:33 PM MDT
A: 80" from the ground.	Answered by: Cat Turner	4/5/2022 1:45 PM MDT
Subject = Event Close: 4/27/2022 2:00 PM EDT (Steelcase Inc.)		Public Thread
Q: We are working diligently on our response, yet given this is a huge "spring break" month in most places, the NASPO Exchange is this month, etc. could the event close deadline be extended a week?	Question added by: Kevin Loubert	4/1/2022 3:14 PM MDT
A: No.	Answered by: Cat Turner	4/5/2022 2:19 PM MDT
Subject = Attachment D (The HON Company)		Public Thread
Q: Lounge Seating - Item #3 - In researching "prong" swivel base it appears that this includes both a 4-leg swivel and a 4-star swivel base. Please confirm that a 4-star swivel base will also be acceptable.	Question added by: Dena Bates	4/1/2022 2:49 PM MDT
A: Please provide a 4 legged swivel base.	Answered by: Cat Turner	4/5/2022 1:41 PM MDT
Subject = Attachment D (The HON Company)		Public Thread
Q: Architectural Products - Please provide additional information in regards to "access to utilities" in the following requirement "Offeror must provide training to the Purchasing Entity in maintenance, panel replacement, and access to utilities."	Question added by: Dena Bates	4/1/2022 10:39 AM MDT
A: Please see the amended RFP document.	Answered by: Cat Turner	4/5/2022 2:19 PM MDT
Subject = Attachment D (The HON Company)		Public Thread
Q: Architectural Products - Please provide additional details on the "standard catalog products".	Question added by: Dena Bates	4/1/2022 10:38 AM MDT
A: Please see Section 7.6.1 of the RFP.	Answered by: Cat Turner	4/5/2022 1:47 PM MDT
Subject = Attachment D (The HON Company)		Public Thread
Q: Architectural Products - a. Are we to list out the full model SKUs for all the components that make up each of the 3 requests and pricing associated with the fully-optioned SKUs? b. Is the 100 feet single panel glass solution connected to drywall / building and are we to include the trim components? c. Are the doors connected to drywall and are we to include the adapters to connect the frames to the building?	Question added by: Dena Bates	4/1/2022 10:37 AM MDT
A: a. Offerors must list Brand, Product Line - Collection (if applicable), Model, and Model Number. Offerors must indicate the exact Published Commercial Price List number and date for which cost is being based on. B/C. Offerors should only provide pricing for the items listed.	Answered by: Cat Turner	4/5/2022 1:48 PM MDT
Subject = Attachment D (The HON Company)		Public Thread
Q: Desking, Tables and Related Products - Line #1 - Please confirm that a coordinating grommet color based on laminate edge selectin is also acceptable.	Question added by: Dena Bates	4/1/2022 10:34 AM MDT
A: That will be acceptable.	Answered by: Cat Turner	4/5/2022 1:45 PM MDT

Subject = Pricing (The HON Company)	Public Thread
<p>Q: Given the rising costs of inflation impacting components such as oil, aluminum, steel, labor, etc. manufacturers are currently in the midst of evaluating how to respond to these market conditions. The terms and conditions state list pricing can be updated on an annual basis, leaving manufacturers holding list pricing in a volatile market. Would NASPO consider reducing this requirement for the first year of the contract from one year to six months after award? Or consider accepting the current list price at time of award? This would allow manufacturers to offer more aggressive discounting as part of their proposal response.</p> <p>A: An awarded Offeror may request to update the pricing on their Published Commercial Price List one (1) time in any twelve (12) month period once the Master Agreement commences. Additional price list increases or temporary surcharges would not be allowed.</p>	<p>Question added by: Dena Bates 4/1/2022 10:33 AM MDT</p> <p>Answered by: Cat Turner 4/5/2022 1:40 PM MDT</p>
Subject = Attachment D: Cost Proposal Cat 6 Architectural P (Steelcase Inc.)	Public Thread
<p>Q: Item#1 requests an 36 STC. If the 36 STC can be delivered in this wall application with tempered glass, is that acceptable?</p> <p>A: Please see the amended Attachment D - Cost Proposal.</p>	<p>Question added by: Kevin Loubert 3/30/2022 11:57 AM MDT</p> <p>Answered by: Cat Turner 3/31/2022 3:35 PM MDT</p>
Subject = 7.2.3 Lounge and Public Seating of RFP (Kimball International)	Public Thread
<p>Q: 7.2.3.3 Describe foot stools including multiple styles or casters and bases, and weight options. Are they referring to a Task Stool that would be seating for a Cafe or Counter Height work area, or is this a Foot Stool that would be used to step on in order to reach higher shelves, cabinets, etc?</p> <p>A: This would be a foot stool to place feet upon when a person is sitting in a chair.</p>	<p>Question added by: Kelli Jenkins 3/30/2022 11:50 AM MDT</p> <p>Answered by: Cat Turner 3/31/2022 1:13 PM MDT</p>
Subject = 7.1.3.2 Office Seating (Kimball International)	Public Thread
<p>Q: 7.1.3.2 Office Seating and Accessories Optional Products as per RFP "Describe value seating options (under \$400 net price per chair before discount) including ergonomic, full adjustability including tilt, height, pneumatic, seat and swivel, multiple styles of casters, bases to include carpet and non-carpet, minimum five-star base, and armrest options." Please clarify if \$400 is net price or list price before discount. Net price usually infers that a discount has already been applied. Thanks!</p> <p>A: Please see the amended Office Furniture RFP.</p>	<p>Question added by: Kelli Jenkins 3/30/2022 11:48 AM MDT</p> <p>Answered by: Cat Turner 3/31/2022 3:27 PM MDT</p>
Subject = Executive Seating Question (Kimball International)	Public Thread
<p>Q: 7.1.2.4.1 "Describe executive seating options including ergonomic, fully adjustability including tilt, height, pneumatic, with multiple seat pan sizes," Will you confirm if the intent is for a single chair model with multiple seat pan size options, or do you allow this requirement to be fulfilled with multiple chair styles and seat widths?</p> <p>A: This category may be fulfilled with multiple chair styles and seat widths.</p>	<p>Question added by: Kelli Jenkins 3/30/2022 11:42 AM MDT</p> <p>Answered by: Cat Turner 3/31/2022 1:12 PM MDT</p>
Subject = RFP: Section 7.1.3.2 (HAWORTH INC.)	Public Thread
<p>Q: Please confirm the sentence should read as follows "Describe value seating under \$400 net price, per chair, AFTER discount".</p> <p>A: Please see the amended Office Furniture RFP.</p>	<p>Question added by: Andy Paterson 3/30/2022 11:26 AM MDT</p> <p>Answered by: Cat Turner 3/31/2022 3:27 PM MDT</p>

Subject = Attachment D: Cost Proposal - Lounge Seating (HAWORTH INC.)		Public Thread
Q: Item #3: Please clarify how a "prong" swivel base is defined? Is a 4-legged swivel base acceptable? Is a 4-star swivel base acceptable?	Question added by: Andy Paterson	3/30/2022 11:22 AM MDT
A: Please provide a 4 legged swivel base.	Answered by: Cat Turner	3/31/2022 2:57 PM MDT
Subject = Attachment D: Cost Proposal - Lounge Seating (HAWORTH INC.)		Public Thread
Q: Items# 1, 2, 4: Many commercial buildings require metal legs and/or feet due to durability and to prevent damage from use and cleaning solutions, and extend longevity. Are metal legs and/or feet acceptable to bid in this category?	Question added by: Andy Paterson	3/30/2022 11:20 AM MDT
A: Please see the amended Attachment D - Cost Proposal.	Answered by: Cat Turner	3/31/2022 3:31 PM MDT
Subject = Attachment D: Cost Proposal - Seating (HAWORTH INC.)		Public Thread
Q: Item #4 calls for a mesh back. Is a breathable, perforated back acceptable?	Question added by: Andy Paterson	3/30/2022 11:17 AM MDT
A: Yes.	Answered by: Cat Turner	3/31/2022 2:54 PM MDT
Subject = Attachment D: Cost Proposal - Seating (HAWORTH INC.)		Public Thread
Q: Where leather is specified, is a faux leather option acceptable?	Question added by: Andy Paterson	3/30/2022 11:14 AM MDT
A: Yes.	Answered by: Cat Turner	3/31/2022 2:53 PM MDT
Subject = Attachment D: Cost Proposal - Seating (HAWORTH INC.)		Public Thread
Q: Items #1,5,6,7 specify a "mesh back and seat." Is a Mesh back and upholstered ergonomic seat acceptable?	Question added by: Andy Paterson	3/30/2022 11:14 AM MDT
A: Yes.	Answered by: Cat Turner	3/31/2022 2:54 PM MDT
Subject = RFP Sec 3.4, page 13-15 of 47 (Global Industries, Inc.)		Public Thread
Q: QUESTION about NASPO Office Furniture RFP Sec 3.4, page 13-15 of 47: Evaluation Process: Could NASPO please revise the Stage 3B minimum score threshold to 270 points so respondents providing all Satisfactory scores will be eligible to proceed to Stage 4? Setting the threshold at 337.5 points means that respondents providing Satisfactory responses to all requirements will still fail to reach the next stage.	Question added by: Joseph Freund	3/30/2022 11:13 AM MDT
A: No.	Answered by: Cat Turner	3/31/2022 1:06 PM MDT
Subject = Section 7: Non-Evaluated vs Mandatory Product (HAWORTH INC.)		Public Thread
Q: Can you provide clarification as to how these 2 categories are defined?	Question added by: Andy Paterson	3/30/2022 11:11 AM MDT
A: Each product category has a series of product mandatory minimum requirements and a series of product related evaluated qualifications. Failure to include an offer on all mandatory products within the product category listed in Attachment B - Scope of Work will disqualify the product category from consideration. Offerors may not team with other manufacturers in order to provide all mandatory products within a category except the architectural products and accessories category. Please see Section 7 of the RFP.	Answered by: Cat Turner	3/31/2022 1:26 PM MDT
Subject = Accessories (Kimball International)		Public Thread

Q: Ref: Attach C #2 "Offeror certifies that Offeror is an Original Equipment Manufacturer." Question: Most Offerors (manufacturers) source products such as keyboard trays, monitor arms, task lights, clamp-on power accessories that they call their own, supported under the Offeror's warranty, to enhance our offering. Will you accept these as OEM?

Question added by: Kelli Jenkins

3/30/2022 11:10 AM
MDT

A: Yes, if these products meet the warranty requirements described in Attachment C.

Answered by: Cat Turner

3/31/2022 1:27 PM MDT

Subject = Warranty 6.1.3 (HAWORTH INC.)**Public Thread**

Q: The number of warranty claims alone, has limited value without the relative number of total units shipped. In order to provide NASPO with a response that will allow evaluation in context, can we provide a percentage of warranty claims for each product category that illustrates the ratio between the total number of claims & total units shipped, rather than providing only a single number?

Question added by: Andy Paterson

3/30/2022 11:09 AM
MDT

A: Please see the amended Office Furniture RFP.

Answered by: Cat Turner

4/5/2022 2:10 PM MDT

Subject = Attachment C – OEM Mandatory Minimum Requirements (Herman Miller)**Public Thread**

Q: Will Canadian shipping costs be included as standard Delivery or handled during the Participating Addendum process?

Question added by: Greg Cass

3/30/2022 11:09 AM
MDT

A: Shipping costs would be negotiated during the PA process.

Answered by: Cat Turner

4/1/2022 12:26 PM MDT

Subject = RFP Sec 3.4, page 13-15 of 47 (Global Industries, Inc.)**Public Thread**

Q: QUESTION about NASPO Office Furniture RFP Sec 3.4, page 13-15 of 47: Evaluation Process: Could NASPO please revise the Stage 2 minimum score threshold to 150 points so respondents providing all Satisfactory scores will be eligible to proceed to Stage 3? Setting the threshold at 187.5 points means that respondents providing Satisfactory responses to all requirements will still fail to reach the next stage.

Question added by: Joseph Freund

3/30/2022 11:08 AM
MDT

A: No.

Answered by: Cat Turner

3/31/2022 1:07 PM MDT

Subject = Reported Sales (Kimball International)**Public Thread**

Q: Section 1: NASPO ValuePoint Solicitation - General Information Of the reported sales by state, can you clarify if the numbers shown are total Office Furniture sales or total NASPO sales? If total sales, can you share a breakdown as it relates to Office Furniture? Additionally, could it be broken down by product category as it relates to the RFP (office seating, lounge seating, desks, etc)?

Question added by: Kelli Jenkins

3/30/2022 11:07 AM
MDT

A: Numbers shown are total Office Furniture sales. The data broken down by category is not available.

Answered by: Cat Turner

3/31/2022 1:07 PM MDT

Subject = Redacted information (HAWORTH INC.)**Public Thread**

Q: We are submitting confidential information within a response to only 1 question. Is your expectation that we submit a redacted version of this section only, or the entire proposal?

Question added by: Andy Paterson

3/30/2022 11:05 AM
MDT

A: Offeror may submit a redacted version of that section only.

Answered by: Cat Turner

3/31/2022 1:06 PM MDT

Subject = Attachment C, #11.9 (Global Industries, Inc.)**Public Thread**

Q: QUESTION about Attachment C, #11.9: May this clause be revised to eliminate penalties and allow manufacturers to use their best commercial efforts to address products delayed as a result of international supply chain interruptions or other logistical issues beyond the manufacturer's control? The past couple years have clearly demonstrated that delivery delays may occur for a wide variety of reasons so it is inequitable to require the manufacturer to accept substantial financial obligations and penalties for aspects which are outside of their control.

Question added by: Joseph Freund

3/30/2022 10:49 AM
MDT

A: Please see the amended Attachment C.

Answered by: Cat Turner

4/5/2022 2:12 PM MDT

Subject = T&C Sec 9.3.2, page 12-13 of 25: Inspection (Global Industries, Inc.)

Public Thread

Q: QUESTION about NASPO T&C Sec 9.3.2, page 12-13 of 25: Inspection: May a manufacturer's Return Goods policy take precedence over the terms within Section 9.3.2? Furniture is not a commodity which can easily be returned. Besides the fact that most products are made-to-order and cannot be restocked, freight costs are typically substantial and should not be presumed to be accepted by the manufacturer without their consideration or acceptance.

Question added by: Joseph Freund

3/30/2022 10:49 AM
MDT

A: Offeror may propose alternative language in their exceptions and/or additions to Attachment A.

Answered by: Cat Turner

4/1/2022 12:31 PM MDT

Subject = T&C Sec 9.3, page 12-13 of 25: Inspection (Global Industries, Inc.)

Public Thread

Q: QUESTION about NASPO T&C Sec 9.3, page 12-13 of 25: Inspection: May a manufacturer's Warranty be the first option for correcting product issues resulting from damage in transit? For example: If a new office chair arrives with a broken caster, the entire chair should not need to be returned; a replacement caster should be provided per the terms of the manufacturer's Warranty.

Question added by: Joseph Freund

3/30/2022 10:48 AM
MDT

A: Offeror may propose alternative language in their exceptions and/or additions to Attachment A.

Answered by: Cat Turner

4/1/2022 12:29 PM MDT

Subject = T&C Sec 9.3, page 12-13 of 25: Inspection (Global Industries, Inc.)

Public Thread

Q: QUESTION about NASPO T&C Sec 9.3, page 12-13 of 25: Inspection; and Section 9.5.5, page 14 of 25: May a manufacturer specify 'a reasonable amount of time' for Acceptance to be "within 5 business days of delivery" to ensure that any issues, especially those resulting from damage in transit, may be promptly addressed? Many carriers have limits on the amount of time allowed after delivery for damage claims to be made. This also reflects the amount of time allowed for damaged product to be reported per Sec 12.1 of Attachment C.

Question added by: Joseph Freund

3/30/2022 10:47 AM
MDT

A: Offeror may propose alternative language in their exceptions and/or additions to Attachment A.

Answered by: Cat Turner

4/1/2022 12:32 PM MDT

Subject = T&C Sec 8.1, page 12 of 25: Shipping Terms (Global Industries, Inc.)

Public Thread

Q: QUESTION about NASPO T&C Sec 8.1, page 12 of 25: Shipping Terms: May additional freight charges be applied if quoted in writing in advance and agreed upon by the Participating Entity for their non-standard shipping requirements such as split-shipments, phased deliveries, pulling stock from atypical (long-distance) locations, using lift-gate trucks, specifically certified drivers, palletizing shipments, after-hours deliveries, walk-ups, or other non-standard shipping or delivery needs? It is not feasible to price-in all of the possible types of non-standard delivery scenarios which are sometimes required in the course of fulfilling furniture projects.

Question added by: Joseph Freund

3/30/2022 10:46 AM
MDT

A: Pricing and fees for additional services such as inside delivery, and other non standard requests will be negotiated during the Participating Addendum process by each Participating Entity.

Answered by: Cat Turner

3/31/2022 1:11 PM MDT

Subject = Attachment D (The HON Company)		Public Thread
Q: Desks, Panel Systems and Accessories – Item #1 Please confirm that multiple panel widths can be used to meet the overall 8' required dimension. For example: can (2) two 48" wide panels be used to meet the 96"W overall dimension.	Question added by: Dena Bates	3/30/2022 8:56 AM MDT
A: Yes, multiple panels may be used.	Answered by: Cat Turner	3/31/2022 3:02 PM MDT
Subject = Attachment D (The HON Company)		Public Thread
Q: Desks, Panel Systems and Accessories – Item #1 Please confirm that a fabric stacking panel can be used to achieve the 60"H requirement.	Question added by: Dena Bates	3/30/2022 8:56 AM MDT
A: Yes, a fabric stacking panel may be used.	Answered by: Cat Turner	3/31/2022 3:12 PM MDT
Subject = Attachment D (The HON Company)		Public Thread
Q: Desks, Tables and Accessories – Item #7 Please confirm that a 42"Dx72"Wx42"H with a laminate top, squared edge and casters will be acceptable.	Question added by: Dena Bates	3/30/2022 8:56 AM MDT
A: Please see the amended Attachment D - Cost Proposal.	Answered by: Cat Turner	3/31/2022 3:32 PM MDT
Subject = Attachment D (The HON Company)		Public Thread
Q: Desks, Tables and Accessories – Item #5 Please confirm that a 36"Dx96"Wx42"H table with a butcher block and non-mitered edge will be acceptable.	Question added by: Dena Bates	3/30/2022 8:56 AM MDT
A: Please see the amended Attachment D - Cost Proposal.	Answered by: Cat Turner	4/5/2022 2:18 PM MDT
Subject = Attachment D (The HON Company)		Public Thread
Q: Desks, Tables and Accessories – Item #4 Please confirm that a soft square base with a vertical tube will be acceptable.	Question added by: Dena Bates	3/30/2022 8:56 AM MDT
A: That will be acceptable.	Answered by: Cat Turner	4/5/2022 1:44 PM MDT
Subject = Attachment D (The HON Company)		Public Thread
Q: Desks, Tables and Accessories – Item #4 Please confirm that a 30" round table will be acceptable.	Question added by: Dena Bates	3/30/2022 8:56 AM MDT
A: Please see the amended Attachment D - Cost Proposal.	Answered by: Cat Turner	3/31/2022 3:32 PM MDT
Subject = Attachment D (The HON Company)		Public Thread
Q: Desks, Tables and Accessories – Item #3 Please confirm that a round, vertical column with a flat plate will be acceptable.	Question added by: Dena Bates	3/30/2022 8:55 AM MDT
A: That will be acceptable.	Answered by: Cat Turner	4/5/2022 1:44 PM MDT
Subject = Attachment D (The HON Company)		Public Thread
Q: Desks, Tables and Accessories – Item #3 Please confirm that a soft square shape as well as round will be acceptable.	Question added by: Dena Bates	3/30/2022 8:55 AM MDT
A: That will be acceptable.	Answered by: Cat Turner	4/5/2022 1:45 PM MDT
Subject = Attachment D (The HON Company)		Public Thread
Q: Lounge and Public Seating and Accessories – Item #1 Since the Cost Proposal will be based on low price, please confirm that standard upholstery will be acceptable in lieu of leather for the specification.	Question added by: Dena Bates	3/30/2022 8:54 AM MDT
A: No, please provide artificial, PU, or synthetic leather.	Answered by: Cat Turner	3/31/2022 2:57 PM MDT

Subject = Attachment D (The HON Company)		Public Thread
Q: Lounge and Public Seating and Accessories – Item #4 Since the Cost Proposal will be based on low price, please confirm that standard upholstery will be acceptable in lieu of leather for the specification.	Question added by: Dena Bates	3/30/2022 8:54 AM MDT
A: No, please provide artificial, PU, or synthetic leather.	Answered by: Cat Turner	3/31/2022 2:58 PM MDT
Subject = Attachment D (The HON Company)		Public Thread
Q: Office Seating and Accessories – Lines 5 & 6 Please confirm that you will accept synchronized tilt plus back angle adjustment as well as tilt limiter and seat angle adjustments?	Question added by: Dena Bates	3/30/2022 8:54 AM MDT
A: Yes.	Answered by: Cat Turner	3/31/2022 2:54 PM MDT
Subject = State Bid Sites (The HON Company)		Public Thread
Q: We have received multiple invitations from individual states to bid NASPO through their own procurement sites such as Connecticut, Louisiana, and Montana. Can you confirm this is informational only and no action is needed with the participating states at this time? All bids will be responded to directly through Utah's procurement site. Any negotiations with participating addendums will happen post award and not during the Master Agreement bid process.	Question added by: Dena Bates	3/30/2022 8:53 AM MDT
A: Proposals must be submitted electronically via Jaggaer (the Utah Public Procurement Place) here: (http://purchasing.utah.gov/currentbids). The Participating Entity and the awarded Offeror must negotiate and agree upon any additional terms and conditions prior to the signing and execution of the Participating Addendum after the Master Agreement is executed.	Answered by: Cat Turner	3/31/2022 1:23 PM MDT
Subject = Award Date (The HON Company)		Public Thread
Q: When is the anticipated date of award?	Question added by: Dena Bates	3/30/2022 8:53 AM MDT
A: It is our hope to award in July 2022.	Answered by: Cat Turner	3/31/2022 1:04 PM MDT
Subject = General Questions (The HON Company)		Public Thread
Q: Specials: In order to meet the unique needs of an end user, we have the ability to customize many of our products. These customized products are referred to as 'specials'. These specials are defined as modifications to existing products that will still maintain the primary product function and warranty. For example, if an end user requires a bookcase that needs five shelves instead of four. Specials are uniquely priced based upon the requested modification; as such, the list prices and model numbers of the specials are not published in our catalog or our list pricer. Please clarify if we can offer this 'specials' program upon contract award.	Question added by: Dena Bates	3/30/2022 8:53 AM MDT
A: Yes, a specials program may be offered upon contract award for awarded product categories.	Answered by: Cat Turner	3/31/2022 2:33 PM MDT
Subject = Attachment E (The HON Company)		Public Thread
Q: Stage 3b: Product Evaluated Qualifications: Should the total percentage of Tech Criteria be 100% rather than 180% in cell K34? It appears the formula is pointing back to Stage 2 points in cell L21 rather than Stage 3 points in cell L34.	Question added by: Dena Bates	3/30/2022 8:53 AM MDT
A: Please see the amended Attachment E - Score Sheet.	Answered by: Cat Turner	3/31/2022 3:28 PM MDT
Subject = Attachment A (The HON Company)		Public Thread

Q: 14.7 Force Majeure, Page 21: Please confirm Force Majeure language includes Contractor's performance of any obligation delayed or made impossible or commercially impracticable due to any cause beyond Contractor's reasonable control.

Question added by: Dena Bates

3/30/2022 8:52 AM MDT

A: Offeror may propose alternative language in their exceptions and/or additions to Attachment A.

Answered by: Cat Turner

4/1/2022 12:25 PM MDT

Subject = Attachment A (The HON Company)**Public Thread**

Q: 14.6 Cancellation, Page 21: Because we are a custom made-to-order manufacturer, please confirm within the Cancellation provision, manufacturers will be paid for work in progress.

Question added by: Dena Bates

3/30/2022 8:52 AM MDT

A: Offeror may propose alternative language in their exceptions and/or additions to Attachment A.

Answered by: Cat Turner

4/1/2022 12:25 PM MDT

Subject = Attachment A (The HON Company)**Public Thread**

Q: 14.1 Records Administration and Audit, Page 17: Please confirm Contractor will receive reasonable advanced notice of any audit and such audit will occur during standard business hours Monday-Friday.

Question added by: Dena Bates

3/30/2022 8:52 AM MDT

A: Offeror may propose alternative language in their redline response to Attachment A. Additional negotiations may be required during the Participating Addendum process.

Answered by: Cat Turner

4/1/2022 12:26 PM MDT

Subject = Attachment A (The HON Company)**Public Thread**

Q: 12.1 General Indemnification, Page 15: Please confirm that indemnification under this agreement is limited to the negligent performance or willful misconduct of the Contractor.

Question added by: Dena Bates

3/30/2022 8:52 AM MDT

A: Offeror may propose alternative language in their exceptions and/or additions to Attachment A.

Answered by: Cat Turner

4/1/2022 12:25 PM MDT

Subject = Attachment A (The HON Company)**Public Thread**

Q: 7.8 Contract Provisions for Orders Utilizing Federal Funds, Page 12: Please confirm the Participating Entity will notify the Contractor prior to order placement when federal funds are being utilized.

Question added by: Dena Bates

3/30/2022 8:51 AM MDT

A: Notification requirements for any federal requirements proposed by a Participating Entity in its Participating Addendum may be negotiated with the Participating Entity.

Answered by: Cat Turner

4/1/2022 4:24 PM MDT

Subject = RFP Document (The HON Company)**Public Thread**

Q: 8.5.2.3 Cost Proposal, Page 37: Please confirm per this section of the RFP that only standard tailgate delivery and dock delivery options are included in the price structure. Any other delivery methods such as inside delivery or delivered and installed can be included with an additional fee in our response.

Question added by: Dena Bates

3/30/2022 8:51 AM MDT

A: The minimum percentage discount offered includes Standard Delivery and Dock Delivery to Purchasing Entity. Pricing and fees for additional services such as inside delivery, and other non standard requests will be negotiated during the Participating Addendum process by each Participating Entity.

Answered by: Cat Turner

3/31/2022 1:11 PM MDT

Subject = RFP Document (The HON Company)**Public Thread**

Q: 8.2 Product Line Additions, Page 35-36: Please confirm that new model numbers introduced under an already approved product series and awarded category can be added to the contract without approval.

Question added by: Dena Bates

3/30/2022 8:50 AM MDT

A: The Lead State Contract Administrator may evaluate requests and update the Master Agreement through a written amendment as appropriate. The request must be made at least ninety (90) calendar days prior to the effective date. The awarded Offeror must update the dedicated website, price lists, and catalog to reflect approved changes. Pricing must utilize the same pricing structure as was used for products falling into the same awarded product category.

Answered by: Cat Turner

3/31/2022 1:09 PM MDT

Subject = Most Favored Customer (Kimball International)

Public Thread

Q: Can you expand or provide further clarification on Section 5.4.5 Most Favored Customer Clause in Attachment A? Specifically this portion: "whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement"

Question added by: Kelli Jenkins

3/30/2022 8:37 AM MDT

A: This clause requires notification to the Lead State and NASPO ValuePoint if Contractor agrees to any third-party contract term guaranteeing a lower price to non-NASPO ValuePoint customers or basing the third-party contract's pricing, or adjustments thereto, on Contractor's Master Agreement pricing or usage.

Answered by: Cat Turner

4/1/2022 4:23 PM MDT

Subject = Product (AllSteel)

Public Thread

Q: Attachment D: Desks, Tables and Accessories – Item #7 Please confirm that table requires mobility can be achieved by slide glides or casters.

Question added by: Cindy Hermann

3/30/2022 8:23 AM MDT

A: Please see the amended Attachment D - Cost Proposal.

Answered by: Cat Turner

3/31/2022 3:33 PM MDT

Subject = Product (AllSteel)

Public Thread

Q: Attachment D: Desks, Tables and Accessories – Item #7 Please confirm that a 30"Dx72"Wx42"H with a laminate top, squared edge and casters will be acceptable.

Question added by: Cindy Hermann

3/30/2022 8:23 AM MDT

A: Please see the amended Attachment D - Cost Proposal.

Answered by: Cat Turner

3/31/2022 3:33 PM MDT

Subject = Attachment D: Cost Proposal Cat 1 Office Seating (Steelcase Inc.)

Public Thread

Q: For Item#3, Black Leather is called out in the description. Does that need to be standard, graded-in leather?

Question added by: Kevin Loubert

3/30/2022 8:23 AM MDT

A: No, please provide artificial, PU, or synthetic leather.

Answered by: Cat Turner

3/31/2022 2:52 PM MDT

Subject = Product (AllSteel)

Public Thread

Q: Attachment D: Desks, Tables and Accessories – Item #2 ABS has become the industry standard and has less of an environmental impact than vinyl edge. Please confirm that an ABS edge is acceptable instead of vinyl.

Question added by: Cindy Hermann

3/30/2022 8:23 AM MDT

A: Please see the amended Attachment D - Cost Proposal.

Answered by: Cat Turner

3/31/2022 3:32 PM MDT

Subject = Product (AllSteel)

Public Thread

Q: Attachment D: Desks, Tables and Accessories – Item #1 Please confirm that pedestal with one lock that controls all drawers will be acceptable.

Question added by: Cindy Hermann

3/30/2022 8:22 AM MDT

A: Please see the amended Attachment D - Cost Proposal.

Answered by: Cat Turner

3/31/2022 3:31 PM MDT

Subject = Attachment D: Cost Proposal Cat 1 Office Seating (Steelcase Inc.)

Public Thread

Q: For Item#3, Black Leather is called out in the description. Can you confirm that the leather cannot be a "faux", artificial, PU or synthetic leather?	Question added by: Kevin Loubert	3/30/2022 8:22 AM MDT
A: No, please provide artificial, PU, or synthetic leather.	Answered by: Cat Turner	3/31/2022 2:53 PM MDT
Subject = Product (AllSteel)	Public Thread	
Q: Attachment D: Desks, Tables and Accessories – Item #1 Please confirm the configuration of the pedestal for the desk. For example: Full-height File/File, Hanging pedestal with Box/File drawers, or Mobile pedestal with Box/File drawers.	Question added by: Cindy Hermann	3/30/2022 8:21 AM MDT
A: Hanging pedestal with Box/File drawers.	Answered by: Cat Turner	3/31/2022 3:00 PM MDT
Subject = Product (AllSteel)	Public Thread	
Q: Attachment D: Office Seating and Accessories – Line 7 Please confirm that an upholstered seat conference chair will also be acceptable.	Question added by: Cindy Hermann	3/30/2022 8:21 AM MDT
A: Please see the amended Attachment D - Cost Proposal.	Answered by: Cat Turner	3/31/2022 3:31 PM MDT
Subject = Product (AllSteel)	Public Thread	
Q: Attachment D: Office Seating and Accessories – Line 4 Please confirm that a 4-leg guest chair will also be acceptable.	Question added by: Cindy Hermann	3/30/2022 8:21 AM MDT
A: Yes.	Answered by: Cat Turner	3/31/2022 2:53 PM MDT
Subject = Product (AllSteel)	Public Thread	
Q: Attachment D: Office Seating and Accessories – Lines 1, 5 & 6 Please confirm that an upholstered seat task chair will also be acceptable.	Question added by: Cindy Hermann	3/30/2022 8:21 AM MDT
A: Please see the amended Attachment D - Cost Proposal.	Answered by: Cat Turner	3/31/2022 3:30 PM MDT
Subject = Firm Pricing (Kimball International)	Public Thread	
Q: Given the volatility of market conditions (inflationary, cost of goods, labor) will the States/NASPO consider foregoing the 180 day price hold and allow vendors to use their current Price List at time of award?	Question added by: Kelli Jenkins	3/30/2022 8:18 AM MDT
A: An awarded Offeror may request to update the pricing on their Published Commercial Price List one (1) time in any twelve (12) month period once the Master Agreement commences. Additional price list increases or temporary surcharges would not be allowed.	Answered by: Cat Turner	4/5/2022 1:40 PM MDT
Subject = RFP Section 8.5 Cost proposal (Herman Miller)	Public Thread	
Q: We expect to provide over 100 price list attachments. Would links to published price lists be acceptable?	Question added by: Greg Cass	3/30/2022 7:51 AM MDT
A: Offeror shall provide in addition to a completed Attachment D - Cost Proposal, a comprehensive, dated and numbered Published Commercial Price List for all products offered in response to this RFP that includes all products offered.	Answered by: Cat Turner	3/31/2022 1:05 PM MDT
Subject = Attachment D – Cost Proposal – Panel Systems Ta (Herman Miller)	Public Thread	
Q: Please clarify requirement. Is this freestanding panels or is it meant to be a workstation with components?	Question added by: Greg Cass	3/30/2022 7:50 AM MDT
A: Freestanding panels.	Answered by: Cat Turner	3/31/2022 3:02 PM MDT
Subject = Attachment D – Cost Proposal (Herman Miller)	Public Thread	

Q: Each of the details tabs asks "Is additional discounting negotiable on Seating orders that exceed \$150,000?" Should this be each category vs. seating?

Question added by: Greg Cass

3/30/2022 7:49 AM MDT

A: Please see the amended Attachment D - Cost Proposal.

Answered by: Cat Turner

3/31/2022 3:27 PM MDT

Subject = Teaming (AllSteel)**Public Thread**

Q: Section 1.1 of the RFP disallows teaming with sister companies to submit an offer to the solicitation, with the exception of the architectural products and accessories category. Allsteel's current NASPO contract includes products from Gunlocke and HBF, which are wholly owned subsidiaries of Allsteel and not sister companies of Allsteel. Please confirm manufacturers can continue to include product lines of their wholly owned subsidiaries with the current bid and resulting contract.

Question added by: Cindy Hermann

3/30/2022 6:58 AM MDT

A: Yes, OEMs can continue to include product lines of their wholly owned subsidiaries with the current RFP and resulting contract.

Answered by: Cat Turner

3/31/2022 1:08 PM MDT

Subject = Acceptance C - Acceptance Document (Steelcase Inc.)**Public Thread**

Q: Stage 1: # 18.1 - In project were there are private offices, collaborative spaces, meeting spaces that include items 1-4, yet don't include Panel Systems or Architectural Products, design services are required and are not included in the product cost. How are those needed and required design services provided for in this contract?

Question added by: Kevin Loubert

3/29/2022 3:37 PM MDT

A: Design Services fees may only be applied to Panel Systems and Accessories and Architectural Products and Accessories unless the project includes one or more of the product categories below: 1. Office Seating and Accessories, 2. Lounge and Public Seating and Accessories 3. Desks, Tables, and Related Products Accessories 4. Storage and Accessories

Answered by: Cat Turner

3/31/2022 1:32 PM MDT

Subject = Attachment D: Cost Proposal Cat 2 Lounge (Steelcase Inc.)**Public Thread**

Q: For Item#2 and Item#3, the description spec is asking for the item to be "Fully upholstered with COM". Typically, would need to know the COM, if it has been tested to work on the chair, how much fabric is needed, etc. Do you want this priced at the COM without fabric level or do you want this priced as a COM using a Graded in upholstery?

Question added by: Kevin Loubert

3/29/2022 3:16 PM MDT

A: Please price at the COM without fabric level.

Answered by: Cat Turner

3/31/2022 2:56 PM MDT

Subject = Attachment D: Cost Proposal Cat 2 Lounge (Steelcase Inc.)**Public Thread**

Q: For Item# 1 and Item# 4, Black Leather is called out in the description. Can you confirm that the leather cannot be a "faux", artificial, PU or synthetic leather?

Question added by: Kevin Loubert

3/29/2022 3:05 PM MDT

A: No, please provide artificial, PU, or synthetic leather.

Answered by: Cat Turner

3/31/2022 2:55 PM MDT

Subject = Attachment D: Cost Proposal Cat 2 Lounge (Steelcase Inc.)**Public Thread**

Q: For Item#1 and Item#4, Black Leather is called out in the description. Does that need to be standard, graded-in leather?

Question added by: Kevin Loubert

3/29/2022 2:58 PM MDT

A: No, please provide artificial, PU, or synthetic leather.

Answered by: Cat Turner

3/31/2022 2:55 PM MDT

Subject = Attachment D: Cost Proposal (Steelcase Inc.)**Public Thread**

Q: It is not clear what % Discount we are to use in the Product Tab, like Office Seating? Are we supposed to use the Discount from Price Tier 1, or do we combine the total list price quantity total and then if that puts you in the Tier 2 or Tier 3 use the corresponding Tier discount? For example, if the product total from that tab was \$100K, should the Tier 2 % Discount if that Offer allows products to be combined to get to higher tiers. How/where do we note that?

Question added by: Kevin Loubert

3/29/2022 1:47 PM MDT

A: Please use the discount from Tier 1 if the total cost for the line item(s) is less than \$50K, Tier 2 if the total cost for the line item(s) is \$50K-\$150K, or Tier 3 if the line item(s) is over \$150K.

Answered by: Cat Turner

3/31/2022 1:12 PM MDT

Subject = Attachment D Storage and Accessories (JASPER SEATING CO)**Public Thread**

Q: Attachment D Category 5 for Storage and Accessories... painted steel and metal is called out on several lines of the item description. Our company manufactures wood and laminate office furniture. We are not able to provide steel or metal lateral files, mobile peds, etc. Are we able to quote these items in laminate or wood?

Question added by: Kathy Vonderheide

3/29/2022 1:20 PM MDT

A: No.

Answered by: Cat Turner

3/31/2022 3:34 PM MDT

Subject = Lounge Seating Mandatory Products (JASPER SEATING CO)**Public Thread**

Q: For the lounge portion of Mandatory Products, ergonomic is mentioned repeatedly. Can we get more detail on what is required for a lounge sofa/chair to be considered ergonomic? Ex. is this just a height adjustability feature, recline feature, or complete electronic lift feature for patient assisted stand? A complete lift requirement would be a specific feature for healthcare furniture.

Question added by: Kathy Vonderheide

3/29/2022 1:12 PM MDT

A: Offeror should describe any ergonomic features offered, if any.

Answered by: Cat Turner

3/31/2022 1:04 PM MDT

Subject = Cost Proposal Attachment D (JASPER SEATING CO)**Public Thread**

Q: Do all specifications in the price sheet need to be met in order for a vendor to quote each line? For ex. on office seating, line item #5 states the item must have fully adjustable arms (height, width & angle). Our seating currently only features height adjustability function. Are we able to submit pricing for this line? If this is a required feature to bid this category, shouldn't this also be listed in the section for product mandatory minimum requirements?

Question added by: Kathy Vonderheide

3/29/2022 1:03 PM MDT

A: Products being offered should meet all specifications described.

Answered by: Cat Turner

3/31/2022 2:28 PM MDT

Subject = Terms & Conditions (JASPER SEATING CO)**Public Thread**

Q: At any point would temporary surcharges be allowed on contract due to extreme inflation? The current state of our economy is highly unstable with constant rising prices in raw materials, logistics, and fuel creating financial struggles for manufacturers in our industry. Pricing holds require us to absorb extra costs which in some commodities are in excess of 50%. Without a clause for inflation protection, contracts requiring pricing holds are deemed high risk with looming possibility of financial burden.

Question added by: Kathy Vonderheide

3/29/2022 12:49 PM MDT

A: An awarded Offeror may request to update the pricing on their Published Commercial Price List one (1) time in any twelve (12) month period once the Master Agreement commences. Additional price list increases or temporary surcharges would not be allowed.

Answered by: Cat Turner

4/5/2022 1:39 PM MDT

Subject = Pricing (JASPER SEATING CO)**Public Thread**

Q: Price lists must be held for 12 months. Is this 12 months post award? I believe the date would be Jan 2024 if this is correct? Also, would NASPO consider more frequent price list increases due to the current state of economic inflation? Without the ability to increase price lists, this agreement would be a financial risk for manufacturers as our costs of materials, labor, and fuel continue to rise.

Question added by: Kathy Vonderheide

3/29/2022 12:44 PM MDT

A: An awarded Offeror may request to update the pricing on their Published Commercial Price List one (1) time in any twelve (12) month period once the Master Agreement commences. Additional price list increases or temporary surcharges would not be allowed.

Answered by: Cat Turner

4/5/2022 1:39 PM MDT

Subject = Pricing (JASPER SEATING CO)

Public Thread

Q: Are we required to submit price lists with our proposal or can we submit them upon award?

Question added by: Kathy Vonderheide

3/29/2022 12:36 PM MDT

A: Offeror shall provide in addition to a completed Attachment D - Cost Proposal, a comprehensive, dated and numbered Published Commercial Price List for all products offered in response to this RFP that includes all products offered.

Answered by: Cat Turner

3/31/2022 1:03 PM MDT

Subject = Q & A deadline for submitting questions (Steelcase Inc.)

Public Thread

Q: Can you extend the deadline for submitting questions a week as it is critical to see what some to the answers are to these questions and more time is needed? A lot of stuff to work through.

Question added by: Kevin Loubert

3/29/2022 10:10 AM MDT

A: The deadline shall be extended to 4/1/2022 4:30:00 PM MDT.

Answered by: Cat Turner

4/1/2022 9:28 AM MDT

Subject = Attachment D: Cost Proposal Cat 1 Office Seating (Steelcase Inc.)

Public Thread

Q: Item#1 & Item#2: Item Description lists a chair with a chrome, which has become a very limiting seat spec for many manufacturers because of the negative environmental human effects of its production. Thus, this spec can reduce fair and open competition for this contract. We ask if you will open this description to allow for a chrome base for those that still do this or finishes like a platinum metallic or polished aluminum be acceptable on these items?

Question added by: Kevin Loubert

3/29/2022 10:07 AM MDT

A: Please see the amended Attachment D - Cost Proposal.

Answered by: Cat Turner

3/31/2022 3:30 PM MDT

Subject = Product specs clarification (Vari)

Public Thread

Q: In attachment D, the Specifications reads to a specific product/brand. Please confirm the products that are being offered must be similar or equivalent. Please confirm you are not seeking a single offeror to provide products in every category, meet every line item, every measurement, and specification as it reads in Attachment D Cost proposal.

Question added by: Sade Williams

3/29/2022 9:41 AM MDT

A: Products being offered should meet all specifications described. Offerors must complete all information requested in Attachment D and bid on every product and complete the corresponding category detail sheet, if Offeror wishes to be considered for the category.

Answered by: Cat Turner

3/31/2022 2:27 PM MDT

Subject = Award (Vari)

Public Thread

Q: Please confirm this is not a single award bid.

Question added by: Sade Williams

3/29/2022 9:32 AM MDT

A: It is anticipated that this RFP will result in multiple contract awards.

Answered by: Cat Turner

3/29/2022 4:39 PM MDT

Subject = Category Items Clarifications (Vari)

Public Thread

Q: Please clarify an offeror may bid on a single category and opt to not bid on another category, and will still be considered for award. Example: Offeror can bid on the desk & table category, bid on each line item in desk & tables. However, not bid on the Panel Category at all. Please confirm the previous example is the desired expectation.

Question added by: Sade Williams

3/29/2022 9:28 AM MDT

A: Offerors may respond to one (1) or more of the product categories.

Answered by: Cat Turner

3/29/2022 4:38 PM MDT

Subject = Category Items Clarifications (Vari)

Public Thread

Q: Please clarify an offeror must bid on every line item in a single category.

Question added by: Sade Williams

3/29/2022 9:23 AM MDT

A: Offerors must complete all information requested in Attachment D and bid on every product and complete the corresponding category detail sheet, if Offeror wishes to be considered for the category.

Answered by: Cat Turner

3/29/2022 4:38 PM MDT

Subject = Attachment D: Cost Proposal Cat 1 Office Seating (Steelcase Inc.)

Public Thread

Q: Item#1, Item#5, Item#6, Item#7: Item Descriptions lists chairs with a mesh seat, which is a very limiting seat for many manufacturers and will not allow us and many to compete, reducing fair and open competition for this contract, seemingly favoring a manufacture with mesh seats. Mesh seats are not the high demand seat for many manufacturers and having these seat specified will eliminate many. We ask if you will open this description to allow for a mesh seat or a fabric seat on these items? Allows both seats to be allowed and greatly increases competition and fairness on a contract like this.

Question added by: Kevin Loubert

3/29/2022 6:38 AM MDT

A: Please see the amended Attachment D - Cost Proposal.

Answered by: Cat Turner

3/31/2022 3:29 PM MDT

Subject = Attachment A - NASPO Value Point Master Ts & Cs (Steelcase Inc.)

Public Thread

Q: 6.2 Payment Payments may be made via a purchasing card with no additional charge. This is an item that increases the cost on items sold to those who choose to use a PCard. This is a cost that should be born only by those that choose to use a PCard not all contract users. Question: Request this item be changed to allow payments may be made via a purchasing card with a limit of up to an amount like \$3000? PCards should not be intended to be used for larger items as the fees make them unreasonable.

Question added by: Kevin Loubert

3/29/2022 6:20 AM MDT

A: This requirement will not be changed.

Answered by: Cat Turner

4/5/2022 1:38 PM MDT

Subject = Attachment A - NASPO Value Point Master Ts & Cs (Steelcase Inc.)

Public Thread

Q: 6.2 Payment Payments may be made via a purchasing card with no additional charge. This is an item that increases the cost on items sold to those who choose to use a PCard. This is a cost that should be born only by those that choose to use a PCard not all contract users. Many places allow for these to be offered at with an added fee to cover the additional cost? Question: Request this item be changed to allow payments may be made via a purchasing card with an additional charge only do cover the additional transaction cost that goes with a purchasing card payment?

Question added by: Kevin Loubert

3/29/2022 6:18 AM MDT

A: This requirement will not be changed.

Answered by: Cat Turner

4/5/2022 1:38 PM MDT

Subject = Attachment A - NASPO Value Point Master Ts & Cs (Steelcase Inc.)

Public Thread

Q: 6.2 Payment Payments may be made via a purchasing card with no additional charge. This is an item that increases the cost on items sold to those who choose to use a PCard. This is a cost that should be born only by those that choose to use a PCard not all contract users. Question: Request this item be removed or be made optional as part of the Participating Addenda process with each state?

Question added by: Kevin Loubert

3/29/2022 6:12 AM MDT

A: This requirement will not be changed.

Answered by: Cat Turner

4/5/2022 1:38 PM MDT

Subject = Section 1: NASPO ValuePoint Solicitation - General (Steelcase Inc.)**Public Thread**

Q: General Information 1.1. Purpose RFP indicates "The solicitation does not allow for sister companies to team and submit offers with the exception of the architectural products and accessories category." This appears to be a direction inconsistent with most COOP contracts in the industry. Question: Given the rapidly changing nature of work and learning environments, customers increasing look to purchase using one contractor contract to reduce costs and complexity, saving time and money. To do this, customers have asked suppliers for help in broadening the products they offer and to do that, many suppliers have developed marketing partnerships to meet these customer requests. Can product in these marketing partnerships be a part of a Contractors proposal to help obtain best value for a state or local government entity? Most COOP contracts have moved in this direction adding greater value for their contract users and to the contracts they manage, as long as the partner products meet the remaining contract criteria requirements.

Question added by: Kevin Loubert

3/29/2022 6:01 AM MDT

A: No, product from marketing partnerships cannot be part of an Offeror's proposal.

Answered by: Cat Turner

4/5/2022 8:05 AM MDT

Subject = Page 3 of RFP, RFP Administrative Information (Steelcase Inc.)**Public Thread**

Q: The RFP indicates that "OTHER PARTICIPATING ENTITIES MAY NEGOTIATE ADDITIONAL ADMINISTRATIVE FEES IN THEIR PARTICIPATING ADDENDA FOLLOWING AWARD OF A MASTER AGREEMENT." We want to confirm that like the current NASPO ValuePoint contract, the Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the State during the PA process. Can you confirm that the Contractor may make these adjustments?

Question added by: Kevin Loubert

3/29/2022 5:55 AM MDT

A: Please see the amended Attachment A and Attachment C.

Answered by: Cat Turner

4/5/2022 2:05 PM MDT

Subject = Attachment D: Cost Proposal (Steelcase Inc.)**Public Thread**

Q: In review of the product categories, we could not readily identify a category for private office casegoods, wood or laminate, which are sometimes even wall mounted as well. If we choose, how would we submit products and pricing for this category? Are those to just be added in the Desks & Tables Details pages as a product lines?

Question added by: Kevin Loubert

3/29/2022 5:55 AM MDT

A: Casegoods would fall under the Desks, Tables, and Related Products and Accessories and/or Storage and Accessories categories, dependent on use.

Answered by: Cat Turner

3/31/2022 1:20 PM MDT

Subject = Attachment D: Cost Proposal (Steelcase Inc.)**Public Thread**

Q: • In review of the product categories, we could not readily identify a category for ergonomic worktools, such as keyboard trays, computer monitor arms, desk lighting or cable and power access and management. If we choose, how would we submit products and pricing for this category? Do we just add them to as a product line in the Detail pages as accessories?

Question added by: Kevin Loubert

3/29/2022 5:51 AM MDT

A: These items are considered accessories under this RFP. Accessories offered must be included in a specific awarded product line. Accessories from a product line not awarded may not be offered.

Answered by: Cat Turner

3/31/2022 12:57 PM
MDT

Subject = Attachment D: Cost Proposal Cat 5 Storage (Steelcase Inc.)

Public Thread

Q: Item # 5, a 72" H bookcase like this is not a high volume item to the point that many manufacturers do not offer it any longer. Ask that you modify the spec to allow for the height to be a more common height of 66" +/- 6 inches which would then allow for what more manufacturers offer and a 72" as well?. This would allow for more competition and value while not eliminating manufacturers for a spec that is not widely offered or desired.

Question added by: Kevin Loubert

3/29/2022 5:49 AM MDT

A: Please see the amended Attachment D - Cost Proposal.

Answered by: Cat Turner

3/31/2022 3:34 PM MDT

Subject = Attachment D: Cost Proposal Cat 5 Storage (Steelcase Inc.)

Public Thread

Q: Item # 4, a bookcase like this is typically available and most useful with adjustable shelves so much so that most manufactures do not offer it with Fixed only shelves. Ask that you modify the spec to allow for the shelves to be Fixed and/or adjustable shelves? This would allow for more competition and value while not eliminating manufacturers for a spec that is not widely offered or desired.

Question added by: Kevin Loubert

3/29/2022 5:48 AM MDT

A: Please see the amended Attachment D - Cost Proposal.

Answered by: Cat Turner

3/31/2022 3:33 PM MDT

Subject = Attachment D: Cost Proposal Cat 4 Panel Systems De (Steelcase Inc.)

Public Thread

Q: Panel Systems Details: The worksheet for Panel Systems identifies a configuration of panels yet does not include panel system components such as Worksurfaces, lower storage, or overhead storage. Panel systems components often discount differently than the panel systems they attached to in order to provide the very best pricing? Are we to list the panels systems components on the Panel Systems Details sheet with their individual product line discounts?

Question added by: Kevin Loubert

3/29/2022 5:47 AM MDT

A: Offeror may offer multiple minimum percentage discounts per category and product line if, those different percentages and product types are specified on the corresponding product category detail sheet in Attachment D – Cost Proposal.

Answered by: Cat Turner

3/31/2022 12:56 PM
MDT

Subject = Attachment D: Cost Proposal Cat 4 Panel Systems (Steelcase Inc.)

Public Thread

Q: The worksheet for Panel Systems identifies a configuration of panels yet does not include panel system components such as worksurfaces, lower storage, or overhead storage, etc. Typically, those product line items for worksurfaces, lower storage, or overhead storage etc., are part of the typical. Want to confirm, we are supposed to list those product line components to the Panel Systems Detail tabs with their information and their associated discounting?

Question added by: Kevin Loubert

3/29/2022 5:44 AM MDT

A: Yes.

Answered by: Cat Turner

3/31/2022 12:55 PM
MDT

Subject = Attachment D: Cost Proposal Cat 4 Panel Systems (Steelcase Inc.)

Public Thread

Q: Panel Height: The panel height dimension provided at 5 feet is a non-standard height for most manufacturers and the +/- four (4) inch variance is not enough on height range and will not enable some manufacturers to compete at all or will force some manufacturers to have to use stackers to compete versus some offerors that randomly are able to use standard panel height sizes which creates unfair competition and will result in fewer responders. Given the starting height at 5 feet is a non-standard height for most manufacturers we ask that the variance be expanded to +/- six (6) inches for panel height? This will enable more manufacturers to compete fairly with similar standard product and more manufacturers to compete overall, providing greater competition. Most panels are based off US Imperial measurement system, using a +/- 6" module.

Question added by: Kevin Loubert

3/29/2022 5:34 AM MDT

A: Please see the amended Attachment D - Cost Proposal.

Answered by: Cat Turner

3/31/2022 3:35 PM MDT

Subject = Section 7: Product Mandatory Minimum Requirements (Steelcase Inc.)

Public Thread

Q: 3. Section 7: Product Mandatory Minimum Requirements and Evaluated Qualifications; Could you please explain with more detail the following: "Offerors shall submit information for mandatory and optional product offerings in separate sections of their response to this section". The procurement site only allows to upload a Product Mandatory Minimum requirement attachment and a Evaluated Qualifications document, we don't see any section for mandatory and optional product offerings. Should these documents need to be uploaded into the Supplier Attachment section?

Question added by: Kevin Loubert

3/27/2022 3:00 PM MDT

A: Offerors should submit one document in response to this section but should separate information for mandatory and optional product offerings in separate sections.

Answered by: Cat Turner

3/31/2022 12:55 PM MDT

Subject = Attachment E- Score Sheet (Steelcase Inc.)

Public Thread

Q: Would you please confirm if the Attachment E- Score Sheet will be completed by the Lead State for evaluation process? or is there something the offeror must do with it?

Question added by: Kevin Loubert

3/27/2022 2:58 PM MDT

A: Attachment E - Score Sheet is provided as a courtesy.

Answered by: Cat Turner

3/29/2022 4:37 PM MDT

Subject = uthorized formats/document types (Steelcase Inc.)

Public Thread

Q: Are PDF, Excel and Word all authorized formats/document types to be uploaded into Jaggaer? If so, do you have a preferred format?

Question added by: Kevin Loubert

3/27/2022 2:55 PM MDT

A: PDF, Excel, and Word are all authorized and acceptable formats/document types to be uploaded into Jaggaer.

Answered by: Cat Turner

3/29/2022 4:37 PM MDT

Subject = Gang/Tandem Seating (ARCONAS CORPORATION)

Public Thread

Q: Our product lines are Gang seating and Tandem seating, see attached link <https://www.arconas.com/categories/tandem-seating/> Attachment D Cost proposal doesn't look like it offers this type seating under category Lounge & Public Seating . Can you please confirm if you are looking for our seating, if so where would do we submit this pricing?

Question added by: Alexandra Barbu

3/23/2022 9:34 AM MDT

A: Lounge and Public Seating and Accessories includes products with single seat units, units with multiple seating positions within one unit or ganged seating units, and folding chairs. Attachment D - Cost Proposal is for scoring purposes. Offerors must complete all information requested in Attachment D and bid on every product and complete the corresponding category detail sheet, if Offeror wishes to be considered for the category.

Answered by: Cat Turner

3/25/2022 1:59 PM MDT

Subject = Bid - Item Categories (Scandinavian Spaces)	Public Thread
<p>Q: Can we bid on only items we offer and leave items we do not offer blank? Please confirm if leaving items blank will not be considered "non-responsive."</p> <p>A: Offerors must complete all information requested in Attachment D and bid on every product and complete the corresponding category detail sheet, if Offeror wishes to be considered for the category.</p>	<p>Question added by: Elizabeth Wren 3/22/2022 2:51 PM MDT</p> <p>Answered by: Cat Turner 3/25/2022 1:59 PM MDT</p>
Subject = Product (Mamava)	Public Thread
<p>Q: Our freestanding lactation room pods would fall under Architectural Products based on the SOW product description. However, the SOW directions and Cost Proposal doesn't allow for that. How can we participate in this?</p> <p>A: Offerors may not team with other manufacturers in order to provide all mandatory products within a category except the architectural products and accessories category. If an Offeror elects to team with another manufacturer to provide the architectural products and accessories category, the Offeror that submits the response must submit a Proposal on behalf of the manufacturer of the architectural products and accessories and will be considered legally responsible for the Proposal and the Master Agreement, if awarded.</p>	<p>Question added by: Suzie McKenna 3/22/2022 2:12 PM MDT</p> <p>Answered by: Cat Turner 3/25/2022 1:53 PM MDT</p>
Subject = Participating Entities - T&C (Scandinavian Spaces)	Public Thread
<p>Q: I'm only seeing attachments for states: RI, UT, NM, UT, HI, CT and CO. Unless uploaded as an addendum at a later date, is it safe to say that the other participating entities do not have separate T&Cs and will use this master agreement/T&C?</p> <p>A: A Participating Addendum must be executed by any state that decides to adopt a NASPO ValuePoint Master Agreement. A Participating Addendum must be executed for each awarded Offeror by the individual Participating Entity desiring to use their contract. A Participating Addendum allows for each Participating Entity to add terms and conditions that may be unique to their entity. The Participating Entity and the awarded Offeror must negotiate and agree upon any additional terms and conditions prior to the signing and execution of the Participating Addendum.</p>	<p>Question added by: Elizabeth Wren 3/22/2022 1:59 PM MDT</p> <p>Answered by: Cat Turner 3/25/2022 1:50 PM MDT</p>
Subject = Bidder Eligibility (Overstock.com, Inc.)	Public Thread
<p>Q: Is this RFP only for manufacturers and their dealers, or are other retailers eligible for this contract as well?</p> <p>A: Please see Attachment C - OEM MMR. Offeror must be an Original Equipment Manufacturer.</p>	<p>Question added by: David Grundvig 3/21/2022 1:17 PM MDT</p> <p>Answered by: Cat Turner 3/25/2022 2:00 PM MDT</p>
Subject = Bidding System (9to5 Seating LLC)	Public Thread
<p>Q: This bid is also in the South Dakota system for bidding. Does it matter which system is used to respond to this bid?</p> <p>A: Proposals must be submitted electronically via Jaggaer (the Utah Public Procurement Place) here: (http://purchasing.utah.gov/currentbids)</p>	<p>Question added by: Joni Stafford 3/18/2022 12:02 PM MDT</p> <p>Answered by: Cat Turner 3/18/2022 2:31 PM MDT</p>
Subject = Lighting (Light Corp)	Public Thread

Q: Hello, My company sells lighting. Desk top lighting (personal task lights) as well as underbin lighting for the office environment. These types of lights are often forgotten until the end user moves in and finds there is a need. I do not see a category for these lights. Would you kindly advise me what code to choose and how I can advise these lights get added to the scope of work?

Question added by: Tamra Felcoski

3/18/2022 11:52 AM
MDT

A: Lights are currently considered an accessory under specific product categories. An additional product category specific to lighting will not be added at this time.

Answered by: Cat Turner

3/25/2022 1:49 PM MDT

Subject = Educational Furniture (Lakeshore Equipment Company)

Public Thread

Q: Hello, Since this bid is for Office Furniture, will there be another one released for Educational Furniture?

Question added by: Rafael Muro

3/17/2022 10:24 AM
MDT

A: Not at this time.

Answered by: Cat Turner

3/17/2022 4:28 PM MDT



ATTACHMENT A

NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS

I. Definitions

- 1.1 Acceptance** means acceptance of goods and services as set forth in Section IX of this Master Agreement.
- 1.2 Contractor** means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.
- 1.3 Embedded Software** means one or more software applications which permanently reside on a computing device.
- 1.4 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.
- 1.5 Lead State** means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.
- 1.6 Master Agreement** means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.
- 1.7 NASPO ValuePoint** is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) limited liability company. 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.
- 1.8 Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

- 1.9 Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (e.g., ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).
- 1.10 Participating Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.
- 1.11 Participating State** means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.
- 1.12 Product or Products and Services** 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 Product includes goods and services.
- 1.13 Purchasing Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

II. Term of Master Agreement

- 2.1 Initial Term.** The initial term of this Master Agreement is for five (5) years.
- 2.2 Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.
- 2.3 Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

III. Order of Precedence

- 3.1 Order.** Any Order placed under this Master Agreement will consist of the following documents:
- 3.1.1** A Participating Entity's Participating Addendum ("PA");

- 3.1.2** NASPO ValuePoint Master Agreement, including all attachments thereto;
 - 3.1.3** A Purchase Order or Scope of Work/Specifications issued against the Master Agreement;
 - 3.1.4** The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
 - 3.1.5** Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.
- 3.2** **Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will 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.
- 3.3** **Participating Addenda.** Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement.

IV. Participants and Scope

- 4.1** **Requirement for a Participating Addendum.** Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.
- 4.2** **Applicability of Master Agreement.** 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, subject to Section III. For the purposes 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.
- 4.3** **Authorized Use.** Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities is subject to applicable state law and 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.

- 4.4 Obligated Entities.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.
- 4.5 Notice of Participating Addendum.** Contractor shall email a fully executed PDF copy of each Participating Addendum to pa@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.
- 4.6 Eligibility for a Participating Addendum.** Eligible entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent of the Chief Procurement Official of the state where the 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; the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.
- 4.7 Prohibition on Resale.** 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 purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.
- 4.8 Individual Customers.** Except as may otherwise be agreed to by the Purchasing Entity and Contractor, 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 and as the Participating Entity has in the Participating Addendum, 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.

- 4.9 Release of Information.** 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.
- 4.10 No Representations.** The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity'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.

V. NASPO ValuePoint Provisions

- 5.1 Applicability.** NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section V are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.

5.2 Administrative Fees

5.2.1 NASPO ValuePoint Fee. 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 must 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 a vendor's response to the Lead State's solicitation.

5.2.2 State Imposed Fees. Some Participating Entities may require an additional administrative fee be paid by Contractor directly to the Participating Entity on purchases made by Purchasing Entities within that Participating Entity. For all such requests, the fee rate or amount, payment method, and schedule for such reports and payments will be incorporated into the applicable Participating Addendum. Unless prohibited by law or otherwise negotiated in a Participating Addendum, Contractor may adjust the Participating Addendum pricing by an amount no greater than the Participating Entity fee for purchases made by Purchasing Entities within the jurisdiction of the Participating Entity. No such agreement will affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by Purchasing Entities outside the jurisdiction of the Participating Entity requesting the additional fee.

5.3 NASPO ValuePoint Summary and Detailed Usage Reports

5.3.1 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://calculator.naspovaluepoint.org>. All sales made under this Master Agreement must be reported as cumulative totals by state. Contractor must submit a report for each quarter, including quarters during which a Contractor has no sales, in which case this will be indicated in the Reporting Tool. Reports must be submitted no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

5.3.2 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 must 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 must be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports must include sales information for all sales under Participating Addenda executed under this Master Agreement.

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

5.3.4 Executive Summary. 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.

5.3.5 Use of Data. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports will 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.

5.4 NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review

5.4.1 Staff Education. Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall 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 eligible entities can participate in the Master Agreement.

5.4.2 Onboarding Plan. Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.

5.4.3 Annual Contract Performance Review. Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.

5.4.4 Use of NASPO ValuePoint Logo. The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.

5.4.5 Most Favored Customer. Contractor shall, within thirty (30) days of their effective date, to notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-party contracts or agreements that may affect the promotion of this Master Agreements or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this

Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

- 5.5 Cancellation.** In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Master Agreement or not exercise an option to renew, when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two years after execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.
- 5.6 Canadian Participation.** Subject to the approval of Contractor, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest Territories, Nunavut, or Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.
- 5.7 Additional Agreement with NASPO.** Upon request by NASPO ValuePoint, awarded Contractor shall enter into a direct contractual relationship with NASPO ValuePoint related to Contractor's obligations to NASPO ValuePoint under the terms of the Master Agreement, the terms of which shall be the same or similar (and not less favorable) than the terms set forth in the Master Agreement.

VI. Pricing, Payment & Leasing

6.1 Pricing.

- 6.1.1** Minimum discount percentage rates must be guaranteed for the initial term of the Master Agreement.
- 6.1.2** Contractor may request to update the pricing on their Published Commercial Price List one (1) time every twelve (12) months. Any update must be submitted at least ninety (90) days prior to the effective date and the Lead Contract State Administrator may update the Master Agreement through a written amendment as appropriate.

The requested increase must be based upon a documented cost increase to the Contractor that is directly correlated to the price of the products on the Contractor's Published Commercial Price List that are covered under the Master Agreement. The price adjustment must not produce a higher profit margin than the original contract and must be accompanied by sufficient documentation supporting the request and demonstrating a reasonableness of the adjustment when comparing the current price list to the proposed price list.

Documentation shall include, but not be limited to, the Contractor's national price increase announcement letter, a complete and detailed description of what products are increasing and by what percentage, a complete and detailed description of what raw materials and/or other costs have increased and provide proof of increase, index data, and other information to support and justify the increase. The Lead State Contract Administrator may conduct a thorough investigation of the data provided and substantiate whether the increase is valid or justified.

Any approved Published Commercial Price List price adjustments shall carry a price guarantee period of twelve (12) months and be effective on the date of the Master Agreement amendment or the designated effective date.

Any adjustment or amendment for a price increase to the Master Agreement will not be effective unless approved by the Lead State Contract Administrator. The End User will be given the immediate benefit of any decrease in the market or allowable discount.

No retroactive price adjustments will be allowed for Published Commercial Price List price adjustments.

6.2 Payment. Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within thirty (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 or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.

6.3 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.

VII. Ordering

- 7.1 Order Numbers.** Master Agreement order and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.
- 7.2 Quotes.** Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an “as needed” basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity’s rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.
- 7.3 Applicable Rules.** 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.
- 7.4 Required Documentation.** Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
- 7.5 Term of Purchase.** Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.
 - 7.5.1** 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.
 - 7.5.2** Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.
 - 7.5.3** 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.

- 7.5.4** Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall 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 in any manner inconsistent with this Master Agreement's terms.
- 7.5.5** Orders for any separate indefinite quantity, task order, 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.
- 7.6 Order Form Requirements.** All Orders pursuant to this Master Agreement, at a minimum, must include:
- 7.6.1** The services or supplies being delivered;
- 7.6.2** A shipping address and other delivery requirements, if any;
- 7.6.3** A billing address;
- 7.6.4** Purchasing Entity contact information;
- 7.6.5** Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor including the following:
- 7.6.5.1** Published Commercial Price List
- 7.6.5.2** Contracted Discount Percentage
- 7.6.5.3** Contract Price
- 7.6.6** Installation and Design Fees show as hourly rates. Information must include the number of crew members required and the installation team's associated hours and hourly rate. Each crew member's number of hours must a detailed explanation of the work to be included in those hours.
- 7.6.7** Anticipated Lead times
- 7.6.8** A not-to-exceed total for the products or services being ordered; and
- 7.6.9** The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.
- 7.7 Communication.** All communications concerning administration of Orders placed must 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.

- 7.8 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.

VIII. Shipping and Delivery

- 8.1 Shipping Terms.** All deliveries will be F.O.B. destination, freight pre-paid and allowed, with all transportation and handling charges paid by the Contractor.
- 8.1.1** Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor's until final inspection and acceptance when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations.
- 8.2** Any portion of an Order to be shipped without transportation charges that is back ordered will be shipped without charge.
- 8.3** Specific delivery instructions will be noted on the order form or Purchase Order. Costs to repair any damage to the building interior (e.g., scratched walls, damage to the freight elevator, etc.) caused by Contractor or Contractor's carrier will be the responsibility of the Contractor. Immediately upon becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.
- 8.4 Packaging.** All products must be delivered in the manufacturer's standard package. Costs must include all packing and/or crating charges. Cases must be of durable construction, in good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

IX. Inspection and Acceptance

- 9.1 Laws and Regulations.** Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.
- 9.2 Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section IX will apply. This section is not intended to limit rights and remedies under the applicable commercial code.
- 9.3 Inspection.** 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, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.

9.3.1 Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.

9.3.2 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.

9.4 Failure to Conform. 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.

9.5 Acceptance Testing. Purchasing Entity may establish a process, in keeping with industry standards, to ascertaining whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.

9.5.1 The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.

9.5.2 If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.

9.5.3 Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c)

continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.

9.5.4 Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section.

9.5.5 No Product will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

X. Warranty

10.1 Applicability. Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section X will apply.

10.2 Warranty. The Contractor warrants at a minimum the office furniture products and materials offered under this RFP and resulting Master Agreement for ten (10) years from Acceptance. Contractor may exclude textiles, color fastness, electrical components, pneumatic cylinders and other moving parts from the ten (10) year warranty from Acceptance. If not explicitly excluded, the products will carry the ten (10) year warranty from Acceptance. Specialty products and accessories may be excluded from the following requirements and must offer a minimum warranty of five (5) years from Acceptance. Warranties must contain descriptive warranty information for all specialty products and accessories. Contractor warrants that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects.

10.3 Breach of Warranty. Upon breach of the warranty set forth above, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made.

10.4 Rights Reserved. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

10.5 Warranty Period Start Date. The warranty period will begin upon Acceptance, as set forth in Section IX.

XI. Product Title

- 11.1 Conveyance of Title.** 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.
- 11.2 Embedded Software.** Transfer of title to the Product must 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 will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.
- 11.3 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.

XII. Indemnification

- 12.1 General Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, 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 any act, error, or omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement.
- 12.2 Intellectual Property Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use infringes Intellectual Property rights of another person or entity ("Intellectual Property Claim").
- 12.2.1** The Contractor's obligations under this section will not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:
- 12.2.1.1** provided by the Contractor or the Contractor's subsidiaries or affiliates;
 - 12.2.1.2** specified by the Contractor to work with the Product;
 - 12.2.1.3** reasonably required to use the Product in its intended manner, and the infringement could not have been

avoided by substituting another reasonably available product, system or method capable of performing the same function; or

12.2.1.4 reasonably expected to be used in combination with the Product.

12.2.2 The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.

12.2.3 The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.

12.2.4 Unless otherwise set forth herein, Section 12.2 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

XIII. Insurance

13.1 Term. Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in their Participating Addendum.

13.2 Class. 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.

- 13.3 Coverage.** Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:
- 13.3.1** Contractor shall maintain Commercial General Liability insurance 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 and \$2 million general aggregate;
- 13.3.2** Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- 13.4 Notice of Cancellation.** 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.
- 13.5 Notice of Endorsement.** 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) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.
- 13.6 Participating Entities.** Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in Section XIII, except the endorsement is provided to the applicable Participating State or Participating Entity.
- 13.7 Furnishing of Certificates.** 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 will 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.
- 13.8 Disclaimer.** Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

XIV. General Provisions

14.1 Records Administration and Audit

- 14.1.1** 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 will 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 will survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Master 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.
- 14.1.2** 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.
- 14.1.3** The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement that requires the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

14.2 Confidentiality, Non-Disclosure, and Injunctive Relief

- 14.2.1 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.

- 14.2.1.1** Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information").

14.2.1.2 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.

14.2.1.3 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.

14.2.2 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.

14.2.2.1 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.

14.2.2.2 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.

14.2.2.3 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.

14.2.2.4 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.

14.2.3 Injunctive Relief. Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be inadequately compensated in monetary 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.

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

14.2.5 NASPO ValuePoint. The rights granted to Purchasing Entities and Contractor's obligations under this section will also extend to NASPO ValuePoint's Confidential Information, including but not limited to Participating Addenda, Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line-item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

14.2.6 Public Information. This Master Agreement and all related documents are subject to disclosure pursuant to the Lead State's public information laws.

14.3 Assignment/Subcontracts

- 14.3.1** 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.
- 14.3.2** The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties, to NASPO ValuePoint and other third parties.
- 14.4 Changes in Contractor Representation.** The Contractor must, within ten (10) calendar days, notify the Lead State in writing of any changes in the Contractor's key administrative personnel managing the Master Agreement. The Lead State reserves the right to approve or reject changes in key personnel, as identified in the Contractor's proposal. The Contractor shall 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.
- 14.5 Independent Contractor.** Contractor is an independent contractor. Contractor has 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 shall not hold itself out as agent except as expressly set forth herein or as expressly set forth in an applicable Participating Addendum or Order.
- 14.6 Cancellation.** Unless otherwise set forth herein, this Master Agreement may be canceled by either party upon sixty (60) days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (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 will 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.
- 14.7 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 acts of war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement upon determining such delay or default will reasonably prevent successful performance of the Master Agreement.
- 14.8 Defaults and Remedies**

- 14.8.1** The occurrence of any of the following events will be an event of default under this Master Agreement:
- 14.8.1.1** Nonperformance of contractual requirements;
 - 14.8.1.2** A material breach of any term or condition of this Master Agreement;
 - 14.8.1.3** 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;
 - 14.8.1.4** 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
 - 14.8.1.5** Any default specified in another section of this Master Agreement.
- 14.8.2** 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 fifteen (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 will not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.
- 14.8.3** 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:
- 14.8.3.1** Any remedy provided by law;
 - 14.8.3.2** Termination of this Master Agreement and any related Contracts or portions thereof;
 - 14.8.3.3** Assessment of liquidated damages as provided in this Master Agreement;
 - 14.8.3.4** Suspension of Contractor from being able to respond to future bid solicitations;

14.8.3.5 Suspension of Contractor's performance; and

14.8.3.6 Withholding of payment until the default is remedied.

14.8.4 Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an 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 will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

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

14.10 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 public procurement or contracting 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.

14.11 No Waiver of Sovereign Immunity

14.11.1 In no event will 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.

- 14.11.2** 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.

14.12 Governing Law and Venue

- 14.12.1** The procurement, evaluation, and award of the Master Agreement will 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 will 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 will be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's state.
- 14.12.2** 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 state serving as Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement will 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 will be in the Purchasing Entity's state.
- 14.12.3** 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.

- 14.13 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.

Attachment B - Scope of Work

A. Scope of Work

The following products and services are not included in the scope of this RFP: residential, gaming, healthcare, educational, laboratory, auditorium and lecture hall furniture. Third party or partner brands are not included in the scope of this RFP.

1. Product Categories

Offerors may respond to all or any of the office furniture categories. Offeror must respond to and provide the mandatory products listed in each product category and may not provide only subcategories and/or optional items.

Offerors awarded a product category will then be awarded the Offeror's entire proposed product lines within the scope of the product category. Accessories provided by the awarded Offeror must be related to each product category for which Offeror is awarded.

- i. Office Seating and Accessories includes general purpose office chairs that are normally used in an office environment and may include, but are not limited to those seating styles typically referred to as: conference/executive chairs, task chairs, side/guest chairs, nesting folding chairs, tablet arm chairs and stools.

Offerors submitting for the office seating and accessories category must provide in their offering, at a minimum, executive seating, task/work seating, conference room seating and guest/side seating. Optional products include dispatch 24/7 seating, value seating, Bariatric seating, stackable/folding seating, work stools, and tablet arm chairs.

- ii. Lounge and Public Seating and Accessories includes products with single seat units, units with multiple seating positions within one unit or ganged seating units, and folding chairs. Public and lounge seating may be ganged/connected. Seating in this category would normally be used in indoor common/shared spaces such as waiting, reception, visitor seating, restaurant and dining settings and other gathering areas. Seating units that must be attached to the building structure for support or stability purposes and general purpose or task-oriented office chairs are not included.

Offerors submitting for the Lounge and Public Seating Accessories category must include, at a minimum, single seats reception/lounge seating, multiple seat reception/lounge seating within one unit or ganged seating units, couch seating, and lounge seating. Optional products include collaborative lounge seating, folding chairs, foot stools, and Bariatric Lounge and Public Seating.

- iii. Desks, Tables, and Related Products and Accessories include products intended for use in commercial office, institutional and training environments; including retail spaces and restaurants. Tables may be collapsible and/or stackable. Tables with attached seating are excluded.

Offerors submitting for the Desks, Tables, and Related Products and Accessories category must provide in their offering, at a minimum, free-standing desks, height adjustable desks, and tables. Optional products include small office, side tables, conference room tables, training tables, and mobile and portable workstations.

- iv. Panel Systems and Accessories include panel systems, screens, panel supported systems, and various hang on components.

Offerors submitting for the Panel Systems and Accessories category must provide in their offering, at a minimum, panel systems and overhead storage. Optional products include moveable screens, boundaries, and panels, mobile boards, and shelving.

- v. Storage and Accessories include freestanding, mobile, and wall mounted storage units and shelving, bookcases, filing cabinets, pedestal filing cabinets, wardrobes, and other similar functioning storage products.

Offerors submitting for the Storage and Accessories category must provide in their offering, at a minimum, file cabinets, free-standing and mobile pedestal file cabinets, and bookcases. Optional items include wardrobes, cabinets, and shelving. This category does not include shelving units that are attached to panel systems or architectural products.

- vi. Architectural Products and Accessories include prefabricated walls, typically steel or aluminum frame with custom design solutions for a variety of applications. A non-structural, manufactured wall system consisting of prefinished modular panels assembled to create various spaces. May be installed into a track system, panels may interlock or butt together with system hardware. Utilities and other infrastructure may be incorporated into the system as well as whiteboards, housing for monitors, and can incorporate lighting, and shelving. The system is best for floor to ceiling installations. This wall type is best suited for longer duration needs and for project separations in occupied spaces as a barrier.

Offerors submitting for the Architectural Products category must provide in their offering, at a minimum, demountable walls (unitized and modular). Optional items include other types of architectural products, shelving, pods, and other similar products. Pods include partially or entirely self-contained spaces that may or may not be mobile that can contain one (1) or more persons.

2. Optional Service Categories

The awarded Offeror may or may not offer these categories. Participating Entities reserve the right to determine to incorporate any of the optional categories into a Participating Addendum. If the optional categories are offered by the awarded Offeror, the terms and conditions, scope of work and hourly rates shall be negotiated during the Participating Addendum process.

Optional services must be provided as a standalone service without the need to place an order for furniture. Contractor must provide a not to exceed quote for optional services

prior to commencing work.

Contractor must comply with all applicable federal, state, borough, and local regulations, codes, and laws, and be liable for all required insurance, licenses, permits, bonds, taxes, inspections, and prevailing wage requirements.

- i. Software that enhances the awarded product categories.
- ii. Recycling or Donation/Reuse Programs
- iii. Work from Home Programs
- iv. Lease Options

Contractor may provide the following rental/financing options, including, but not limited to lump sum payment, installment sale, rental and the option to lease any office furniture, supplies, materials and services. Contractor will identify its rental/lease partner(s). Any Purchasing Entity may choose to work with a Contractor's lease partner or obtain other financing or work with other leasing entities of the Purchasing Entity's choice.

- v. Reconfiguration of Furniture

- 1. Product Inventory

- a. Contractor shall go to the existing space and assess/inventory the existing furniture layout and products. A drawing and specification list of the existing furniture layout is required prior to beginning a reconfiguration of furniture.
- b. If the original design was completed by the Contractor and the design is on file, the Contractor shall verify the existing layout against the design, then update the design to verify the design/layout/count of existing products is accurate prior to beginning the new design.
- c. If the original design was not completed by the Contractor or the design is not on file, then the Contractor shall need to create a new set of drawings that reflect the current furniture layout prior to beginning the new design.

- 2. Field Verifications

Contractor shall complete a field verification of facility dimensions, including inspecting the site, measuring the space and updating the Purchasing Entity's provided CAD drawings to reflect accurate dimensions, or creating the CAD drawings if the drawings do not exist.

- 3. Furniture Space Planning, Layout, and 3D Rendering

Purchasing Entities may request multiple revisions based on Purchasing Entity feedback. Space planning may also include preliminary block plans to

determine space utilization or may include specific product application and design. Contractor shall ensure that plans meet all building, electrical and fire codes, and obtain approval from building departments, as required.

4. Furniture Specification

Contractor shall create parts lists based on the layout of space, application of color, material, and finish, and specification/coordination of electrical/data. Contractor shall double check to make sure all plans meet code and match the requested finishes, quantities, and sizes on the floor plan.

Purchasing Entity may request that the Contractor research and present multiple product options as requested. Each time the layout or color, material, and finish is revised, the plan must also be revised.

5. Customer's Own Material (COM)

If an Purchasing Entity elects to use COM, Contractor must spend time verifying yardage and application of COM along with availability and compatibility on product. Each time colors and finishes are revised by an Purchasing Entity, the plan must also be revised.

6. Final Floor Plans and Quote

Contractor must create a final floor plan in a printed copy or electronic PDF format for the Purchasing Entity to approve in writing and allows an order to be placed. The final floor plan must include furniture layout, electrical/data locations, etc.

3. Authorized Dealers

Authorized Dealers are required to offer all mandatory services.

Each Participating Entity may select the Authorized Dealer(s) they choose to do business with during the Participating Addendum process. A Participating Entity may require the Authorized Dealer(s) to submit additional information regarding its firm as part of the selection process during the execution of a Participating Addendum. This information could include, but is not limited to; business references, number of years in business, technical capabilities, information on past projects, and the experience of both its sales and installation personnel.

The awarded Offeror will be the sole point of responsibility. The Lead State Contract Administrator and Participating Entities will look solely to the awarded Offeror for the performance of all contractual obligations, and the awarded Offeror shall not be relieved for the non-performance of any Authorized Dealers and/or all subcontractors. Master Agreement requirements such as websites, reporting, etc. are the responsibility of the awarded Offeror. The awarded Offeror must provide education and guidance on use of the Master Agreement and Participating Addendums.

The process for adding or removing an Authorized Dealer at the Participating Entity level will be negotiated and described in the Participating Addendum. Each Participating Entity shall determine, negotiate with the awarded Offeror, and describe the process in the Participating Addendum. The awarded Offeror shall follow the process described in the Participating Addendum for each Participating Entity when adding or removing an Authorized Dealer.

4. Participating Addendum Process

Each Participating Entity has the option to select one or more product categories or services from the resulting Master Agreement(s) during the execution of the Participating Addendum. Office furniture accessories may be included in the offering by the Offeror, but Participating Entities may elect to procure these items from other sources to meet their individual needs or preferences.

Each Participating Entity has the option to negotiate an expanded product line within the product category offering and within the scope of this RFP during the Participating Addendum process. Any additional incremental discounts available to a Participating Entity, if offered, may be provided at the discretion and at the sole legal obligation of the awarded Offeror or their Authorized Dealer to the Participating Entity and negotiated during the Participating Addendum process.

Attachment C - Acceptance Document	
OEM Mandatory Minimum Requirements	

Offeror Name:

Instructions	
1	The following are OEM Mandatory Minimum Requirements that correspond to Stage 1 - OEM Mandatory Minimum Requirements of the RFP.
2	A "Yes" or "No" or "Not submitting to this category" (as applicable) answer must be provided in column D for each item. A "No" response will disqualify Offeror's Proposal from further consideration.
3	All cells in yellow require an input.
4	Offeror must title document as further described in Section 2.11 of the RFP.
5	Any discrepancies in the language found in this document from the RFP, will be resolved by defaulting to the RFP.

Stage 1: OEM Mandatory Minimum Requirements		Yes/No
1	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, upload a written explanation in the Supplier's Attachment section in Jaggaer for review by the Lead State.	
2	Offeror certifies that Offeror is an Original Equipment Manufacturer.	
3	Terms and Conditions	
3.1	Offeror certifies that Offeror has read and understands all of the terms and conditions as shown in the Attachment A – NASPO ValuePoint Master Agreement Terms and Conditions.	
3.2	Offeror certifies that Offeror has read and understands all of the terms and conditions as shown in the Lead State Terms and Conditions.	
3.3	Offeror certifies that Offeror may be required to negotiate Participating Entity terms and conditions when executing a Participating Addendum.	
4	Offeror certifies that there shall be no minimum dollar amount or product count under the Master Agreement or resulting Participating Addendums.	
5	Offeror certifies that the minimum discount percentage(s) offered shall be guaranteed for the term of the Master Agreement.	
6	Offeror shall only offer new products. Used, shopworn, refurbished, demonstrator, prototype, or discontinued models are not acceptable.	
7	Dedicated Website: Offeror certifies that Offeror shall maintain a contract website for each Participating Entity that executes a Participating Addendum. The purpose of the website is to inform Purchasing Entities of the individual programs under any subsequent Participating Addendum. The website, shall at minimum contain:	
7.1	Product offerings and options, limited to the products approved by each Participating Entity though their Participating Addendum.	
7.2	A list of Authorized Dealers within the Participating Entities that are authorized to service the Participating Addendum.	
7.3	Pricing information limited to the products approved by the Participating Entity through their Participating Addendum.	
7.4	Offeror must have website implemented within ninety (90) calendar days of execution of a Master Agreement or implementation of a Participating Addendum. Participating Entities will identify any state specific accessibility or other requirements during the Participating Addendum process.	
8	Warranty: Offeror certifies that Offeror must, at a minimum, warrant the office furniture products and materials offered under this RFP and resulting Master Agreement for ten (10) years from Acceptance. Offeror may exclude textiles, color fastness, electrical components, pneumatic cylinders and other moving parts from the ten (10) year warranty from Acceptance. If not explicitly excluded, the products will carry the ten (10) year warranty from Acceptance. Specialty products and accessories may be excluded from the following requirements and must offer a minimum warranty of five (5) years from Acceptance. Warranties must contain descriptive warranty information for all specialty products and accessories.	
8.1	Products including parts and components that fail under normal use as a result of a defect in design, materials, workmanship, or installation must be repaired or replaced free of charge (including labor, delivery, and installation) throughout the warranty period.	
8.2	Products that require warranty repair or replacement must be repaired or replaced within a reasonable time frame that is agreed to in writing by the Purchasing Entity. This process is to ensure sufficient lead time for ordering warranty parts, components or products during the entire warranty period.	
9	Geographic Coverage. Offeror certifies that Offeror can provide one (1) or more of the product categories and all mandatory services listed below on a nationwide basis. Offeror or Authorized Dealer(s) must provide the associated mandatory services for the awarded product categories. All products and services must be provided to the entire state.	
10	Insurance Requirements. Offeror certifies that Offeror shall 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 13 in Attachment A - NASPO ValuePoint Master Agreement Terms and Conditions. Participating Entities will identify any state specific insurance requirements during the Participating Addendum process. The insurance requirements found in Section 13 of Attachment A - NASPO ValuePoint Master Agreement Terms and Conditions will apply to all orders arising from the RFP.	
11	Freight and Delivery: Offeror certifies that unless otherwise noted on a purchase order, the Offeror or Offeror's Authorized Dealer must comply with the following delivery requirements:	
11.1	The Offeror or Offeror's Authorized Dealer must be able to offer the following delivery methods. Pricing and fees for additional services, such as inside delivery, and other non-standard requests will be negotiated during the Participating Addendum process by each Participating Entity.	
11.1.1	Standard Delivery – FOB Destination Freight Prepaid and Allowed. Product is brought to the tailgate or end of truck and Purchasing Entity is responsible to unload. No additional freight charges apply. Freight costs must be included in the Contract Price for all Participating Entities. All freight costs for shipments to the closest west coast shipping port for Alaska and Hawaii must be included in the Contract Price offered in response to this RFP. Alaska and Hawaii will negotiate freight rates (from the closest west coast shipping port to the locations of the Participating Entity) during the Participating Addendum process. The awarded Offeror is responsible for filing and expediting all freight claims with carriers. The awarded Offeror must pay title and risk of loss or damage charges. Participating Entities reserve the right to examine freight cost and route shipments with their own contracted carrier. <u>F.O.B Destination, freight prepaid</u> Seller – Pays freight charges Seller – Bears freight charges and selects carrier Seller – Owns goods in transit Seller – Files claims (if any)	
11.1.2	Dock Delivery – Products will be delivered and unloaded by a common carrier to a dock. Participating Entities may want to order, for example, seating or accessories and does not need assistance with installation and prefers the product to be delivered directly to Purchasing Entity's facility dock.	
11.1.3	Inside Delivery – Products will be delivered by the Offeror or Offeror's Authorized Dealer to the receiving address as designated on a purchase order. Products will be unloaded and unboxed by the Offeror or Offeror's Authorized Dealer with no installation required by the Offeror or Offeror's Authorized Dealer.	
11.1.4	Installation – Products will be delivered, unloaded, uncrated, and installed by the Offeror or the Offeror's Authorized Dealer according to the plan and to a move in ready condition incorporating the requirements below in Section 17.	
11.2	Delivery of products must be made to any receiving address specified on the purchase order. Multiple delivery locations could be included on one (1) purchase order. Locations may include, but are not limited to, standard office buildings, high-rise office buildings, receiving docks, and staging areas.	
11.3	Offeror or Offeror's Authorized Dealer must offer delivery, unloading, uncrating, and installation of products ordered from any product category for which Offeror is awarded.	

11.4	Offeror or Offeror's Authorized Dealer is responsible for the removal of all packaging materials from the job site on a daily basis. Dumpsters and trash receptacles that belong to the Participating Entity must not be used without written permission from the Purchasing Entity.	
11.5	Participating Entity personnel shall not assist with unloading product.	
11.6	Participating Entities may elect to accept partial deliveries; however, final payment will not be made until all products have been received and accepted unless a partial delivery was made at the request of the Participating Entity.	
11.7	Offeror or Offeror's Authorized Dealer is responsible for storage of product prior to delivery. If delivery is delayed by the Participating Entity, the Participating Entity shall negotiate a new delivery date with the Offeror or Offeror's Authorized Dealer and the purchase order shall be revised. Storage costs associated with the delayed deliveries requested by the Participating Entity shall be negotiated on a project basis.	
11.8	Emergency or rush deliveries required by the Participating Entity that require special shipping and handling charges may be at the Participating Entity's expense, but only with prior written approval from the Participating Entity and a delivery date agreement from the Offeror or Offeror's Authorized Dealer. Emergency or rush shipping charges must be added to an invoice as a separate line item. In the event emergency or rush delivery is required as the result of the Offeror or Offeror's Authorized Dealer's error; all shipping and handling charges must be paid by the Offeror and Offeror's Authorized Dealer including all charges for shipping and handling to Alaska and Hawaii.	
11.9	The acceptance of delivery with or without objection shall not waive the right to claim damage for breach nor constitute a waiver of requirements for timely delivery or performance of any actions that must remain the obligation of the Offeror or Offeror's Authorized Dealer. Unless otherwise stated in the Participating Addendum or project agreement, if delivery of critical components to perform the job function are delayed more than ten (10) business days beyond the delivery terms as stated in the purchase order, the Offeror or Offeror's Authorized Dealer will be given the opportunity to provide a substitute product that meets the needs to the Participating Entity until the ordered product is delivered. The Participating Entity reserves the right to determine if the substitute product is acceptable and meets its needs. Should substitute product not meet the needs of the Participating Entity or if the Offeror or Offeror's Authorized Dealer does not provide a substitute product then the Participating Entity may impose a penalty of 3% of delayed product cost per week (Monday through Friday business week) for every week the delivery is delayed, assessed on the first day of each week. This penalty may be imposed at the discretion of the Participating Entity, but does not preclude the Participating Entity from compensation from the Offeror or Offeror's Authorized Dealer for other expenses or penalties caused by late delivery. Participating Entity acknowledges that Offeror or Offeror's Authorized Dealer will not be liable to the extent that any such delays are caused by order changes requested by the Participating Entity, construction/inspection delays at Participating Entity's job site, and/or force majeure events.	
12	Damaged and Incorrect Product	
12.1	Damaged or incorrect product must be reported to Offeror or Offeror's Authorized Dealer by the Participating Entity within five (5) calendar days after the damage is noticed.	
12.2	Offeror or Offeror's Authorized Dealer is responsible for pickup and repair or replacement of all damaged goods within a reasonable time frame acceptable to the Participating Entity.	
12.3	Offeror or Offeror's Authorized Dealer shall bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the Participating Entity.	
12.4	Offeror or Offeror's Authorized Dealer is responsible for filing all claims for damage with carriers or other responsible parties in a timely manner.	
12.5	Offeror or Offeror's Authorized Dealer is required to keep the Participating Entity informed of the replacement process and delivery date for any and all replacement orders.	
12.6	The Participating Entity will not be charged a re-stock fee for any returns due to an Offeror error.	
12.7	In the event that a Participating Entity does not accept product due to damages or shipment error as described above, Participating Entity including Alaska or Hawaii shall not pay additional shipping and handling charges for the shipment of replacement products.	
13	Product Manuals. Upon request, an owner's manual, which includes installation instructions and serviceable parts lists, must be supplied for all products. Manuals may be available via the Offeror's website. The manuals must be available that contain complete installation and uninstallation instructions including all necessary parts lists and diagrams.	
14	OEM Contract Administrator	
14.1	Offeror certifies that the OEM Contract Administrator has authority to enforce the scope of work and terms and conditions of the resulting Master Agreement.	
14.2	Offeror certifies that the OEM Contract Administrator shall attend, and travel at their expense, an annual meeting with the Lead State Contract Administrator and evaluation committee to provide information regarding the Master Agreement. Information to be provided by the OEM Contract Administrator is listed below. 1. Total Master Agreement purchases. 2. Total Master Agreement purchases by product category. 3. Total Master Agreement purchases by Participating Entity. 4. Total Master Agreement purchases by Participating Entity by product category. 5. Report on quality issues, if applicable. 6. New product introductions and market trends. 7. Website traffic and offerings. 8. Updates on Authorized Dealers 9. Marketing and other resources available. 10. Management of the Master Agreement and questions or concerns. 11. Discuss any issues or concerns and what Offeror experience is in doing business with governmental entities under this Master Agreement. 12. General Discussion.	
15	NASPO ValuePoint Administrative Fee, Reporting Requirements and Usage Report Administrator	
15.1	Offeror agrees to pay a NASPO ValuePoint administrative fee as specified in Section 5.2 in Attachment A - NASPO ValuePoint Master Agreement Terms and Conditions. Moreover, specific summary and detailed usage reporting requirements are prescribed by Section 5.3 of the Attachment A - NASPO ValuePoint Master Agreement Terms and Conditions. Participating Entities may require additional usage reporting and administrative fee be paid directly to the Participating Entity 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 part of the Master Agreement. Unless agreed to in writing by a Participating Entity, the awarded Offeror may not adjust the Master Agreement pricing to include the Participating Entity fee for purchases made by Purchasing Entities within the jurisdiction of the Participating Entity.	
15.2	If awarded, Offeror must identify the Usage Report Administrator who is responsible for providing the mandatory quarterly usage reports for both NASPO ValuePoint and any Participating Entity with reporting requirements included in Participating Addendums. This information must be kept current during the entire Master Agreement period. The awarded Offeror will be required to provide reporting contact within fifteen (15) days of Master Agreement execution.	
16	Customer Service. Offeror certifies that Offeror can provide or meet the following requirements:	
16.1	Offeror or Offeror's Authorized Dealer must have one (1) lead representative for each Participating Entity that executes a Participating Addendum. Contact information shall be kept current. Any changes shall be communicated to the Participating Entity within five (5) business days.	
16.2	Purchasing Entities must have the option of ordering through the Offeror or Offeror's Authorized Dealer network.	
16.3	Offeror's or Offeror's Authorized Dealer's representative must be available by phone or email at a minimum, from 8 AM to 5 PM on Monday through Friday for the applicable time zones.	
16.4	Offeror or Offeror's Authorized Dealer's representative will respond to inquiries within one (1) business day.	
16.5	Offeror or Offeror's Authorized Dealer(s) must provide Design Services for the applicable categories as further described below in Section 18.	
16.6	Offeror or Offeror's Authorized Dealer(s) must provide Installation Services for the applicable categories as further described below in Section 17.	

16.7	Offeror or Offeror's Authorized Dealer(s) must provide Customer Service as further described below in Section 19 at no additional charge.	
16.8	<p>Quotes provided by the Offeror or Offeror's Authorized Dealer(s) to Purchasing Entities must contain, at a minimum, the following elements:</p> <ol style="list-style-type: none"> 1. Master Agreement and Participating Addendum (if Applicable) Number 2. Published Commercial Price List 3. Contracted Discount Percentage 4. Contract Price 5. Installation and Design Fees shown as hourly rates. Information must include the number of crew members required and the installation team's associated hours and hourly rate. Each crew member's number of hours must a detailed explanation of the work to be included in those hours. 6. Anticipated Lead times 	
16.9	Quotes provided by the Offeror or Offeror's Authorized Dealer(s) must be approved in writing by the Purchasing Entity prior to ordering or work commencement.	
16.10	<p>Invoices provided by the Offeror or Offeror's Authorized Dealer(s) must contain, at a minimum, the following elements:</p> <ol style="list-style-type: none"> 1. Purchase order number or other identifying order number. 2. Master Agreement and Participating Addendum (if Applicable) Number 3. Payment terms must be in compliance with the Master Agreement or the Participating Entity's Participating Addendum. 4. Pricing that reflects that which is on the purchase order or other ordering confirmation documentation as applicable (i.e. signed quote, work order, etc.). 	
17	Service Category - Installation Services. Offeror certifies that they can provide or meet the following requirements:	
17.1	Offeror certifies that Installation Services include all planning and labor required to disassemble, assemble, deliver, setup, install, and otherwise finish an office installation or remodel project at a contracted hourly rate. The contracted hourly rate and hours will be negotiated during the Participating Addendum process by each Participating Entity.	
17.2	Installation of Product (Applies to all product categories)	
17.2.1	The Offeror or Authorized Dealer must take precautions during the installation of any product not to damage the premises and/or property of the Purchasing Entity except as necessary to install product and approved in advance by the Purchasing Entity. If damages do occur as a result of operations under this Master Agreement, the Offeror or Offeror's Authorized Dealer is responsible for ensuring that the affected premises and/or property is returned/restored to their original condition or the Offeror or Offeror's Authorized Dealer must make restitution, as agreed upon by the parties.	
17.2.2	Installation must occur with minimal disruption, time, noise volume, and space usage.	
17.2.3	Products must be fully installed and ready for use within the agreed upon time frame of the Participating Entity.	
17.2.4	<p>Installation Team</p> <ol style="list-style-type: none"> 1. Offeror or Offeror's Authorized Dealer must maintain an installation crew either in-house or subcontracted as an installation team. 2. Offeror or Offeror's Authorized Dealer must be fully responsible for and supervision of the installation team. 3. Installation team must be trained and experienced in the installation of product and comply with any and all applicable federal, state, and local licensing, code and prevailing wage requirements as well as any manufacturer recommended installation methods. 4. Installation team must be fully responsible for installation of product unless Standard Delivery or Dock Delivery is selected by the Purchasing Entity. 5. Installation team is responsible for the removal of all packaging materials from the job site on a daily basis. Dumpsters and trash receptacles that belong to the Participating Entity must not be used without written permission from the Purchasing Entity. 6. Installation team is responsible for all of their own tools, supplies, and equipment and assume all risk and/or loss. Purchasing Entity is not responsible for tools left at the job site. 7. Installation team must place all products in the location designated by the plan or Purchasing Entity. 	
17.3	Cleaning	
17.3.1	Offeror or Offeror's Authorized Dealer(s) is responsible to ensure that a final cleaning will be completed prior to the final walk through and acceptance of all products. A final cleaning must include a wet wipe down of all surfaces, vacuuming of carpet or broom sweeping of solid surface flooring, and any other cleaning required for the product be ready for use or move in condition, as applicable.	
17.3.2	Purchasing Entity reserves the right to hire or make arrangements for additional cleaning personnel if the Offeror or Offeror's Authorized Dealer, after notification and request for correction, is not able to properly clean and ready the job site for occupation by the designated move in date.	
17.3.3	The cost of additional cleaning shall be fully reimbursed by the Offeror or Offeror's Authorized Dealer if the Offeror or Offeror's Authorized Dealer(s) do not correct the issue promptly to allow for occupation of the job site on the designated move in date.	
17.4	<p>Offeror or Offeror's Authorized Dealer must work cooperatively with the Purchasing Entity and participate in the final walk through inspection and provide a punch out checklist, if requested by the Purchasing Entity.</p> <ol style="list-style-type: none"> 1. The punch out checklist must include a listing of any missing, incorrect, non-working or damaged products that is approved and signed by the Purchasing Entity after issues are resolved. 	
17.5	Offeror or Offeror's Authorized Dealer(s) is responsible for ordering any missing, damaged, or incorrect products upon discovery, and Purchasing Entity must incur no additional charges as a result of the Offeror or Offeror's Authorized Dealer error or omission.	
18	Service Category - Design Services. Offeror certifies that Offeror can provide or meet the following requirements:	
18.1	<p>Design Services fees may only be applied to Panel Systems and Accessories and Architectural Products and Accessories unless the project includes one or more of the product categories below:</p> <ol style="list-style-type: none"> 1. Office Seating and Accessories 2. Lounge and Public Seating and Accessories 3. Desks, Tables, and Related Products Accessories 4. Storage and Accessories 	
18.2	Offeror's awarded the Panel Systems and Accessories and/or the Architectural Products and Accessories categories must provide design services including reconfiguration and layout services at a contracted hourly rate. The contracted hourly rate will be negotiated during the Participating Addendum process by each Participating Entity.	
18.3	Design services include but are not limited to; space planning, furniture migration strategies, reconfiguration of existing panel system or architectural products, assistance with furniture selection, interior office design, and computerized installation drawings. Purchasing Entity's project manager must approve final plans in writing.	
18.3.1	Offeror or Offeror's Authorized Dealers working on projects that require design services will provide a detailed description and breakdown of all services being provided and costs associated with them. Design fees must not exceed 3% of the total Contract Price unless the Purchasing Entity agrees to additional charges in advance of services.	
18.3.1.1	<p>Offeror may request an exception, directly to the Purchasing Entity, to the 3% cap or request that design fees be allowed for other furniture product categories for one or more of the following reasons. The request must be approved by the Purchasing Entity and must be included in the quote and, after approval, be included in the purchase order.</p> <ol style="list-style-type: none"> 1. The project is more complex and requires more labor hours or expertise. 2. The project requires additional site visits or travel to remote locations. <p>Offeror or Offeror's Authorized Dealer may only collect design fees if they are awarded the project and must provide detailed quotes free of charge.</p>	
18.3.2	Design Services applicable to Panel Systems and Accessories.	
18.3.2.1	Fabric, paint, and finishes must be available electronically and incorporated into computer-aided design drawings to aid in the selection process.	

18.3.2.2	<p>Offeror is responsible for the following:</p> <p>1. Accuracy of all job site dimensions, obstructions, and attributes.</p> <p>2. Overages, shortages, or all other ordering errors resulting from orders based on the design work completed by the Offeror or Offeror's Authorized Dealer. Approval of design work by the Purchasing Entity does not constitute responsibility for the Offeror or Offeror's Authorized Dealer's design or ordering process.</p> <p>3. Resolve the matter to the Purchasing Entity's satisfaction (financially and logistically), if Offeror or Offeror's Authorized has designed and specified a new furniture installation that does not fit properly due to inaccurate floor plans. No payment will be made until the issue is fully resolved and approved by the Purchasing Entity.</p> <p>4. Provide a plan showing in detail, the position of all new furniture products, wall heights, colors, types of panels, and voice/data outlets.</p> <p>5. All plans and review for correct product application and stability including notifying the Purchasing Entity immediately of any deviations or inconsistencies with product capabilities, including unusual installation requirements.</p> <p>6. Accurately specifying all necessary products including parts, components, connectors, fillers, trim pieces, and other items in the plan and on the component list. If parts are missing at the time of installation, Offeror or Offeror's Authorized Dealer is responsible for the quick shipment (within the agreed upon timeframe) of the missing parts.</p> <p>7. Complying with all applicable federal, state, borough, and local regulations, codes, and laws, and be liable for all required insurance, licenses, permits, bonds, taxes, inspections, and prevailing wage requirements.</p>	
18.3.3	Design Services applicable to Architectural Products and Accessories.	
18.3.3.1	Fabric, paint, and finishes must be available electronically and incorporated into computer-aided design drawings to aid in the selection process.	
18.3.3.2	<p>Offeror is responsible for the following:</p> <p>1. Accuracy of all job site dimensions, obstructions, and attributes.</p> <p>2. Field verifications and any overages, shortages, and all other ordering errors resulting from orders based on the design work completed by the Offeror or Offeror's Authorized Dealer. Approval of design work by the Purchasing Entity does not constitute responsibility for the Contractor design or ordering process.</p> <p>3. Provide concept drawings and construction documents, part lists, and submittal samples (including finishes). Offeror or Offeror's Authorized Dealer must provide a plan showing in detail, the position of all walls including heights, widths, types of panels, voice/data outlets, and electrical outlets, and plumbing, as applicable. Drawings must include elevations, and connection and attachment details to the base building.</p> <p>4. All plans and review for correct product application and stability including notifying the Purchasing Entity immediately of any deviations or inconsistencies with product capabilities, including unusual installation requirements.</p> <p>5. Accurately specifying all necessary products including parts, components, connectors, fillers, trim pieces, and other items in the plan and on the component list. If parts are missing at the time of installation, Offeror or Offeror's Authorized Dealer is responsible for the quick shipment (within the agreed upon timeframe) of the missing parts.</p> <p>6. Provide on-site visits to assess needs and develop plans and must return to the job site to verify installations.</p> <p>7. Coordinate electrical provisions to be included in the walls with final circuited electrical engineering drawings, schedules, including drawings stamped by a professional engineer and must be compliant with federal, state, local, and other applicable codes, and prevailing wage requirements.</p> <p>8. Complying with all applicable federal, state, borough, and local regulations, codes, and laws, and be liable for all required insurance, licenses, permits, bonds, taxes, inspections, and prevailing wage requirements.</p>	
19	Service Category - Customer Service. Offeror certifies that Offeror can provide or meet the following requirements: Customer service includes sales service, project management services, product information services, and warranty services. If a Participating Entity elects to provide Customer Owned Material, Offeror shall assist the Participating Entity with the evaluation of that material at no additional cost. Offeror or Offeror's Authorized Dealer may not charge for Customer Service.	
20	Optional Services. Offeror certifies that they can provide or meet the following requirements if Offeror determines to offer the optional service categories listed in Attachment B – Scope of Work. If Offeror selects "Not Submitting for This Category" for any of the items below, Offeror will be disqualified from offering the optional service categories.	
20.1	Optional services may be provided in addition to the mandatory services or as a standalone service without the need to place an order for furniture.	
20.2	Offeror or Offeror's Authorized Dealer must provide a not to exceed quote for optional services prior to commencing work.	
20.3	Offeror and Offeror's Authorized Dealer must comply with all applicable federal, state, borough, and local regulations, codes, and laws, and be liable for all required insurance, licenses, permits, bonds, taxes, inspections, and prevailing wage requirements.	
20.4	Offeror shall upload a separate document describing the optional service categories Offeror wishes to offer. Title this document upload in the Supplier's Attachments section – [Offeror Name] – Optional Services.	
21	Product Categories. Indicate which product categories Offeror is submitting a proposal.	
21.1	Office Seating and Accessories.	
21.2	Lounge and Public Seating and Accessories.	
21.3	Desks and Tables and Accessories.	
21.4	Panel Systems and Accessories.	
21.5	Storage and Accessories.	
21.6	Architectural Products and Accessories.	

Offeror Name:

CATEGORY 1: Office Seating - Base											
Item #	Item Description	Quantity	Brand	Product Line - Collection (if applicable)	Model	Model Number	Price List # and Date	Published Commercial Price List Price	Published Commercial Price List Price x Quantity	% Discount	Contract Price (Published Commercial Price List x Quantity x Discount)
1	Executive 5 Star Base Chair. Black mesh or fabric seat and back. High back, height adjustable arms, gas lifted, synchronized titling mechanism, chrome, platinum metallic, or polished aluminum base, standard casters for low pile carpet or tile.	6						\$ -	\$ -	0.00%	\$ -
2	Armless 5 Star Base Chair. Black fabric upholstered chair, gas lifted, tilting mechanism, chrome, platinum metallic, or polished aluminum base, standard casters for low pile carpet or tile.	4						\$ -	\$ -	0.00%	\$ -
3	Armless Sled Base Guest Chair. Glides. Black Leather back and seat. Black frame.	16						\$ -	\$ -	0.00%	\$ -
4	Sled Base Guest Chair with fixed arms. Glides. Mesh back. Black seat fabric. Black frame.	16						\$ -	\$ -	0.00%	\$ -
5	Task Chair with arms. Mesh or fabric seat and back. Five star base. Height adjustable. Tilt limiter and seat angle adjustments. Fully adjustable arms (height, width, and angle) with non upholstered arm pads. Standard casters for low pile carpet or tile. Finish: graphite or black base finish.	12						\$ -	\$ -	0.00%	\$ -
6	Armless Task Chair. Mesh or fabric seat and back. Five star base. Height adjustable. Tilt limiter and seat angle adjustments. 2 1/2" hard caster for carpet. Finish: graphite or black base finish with standard mesh seat and back.	12						\$ -	\$ -	0.00%	\$ -
7	Conference Chair with arms. Mesh or fabric seat and back. Five star base. Height adjustable. Standard tilt. Fully adjustable arms (height, width, and angle) with nonupholstered arm pads. 2 1/2" caster for low pile carpet or tile. Finish: graphite or black base finish.	48						\$ -	\$ -	0.00%	\$ -
CATEGORY 1 TOTAL (Points for Category 1 determined by this amount)											\$ -

Offeror Name:

Instructions:	
1	All cells shaded in yellow must be filled out. All cells shaded in a grey highlight throughout this worksheet are to be completed by the Offeror as needed. All other cells are not to be changed or altered.
2	Under the column heading " Brand ", " Product Line(s) Offered ", and " Collection (if applicable) " enter Offeror's complete offering for this category. There is no limit to the number of brands or product lines that may be offered. Multiple product lines may be combined into a single line where the discounts are the same across each price tier.
3	Under the column heading " Price Tier 1 Percentage Discount ", enter the minimum percentage discount for purchases made that are in this cost range for each brand and product line offered.
4	Under the column heading " Price Tier 2 Percentage Discount ", enter the minimum percentage discount for purchases made that are in this cost range for each brand and product line offered.
5	Under the column heading " Price Tier 3 Percentage Discount ", enter the minimum percentage discount for purchases made that are in this cost range for each brand and product line offered. Offeror may enter "negotiable" instead of submitting a minimum percentage discount.

EXAMPLE	The following example is for illustrative purposes.				
Brand	Product Line(s) Offered	Collection (If applicable)	Price Tier 1 Minimum Percentage Discount Less than or equal to \$50k	Price Tier 2 Minimum Percentage Discount Over \$50k to \$150k	Price Tier 3 Minimum Percentage Discount Over \$150k
Bobs Chairs	Classic Comfort	Diamond Collection	34.00%	39.00%	50.00%
Bobs Chairs	Cushy Ride	N/A	38.00%	42.00%	53.00%
Bobs Chairs	Super Plush	Bronze Collection	36.00%	45.00%	62.00%

Office Seating and Accessories Product Offering

Is additional discounting negotiable on Seating orders that exceed \$150,000? (yes or no)

[illegible]

Offeror Name:	
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1. Offerors must complete all information requested (yellow boxes) and **bid on every product** and complete the corresponding category detail sheet, if Offeror wishes to be considered for the category.

1. Offerors must complete all information requested (yellow boxes) and **bid on every product** and complete the corresponding category detail sheet, if Offeror wishes to be considered for the category.

2. Each line item must be completed with one (1) product.

3. This cost sheet is for scoring purposes and if awarded, the percentage discount offered by the Offeror for products below should match the minimum percentage discount in the corresponding detail sheet.

4. Offerors must indicate the exact Published Commercial Price List number and date for which cost is being based on.

5. Base is defined as the best priced standard typical offering.

6. Boxes in green and blue will auto-populate.

CATEGORY 2: Lounge and Public Seating - Base											
Item #	Item Description	Quantity	Brand	Product Line - Collection (if applicable)	Model	Model Number	Price List # and Date	Published Commercial Price List Price	Commercial Price List Price x Quantity	% Discount	Contract Price (Published Commercial Price List x Quantity x Percentage Discount)
1	Lounge Chair. Single seat. Four hardwood or metal feet. Black leather chair. Attached arms. Glides.	4						\$ -	\$ -	0.00%	\$ -
2	Armless Reception Chair. Single seat. Full upholstered with COM. High back. 4 wooden or metal legs. Glides.	2						\$ -	\$ -	0.00%	\$ -
3	Reception Chair. Single Seat. Fully upholstered with COM. Mid back. 4 prong swivel base in black finish. Glides.	4						\$ -	\$ -	0.00%	\$ -
4	Reception Sofa. 3 Seater. Fixed arms. Black leather seat and back. Glides. Wood or metal legs matching black leather.	1						\$ -	\$ -	0.00%	\$ -
5	Open Office Sofa. Fully upholstered three seat lounge w/high back and high arms, carpet glides, and upholstered back.	4						\$ -	\$ -	0.00%	\$ -
CATEGORY 2 TOTAL (Points for Category 2 determined by this amount)											\$ -

Offeror Name:

Instructions:	
1	All cells shaded in yellow must be filled out. All cells shaded in a grey highlight throughout this worksheet are to be completed by the Offeror as needed. All other cells are not to be changed or altered.
2	Under the column heading " Brand ", " Product Line(s) Offered ", and " Collection (if applicable) " enter Offeror's complete offering for this category. There is no limit to the number of brands or product lines that may be offered. Multiple product lines may be combined into a single line where the discounts are the same across each price tier.
3	Under the column heading " Price Tier 1 Percentage Discount ", enter the percentage discount for purchases made that are in this cost range for each brand and product line offered.
4	Under the column heading " Price Tier 2 Percentage Discount ", enter the percentage discount for purchases made that are in this cost range for each brand and product line offered.
5	Under the column heading " Price Tier 3 Percentage Discount ", enter the percentage discount for purchases made that are in this cost range for each brand and product line offered. Offeror may enter "negotiable" instead of submitting a percentage discount.

EXAMPLE	The following example is for illustrative purposes.				
Brand	Product Line(s) Offered	Collection (If applicable)	Price Tier 1 Minimum Percentage Discount Less than or equal to \$50k	Price Tier 2 Minimum Percentage Discount Over \$50k to \$150k	Price Tier 3 Minimum Percentage Discount Over \$150k
Bobs Chairs	Classic Comfort	Diamond Collection	34.00%	39.00%	50.00%
Bobs Chairs	Cushy Ride	N/A	38.00%	42.00%	53.00%
Bobs Chairs	Super Plush	Bronze Collection	36.00%	45.00%	62.00%
Lounge and Public Seating and Accessories Product Offering					
Is additional discounting negotiable on Lounge and Public Seating and Accessories orders that exceed \$150,000?			(yes or no)		

[illegible]

Attachment D: Cost Proposal
Category 3: Desks and Tables and Accessories

Offeror Name:

Cost Proposal Form Instructions:

1. Offerors must complete all information requested (yellow boxes) and **bid on every product** and complete the corresponding category detail sheet, if Offeror wishes to be considered for the category.
2. Each line item must be completed with one (1) product.
3. This cost sheet is for scoring purposes and if awarded, the percentage discount offered by the Offeror for products below should match the minimum percentage discount in the corresponding detail sheet.
4. Offerors must indicate the exact Published Commercial Price List number and date for which cost is being based on.
5. Offerors may offer a product with a +/- six (6) inch variance.
6. Base is defined as the best priced standard typical offering.
7. Boxes in green and blue will auto-populate.

CATEGORY 3: Desks and Tables - Base											
Item #	Item Description	Quantity	Brand	Product Line - Collection (if applicable)	Model	Model Number	Price List # and Date	Published Commercial Price List Price	Published Commercial Price List Price x Quantity	% Discount	Contract Price (Published Commercial Price List x Quantity x Discount)
1	24" D x 48" W x 29" H Laminate Desk. Single Hanging Pedestal with two box/file drawers. Locks can be on all drawers or one lock that controls all drawers. Full modestly panel. Glides. Minimum 1 black wire management grommets.	1						\$ -	\$ -	0.00%	\$ -
2	Height Adjustable Worksurface. square edge rectangular plastic laminate surface with vinyl or ABS edge. Base: Height adjustable base with standard electric height adjustment (19" range); adjustment mechanism placed at the front edge of the table. Size: 48" W x 30" D. Finish: wood grain plastic laminate with vinyl edge; color light brown.	8						\$ -	\$ -	0.00%	\$ -
3	18" D x 18" H Round Laminate Table. Round steel base with glide plate.	4						\$ -	\$ -	0.00%	\$ -
4	24" D x 18" H Round Laminate Table. Round steel base with glide plate.	4						\$ -	\$ -	0.00%	\$ -
5	36" D x 96" W x 42" H Work Table. Standing height table. Wood veneer or wood with mitered or rounded edge. Non powered.	2						\$ -	\$ -	0.00%	\$ -
6	24" D x 72" W Rectangular Table. Squared Edge. Laminate Top. Post leg. Glides or Casters.	2						\$ -	\$ -	0.00%	\$ -
7	36" D x 42" H x 72" W Rectangular Table. Squared Edge. Laminate Top. Glides or Casters.	1						\$ -	\$ -	0.00%	\$ -
CATEGORY 3 TOTAL (Points for Category 3 determined by this amount)											\$ -

Offeror Name:

Instructions:	
1	All cells shaded in yellow must be filled out. All cells shaded in a grey highlight throughout this worksheet are to be completed by the Offeror as needed. All other cells are not to be changed or altered.
2	Under the column heading "Brand", "Product Line(s) Offered", and "Collection (If applicable)" enter Offeror's complete offering for this category. There is no limit to the number of brands or product lines that may be offered. Multiple product lines may be combined into a single line where the discounts are the same across each price tier.
3	Under the column heading "Price Tier 1 Percentage Discount", enter the percentage discount for purchases made that are in this cost range for each brand and product line offered.
4	Under the column heading "Price Tier 2 Percentage Discount", enter the percentage discount for purchases made that are in this cost range for each brand and product line offered.
5	Under the column heading "Price Tier 3 Percentage Discount", enter the percentage discount for purchases made that are in this cost range for each brand and product line offered. Offeror may enter "negotiable" instead of submitting a percentage discount.

EXAMPLE	The following example is for illustrative purposes.				
Brand	Product Line(s) Offered	Collection (If applicable)	Price Tier 1 Minimum Percentage Discount Less than or equal to \$50k	Price Tier 2 Minimum Percentage Discount Over \$50k to \$150k	Price Tier 3 Minimum Percentage Discount Over \$150k
Bobs Chairs	Classic Comfort	Diamond Collection	34.00%	39.00%	50.00%
Bobs Chairs	Cushy Ride	N/A	38.00%	42.00%	53.00%
Bobs Chairs	Super Plush	Bronze Collection	36.00%	45.00%	62.00%
Desks and Tables and Accessories Product Offering					

Is additional discounting negotiable on Desks and Tables and Accessories orders that exceed \$150,000? (yes or no)	
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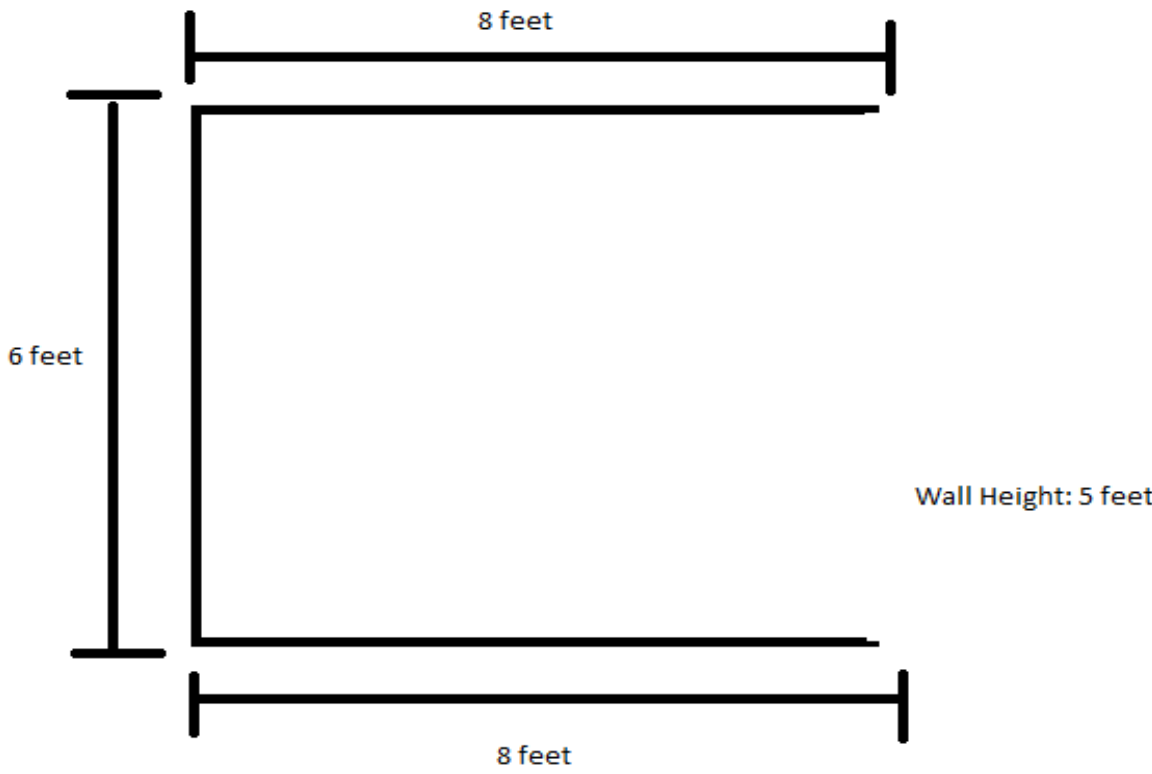
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Attachment D: Cost Proposal
Category 4: Panel Systems and Accessories

Offeror Name:

Cost Proposal Form Instructions:										
1. Offerors must complete all information requested (yellow boxes) and bid on every product and complete the corresponding category detail sheet, if Offeror wishes to be considered for the category.										
2. Each line item must be completed with one (1) product.										
3. This cost sheet is for scoring purposes and if awarded, the percentage discount offered by the Offeror for products below should match the minimum percentage discount in the corresponding detail sheet.										
4. Offerors must indicate the exact Published Commercial Price List number and date for which cost is being based on.										
5. Offerors may offer a product with a +/- six (6) inch variance on width and height. Offerors may offer a product with a +/- one (1) inch variance on thickness.										
6. Base is defined as the best priced standard typical offering.										
7. Boxes in green and blue will auto-populate.										

CATEGORY 4: Panel Systems - Base										
Item #	Item Description	Brand	Product Line - Collection (if applicable)	Model	Model Number	Price List # and Date	Published Commercial Price List Price	Published Commercial Price List Price x Quantity	% Discount	Contract Price (Published Commercial Price List x Quantity x Discount)
1	Freestanding 2" thick, full fabric gray upholstered panels with black trim including all necessary hardware for installation. (See image below for dimensions).						\$ -	\$ -	0.00%	\$ -
CATEGORY 4 TOTAL (Points for Category 4 determined by this amount)										\$ -



Attachment D: Cost Proposal
Category 4: Panel Systems and Accessories Detail

Instructions:	
1	All cells shaded in yellow must be filled out. All cells shaded in a grey highlight throughout this worksheet are to be completed by the Offeror as needed. All other cells are not to be changed or altered.
2	Under the column heading "Brand", "Product Line(s) Offered", and "Collection (If applicable)" enter Offeror's complete offering for this category. There is no limit to the number of brands or product lines that may be offered. Multiple product lines may be combined into a single line where the discounts are the same across each price tier.
3	Under the column heading "Price Tier 1 Percentage Discount", enter the percentage discount for purchases made that are in this cost range for each brand and product line offered.
4	Under the column heading "Price Tier 2 Percentage Discount", enter the percentage discount for purchases made that are in this cost range for each brand and product line offered.
5	Under the column heading "Price Tier 3 Percentage Discount", enter the percentage discount for purchases made that are in this cost range for each brand and product line offered. Offeror may enter "negotiable" instead of submitting a percentage discount.

EXAMPLE	The following example is for illustrative purposes.				
Brand	Product Line(s) Offered	Collection (If applicable)	Price Tier 1 Minimum Percentage Discount Less than or equal to \$50k	Price Tier 2 Minimum Percentage Discount Over \$50k to \$150k	Price Tier 3 Minimum Percentage Discount Over \$150k
Bobs Chairs	Classic Comfort	Diamond Collection	34.00%	39.00%	50.00%
Bobs Chairs	Cushy Ride	N/A	38.00%	42.00%	53.00%
Bobs Chairs	Super Plush	Bronze Collection	36.00%	45.00%	62.00%
Panel Systems and Accessories Product Offering					

Is additional discounting negotiable on Panel Systems and Accessories orders that exceed \$150,000? (yes or no)	
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[illegible]

Offeror Name:

1. Offerors must complete all information requested (yellow boxes) and **bid on every product** and complete the corresponding category detail sheet, if Offeror wishes to be considered for the category.
2. Each line item must be completed with one (1) product.
3. This cost sheet is for scoring purposes and if awarded, the percentage discount offered by the Offeror for products below should match the minimum percentage discount in the corresponding detail sheet.
4. Offerors must indicate the exact Published Commercial Price List number and date for which cost is being based on.
5. Offerors may offer a product with a +/- six (6) inch variance.
6. Base is defined as the best priced standard typical offering.
7. Boxes in green and blue will auto-populate.

CATEGORY 5: Storage and Accessories - Base											
Item #	Item Description	Quantity	Brand	Product Line - Collection (if applicable)	Model	Model Number	Price List # and Date	Published Commercial Price List Price	Published Commercial Price List x Quantity	% Discount	Contract Price (Published Commercial Price List x Quantity x Discount)
1	20" D x 36" W x 26" H Lateral File Cabinet. Laminate top. Painted steel, standard smooth finish. Rails included. Leveling glides. Keyed.	6						\$ -	\$ -	0.00%	\$ -
2	22" D x 15" W x 22" H. Metal Mobile Pedestal. Cushion top. Keyed. Rails included. Casters. 2 Drawers. Counterweight included.	10						\$ -	\$ -	0.00%	\$ -
3	22" D x 15" W x 28" H. Metal Mobile Pedestal. Keyed. Rails included. Casters. 3 Drawers. Counterweight included.	20						\$ -	\$ -	0.00%	\$ -
4	13" D x 36" W x 48" H 3 Shelf Bookcase. Laminate. Glides. Fixed and/or adjustable Shelves.	4						\$ -	\$ -	0.00%	\$ -
5	13" D x 36" W x 72" H 5 Shelf Bookcase. Metal. Glides. Adjustable Shelves.	4						\$ -	\$ -	0.00%	\$ -
CATEGORY 5 TOTAL (Points for Category 5 determined by this amount)											\$ -

Attachment D: Cost Proposal
Category 5: Storage and Accessories Detail

Offeror Name:

Instructions:	
1	All cells shaded in yellow must be filled out. All cells shaded in a grey highlight throughout this worksheet are to be completed by the Offeror as needed. All other cells are not to be changed or altered.
2	Under the column heading " Brand ", " Product Line(s) Offered ", and " Collection (if applicable) " enter Offeror's complete offering for this category. There is no limit to the number of brands or product lines that may be offered. Multiple product lines may be combined into a single line where the discounts are the same across each price tier.
3	Under the column heading " Price Tier 1 Percentage Discount ", enter the percentage discount for purchases made that are in this cost range for each brand and product line offered.
4	Under the column heading " Price Tier 2 Percentage Discount ", enter the percentage discount for purchases made that are in this cost range for each brand and product line offered.
5	Under the column heading " Price Tier 3 Percentage Discount ", enter the percentage discount for purchases made that are in this cost range for each brand and product line offered. Offeror may enter "negotiable" instead of submitting a percentage discount.

EXAMPLE	The following example is for illustrative purposes.				
Brand	Product Line(s) Offered	Collection (If applicable)	Price Tier 1 Minimum Percentage Discount Less than or equal to \$50k	Price Tier 2 Minimum Percentage Discount Over \$50k to \$150k	Price Tier 3 Minimum Percentage Discount Over \$150k
Bobs Chairs	Classic Comfort	Diamond Collection	34.00%	39.00%	50.00%
Bobs Chairs	Cushy Ride	N/A	38.00%	42.00%	53.00%
Bobs Chairs	Super Plush	Bronze Collection	36.00%	45.00%	62.00%
Storage and Accessories Product Offering					
Is additional discounting negotiable on Storage and Accessories orders that exceed \$150,000? (yes or no)					

[illegible]

Offeror Name:

1. Offerors must complete all information requested (yellow boxes) and bid on every product and complete the corresponding category detail sheet, if Offeror wishes to be considered for the category.
2. Each line item must be completed with one (1) product.
3. This cost sheet is for scoring purposes and if awarded, the percentage discount offered by the Offeror for products below should match the minimum percentage discount in the corresponding detail sheet.
4. Offerors must indicate the exact Published Commercial Price List number and date for which cost is being based on.
5. Base is defined as the best priced standard typical offering.
6. Boxes in green and blue will auto-populate.

CATEGORY 6A: Architectural Products - Base											
Item #	Item Description	Quantity	Brand	Product Line - Collection (if applicable)	Model	Model Number	Price List # and Date	Published Commercial Price List Price	Published Commercial Price List x Quantity	% Discount	Contract Price (Published Commercial Price List x Quantity x Discount)
1	100 feet single pane glass solution; 1/2" acoustic laminated glass; 36 STC, 9' bulkhead height with standard powder coat finish and stainless steel door hardware. Glass may be tempered or laminated.	1						\$ -	\$ -	0.00%	\$ -
2	1 frameless glass swing door, self closing hinges, non locking pull bar.	6						\$ -	\$ -	0.00%	\$ -
3	1 frameless glass sliding door, soft close mechanism, non locking bar pull.	38						\$ -	\$ -	0.00%	\$ -
CATEGORY 6 TOTAL (Points for Category 6 determined by this amount)											\$ -

Offeror Name:

Instructions:	
1	All cells shaded in yellow must be filled out. All cells shaded in a grey highlight throughout this worksheet are to be completed by the Offeror as needed. All other cells are not to be changed or altered.
2	Under the column heading "Brand", "Product Line(s) Offered", and "Collection (If applicable)" enter Offeror's complete offering for this category. There is no limit to the number of brands or product lines that may be offered. Multiple product lines may be combined into a single line where the discounts are the same across each price tier.
3	Under the column heading "Price Tier 1 Percentage Discount", enter the percentage discount for purchases made that are in this cost range for each brand and product line offered.
4	Under the column heading "Price Tier 2 Percentage Discount", enter the percentage discount for purchases made that are in this cost range for each brand and product line offered.
5	Under the column heading "Price Tier 3 Percentage Discount", enter the percentage discount for purchases made that are in this cost range for each brand and product line offered. Offeror may enter "negotiable" instead of submitting a percentage discount.

EXAMPLE	The following example is for illustrative purposes.				
Brand	Product Line(s) Offered	Collection (If applicable)	Price Tier 1 Minimum Percentage Discount Less than or equal to \$50k	Price Tier 2 Minimum Percentage Discount Over \$50k to \$150k	Price Tier 3 Minimum Percentage Discount Over \$150k
Bobs Chairs	Classic Comfort	Diamond Collection	34.00%	39.00%	50.00%
Bobs Chairs	Cushy Ride	N/A	38.00%	42.00%	53.00%
Bobs Chairs	Super Plush	Bronze Collection	36.00%	45.00%	62.00%
Architectural Products and Accessories Product Offering					

Is additional discounting negotiable on Architectural Products and Accessories orders that exceed \$150,000? (yes or no)	
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[illegible]

ATTACHMENT E - SCORE SHEET

RFP EVALUATION SCORE SHEET

Firm Name:

Evaluator:

Date:

Score will be assigned as follows:

0 = Fail, the proposal fails to address the requirements or criteria described in the RFP or cannot be assessed due to missing information.

1 = Poor, the proposal inadequately addresses the requirements or criteria described in the RFP or cannot be assessed due to missing information.

2 = Unsatisfactory, the proposal addresses the requirements or criteria described in the RFP in an unsatisfactory manner.

3 = Satisfactory, the proposal addresses all requirements or criteria described in the RFP in a minimum satisfactory manner.

4 = Good, the proposal addresses all requirements or criteria described in the RFP and in some respects exceeds them.

5 = Excellent, the proposal addresses and exceeds all of the requirements or criteria described in the RFP.

Stage 1: OEM Mandatory Minimum Requirements	Attachment C - OEM Mandatory Minimum Requirements	Evaluation (Pass/Fail)
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Stage 2: OEM Evaluated Qualifications		RFP Section	Evaluator Score (0-5)	Criteria Weight	% of Tech Criteria	Points Possible	Points Earned
1	OEM Evaluated Qualification 1 (40 Points): Warranty.	Office Furniture RFP	0	8	16.0%	40.0	0.0
2	OEM Evaluated Qualification 2 (40 Points): Website.	Office Furniture RFP	0	8	16.0%	40.0	0.0
3	OEM Evaluated Qualification 3 (50 Points): Customer Service Capabilities.	Office Furniture RFP	0	10	20.0%	50.0	0.0
4	OEM Evaluated Qualification 4 (40 Points): Delivery.	Office Furniture RFP	0	8	16.0%	40.0	0.0
5	OEM Evaluated Qualification 5 (20 Points): Authorized Dealer Relationship.	Office Furniture RFP	0	4	8.0%	20.0	0.0
6	OEM Evaluated Qualification 6 (60 Points): Environmental.	Office Furniture RFP	0	12	24.0%	60.0	0.0
					100.0%	250.0	0.0

Required OEM Evaluated Qualifications Point Threshold	RFP Section	Min Percent	Min Points Required	Points Earned	Percent Earned	Evaluation
	Office Furniture RFP	75%	187.50	0.00	0.0%	

Stage 3a: Product Mandatory Minimum Requirements	Office Furniture RFP	Evaluation (Pass/Fail)
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Stage 3b: Product Evaluated Qualifications		RFP Section	Evaluator Score (0-5)	Criteria Weight	% of Tech Criteria	Points Possible	Points Earned
1	Product Evaluated Qualification 1 (100 Points): Category Capabilities, Components and Finishes.	Office Furniture RFP	0	20	22.2%	100.0	0.0
2	Product Evaluated Qualification 2 (100 Points): ANSI/BIFMA.	Office Furniture RFP	0	20	22.2%	100.0	0.0
3	Product Evaluated Qualification 3 (100 Points): Versatility.	Office Furniture RFP	0	20	22.2%	100.0	0.0
4	Product Evaluated Qualification 4 (100 Points): Mandatory Products.	Office Furniture RFP	0	20	22.2%	100.0	0.0
5	Product Evaluated Qualification 5 (50 Points): Accessories.	Office Furniture RFP	0	10	11.1%	50.0	0.0
					100.0%	450.0	0.0

Required Product Evaluated Qualifications Point Threshold	RFP Section	Min Percent	Min Points Required	Points Earned	Percent Earned	Evaluation
	Prerequisites	75%	337.5	0.0	0.0%	

Stage 4: Cost	RFP Section	Low Cost Option	Offered Cost	Percent of Total	Points Possible	Points Earned
	Office Furniture RFP			30%	300.0	0.0

Purchasing will use the following cost formula for each cost category: The Offeror with the lowest total cost per product category shall receive 300 points (100% of the total cost points). Other Offerors will receive a portion of the cost points based on what ratio higher their total cost is than the lowest proposed total cost.

Total Evaluation Points	Percent of Total	Points Possible	Points Earned
Total OEM Evaluated Qualifications Points	25%	250.0	0.00
Total Product Evaluated Qualifications Points	45%	450.0	0.00
Total Cost Evaluation Points	30%	300.0	0.00
Total Evaluation Points	100%	1,000.0	0.00

Attachment F
CLAIM OF BUSINESS CONFIDENTIALITY

Pursuant to Utah Code Annotated, Subsections 63G-2-305(1) and (2), and in accordance with Section 63G-2-309, _____ (company name) asserts a claim of business confidentiality to protect the following information submitted as part of this solicitation. Pricing/Cost Proposals may not be classified as confidential or protected and will be considered public information. **An entire proposal cannot be identified as “PROTECTED”, “CONFIDENTIAL” or “PROPRIETARY”.**

- ☐ Non-public financial statements
- ☐ Specific employee name and contact information
- ☐ Specific customer information, client lists, or subscription lists
- ☐ Other (specify): _____

This claim is asserted because this information requires protection as it includes:

☐ trade secrets as defined in Utah Code Annotated Section 13-24-2 ("Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy).

☐ 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; [and] (b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access.

This statement of reasons supporting the claim of business confidentiality applies to the following information in this proposal:

Page	Paragraph	Reason

Please use additional sheets if needed.

You will be notified if a record claimed to be protected herein under Utah Code Annotated § 63G-2-305(1) or (2) is classified public or if the governmental entity determines that the record should be released after weighing interests under Utah Code Annotated § 63G-2-201(5)(b) or Utah Code Annotated § 63G-2-401(6). See Utah Code Annotated § 63G-2-309.

Signed: _____
On behalf of (company): _____
Date: _____

(Revision 6/4/2015)

Attachment G - NASPO ValuePoint Detailed Sales Reporting Template		
Field Name		Field Description
VENDOR		The awarded Contractor's name
VENDOR CONTRACT NUMBER		Lead State assigned contract number (using Lead State's numbering protocol)
STATE		State postal abbreviation code (Alaska = AK, Missouri = MO, etc.)
CUSTOMER TYPE (SEGMENT)		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]
BILL TO NAME		Customer (agency) Bill to name
BILL TO ADDRESS		Customer (agency) Bill to address
BILL TO CITY		Customer (agency) Bill to city
BILL TO ZIPCODE		Zip code in standard 5-4 format [standard 5 digits is acceptable, formatted as a zip code]
SHIP TO NAME		Customer (agency) Ship to name
SHIP TO ADDRESS		Customer (agency) Ship to address
SHIP TO CITY		Customer (agency) Ship to city
SHIP TO ZIPCODE		Zip code in standard 5-4 format [standard 5 digits is acceptable, formatted as a zip code]
ORDER NUMBER		Vendor assigned order number
CUSTOMER PO NUMBER		Customer provided Purchase Order Number
CUSTOMER NUMBER		Vendor assigned account number for the purchasing entity
ORDER TYPE		Sales order, Credit/Return, Upgrade/Downgrade, etc. [determined by industrial practice for each contract - uniform for each contract]
PO DATE (ORDER DATE)		(mm/dd/ccyy)
SHIP DATE		(mm/dd/ccyy)
INVOICE DATE		(mm/dd/ccyy)
INVOICE NUMBER		Vendor assigned Invoice Number
PRODUCT NUMBER		Product number of purchased product
PRODUCT DESCRIPTION		Product description of purchased product
UNSPSC		Commodity-level code based on UNSPSC code rules (8 Digits)
CATEGORY		Product Category
LIST PRICE/MSRP/CATALOG PRICE		List Price - US Currency (\$99999.999) [determined by industrial practice for each contract - uniform for each contract]
QUANTITY		Quantity Invoiced (99999.999)
TOTAL PRICE		Extended Price (unit price multiplied by the quantity invoiced) - US Currency (\$999999999.999)
VAR/Reseller/Distributor		If a VAR/Reseller/Distributor, name of VAR/Reseller/Distributor and state where located
Energy Star Compliant		Yes = 1 No = 2 Energy Star Does not Apply = 0
Optional		More information

Please note this template is for sample purposes and subject to change.

COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall

be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and

services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

Attachment I
PARTICIPATING ADDENDUM – **DRAFT 3/9/2022**
NASPO ValuePoint COOPERATIVE PURCHASING ORGANIZATION
Office Furniture
Administered by the State of Utah (hereinafter “Lead State”)

MASTER AGREEMENT
Master Agreement Number: **NASPO ValuePoint Master Agreement Number (TBD) /**
Lead State Sourcing Event Number CT22-79

«**Contractor Name**»
(hereinafter “Contractor”)

And

The State of Connecticut, all using State Agencies, Political Subdivisions and Institutions
in accordance with Connecticut General Statute §4a-53
(hereinafter “Participating State/Entity” or “State”)

1. Scope

This Participating Addendum allows for the purchase of Office Furniture, led by the State of Utah along with a multi-state sourcing team for use by State of Connecticut agencies and political subdivisions and institutions in accordance with Conn. Gen. Stat. §4a-53 located in the participating State/Entity authorized by that State’s statutes to utilize its State contracts, and which receives prior written approval of the State’s Chief Procurement Official.

The Participating State will identify this Participating Addendum as the State of Connecticut (“State”), Department of Administrative Services (DAS), Procurement Division Contract #22PSX0045.

2. Participation

The National Association of State Procurement Officials (“NASPO”) is the Cooperative Purchasing Organization, LLC doing business as NASPO ValuePoint. Use of specific NASPO ValuePoint cooperative contracts by state agencies, political subdivisions and other entities (including cooperatives) authorized by an individual State’s statutes to use State/Entity 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.

Each using State agency, political subdivision and institution in accordance with Conn. Gen. Stat. §4a-53 (“Participating Entity”) that purchases under the NASPO ValuePoint Master Agreement Number **(TBD by Lead State upon award)** (“Master Agreement”) will be treated as an individual customer(s). Except to the extent modified by this Participating 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 purchases as the Lead State has in the Master Agreement. Each Participating Entity will be responsible for its own charges, fees, and liabilities.

3. Order of Precedence

- a. A Participating Entity’s Participating Addendum. A Participating Entity’s Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State’s contractual relationship with the Contractor under the Terms of Utah NASPO ValuePoint Master Agreement;
- b. Utah NASPO ValuePoint Master Agreement (includes negotiated Terms & Conditions);
- c. The Solicitation including all Addendums; and
- d. Contractor’s response to the Solicitation.

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 the Master Agreement are only those that are expressly accepted by the Lead State

PARTICIPATING ADDENDUM – DRAFT 3/9/2022
NASPO ValuePoint COOPERATIVE PURCHASING ORGANIZATION
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MASTER AGREEMENT
Master Agreement Number: NASPO ValuePoint Master Agreement Number (TBD) /
Lead State Sourcing Event Number CT22-79

«Contractor Name»
(hereinafter “Contractor”)
And

The State of Connecticut, all using State Agencies, Political Subdivisions and Institutions
in accordance with Connecticut General Statute §4a-53
(hereinafter “Participating State/Entity” or “State”)

in writing, and attached to the Master Agreement. No other terms and conditions apply. The Solicitation language prevails unless a mutually agreed exception has been negotiated.

4. Primary Contacts

The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Lead State:

Name: State of Utah
Address: 4315 S 2700 W FL 3, Taylorsville, UT 84129-2128
Contact Person: Cat Turner, State Contract Analyst
Telephone: 801-957-7128
E-mail: caturner@utah.gov

Contractor:

Name: «Contractor Name»
Address: «Contractor Address»
Contact Person: «Contractor Contact Person»
Telephone: «Contractor Phone Number»
E-mail: «Contractor Email Address»

Participating Entity:

Name: State of Connecticut, Department of Administrative Services,
Procurement Division
Address: 450 Columbus Boulevard, Suite 1202, Hartford, CT 06103
Contact Person: Susanne Hawkins, Contract Specialist
Telephone: 860-713-5064
E-mail: Susanne.hawkins@ct.gov

5. Orders

Any order placed by a Participating Entity through the Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) the Master Agreement unless the parties of the order agree in writing that another contract or agreement applies to such order.

All purchase orders shall contain the Master Agreement No. **NASPO ValuePoint Master Agreement Number (TBD by Lead State upon award)** and the DAS Contract No. 22PSX0045.

PARTICIPATING ADDENDUM – DRAFT 3/9/2022
NASPO ValuePoint COOPERATIVE PURCHASING ORGANIZATION
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Master Agreement Number: **NASPO ValuePoint Master Agreement Number (TBD) /**
Lead State Sourcing Event Number CT22-79

«Contractor Name»
(hereinafter “Contractor”)
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6. Participating State Modifications or Additions to Master Agreement

The parties agree that the following provisions of this Participating Addendum shall apply to any action, purchase or purchase order issued by the State or any of its Participating Entities.

6.1 Definitions

The following definitions apply to this Participating Addendum:

a. Claims

All actions, suits, claims, demands, investigations, and proceedings of any kind, open, pending, or threatened, whether mature, un-matured, contingent, known or unknown, at law or in equity in any forum.

b. Client Agency

Any department, commission, board, bureau, agency, institution, public authority, office, council, association, instrumentality or political subdivision of the State of Connecticut, non-profit organization organized in this State and any entity identified in Conn. Gen. Stat. Sec. 4a-53, as applicable, who is authorized and chooses to make purchases under, and pursuant to the terms of this Contract.

c. Confidential Information

Any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number and residential address, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation. Without limiting the foregoing, Confidential Information shall also include any information that DAS classifies as “confidential” or “restricted.” Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.

d. Confidential Information Breach

Generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior

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«Contractor Name»
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written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the Client Agency, the Contractor, or State.

e. Contract

Master Agreement and this Participating Addendum.

f. Contractor

The person or entity who executes the Contract.

g. Contractor Parties

Contractor’s members, principals, directors, officers, shareholders, partners, managers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity or with whom Contractor contracts to Perform under this Contract in any capacity.

h. Deliverable

Each (1) Good, Service, Maintenance Services, Improvement, Material, Documentation, System, process or information of any type, whether stand-alone or intended as part of the integration of the System with existing hardware or software of the State, and whether or not used for administrative, maintenance, consulting, training, data warehousing, operations, support, hosting, or fulfillment of Performance; and (2) warranty of a Deliverable(s) that is listed in the Pricing Schedule or provided by Contractor as an element of Contractor’s overall approach and solution to the requirements of this Contract. Any one of them or a combination of any of them may be developed or produced by Contractor or by a third party as a supplier or subcontractor to Contractor.

i. Perform

All acts and things of the Contractor and Contractor Parties, severally and collectively, that are necessary or appropriate to fulfill or accomplish this Contract fully, including the Deliverables and all other Contract obligations. The work “Perform” includes all parts of speech.

j. Records

All working papers and such other information and materials furnished or prepared by the Contractor in Performing including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries, memoranda and correspondence, kept or stored in any form.

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6.2 Whistleblower Provision

This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of such statute, Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty percent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

6.3 Forum and Choice of Law

The parties deem this Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of this Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

6.4 Sovereign Immunity

The parties acknowledge and agree that nothing in this Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of this Contract. To the extent that this Section conflicts with any other Section, this Section shall govern.

6.5 Summary of State Ethics Laws

Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes (a) the State has provided to the Contractor the summary of State ethics laws developed by the State Ethics Commission

PARTICIPATING ADDENDUM – DRAFT 3/9/2022
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pursuant to section 1-81b of the Connecticut General Statutes, which summary is incorporated by reference into and made a part of this Contract as if the summary had been fully set forth in this Contract; (b) the Contractor represents that the chief executive officer or authorized signatory of the Contract and all key employees of such officer or signatory have read and understood the summary and agree to comply with the provisions of state ethics law; (c) prior to entering into a contract with any subcontractors or consultants, the Contractor shall provide the summary to all subcontractors and consultants and each such contract entered into with a subcontractor or consultant on or after July 1, 2021, shall include a representation that each subcontractor or consultant and the key employees of such subcontractor or consultant have read and understood the summary and agree to comply with the provisions of state ethics law; (d) failure to include such representations in such contracts with subcontractors or consultants shall be cause for Termination of the Contract; and (e) each contract with such contractor, subcontractor or consultant shall incorporate such summary by reference as a part of the contract terms.

6.6 Campaign Contribution Restriction

For all State contracts, defined in section 9-612 of the Connecticut General Statutes as having a value in a calendar year of \$50,000 or more, or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Contract represents that they have received the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice.

6.7 Executive Orders and Other Enactments

- a. All references in this Contract to any Federal, State, or local law, statute, public or special act, executive order, ordinance, regulation or code (collectively, “Enactments”) shall mean Enactments that apply to the Contract at any time during its term, or that may be made applicable to the Contract during its term. This Contract shall always be read and interpreted in accordance with the latest applicable wording and requirements of the Enactments. At the Contractor's request, the Client Agency shall provide a copy of these Enactments to the Contractor. Unless otherwise provided by Enactments, the Contractor is not relieved of its obligation to perform under this Contract if it chooses to contest the applicability of the Enactments or the Client Agency's authority to require compliance with the Enactments.
- b. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of this Contract as if they had been fully set forth in it.
- c. This Contract may be subject to (1) Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services; (2) Executive Order No. 61 of Governor Dannel P. Malloy promulgated December 13, 2017 concerning the Policy for the Management of State Information Technology Projects, as issued by the Office of Policy and

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MASTER AGREEMENT
Master Agreement Number: NASPO ValuePoint Master Agreement Number (TBD) /
Lead State Sourcing Event Number CT22-79

«Contractor Name»
(hereinafter “Contractor”)
And

The State of Connecticut, all using State Agencies, Political Subdivisions and Institutions
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Management, Policy ID IT-SDLC-17-04; and (3) Executive Order Nos. 13F and 13G of Governor Ned Lamont, promulgated September 3, 2021 and September 10, 2021, respectively, concerning protection of public health and safety during COVID-19 pandemic, as extended by Executive Order No. 14A of Governor Ned Lamont, promulgated September 30, 2021. If any of the Executive Orders referenced in this subsection is applicable, it is deemed to be incorporated into and made a part of this Contract as if fully set forth in it.

6.8 Nondiscrimination

a. For purposes of this Section, the following terms are defined as follows:

1. "Commission" means the Commission on Human Rights and Opportunities;
2. "Contract" and "contract" include any extension or modification of this Contract;
3. "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;"
4. "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose;
5. "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
6. "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;
7. "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;
8. "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;
9. "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

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10. "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.
- b. For purposes of this Section, the terms “Contract” and “contract” do not include a contract where each contractor is (1) a political subdivision of the State, including, but not limited to, a municipality, unless the contract is a municipal public works contract or quasi-public agency project contract, (2) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in C.G.S. § 1-267, (3) the federal government, (4) a foreign government, or (5) an agency of a subdivision, state or government described in the immediately preceding enumerated items (1), (2), (3), or (4).
1. The Contractor agrees and warrants that in the Performance of this Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status of a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status of a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved;
2. the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action equal opportunity employer" in accordance with regulations adopted by the Commission;
3. the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this Section and to post copies of the notice in conspicuous places available to employees and applicants for employment;
4. the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a- 68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and
5. the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the

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provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

- c. Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
- d. The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- e. The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- f. The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the Term of this Contract and any amendments thereto.
- g.
 - 1. The Contractor agrees and warrants that in the Performance of this Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation;
 - 2. the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Contract or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this Section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;
 - 3. the Contractor agrees to comply with each provision of this Section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §46a-56; and

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4. the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes §46a-56.
- h. The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- i. Pursuant to subsection (c) of section 4a-60 and subsection (b) of section 4a-60a of the Connecticut General Statutes, the Contractor, for itself and its authorized signatory of this Contract, affirms that it understands the obligations of this section and that it will maintain a policy for the duration of the Contract to assure that the Contract will be performed in compliance with the nondiscrimination requirements of such sections. The Contractor and its authorized signatory of this Contract demonstrate their understanding of this obligation by either (A) having provided an affirmative response in the required online bid or response to a proposal question which asks if the contractor understands its obligations under such sections, or (B) initialing this nondiscrimination affirmation in the following box: ☐

6.9 Indemnification

- a. Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with this Contract for the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or this Contract. Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this Section. Contractor's obligations under this Section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or non-copyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.
- b. Contractor shall not be responsible for indemnifying, defending or holding the State harmless from any liability arising due to the negligence of the State or any third party acting under the direct control or supervision of the State.

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- c. Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of Contractor or any Contractor Parties. The State shall give Contractor reasonable notice of any such Claims.
- d. Contractor's duties under this Section shall remain fully in effect and binding in accordance with the terms of this Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims or both.
- e. Contractor shall carry and maintain at all times during the Term of this Contract, and during the time that any provisions survive the Term of this Contract, sufficient commercial general liability insurance to satisfy its obligations under this Contract. Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to DAS prior to the Effective Date of this Contract. Contractor shall not begin Performance until the delivery of the policy to DAS. The State shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Client Agency or the State was contributorily negligent.
- f. Neither party shall be liable for consequential, special, punitive, or incidental damages, or lost profits from any cause under this Contract.
- g. This Section shall survive the Termination of this Contract and shall not be limited by reason of any insurance coverage.

6.10 Tangible Personal Property

- a. Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
 - 1. For the Term, Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus with the State under the provisions of Chapter 219 to be required to collect Connecticut use tax;
 - 2. A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
 - 3. Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in this Contract if any, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;

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4. Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
5. Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in this Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under Chapter 219 of the general statutes.
- b. For purposes of this Section of this Contract, the word “Affiliate” means any person, as defined in Section 12-1 of the general statutes, that controls is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The term “voting security” means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. “Voting security” includes a general partnership interest.
- c. Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State’s contracting authority, such information as the State may require to ensure, in the State’s sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

6.11 Audit and Inspection of Plants, Places of Business and Records

- a. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State’s Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor’s and Contractor Parties’ plants and places of business which, in any way, are related to, or involved in, the Performance of this Contract.
- b. Contractor shall maintain, and shall require each Contractor Party to maintain, accurate and complete Records. Contractor shall make all of its and the Contractor Parties’ Records available at all reasonable hours for audit and inspection by the State and its agents.
- c. The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty- four (24) hours’ notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- d. Contractor will pay for all costs and expenses of any audit or inspection which reveals information that, in the sole determination of the State, is sufficient to constitute a Breach by the Contractor under this Contract. The Contractor will remit full payment to the State for such audit or inspection no later than 30 days after receiving an invoice from the State. If the State does not receive payment within such time,

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the State may setoff the amount from any moneys which the State would otherwise be obligated to pay the Contractor in accordance with this Contract.

- e. Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (1) final payment under this Contract, or (2) the expiration or earlier termination of this Contract, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- f. Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- g. Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

6.12 Protection of Confidential Information

- a. Contractor and Contractor Parties have a duty to and shall, at their own expense, protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with the highest current industry standards and best practices, as they may be amended from time to time.
- b. Contractor and all Contractor Parties shall develop, implement and maintain a comprehensive written information security policy for the protection of Confidential Information that meets or exceeds current industry standards and best practices as they may be amended from time to time. The safeguards contained in the written information security policy must meet or exceed the standards for the protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and State law and in written policy of the Client Agency or DAS concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
 - 1. A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
 - 2. Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept and an auditable electronic system of logging and tracking the viewing, accessing or both of Confidential Information;
 - 3. A process for reviewing policies and security measures at least annually;
 - 4. Creating secure access controls to Confidential Information, including but not limited to passwords; and

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5. Encrypting of Confidential Information that is stored on laptops, portable devices and storage media or that is being transmitted electronically.
- c. Contractor and Contractor Parties shall notify DAS, the Client Agency and the Connecticut Office of the Attorney General as soon as practical, but no later than the next Business Day, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred which, in the sole opinion of the Client Agency after consultation with the Attorney General, constitutes a breach of security as defined in Connecticut General Statutes, § 36a- 701b, or otherwise (Breach), the Contractor shall, within three (3) Business Days after the notification, present a credit monitoring and protection plan to the Commissioner of DAS, the Client Agency, and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring and protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Breach. Neither Contractor's nor any Contractor Party's costs and expenses for the credit monitoring and protection plan shall be recoverable from DAS, the Client Agency, or any State of Connecticut entity or any affected individuals and shall be outside of any liability cap or limitation contained in this Contract.
- d. Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- e. Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to the provisions of this Contract concerning the obligations of the Contractor to the Client Agency or DAS.

6.13 Audit Requirements for Recipients of State Financial Assistance

For purposes of this paragraph, the word "contractor" shall be deemed to mean "nonstate entity," as that term is defined in Section 4-230 of the Connecticut General Statutes. The Contractor shall provide for an annual financial audit acceptable to the Client Agency for any expenditure of state awarded funds made by the Contractor. Such audit shall include management letters and audit recommendations. The State Auditors of Public Accounts shall have access to all records and accounts for the fiscal year(s) in which the award was made. The Contractor will comply with federal and state single audit standards as applicable.

6.14 Lead State Terms that shall not apply to Connecticut.

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The parties hereby agree that any provision in the Standard Terms and Conditions of the NASPO ValuePoint, the State of Utah’s negotiated terms and conditions or the Master Agreement between NASPO ValuePoint and «Contractor Name» and any of its Exhibits, shall not apply to Connecticut or any of the participating entities from Connecticut if the provision violates sovereign immunity or conflicts with this Participating Addendum. Further the parties agree that in any instance where a provision requires the State to indemnify the Contractor or that the parties are bound by binding arbitration that constitutes a violation of sovereign immunity, and therefore is not applicable.

6.15 Reserved.

6.16 Reserved.

6.17 Reserved.

6.18 Reserved.

6.19 Reserved.

6.20 Reserved.

6.21 Reserved.

6.22 Reserved.

6.23 Reserved.

6.24 Data: Access

a. Access to Contract and State Data.

The Contractor shall provide to the Client Agency access to any data, as defined in Conn. Gen Stat. Sec. 4e-1, concerning the Contract and the Client Agency that are in the possession or control of the Contractor upon demand and shall provide the data to the Client Agency in a format prescribed by the Client Agency and the State Auditors of Public Accounts at no additional cost.

6.25 P-Card (Purchasing Credit Card)

Purchases may be made using the State of Connecticut Purchasing Card Program (“P-Card Program or P-Card”) in accordance with sections 4-98(c) and 42-133ff(a) of the Connecticut General Statutes.

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Contractor shall be equipped to receive orders issued by the Participating Entity using the P-Card Program. The Contractor shall be responsible for the credit card user-handling fee associated with P-Card Program purchases. The Contractor shall charge to the P-Card only upon acceptance of Goods delivered to the Participating Entity or rendering of Services.

The Contractor shall capture and provide to its merchant bank, Level 3 reporting at the line item level for all orders placed by MasterCard.

Questions regarding the state of Connecticut P-Card Program may be directed to the Procurement Card Program Administrator at DAS.PCardAdmin@ct.gov.

6.26 Reserved.

6.27 Iran Energy Investment Certification

- a. Pursuant to section 4-252a of the Connecticut General Statutes, the Contractor certifies that it has not made a direct investment of twenty million dollars or more in the energy sector of Iran on or after October 1, 2013, as described in Section 202 of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, and has not increased or renewed such investment on or after said date.
- b. If the Contractor makes a good faith effort to determine whether it has made an investment described in subsection (a) of this section, it shall not be subject to the penalties of false statement pursuant to section 4-252a of the Connecticut General Statutes. A "good faith effort" for purposes of this subsection includes a determination that the Contractor is not on the list of persons who engage in certain investment activities in Iran created by the Department of General Services of the State of California pursuant to Division 2, Chapter 2.7 of the California Public Contract Code. Nothing in this subsection shall be construed to impair the ability of the State agency or quasi-public agency to pursue a breach of contract action for any violation of the provisions of the Contract.

6.28 Large State Contract Representation for Contractor

Pursuant to section 4-252 of the Connecticut General Statutes and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021, the Contractor, for itself and on behalf of all of its principals or key personnel who submitted a bid or proposal, represents:

- a. That no gifts were made by (A) the Contractor, (B) any principals and key personnel of the Contractor, who participate substantially in preparing bids, proposals or negotiating State contracts, or (C) any agent of the Contractor or principals and key personnel, who participates substantially in preparing bids, proposals or negotiating State contracts, to (i) any public official or

PARTICIPATING ADDENDUM – DRAFT 3/9/2022
NASPO ValuePoint COOPERATIVE PURCHASING ORGANIZATION
Office Furniture
Administered by the State of Utah (hereinafter “Lead State”)

MASTER AGREEMENT
Master Agreement Number: NASPO ValuePoint Master Agreement Number (TBD) /
Lead State Sourcing Event Number CT22-79

«Contractor Name»
(hereinafter “Contractor”)
And

The State of Connecticut, all using State Agencies, Political Subdivisions and Institutions
in accordance with Connecticut General Statute §4a-53
(hereinafter “Participating State/Entity” or “State”)

State employee of the State agency or quasi- public agency soliciting bids or proposals for State contracts, who participates substantially in the preparation of bid solicitations or requests for proposals for State contracts or the negotiation or award of State contracts, or (ii) any public official or State employee of any other State agency, who has supervisory or appointing authority over such State agency or quasi-public agency;

- b. That no such principals and key personnel of the Contractor, or agent of the Contractor or of such principals and key personnel, knows of any action by the Contractor to circumvent such prohibition on gifts by providing for any other principals and key personnel, official, employee or agent of the Contractor to provide a gift to any such public official or State employee; and
- c. That the Contractor is submitting bids or proposals without fraud or collusion with any person.

6.29 Large State Contract Representation for Official or Employee of State Agency

Pursuant to section 4-252 of the Connecticut General Statutes and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021, the State agency official or employee represents that the selection of the most qualified or highest ranked person, firm or corporation was not the result of collusion, the giving of a gift or the promise of a gift, compensation, fraud or inappropriate influence from any person.

6.30 Consulting Agreements Representation

Pursuant to section 4a-81 of the Connecticut General Statutes, the Contractor makes the representations set forth in Exhibit A, Consulting Agreements Representation.

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

PARTICIPATING ADDENDUM – DRAFT 3/9/2022
NASPO ValuePoint COOPERATIVE PURCHASING ORGANIZATION
Office Furniture
Administered by the State of Utah (hereinafter “Lead State”)

MASTER AGREEMENT
Master Agreement Number: NASPO ValuePoint Master Agreement Number (TBD) /
Lead State Sourcing Event Number CT22-79

«Contractor Name»
(hereinafter “Contractor”)
And

The State of Connecticut, all using State Agencies, Political Subdivisions and Institutions
in accordance with Connecticut General Statute §4a-53
(hereinafter “Participating State/Entity” or “State”)

Participating Entity: State of Connecticut Dept. of Administrative Services Procurement Division	Contractor: «Contractor Name»
By: (Original Signature on Document in Procurement Files)	By: (Original Signature on Document in Procurement Files)
Name: «Contracting Staff Name Signing RFP MC»	Name:
Title: «Contracting Staff Title RFP MC»	Title:
Date:	Date:

EXHIBIT A
CONSULTING AGREEMENTS REPRESENTATION

Pursuant to section 4a-81 of the Connecticut General Statutes, the Contractor represents that it has not entered into any consulting agreements in connection with this Contract, except for the agreements listed below. "Consulting agreement" means any written or oral agreement to retain the services, for a fee, of a consultant for the purposes of (A) providing counsel to a contractor, vendor, consultant or other entity seeking to conduct, or conducting, business with the State, (B) contacting, whether in writing or orally, any executive, judicial, or administrative office of the State, including any department, institution, bureau, board, commission, authority, official or employee for the purpose of solicitation, dispute resolution, introduction, requests for information, or (C) any other similar activity related to such contracts. "Consulting agreement" does not include any agreements entered into with a consultant who is registered under the provisions of chapter 10 of the Connecticut General Statutes as of the date such contract is executed in accordance with the provisions of section 4a-81 of the Connecticut General Statutes.

Consultant's Name and Title	Name of Firm (if applicable)
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Start Date	End Date	Cost
------------	----------	------

The basic terms of the consulting agreement are: _____

Description of Services Provided: _____

Is the consultant a former State employee or former public official? ☐ YES ☐ NO

If YES: _____
Name of Former State Agency Termination Date of Employment

The undersigned, being the person signing the Contract, swears that the representation in this Consulting Agreements Representation provision in this Contract is true to the best of my knowledge and belief, and is subject to the penalties of false statement.

Signature of person signing this Contract

Print Name
Date: _____

Sworn and subscribed before me on this _____ day of _____, 20____.

Commissioner of the Superior Court
or Notary Public

My Commission Expires _____

Attachment J
GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.

2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.

 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.

 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.

 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.

 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.

 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
 - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
 - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
 - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
 - a. Definitions.

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

 - (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.



STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Purchasing Division

515 East Musser Street, Suite 300 | Carson City, NV 89701
Phone: 775-684-0170 | Fax: 775-684-0188

THE NEVADA STATE PURCHASING DIVISION

TERMS AND CONDITIONS FOR STATEWIDE COMMODITIES

1. REQUIREMENTS

- 1.1** A Nevada based business may apply for a five percent (5%) preference on its Quote. A Nevada based business is defined as a business which certifies that a 'majority of goods provided for the contract are produced' in Nevada. The preference will be applied to the Quote price. This preference cannot be combined with any other preference, granted for the award of a contract using federal funds, or granted for the award of a contract procured on a multi-state basis. **To claim this preference a business must submit a letter with its Quote showing it qualifies for the preference.**
- 1.2** Bidders are especially cautioned to recheck Quote prices for errors prior to submitting Quote as changes in Quote prices after opening date and hour of Bid Solicitation due to an error shall not be permitted or accepted. Bidders shall be required to furnish equipment at Quote price or prices or be penalized by being removed from bidders' list for a period of one year.
- 1.3** Equipment shall be *new* only; used, refurbished, demo, prototype or gray market equipment shall not be accepted.
- 1.4** Bidders are required to submit descriptive data or printed specifications describing items bidding. Failure to comply with this request may be cause for non-acceptance of Quote.
- 1.5** *Brand Names:* Unless otherwise stated "**No Exceptions**", brand names mentioned in these specifications are for reference only and are intended for the purpose of assisting in describing the need, use, and quality of the item. Bidders shall identify any alternate item(s) and it is the State's prerogative to either accept or reject any alternative item(s).
- 1.6** Proof, satisfactory to the State, shall be provided by bidders to show that any alternate article is equal to, or exceeds the Bid Solicitation specifications in design and performance. Complete and detailed comparative documentation for equipment other than requested in this Bid Solicitation is *required* to be submitted as an attachment with the Quote. Equivalent items may be subject to performance testing.
- 1.7** For purposes of addressing questions concerning this Bid Solicitation, the sole contact shall be the Purchasing Division's designee. Upon issuance of this Bid Solicitation,

employees and representatives of the agencies identified herein shall not answer questions or otherwise discuss the contents of this request with any prospective bidders or their representatives. Failure to observe this restriction may result in disqualification of any Quote. This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.

2. PAYMENT

- 2.1** Prices offered in Quotes are an irrevocable offer for the term of the Contract/Purchase Order and any Contract/Purchase Order extensions.
- 2.2** The State generally pays within 30-45 days upon receipt of invoice and the using agency's approval. Per the State's policy and procedures, payments are not made prior to receipt of goods. Pursuant to NRS 227.185 and NRS 333.450, the State shall pay claims for supplies, materials, equipment and services purchased under the provisions of this Bid Solicitation electronically, unless determined by the State Controller that the electronic payment would cause the payee to suffer undue hardship or extreme inconvenience.
- 2.3** Prompt payment discount periods equal to (or greater than) 30 calendar days shall receive consideration and Quote pricing shall be reduced (for evaluation purposes only) by the amount of that discount(s).
- 2.4** The Quote price is for the specified delivery, and, unless otherwise specified in the Contract/Purchase Order, is Free on Board (FOB) Destination, freight prepaid to the delivery address. FOB requires the seller to, at its own expense and risk, transport the goods to the destination and there tender delivery of them in the manner provided in NRS 104.2503. Unless otherwise specified in the Contract/Purchase Order, the price does not include applicable federal or State sales, use, excise, processing or any similar taxes, or duty charges, which shall be paid by the State, or in lieu thereof, the State shall provide the Vendor with a tax exemption certificate acceptable to the applicable taxing authority. Unless otherwise specified in the Contract/Purchase Order, payment shall be made in accordance with Nevada law to the Vendor.
- 2.5** The State requests Manufacturer's Suggested Retail Prices (MSRP) in effect at the time of Quote submittal for internal statistical purposes.
- 2.6** Purchasing Card Acceptance

In an effort to streamline the purchasing and payment process, the State is encouraging agencies to use the State contracted purchasing card to facilitate small dollar purchases. While at the present time it is not mandatory that a Vendor accept credit card purchases; bidders are encouraged to consider this alternate payment process. The current card available for State agency use is a MasterCard product.

3. BID SOLICITATION, EVALUATION AND AWARD PROCESS

- 3.1** This procurement is being conducted in accordance with NRS Chapter 333 and NAC Chapter 333.
- 3.2** Quotes shall conform to all terms, conditions and specifications in this Bid Solicitation.

3.3 Vendor agrees to comply with conditions of the Federal Occupational Safety and Health Acts of 1970 (OSHA) as may be amended, and certifies that all items furnished and purchased under this order shall conform to and comply with said standards and regulations. Vendor further agrees to indemnify and hold harmless purchaser from all damages assessed against purchaser as a result of Vendor's failure to comply with the acts and standards thereunder and for the failure of the items furnished under this order to so comply.

3.4 Pursuant to NRS Chapter 613 in connection with the performance of work under this Contract/Purchase Order, the Vendor agrees not to unlawfully discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation or age, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including, without limitation, apprenticeship.

The Vendor further agrees to insert this provision in all subcontracts, hereunder, except subcontracts for standard commercial supplies or raw materials.

3.5 Pursuant to NRS 333.338, the State of Nevada cannot enter into a contract with a company unless that company agrees for the duration of the contract not to engage in a boycott of Israel. By submitting a proposal or bid, vendor agrees that if it is awarded a contract it will not engage in a boycott of Israel as defined in NRS 333.338(3)(a).

3.6 Every Contract/Purchase Order or order for goods shall be awarded to the lowest responsible bidder (*Refer to NRS 333.340(1)*). To determine the lowest responsible bidder, the Purchasing Division may consider:

- 3.6.1 The location of the using agency to be supplied;
- 3.6.2 The qualities of the articles to be supplied;
- 3.6.3 The total cost of ownership of the articles to be supplied;
- 3.6.4 The conformity of the articles to be supplied with the specifications;
- 3.6.5 The purposes for which the articles to be supplied are required; and
- 3.6.6 The dates of delivery of the articles to be supplied.

The Purchasing Division shall not be obligated to accept low bid, but shall make an award in the best interest of the State after all factors have been evaluated (*Refer to NRS 333.300(2)*).

3.6.7 When the Bid Solicitation includes a statement that Quotes for alternative articles shall be considered, alternative articles shall be considered in as much as they are determined to:

- 3.6.7.1 Meet or exceed the specifications of the article listed in the original Bid Solicitation;
- 3.6.7.2 The purchase of the alternative article results in a lower price; and
- 3.6.7.3 The Administrator or designee deems the purchase of the alternative article to be in the best interests of the State.

- 3.7** For the purpose of awarding a formal Contract/Purchase Order solicited in accordance NRS 333.300(2), if
- 3.7.1 A local business owned and operated by a veteran with a service-connected disability submits a Quote or proposal for a Contract/Purchase Order for which the estimated cost is more than \$50,000 but no more than \$250,000 and is a responsive and responsible bidder, the Quote or proposal shall be deemed to be five (5%) percent lower than the Quote or proposal actually submitted.
 - 3.7.2 A local business owned and operated by a veteran with a service-connected disability which is determined to be 50 percent or more by the United States Department of Veterans Affairs submits a Quote or proposal for a Contract/Purchase Order for which the estimated cost is more than \$250,000 but less than \$500,000 and is a responsive and responsible bidder, the Quote or proposal shall be deemed to be five (5%) percent lower than the Quote or proposal actually submitted.
 - 3.7.3 The preferences described above may not be combined with any other preference.
- 3.8** NRS 333.290 grants a preference to materials and supplies that can be supplied from a “charitable, reformatory or penal institution of the State” that produces such goods or services through the labor of inmates. The Administrator reserves the right to secure these goods, materials or supplies from any such eligible institution, if they can be secured of equal quality and at prices not higher than those of the lowest acceptable Quote received in response to this Bid Solicitation. In addition, NRS 333.410 grants a preference to commodities or services that institutions of the State are prepared to supply through the labor of inmates. The Administrator shall apply the preferences stated in NRS 333.290 and 333.410 to the extent applicable.
- 3.9** Quotes may be withdrawn by written or facsimile notice received prior to the Bid Solicitation opening time. Withdrawals received after the Bid Solicitation opening time shall not be considered except as authorized by NRS 333.350(3).
- 3.10** The State reserves the right to alter, amend, or modify any provisions of this Bid Solicitation, or to withdraw this Bid Solicitation, at any time prior to the award of a Contract/Purchase Order pursuant hereto, if it is in the best interest of the State to do so.
- 3.11** Any unsuccessful bidders may file an appeal in strict compliance with NRS 333.370.
- 3.12** The Legislature, the Supreme Court, the Nevada Wing of the Civil Air Patrol (NRS 333.469), the Nevada System of Higher Education (NRS 333.470) and local governments (as defined in NRS 332.015) are intended third party beneficiaries of any Contract/Purchase Order resulting from this Bid Solicitation and any local government may join or use any Contract/Purchase Order resulting from this Bid Solicitation subject to all terms and conditions thereof pursuant to NRS 332.195. The State is not liable for the obligations of any local government which joins or uses any Contract/Purchase Order resulting from this Bid Solicitation.

- 3.13** A Vendor who enters into a Contract/Purchase Order with the State of Nevada and who sells tangible personal property in the State of Nevada is required to obtain a permit in accordance with NRS 372.125, and required to collect and pay the taxes imposed by law on the sale of tangible personal property in this State.
- 3.14** When applicable, submission of a Quote shall include any and all proposed terms and conditions, including, without limitation, written warranties, maintenance/service agreements, license agreements, lease purchase agreements, and the bidder's standard contract language. A review of these documents shall be necessary to determine if a Quote is in the best interest of the State.
- 3.15** *Subcontractor:* Third party, not directly employed by the Vendor, who shall provide goods and/or services identified in this Bid Solicitation. This does not include third parties who provide support or incidental services to the Vendor.
- 3.16** *Proprietary Information:* Any trade secret or confidential business information that is contained in a Quote submitted on a particular Contract. *Refer NRS 333.020(5) (a); NRS 333.333.*
- 3.17** *Public Record:* All books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential must be open to inspection by any person and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. *Refer to NRS 333.333; NRS 600A.030(5).*
- 3.18** *Trade Secret:* Information including, without limitation, a formula, pattern, compilation, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction or code that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain commercial or economic value from its disclosure or use, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. *Refer to NRS 600A.030(5).*
- 3.19** In accordance with NRS 333.350(1), a contract may be awarded for separate items, portions or groups of items in the best interests of the State, as required.
- 3.20** *Vendor Authorization:* By submitting a Quote the Vendor is duly organized, validly existing, and in good standing under the appropriate laws with full power and authority to conduct the business that it presently conducts in the State of Nevada. The Vendor has the legal power and right to enter into and perform the Contract. Consummation of the transactions contemplated by the Contract shall not violate any provision of law, or any of the Vendor's governing documents (articles of incorporation, partnership Contract, etc). Execution of the Contract and all documents provided for in the Contract by the Vendor and its delivery to the State have been duly authorized by the board of directors or managing agents of the Vendor and no further action is necessary on the Vendor's part to make the Contract valid and binding on the Vendor in accordance with its terms. The Vendor has obtained all licenses and permits to perform all of its requirements under the Contract, and is current on all tax obligations to the State of Nevada or any other governmental entity in Nevada.

4. TERMS AND CONDITIONS FOR PURCHASE OF GOODS

- 4.1** *Goods:* As defined in NRS 104.2105, and as specifically identified in this Bid Solicitation.
- 4.2** *Purchase Order:* Buyer-generated document that authorizes a purchase transaction. It sets forth the descriptions, quantities, prices, discounts, payment terms, date of performance or shipment, other associated terms and conditions, and identifies a specific seller. When accepted by the seller, it becomes a contract binding on both parties; also called order.
- 4.3** *Incorporated Documents:* The Contract/Purchase Order shall consist of this Bid Solicitation, any amendments to this Bid Solicitation if applicable, the Vendor Quote and all documentation contained therein, together with any subsequently issued Purchase Order(s) executed by a person with full power and authority to issue same on behalf of the State. A Vendor Quote shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in the Contract/Purchase Order.
- 4.4** *Administrative Fee:* The State shall implement an administrative fee of not more than 1% on contracts procured or negotiated by the Purchasing Division. This fee shall be assessed over the time of the contract period. Fees shall be paid quarterly, 45 days after the close of the quarter, on all purchases under the contract.
- 4.5** *Notice:* Unless otherwise specified, termination shall not be effective until thirty (30) calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract/Purchase Order shall be in writing and shall be deemed to have been duly given if delivered via email, personally in hand, by telephonic facsimile, regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.
- 4.6** **TERMINATION:**
- 4.6.1** *Termination Without Cause:* Any discretionary or vested right of renewal notwithstanding, this Contract/Purchase Order may be terminated upon written notice by mutual consent of both parties or unilaterally by either party without cause.
- 4.6.2** *State Termination for Nonappropriation:* The continuation of the Contract/Purchase Order beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate the Contract/Purchase Order, and the Vendor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.
- 4.6.3** *Cause Termination for Default or Breach:* A default or breach may be declared with or without termination. The Contract/Purchase Order may be terminated by either party upon written notice of default or breach to the other party as follows:
- 4.6.3.1** If the Vendor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by the Contract/Purchase Order within the time requirements specified in the

Contract/Purchase Order or within any granted extension of those time requirements; or

- 4.6.3.2 If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by the Vendor to provide the goods or services required by the Contract/Purchase Order is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
- 4.6.3.3 If the Vendor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
- 4.6.3.4 If the State materially breaches any material duty under the Contract/Purchase Order and any such breach impairs the Vendor's ability to perform; or
- 4.6.3.5 If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by the Vendor, or any agent or representative of the Vendor, to any officer or employee of the State of Nevada with a view toward securing a Contract/Purchase Order or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such Contract/Purchase Order; or
- 4.6.3.6 If it is found by the State that the Vendor has failed to disclose any material conflict of interest relative to the performance of the Contract/Purchase Order.

4.6.4 *Time to Correct:* Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in **Section 4.4, Notice** and the subsequent failure of the defaulting party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

4.6.5 *Winding Up Affairs Upon Termination:* In the event of termination of the Contract/Purchase Order for any reason, the parties agree that the provisions of this paragraph survive termination:

- 4.6.5.1 The parties shall account for and properly present to each other all claims for fees and expenses and pay those that are undisputed and otherwise not subject to set off under the Contract/Purchase Order. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
- 4.6.5.2 The Vendor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency.

4.7 REPRESENTATIONS AND WARRANTIES:

The Vendor represents and warrants to the State:

- 4.7.1 *Bid Representations:* All statements made by the Vendor on any application, Quote, proposal, offer, financial statement, or other document used by the Vendor to induce the State to enter into the Contract/Purchase Order are true, correct, complete, and omit no information which would render them misleading.
- 4.7.2 *Use of Broker:* The Vendor agrees to indemnify the State from any damage, liability, or expense that it may suffer as a result of any claim of a broker or other finder with whom it is determined that the Vendor has dealt in connection with the transactions contemplated under the Contract/Purchase Order.
- 4.7.3 *Express Warranties:* For the period specified in the Contract/Purchase Order, Vendor warrants and represents each of the following with respect to any goods provided under the Contract/Purchase Order:
 - 4.7.3.1 *Fitness for Particular Purpose:* The goods shall be fit and sufficient for the particular purpose set forth in the Contract/Purchase Order.
 - 4.7.3.2 *Fitness for Ordinary Use:* The goods shall be fit for the purpose for which goods of a like nature are ordinarily intended, it being understood that the purpose for the goods covered by the Contract/Purchase Order are ordinarily intended for use in general government administration and operations.
 - 4.7.3.3 *Merchantable, Good Quality, No Defects:* The goods shall be merchantable, of good quality, and free from defects, whether patent or latent, in material and workmanship.
 - 4.7.3.4 *Conformity:* The goods shall conform to the standards, specifications and descriptions set forth in the Contract/Purchase Order. If the Vendor has supplied a sample to the State, the goods delivered shall conform in all respects to the sample and shall be identified by the word "sample" and Vendor's name.
 - 4.7.3.5 *Uniformity:* The goods shall be without variation, and shall be of uniform kind, quality, and quantity within each unit and among all units.
 - 4.7.3.6 *Packaging and Labels:* The goods shall be contained, packaged, and labeled so as to satisfy all legal and commercial requirements applicable to use by a government agency, including without limitation, Occupational Safety and Health Administration material safety data sheets and shall conform to all statements made on the label.
 - 4.7.3.7 *Full Warranty:* The foregoing warranties are "full" warranties within the meaning of the Magnuson-Moss Warranty -- Federal Trade Commission Improvement Act, 15 U.S.C. 2301 et seq., and implementing regulations 16 C.F.R. pts. 700-703, if applicable to this transaction.

- 4.7.3.8 *Title:* The Vendor has exclusive title to the goods and shall pass title to the State free and clear of all liens, encumbrances, and security interests.
- 4.7.3.9 *Infringement; Indemnity:* The Vendor warrants the purchase or use of the goods shall not infringe upon any United States or foreign patent, and the Vendor shall indemnify the State against all judgments, decrees, costs, and expenses resulting from any alleged infringement and shall defend, upon written request of the State, at its own expense, any action which may be brought against the State, its vendees, lessees, licensees, or assignees, under any claim of patent infringement in the purchase or use of the Vendor's goods. If the State is enjoined from using such goods, the Vendor shall re-purchase such goods from the State at the original purchase price. The State shall notify the Vendor promptly in writing of any such suit. If the State compromises or settles any such suit without the written consent of the Vendor, the Vendor shall be released from the obligations of this paragraph and from any liability to the State under any statute or other rule of law.
- 4.7.3.10 *Usage of Trade; Course of Dealings; Implied Warranties:* The Vendor shall be bound by any implied warranty that, at the time of execution of the Contract/Purchase Order, prevails in the trade of government in the marketing area in and about the State of Nevada. The Vendor shall also be bound by any other implied warranty arising through course of dealings between the Vendor and the State from and after the execution of the Contract/Purchase Order. The Vendor shall also be bound by all warranties set forth in Nevada's Uniform Commercial Code (NRS Chapter 104) in effect on the date of issuance of the Contract/Purchase Order.
- 4.7.3.11 *Warranties Cumulative:* It is understood that warranties created by the Contract/Purchase Order, whether express or implied, as well as all warranties arising by operation of law that affect the rights of the parties, are cumulative and may be construed in a manner consistent with one another.
- 4.7.3.12 *Priority of Warranties:* If it is held by a court of competent jurisdiction that there is an irreconcilable conflict between or among any of the warranties set forth in the Contract/Purchase Order and any warranties implied by law, the parties agree that the specifications contained in the Contract/Purchase Order shall be deemed technical and mere language of description.
- 4.7.3.13 *Beneficiaries of Warranties:* Benefit of any warranty made in the Contract/Purchase Order shall be in favor of the State, any of its political subdivisions or agencies, employee or licensee thereof who uses the goods, and the benefit of any warranty shall apply to both personal injury and property damage.

- 4.8** *Delivery, Inspection, Acceptance, Title, Risk of Loss:* The Vendor agrees to deliver the goods as indicated in the Contract/Purchase Order, and upon acceptance by the State, title to the goods shall pass to the State. The State shall have the right to inspect the goods on arrival and within a commercially reasonable time. The State shall give notice to the

Vendor of any claim or damages on account of condition, quality, or grade of the goods, and shall specify the basis of the claim in detail. Acceptance of the goods described in the Contract/Purchase Order is not a waiver of UCC revocation of acceptance rights or of any right of action that the State may have for breach of warranty or any other cause. Unless otherwise stated above, risk of loss from any casualty, regardless of the cause, shall be on the Vendor until the goods have been accepted and title has passed to the State. If provided by the Vendor, the State agrees to follow reasonable instructions regarding return of the goods.

- 4.9** *No Arrival, No Sale:* The Contract/Purchase Order is subject to provisions of no arrival, no sale terms, but proof of shipment shall be given by the Vendor; each shipment to constitute a separate delivery. A variation of ten (10) days in time of shipment or delivery from that specified in the Contract/Purchase Order does not constitute a ground for rejection. The State may treat any deterioration of the goods as entitling the State to the rights resulting from a casualty to the identified goods without regard to whether there has been sufficient deterioration so that the goods no longer conform to the Contract/Purchase Order.
- 4.10** *Breach, Remedies:* Failure of either party to perform any obligation of the Contract/Purchase Order shall be deemed a breach. In the event of a breach, the party asserting breach may, in addition to any remedies or rights afforded by Nevada law, cancel the Contract/Purchase Order with respect to any executory obligations. All rights and remedies are cumulative with one another and with those provided by law, and exercise of one remedy or right is not a waiver of the right to pursue any other right or remedy afforded. Either party, as a prevailing party to any other action regarding the enforcement of the Contract/Purchase Order, is entitled to reasonable attorney's fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation One Hundred Fifty Dollars (\$150.00) per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of the Vendor to any State agency.
- 4.11** *Limited Liability:* The State shall not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract/Purchase Order liability of both parties shall not be subject to punitive damages.
- 4.12** *Waiver of Breach:* A failure to assert any right or remedy available to a party under the Contract/Purchase Order, or a waiver of the rights or remedies available to a party by a course of dealing or otherwise shall not be deemed to be a waiver of any other right or remedy under the Contract/Purchase Order, unless such waiver is contained in a writing signed by the waiving party.
- 4.13** *Severability:* If any provision contained in the Contract/Purchase Order is held to be unenforceable by a court of law or equity, the Contract/Purchase Order shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of the Contract/Purchase Order unenforceable.
- 4.14** *Assignment/Delegation:* To the extent that any assignment of any right under the Contract/Purchase Order changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of the Contract/Purchase Order, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of the Contract/Purchase Order. No duties of either party may be delegated without

written consent by the other party, and any such consent does not in any way affect the liability of the delegating party, unless the writing so states.

- 4.15** *Force Majeure:* Neither party shall be deemed to be in violation of this Contract/Purchase Order if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause shall not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract/Purchase Order after the intervening cause ceases.
- 4.16** *Governing Law; Jurisdiction:* This Contract/Purchase Order and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, including, without limitation, Nevada's UCC (NRS Chapter 104) in effect on the date of the Contract/Purchase Order. The parties consent to the jurisdiction and exclusive venue of the First Judicial District Court, Carson City, Nevada for enforcement of the Contract/Purchase Order.
- 4.17** *Entire Agreement; Conflict with Other Documents:* The Contract/Purchase Order (including all incorporated attachments) is intended by the parties as the final expression of their agreement and is the complete and exclusive statement of the terms hereof. All prior agreements are superseded and excluded. Prices, quantities, dates, and places of deliveries and means of transportation may be fixed by attachments to the Contract/Purchase Order. Except as previously stated, if any term in any incorporated attachment or in any Vendor's invoice contradicts or negates a term in the Contract/Purchase Order, the Contract/Purchase Order shall control. All amendments shall be in writing and signed by the parties.
- 4.18** In accordance with NRS 333.4611, the State of Nevada, Purchasing Division shall require the purchase of new appliances, equipment, lighting and other devices that use electricity, natural gas, propane or oil, have received the Energy Star label pursuant to the program established pursuant to 42 U.S.C. 6294a or its successor, or meet the requirements established pursuant to 48 C.F.R. 23.203. These standards do not apply insofar as: (a) No items in a given class have been evaluated to determine whether they are eligible to receive the Energy Star label or have been designated by the Federal Government to meet the requirements established pursuant to 48 C.F.R. 23.302 or (b) The purchase of these items that have received the Energy Star label would not be cost-effective in an individual instance, comparing the cost of the items to the cost of the amount of energy that shall be saved over the useful life of the item.
- 4.19** *Term:* In accordance with NRS 333.280, the Purchasing Division may enter into a Contract/Purchase Order for the furnishing of goods for not more than two (2) years. The original terms of a Contract/Purchase Order may be extended annually thereafter if the conditions for extension are specified in this Bid Solicitation, and the Purchasing Division determines that an extension is in the best interest of the State.
- 4.20** *Insurance:* Automobile Liability, as stated below, is required only if the commodity is being delivered to the State by the Vendor. If the commodity is being shipped by common carrier, automobile liability shall not be required. Vendor shall furnish the State with certificates of insurance (ACORD form or equivalent approved by the State) as required.

The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

4.20.1 Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

Attachment L
State of New Mexico – Separate Terms and Conditions

1. Taxes:

The Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

A. Retainage.

Reserved

B. Performance Bond.

Reserved

2. Term:

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE STATE PURCHASING AGENT. This Agreement shall begin on date approved by the State Purchasing Agent, if the State Purchasing Agent has signed this Agreement, and end on **DATE**. The agency reserves the right to renew the contract on an annual basis by mutual Agreement not exceed a total of 8 years in accordance with NMSA 1978 §13-1-150.

3. Termination:

A. Grounds. The Procuring Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Procuring Agency's uncured, material breach of this Agreement.

B. Notice; Procuring Agency Opportunity to Cure.

1. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Procuring Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
2. Contractor shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Procuring Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Procuring Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Procuring Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.
3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Procuring Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Procuring Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor

shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PROCURING AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

4. Appropriations:

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Procuring Agency to the Contractor. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

5. Status of Contractor:

The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

6. Conflict of Interest; Governmental Conduct Act:

- A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.
- B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:
 - 1) In accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency's contracting process;
 - 2) This Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;
 - 3) In accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Procuring Agency's making this Agreement;
 - 4) This Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a

legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

- 5) In accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and
 - 6) In accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Procuring Agency.
- C. Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Procuring Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Procuring Agency and notwithstanding anything in the Agreement to the contrary, the Procuring Agency may immediately terminate the Agreement.
- D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

7. Amendment:

- A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.
- B. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in the Terminations Clause of this Agreement, or to agree to the reduced funding.

8. Merger:

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

9. Penalties for violation of law:

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities and kickbacks.

10. Equal Opportunity Compliance:

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

11. Workers Compensation:

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

12. Applicable Law:

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

13. Records and Financial Audit:

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Procuring Agency, the Department of Finance and Administration and the State Auditor. The Procuring Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments.

14. Invalid Term or Condition:

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

15. Enforcement of Agreement:

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

16. Non-Collusion:

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.

17. Notices:

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Procuring Agency:

Mark Hayden, State Purchasing Agent
State Purchasing Division
1100 St. Francis Dr., Room 2016
Santa Fe, NM 87505

To the Contractor:

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

18. Succession:

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

19. Headings:

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

20. Default/Breach:

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Procuring Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

21. Equitable Remedies:

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irreparable harm and that a remedy at law for such a failure would be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

22. New Mexico Employees Health Coverage:

- A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://bewellnm.com>.

23. Indemnification:

The Contractor shall defend, indemnify and hold harmless the Procuring Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Procuring Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

24. Default and Force Majeure:

The State reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the State, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the State due to the Contractor's default. The

Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

25. Assignment:

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Procuring Agency.

26. Subcontracting:

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Procuring Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

27. Inspection of Plant:

The State Purchasing Agent or agency or entity that is a party to this Agreement may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this Agreement.

28. Commercial Warranty:

The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other Clause of this Agreement or order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

29. Condition of Proposed Items:

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

30. Release:

Final payment of the amounts due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

31. Confidentiality:

Any Confidential Information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Procuring Agency will result in direct, special and incidental damages.

32. Contractor Personnel:

- A. Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

[Insert Contractor Staff Name(s)]

- B. **Personnel Changes.** Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations.

33. Incorporation by Reference and Precedence:

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

34. Inspection:

If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

35. Inspection of Services:

If this Agreement is for the purchase of services, the following terms shall apply.

- A. Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.
- B. The Contractor shall provide and maintain an inspection system acceptable to the State Purchasing Agent or other party to this Agreement covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the State Purchasing Agent or other party to this Agreement during the term of performance of this Agreement and for as long thereafter as the Agreement requires.
- C. The State Purchasing Agent or other party to this Agreement has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The State Purchasing Agent or other party to this Agreement shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.
- D. If the State Purchasing Agent or other party to this Agreement performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.
- E. If any part of the services do not conform with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the State Purchasing Agent or other party to this Agreement may:

- (1) Require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
 - (2) Reduce the Agreement price to reflect the reduced value of the services performed.
- F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may:
- (1) By Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the State Purchasing Agent or other party to this Agreement that is directly related to the performance of such service; or
 - (2) Terminate the Agreement for default.

THE PROVISIONS OF THIS CLAUSE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE STATE PARTIES' TO THIS AGREEMENT OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

36. Insurance:

If the services contemplated under this Agreement will be performed on or in State facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the State of New Mexico, General Services Department or other party to this Agreement as additional insured.

- A. Workers Compensation (including accident and disease coverage) at the statutory limit.
Employers liability: \$100,000.
- B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:
1. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
 2. Property damage or combined single limit coverage: \$1,000,000.
 3. Automobile liability (including non-owned automobile coverage): \$1,000,000.
 4. Umbrella: \$1,000,000.
- C. Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

37. Arbitration:

Any controversy or claim arising between the parties shall be settled by arbitration pursuant to NMSA 1978 § 44-7A-1 *et seq.*

38. New Mexico Administration Reporting and Fees:

All contracts and Purchase Orders arising out of this agreement shall be deemed to include an Administrative Fee assessment at the rate of **percent (1.00 %)** for the gross total sales and other revenues (including commissions and fees charged). This assessment shall apply to all New Mexico state agencies and local public bodies. **“Gross total sales”** means any invoiced amount less any applicable state and local taxes.

The Contractor agrees to provide a utilization report to SPD for all sales and/or services, other revenues including commissions, and fees charged under this GSA, subtitled by procuring agency name, in accordance with the following schedule:

Quarter:	Period Ending:	Report Due Date:
First	September 30	October 30
Second	December 31	January 31
Third	March 31	April 30
Fourth	June 30	July 31

Sample Reports can be found at:

<http://www.generalservices.state.nm.us/statepurchasing/resourcesandinformation.aspx#Vendors>

Email completed reports to: GSD.QuarterlyUsageR@state.nm.us

The quarterly report shall include the gross total sales for the quarter; zero sales during the quarter shall be reported, and partial quarters at the beginning or end of the contract term shall also be reported. The report shall be accompanied with a check payable to the State Purchasing Division for an amount equal to three quarters of one percent (0.75%) of the total sales and other revenues derived from the New Mexico state agencies and local public bodies for the period. The Vendor shall indicate the contract number **SWPA #XX-00000-XX-XXXXX on the remittance.**

Send payment of fees through U.S. Mail or Courier Delivery:

New Mexico State Purchasing Division
Joseph Montoya Building Room 2016,
1100 St. Francis Drive, Santa Fe, New Mexico 87505

Or: P.O. Box 6850, Santa Fe, New Mexico 87502

For questions regarding the Administrative Fees and Quarterly Sales Reports contact SPD's Financial Specialist at (505) 469-2679 or (505) 795-4512

GENERAL CONDITIONS – ADDENDUM A

GENERAL INSURANCE REQUIREMENTS

Unless otherwise specified in the solicitation or procurement, the following Insurance Requirements shall apply. These Insurance Requirements establish minimum types and limits of insurance coverage for many contract situations entered into by State. It is possible that certain contract exposures are not addressed. Risk management and insurance questions regarding any Contract to be entered into by State, including any that may be deemed “high-risk procurement” (*i.e.*, either by amount of the procurement or solicitation and/or Contract Party’s scope of services) should be reviewed with State Risk Management personnel at (401) 222-6200.

Schedule A1: General Requirements

Schedule A2: Professional Services

Schedule A3: Information Technology

Schedule A4: Public Works

Schedule A5: Department of Transportation Projects

Schedule A1 – General Requirements

Definitions

“State:” *The State of Rhode Island and its branches, departments, agencies, offices, commissions, any using entity authorized by R.I. Gen. Laws § 37-2-1, et seq., to participate in a procurement or solicitation and any other party directed by the State and the officers, directors, officials, agents, employees, independent contractors and volunteers of any of them.*

“Contract Party:” *Any person, organization or entity that is a Contract Party with State in which the Contract Party (i.e., vendor) provides services or products to State. Contract Party shall also include as insured persons Contract Party’s officers, directors, officials, agents, employees, subcontractors, independent contractors, volunteers and any other entity or person for which the Contract Party is legally responsible. For purposes of this document, Contract Party does not include any branches, departments, agencies, offices, or commissions of the State that may contract with any other State branches, departments, agencies, offices, or commissions.*

Required Insurance

Contract Party shall procure **Required Insurance** as defined herein:

- a. At the sole cost and expense of Contract Party.
- b. Obtain and maintain such **Required Insurance** in full force and effect during the entire term of the Contract until all obligations of Contract Party have been discharged, including any warranty periods or extended reporting periods, against claims that may arise out of, are alleged to arise out of, directly or indirectly, in whole or in part, from or in connection with the Contract and/or result from the performance of the Contract.
- c. Any deductible, self-insured retention, or form of self-insurance under the policies shall be the sole responsibility of the Contract Party and shall be disclosed to and acceptable to the State authorized personnel.
- d. Any required liability insurance policy that is to insure any form of products liability and/or completed operations exposure created by Contract Party must provide extended coverage as follows:
 1. When required liability insurance policy uses “Occurrence” coverage trigger (including that known as “Reported Occurrence”):
 - a. Policy issued by same insurer for Contract Party as of effective date of Contract between State and Contract Party or by comparable insurer providing renewal insurance policy of 1-same coverage terms and conditions of prior expired policy or 2-coverage at least equal to that required by Contract.
 - b. Such coverage must be provided for a period of not less than five (5) years after the later of:
 - i. when the Contract has ended; or
 - ii. when products or services have been put to intended use; or
 - iii. when hardware, software, buildings, other physical structures or repairs have been put to intended use.
 - c. Such required insurance can be provided by annual insurance policies or by single runoff policy commonly referred to as “discontinued products or operations.”
 2. When required liability insurance policy uses any form of “claims-first made trigger:”
 - a. Policy issued by same insurer for Contract Party as of effective date of Contract between State and Contract Party or by comparable insurer providing renewal insurance policy of 1-same coverage terms and conditions

- of prior expired policy or 2-coverage at least equal to that required by Contract.
- b. Provide coverage with a retroactive date on or before the effective date of the Contract or at the beginning of Contract work.
- c. Such coverage must be provided for a period of not less than five (5) years after the later of:
 - i. when the Contract has ended; or
 - ii. when products or services have been put to intended use; or
 - iii. when hardware, software, buildings, other physical structures or repairs have been put to intended use.
- d. Such required insurance can be provided by annual insurance policies or by single runoff policy commonly referred to as “discontinued products or operations.”
- e. If “claims-first made” liability insurance policy is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract date, the Contract Party must purchase extended reporting coverage for a minimum of five (5) years after completion of work.
- f. **Required Insurance** limits to be provided by single insurance policy or through “follow form primary” layered excess insurance policies to obtain overall required limit(s).
- g. Contract Party’s subcontractors to maintain same insurance.
- h. Any insurance obtained by Contract Party that includes an “insured vs. insured” exclusion must be revised to exclude State as Additional Insured.
- i. State Purchasing Agent reserves the right to consider and accept alternative forms and plans of insurance or to require additional more extensive coverage for any individual requirement and can modify types of insurance and revise limits required of Contract Party at any time during the term of this Contract.

Required Insurance:

1. Commercial General Liability Insurance. Commercial General Liability Insurance (“CGL”) based on Insurance Services Office (“ISO”) most recent version of Commercial General Liability policy form CG00 01, or its equivalent:
 - a. Covering bodily injury (including death), broad form property damage, personal and advertising injury, independent contractors, products and completed operations and contractual liability.
 - b. Such insurance coverage is subject to a minimum combined single limit of \$1,000,000 per occurrence, \$1,000,000 general aggregate and \$1,000,000 products/completed operations aggregate.
 - c. The general aggregate must be on a “per project” or “per location” basis.
 - d. Shall include waiver of subrogation in favor of State.
 - e. Include State as additional insured on a primary and non-contributory basis.
 - f. The Contract Party shall submit a copy of any policy endorsement, or blanket endorsement, evidencing the State as additional insured¹ on a primary and non-contributory basis and a waiver of subrogation in favor of State. All endorsements shall be subject to review and approval by the authorized State personnel.
2. Automobile Liability Insurance. Automobile Liability Insurance based on ISO most recent version of Business Automobile Policy (“BAP”) CA 00 01, or its equivalent:
 - a. Covering bodily injury and property damage for any vehicles used in conjunction with the performance of this Contract including owned, non-owned, and hired vehicles.

¹Any time Contract Party is responsible for construction of any kind the additional insured status for State shall include additional Insured-products/completed operations in addition to additional insured-premises/operations.

- b. If a Contract Party does not own any vehicle at any time during the duration of this Contract then the Contract Party can seek hired and non-owned automobile coverage as provided by BAP or by hired non-owned automobile coverage endorsement to CGL.
 - c. At a minimum Contract Party must maintain hired and non-owned automobile coverage for the full duration of this Contract.
 - d. Such insurance coverage is subject to a minimum combined single limit of \$1,000,000 per occurrence.
 - e. Shall include waiver of subrogation in favor of State.
 - f. Include State as additional insured on a primary and non-contributory basis.
 - g. The Contract Party shall submit a copy of any policy endorsement, or blanket endorsement, evidencing the State as additional insureds on a primary and non-contributory basis and a waiver of subrogation in favor of State. All endorsements shall be subject to review and approval by the authorized State personnel.
3. Workers' Compensation and Employers' Liability.
- a. Statutory coverage as required by the workers' compensation laws of the State of Rhode Island, plus any applicable state law other than State of Rhode Island if employee(s) state of hire is other than State of Rhode Island or employee(s) work related to the Contract is not in the State of Rhode Island.
 - b. Policy form based on NCCI or its equivalent.
 - c. Employers' Liability with minimum limits of \$100,000 each accident, \$100,000 disease or policy limit and \$100,000 each employee or minimum amount necessary for umbrella/excess liability policy of Contract Party.
 - d. A Contract Party neither eligible for, nor entitled to, Worker's Compensation who is an independent Contract Party under Rhode Island law must comply with the statutory procedure precluding an independent Contract Party from bringing a workers' compensation claim against the State.
 - e. Policy to include waiver of subrogation in favor of State.
 - f. The Contract Party shall submit a copy of any policy endorsement or blanket endorsement evidencing the waiver of subrogation in favor of the State. All endorsements shall be subject to review and approval by the State authorized personnel.

Crime insurance, as applicable to the procurement or solicitation:

4. Crime Insurance. Crime Insurance to cover dishonest acts of Contract Party that result in a loss of any State property, including funds or securities of any kind, plus any other entity or person's property, including funds or securities of any kind, entrusted to the State that is in the custody or control of the Contract Party. The policy shall:
- a. Include insuring agreements for employee dishonesty, forgery/alteration, theft of money and securities, robbery and safe burglary, money order and counterfeit currency, computer crime and funds transfer fraud.
 - b. Include an endorsement for "Client's Property" using ISO form CR04010813 or the equivalent;
 - c. Have minimum combined limits of not less than \$500,000 per occurrence; however, in no instance shall the combined limits be less than fifty per cent (50%) of the value of the Contract or based on the amount of funds that may be diverted, whichever is greater.
 - d. Name State as loss payee based on ISO CR20141010 or the equivalent.
 - e. Not contain a condition requiring an arrest.
 - f. When Contract Party has custody of State funds in excess of \$250,000 then Contract Party must have crime coverage commonly referred to as Social Engineering Fraud

("SEF") in an amount equal to Computer Crime limit and/or Fraudulent Funds Transfer limit.

All Required Insurance shall be:

1. Placed with insurers:
 - a. Authorized to do business in Rhode Island and, when admitted insurers are not possible, then use of non-admitted insurers will be allowed to the extent acceptable to State.
 - b. Rated "A-," class X or better by A.M. Best Company, Inc.
 - c. Any insurer with a lesser financial rating must be approved by the authorized State personnel.
2. The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary.
3. As evidence of the insurance required by this Contract, the Contract Party shall furnish to State Certificates of Insurance, including confirmation of all required policy endorsements including, but not limited to, additional insured endorsements:
 - a. In form acceptable to the State to the Department of Administration, Division of Purchases prior to a Division of Purchases award. Failure to comply with this provision may result in rejection of the bid offer.
 - b. All certificates of insurance, whenever issued, shall include the requirement of the insurer for thirty (30) days advance written notice of cancellation or non-renewal of any insurance policy to Department of Administration, Division of Purchases Attn: Purchasing Agent, One Capitol Hill, Providence, RI 02908. Contract Party shall also immediately notify the State if the Required Insurance is cancelled, non-renewed, potential exhaustion of policy limits or otherwise changed.
 - c. Certificates of Insurance and required endorsements shall thereafter be submitted annually or earlier upon expiration and renewal of any of the policies.
 - d. All Certificates of Insurance and to the extent possible endorsements shall reference the State procurement number.
 - e. State retains the right to demand a certified copy of any **Required Insurance** policy, Certificate of Insurance or endorsement.
4. The Contract Party shall be responsible to obtain and maintain insurance on any real or personal property owned, leased or used by State that is in the care, custody or control of Contract Party. All property insurance of Contract Party must include a waiver of subrogation that shall apply in favor of the State.
5. No warranty is made that the coverages and limits listed herein are adequate to cover and/or protect the interests of the Contract Party for the Contract Party's operations. These are solely minimums to protect the interest of State.
6. State shall be indemnified and held harmless as required by the Contract and to the full extent of any coverage actually secured by the Contract Party in excess of the minimum requirements set forth above.
7. The Contract Party shall use at its own risk and insure at its own cost any of its owned, leased or used real or personal property. All such insurance of Contract Party must include a waiver of subrogation that shall apply in favor of the State.
8. The Contract Party shall comply with any other insurance requirements including, but not limited to, additional coverages or limits contained in the procurement or solicitation.

9. Failure to comply with these Insurance Requirements is a material breach entitling the State to terminate or suspend the Contract immediately.
10. These Insurance Requirements shall survive expiration or termination of the Contract.

Schedule A2 – Professional Services

Definitions

“Professional Services:” *A type of liability insurance designed to protect traditional professionals (e.g., accountants, attorneys) and quasi-professionals (e.g., real estate brokers, consultants) against liability incurred as a result of errors and omissions made in performing their professional services to State. Although there are a few exceptions (e.g., physicians, architects, and engineers), most professional liability policies only cover economic or financial losses suffered by State as opposed to bodily injury (BI) and property damage (PD) claims. This is because the latter two types of loss are typically covered under commercial general liability (CGL) policies. The vast majority of professional liability policies are written with claims-made coverage triggers. In addition, professional liability policies contain what are known as “shrinking limits,” meaning that unlike CGL policies (where defense costs are paid in addition to policy limits), the insurer’s payment of defense costs reduces available policy limits. Accordingly, when attempting to determine appropriate policy limits, insureds [State] must consider the fact that because defense costs are often a high proportion of any claim settlement or judgment, they must usually purchase additional limits. The most common exclusions in professional liability policy forms are for BI, PD, and intentional/dishonest acts.²*

“State:” *The State of Rhode Island and its branches, departments, agencies, offices, commissions, any using entity authorized by R.I. Gen. Laws § 37-2-1, et seq., to participate in a procurement or solicitation and any other party directed by the State and the officers, directors, officials, agents, employees, independent contractors and volunteers of any of them.*

“Contract Party:” *Any person, organization or entity that is a Contract Party with State in which the Contract Party (i.e., vendor) provides services or products to State.” Contract Party shall also include as insured persons Contract Party’s officers, directors, officials, agents, employees, subcontractors, independent contractors, volunteers and any other entity or person for which the Contract Party is legally responsible. For purposes of this document “Contract Party” does not include any branches, departments, agencies, offices, or commissions of the State that may contract with any other State departments, agencies, offices, commissions.*

Required Insurance

Contract Party shall procure **Required Insurance** as defined herein:

- a. At the sole cost and expense of Contract Party.
- b. Obtain and maintain such **Required Insurance** in full force and effect during the entire term of the Contract until all obligations of Contract Party have been discharged, including any warranty periods or extended reporting periods, against claims that may arise out of, are alleged to arise out of, directly or indirectly, in whole or in part, from or in connection with the Contract and/or result from the performance of the Contract.
- c. Any deductible, self-insured retention, or form of self-insurance under the policies shall be the sole responsibility of the Contract Party and shall be disclosed to and acceptable to the State authorized personnel.
- d. Any required liability insurance policy that is to insure any form of products liability and/or completed operations exposure created by Contract Party must provide extended coverage as follows:
 1. When required liability insurance policy uses “Occurrence” coverage trigger (including that known as “Reported Occurrence”):

²Definition based on one used by International Risk Management Institute:
<https://www.irmi.com/term/insurance-definitions/professional-liability>.

- a. Policy issued by same insurer for Contract Party as of effective date of Contract between State and Contract Party or by comparable insurer providing renewal insurance policy of 1-same coverage terms and conditions of prior expired policy or 2-coverage at least equal to that required by Contract.
- b. Such coverage must be provided for a period of not less than five (5) years after the later of:
 - i. when the Contract has ended; or
 - ii. when products or services have been put to intended use; or
 - iii. when hardware, software, buildings, other physical structures or repairs have been put to intended use.
- c. Such required insurance can be provided by annual insurance policies or by single runoff policy commonly referred to as "discontinued products or operations."
- 2. When required liability insurance policy uses any form of "claims-first made trigger:"
 - a. Policy issued by same insurer for Contract Party as of effective date of Contract between State and Contract Party or by comparable insurer providing renewal insurance policy of 1-same coverage terms and conditions of prior expired policy or 2-coverage at least equal to that required by Contract.
 - b. Provide coverage with a retroactive date on or before the effective date of the Contract or at the beginning of Contract work.
 - c. Such coverage must be provided for a period of not less than five (5) years after the later of:
 - i. when the Contract has ended; or
 - ii. when products or services have been put to intended use; or
 - iii. when hardware, software, buildings, other physical structures or repairs have been put to intended use.
 - d. Such required insurance can be provided by annual insurance policies or by single runoff policy commonly referred to as "discontinued products or operations."
- e. If "claims-first made" liability insurance policy is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract date, the Contract Party must purchase extended reporting coverage for a minimum of five (5) years after completion of work.
- f. **Required Insurance** limits to be provided by single insurance policy or through "follow form primary" layered excess insurance policies to obtain overall required limit(s).
- g. Contract Party's subcontractors to maintain same insurance.
- h. Any insurance obtained by Contract Party that includes an "insured vs. insured" exclusion must be revised to exclude State as Additional Insured.
- i. State Purchasing Agent reserves the right to consider and accept alternative forms and plans of insurance or to require additional more extensive coverage for any individual requirement and can modify types of insurance and revise limits required of Contract Party at any time during the term of this Contract.

Required Insurance:

1. Commercial General Liability Insurance. Commercial General Liability Insurance ("CGL") based on Insurance Services Office ("ISO") most recent version of Commercial General Liability policy form CG00 01, or its equivalent:
 - a. Covering bodily injury (including death), broad form property damage, personal and advertising injury, independent contractors, products and completed operations and contractual liability.

- b. Such insurance coverage is subject to a minimum combined single limit of \$1,000,000 per occurrence, \$1,000,000 general aggregate and \$1,000,000 products/completed operations aggregate.
 - c. The general aggregate must be on a “per project” or “per location” basis.
 - d. Shall include waiver of subrogation in favor of State.
 - e. Include State as additional insureds on a primary and non-contributory basis.
 - f. The Contract Party shall submit a copy of any policy endorsement, or blanket endorsement, evidencing the State as additional insureds³ on a primary and non-contributory basis and a waiver of subrogation in favor of the State. All endorsements shall be subject to review and approval by the authorized State personnel.
2. Automobile Liability Insurance. Automobile Liability Insurance based on ISO most recent version of Business Automobile Policy (“BAP”) CA 00 01, or its equivalent:
- a. Covering bodily injury and property damage for any vehicles used in conjunction with the performance of this Contract including owned, non-owned, and hired vehicles.
 - b. If a Contract Party does not own any vehicle at any time during the duration of this Contract then the Contract Party can seek hired and non-owned automobile coverage as provided by BAP or by hired non-owned automobile coverage endorsement to CGL.
 - c. At a minimum Contract Party must maintain hired and non-owned automobile coverage for the full duration of this Contract.
 - d. Such insurance coverage is subject to a minimum combined single limit of \$1,000,000 per occurrence.
 - e. Shall include waiver of subrogation in favor of State.
 - f. Include State as additional insureds on a primary and non-contributory basis.
 - g. The Contract Party shall submit a copy of any policy endorsement, or blanket endorsement, evidencing the State as additional insureds on a primary and non-contributory basis and a waiver of subrogation in favor of the State. All endorsements shall be subject to review and approval by the authorized State personnel
3. Workers’ Compensation and Employers’ Liability.
- a. Statutory coverage as required by the workers’ compensation laws of the State of Rhode Island, plus any applicable state law other than State of Rhode Island if employee(s) state of hire is other than State of Rhode Island or employee(s) work related to the Contract is not in the State of Rhode Island.
 - b. Policy form based on NCCI or its equivalent.
 - c. Employers’ Liability with minimum limits of \$100,000 each accident, \$100,000 disease or policy limit and \$100,000 each employee or minimum amount necessary umbrella/excess liability of Contract Party.
 - d. A Contract Party neither eligible for, nor entitled to, Worker’s Compensation who is an independent Contract Party under Rhode Island law must comply with the statutory procedure precluding an independent Contract Party from bringing a workers’ compensation claim against the State.
 - e. Policy to include waiver of subrogation in favor of State.
 - f. The Contract Party shall submit a copy of any policy endorsement or blanket endorsement evidencing the waiver of subrogation in favor of the State. All endorsements shall be subject to review and approval by the State authorized personnel.

³ Any time Contract Party is responsible for construction of any kind the additional status for State shall include additional Insured-products/completed operations in addition to additional insured-premises/operations.

4. Professional Liability Insurance.⁴

- a. Covering any damages to State caused by any error, omission, wrongful act, or breach of Contract in performance of Contract Party's professional services to State.
- b. Combined single limit per occurrence shall not be less than \$2,000,000 and include an annual aggregate of not less than \$2,000,000.
- c. Shall include waiver of subrogation in favor of State to extent coverage to Contract Party is not impaired.
- d. If Contract Party is providing services to State where Contract Party has access to paper and/or e-data privacy/confidential information then go to Schedule A3 and ensure appropriate cyber/privacy insurance is contained in Contract Party's Professional Liability Insurance. If cyber/privacy insurance is not contained in Contract Party's Professional Liability Insurance then refer to Schedule A3 Required Insurance Number 5 and add this coverage in addition to Professional Liability Insurance.

Crime Insurance, Environmental/Pollution Liability Insurance, and Working with Children, Elderly or Disabled Persons as applicable to the procurement or solicitation:

5. Crime Insurance. Crime Insurance to cover dishonest acts of Contract Party that result in a loss of any State property, including funds or securities of any kind, plus any other entity or person's property, including funds or securities of any kind, entrusted to the State that is in the custody or control of the Contract Party. The policy shall:

- a. Include insuring agreements for employee dishonesty, forgery/alteration, theft of money and securities, robbery and safe burglary, money order and counterfeit currency, computer crime and funds transfer fraud.
- b. Include an endorsement for "Client's Property" using ISO form CR04010813 or the equivalent.
- c. Have minimum combined limits of not less than \$500,000 per occurrence; however, in no instance shall the combined limits be less than fifty per cent (50%) of the value of the Contract or based on the amount of funds that may be diverted, whichever is greater.
- d. Name State as loss payee based on ISO CR20141010 or the equivalent.
- e. Not contain a condition requiring an arrest.
- f. When Contract Party has custody of State funds in excess of \$250,000 then Contract Party must have crime coverage commonly referred to as Social Engineering Fraud ("SEF") in an amount equal to Computer Crime limit and/or Fraudulent Funds Transfer limit.

5. Environmental/Pollution Liability Insurance when past, present or future hazard is possible. Environmental/Pollution Liability Insurance coverage for bodily injury, property damage and resulting loss of use and environmental damages resulting from sudden accidental (and/or gradual if appropriate) pollution and related cleanup costs arising out of the work or services to be performed under the Contract:

- a. If coverage is on a "claims-first made" basis then 1-any retroactive date will precede the effective date of the Contract, and 2- remain in-force for the later period of five years after Contract has ended and/or work by Contract Party has been put to its intended use.
- b. Per occurrence limits of no less than \$1,000,000 per occurrence and \$2,000,000 aggregate. The policy shall include defense including costs, charges and expenses

⁴Medical malpractice insurance whether for an individual practitioner such as MD, OD or DMD, hospital or nurses, is considered a subset of Professional Liability insurance. When medical malpractice insurance may be required consult with State Risk Management.

incurred in the investigation, adjustment or defense of claims for such compensatory damages.

- c. Policy to include State as additional insured for work performed by Contract Party for State to the extent coverage is not subject to an insured versus insured exclusion. Additional insured status for State to be on a primary and non-contributory basis.
- d. Shall include waiver of subrogation in favor of State.
- e. Contract Party shall submit a copy of any policy endorsement, or blanket endorsement, evidencing the State as additional insureds on a primary and non-contributory basis and a waiver of subrogation in favor of the State. All endorsements shall be subject to review and approval by the authorized State personnel.

For environmental engineering and consultant services, the environmental liability insurance may be included with errors and omissions insurance and coverage if on a claims-made basis and will remain in effect for the period of the Contract with a minimum extended reporting period of five (5) years.

- 6. Working with Children, Elderly or Disabled Persons-Physical Abuse and Molestation Liability Insurance. Physical Abuse and Molestation Insurance covering damages arising out of: actual or threatened physical abuses; mental injury; sexual molestation; negligent hiring, employment, or supervision; negligent investigation or reporting to proper authorities; and, retention of any person for whom the Contract Party is responsible:
 - a. Coverage shall be written in an amount not less than \$1,000,000 per occurrence.
 - b. Coverage can be provided by a separate policy or as an endorsement to the commercial general liability or professional liability policies. The limits shall be exclusive to this required coverage.
 - c. When policy uses any form of "claims-first made trigger:"
 - i. Remain in-force for a period of five (5) years after the Contract has ended;
 - ii. Provide coverage with a retroactive date on or before the Effective Date of the Contract or at the beginning of Contract work; and,
 - iii. If coverage is cancelled or not renewed, and not replaced with another claims-made policy with a retroactive date prior to the Contract date, the Contract Party must purchase extended reporting coverage for a minimum of five (5) years after completion of work.
 - d. Shall include waiver of subrogation in favor of State.
 - e. Policy to include State as additional insured for work performed by Contract Party for State to the extent that coverage is not subject to an insured versus insured exclusion. Additional insured status for State to be on a primary and non-contributory basis.
 - f. The Contract Party shall submit a copy of any policy endorsement, or blanket endorsement, evidencing the State as additional insureds on a primary and non-contributory basis and a waiver of subrogation. All endorsements shall be subject to review and approval by the authorized State personnel.

All Required Insurance shall be:

- 1. Placed with insurers:
 - a. Authorized to do business in Rhode Island.
 - b. Rated "A-," class X or better by A.M. Best Company, Inc.
 - c. Any insurer with a lesser financial rating must be approved by the authorized State personnel.
- 2. The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary.

3. As evidence of the insurance required by this Contract, the Contract Party shall furnish to State Certificates of Insurance, including confirmation of all required policy endorsements including, but not limited to, additional insured endorsements:
 - a. In form acceptable to the State to the Department of Administration, Division of Purchases prior to a Division of Purchases award. Failure to comply with this provision may result in rejection of the bid offer.
 - b. All certificates of insurance, whenever issued, shall include the requirement of the insurer for thirty (30) days advance written notice of cancellation or non-renewal of any insurance policy to Department of Administration, Division of Purchases Attn: Purchasing Agent, One Capitol Hill, Providence, RI 02908. Contract Party shall also immediately notify the State if the Required Insurance is cancelled, non-renewed, potential exhaustion of policy limits or otherwise changed.
 - c. Certificates of Insurance and required endorsements shall thereafter be submitted annually or earlier upon expiration and renewal of any of the policies.
 - d. All Certificates of Insurance and to the extent possible endorsements shall reference the State procurement number.
 - e. State retains the right to demand a certified copy of any **Required Insurance** policy. Certificate of Insurance or endorsement.
4. The Contract Party shall be responsible to obtain and maintain insurance on any real or personal property owned, leased or used by State that is in the care, custody or control of Contract Party. All property insurance of Contract Party must include a waiver of subrogation that shall apply in favor of the State.
5. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Contract Party for the Contract Party's operations. These are solely minimums that have been established to protect the interest of the State.
6. State shall be indemnified and held harmless as required by the Contract and to the full extent of any coverage actually secured by the Contract Party in excess of the minimum requirements set forth above.
7. The Contract Party shall use at its own risk and insure at its own cost any of its owned, leased or used real or personal property. All such insurance of Contract Party must include a waiver of subrogation that shall apply in favor of the State.
8. The Contract Party shall comply with any other insurance requirements including, but not limited to, additional coverages or limits contained in the procurement or solicitation.
9. Failure to comply with these Insurance Requirements is a material breach entitling the State to terminate or suspend the Contract immediately.
10. These Insurance Requirements shall survive expiration or termination of the Contract.

Schedule A3 – Information Technology and/or Cyber/Privacy

Definitions

“Information Technology” A type of insurance designed to cover providers of technology *services* or *products*. For example, data storage companies and website designers provide *technology services*, while computer software and computer manufacturers offer *technology products*.⁵

Technology E&O (“Tech E & O”) policies cover both liability and property loss exposures. Major liability insuring agreements include losses resulting from: (1) technology services, (2) technology products, (3) media content, and (4) network security breaches. Key property insuring agreements provide coverage for extortion threats, crisis management expense, and business interruption.

Tech E&O insurance is often confused with cyber and privacy insurance. In contrast to Tech E&O coverage, cyber and privacy insurance is intended to protect *consumers* of technology products and services. Nevertheless, cyber and privacy insurance policies do offer a number of the same insuring agreements as Tech E&O policies.

Cyber/Privacy: A type of insurance designed to cover consumers of technology services or products. More specifically, the policies are intended to cover a variety of both liability and property losses that may result when a business engages in various electronic activities, such as selling on the Internet or collecting data within its internal electronic network.⁶ Note this coverage is not only for an electronic breach, but also for paper data breaches.

Most notably, but not exclusively, cyber and privacy policies cover liability for a data breach in third party personal information, such as Social Security numbers, credit card numbers, Protected Health Information as defined in HIPAA and its implementing regulations, Personal Information as defined in HIPAA and its implementing regulations and Personal Information as defined in R.I. Gen. Laws § 11-49.3-1, *et seq.*, as amended, or as otherwise defined in the Contract (“Confidential Information”) is exposed or stolen by a hacker or other criminal who has gained access to Contract Party’s electronic network. The policies cover a variety of expenses associated with both electronic and paper data breaches including: notification costs, credit monitoring, costs to defend claims by state regulators, fines and penalties, and loss resulting from identity theft.

In addition, the policies cover liability arising from website media content, as well as property exposures from: (a) business interruption, (b) data loss/destruction, (c) computer fraud, (d) funds transfer loss, and (e) cyber extortion.

Cyber and privacy insurance is often confused with Tech E&O insurance. In contrast to cyber and privacy insurance, Tech E&O coverage is intended to protect providers of technology products and services, such as computer software and hardware manufacturers, website designers, and firms that store data on an off-site basis. Nevertheless, Tech E&O insurance policies do contain a number of the same insuring agreements as cyber and privacy policies.

“State:” *The State of Rhode Island and its branches, departments, agencies, offices, commissions, any using entity authorized by R.I. Gen. Laws § 37-2-1, et seq. to participate in a procurement and any other party directed by the State and the officers, directors, officials, agents, employees, independent contractors and volunteers of any of them.*

⁵<https://www.irmi.com/term/insurance-definitions/technology-errors-and-omissions-insurance>.

⁶<https://www.irmi.com/term/insurance-definitions/cyber-and-privacy-insurance>.

“Contract Party:” Any person, organization or entity that is a Contract Party with State in which the Contract Party (i.e., vendor) provides services or products to State. Contract Party shall also include as insured persons Contract Party’s officers, directors, officials, agents, employees, subcontractors, independent contractors, volunteers and any other entity or person for which the Contract Party is legally responsible. For purposes of this document “Contract Party” does not include any branches, departments, agencies, offices, or commissions of the State that may contract with any other State branches, departments, agencies, offices, commissions.

Required Insurance

Contract Party shall procure **Required Insurance** as defined herein:

- a. At the sole cost and expense of Contract Party.
- b. Obtain and maintain such **Required Insurance** in full force and effect during the entire term of the Contract until all obligations of Contract Party have been discharged, including any warranty periods or extended reporting periods, against claims that may arise out of, are alleged to arise out of, directly or indirectly, in whole or in part, from or in connection with the Contract and/or result from the performance of the Contract.
- c. Any deductible, self-insured retention, or form of self-insurance under the policies shall be the sole responsibility of the Contract Party and shall be disclosed to and acceptable to the State authorized personnel.
- d. Any required liability insurance policy that is to insure any form of products liability and/or completed operations exposure created by Contract Party must provide extended coverage as follows:
 1. When required liability insurance policy uses “Occurrence” coverage trigger (Including that known as “Reported Occurrence”):
 - a. Policy issued by same insurer for Contract Party as of effective date of Contract between State and Contract Party or by comparable insurer providing renewal insurance policy of 1-same coverage terms and conditions of prior expired policy or 2-coverage at least equal to that required by Contract.
 - b. Such coverage must be provided for a period of not less than five (5) years after the later of:
 - i. when the Contract has ended; or
 - ii. when products or services have been put to intended use; or
 - iii. when hardware, software, buildings, other physical structures or repairs have been put to intended use.
 - c. Such required insurance can be provided by annual insurance policies or by single runoff policy commonly referred to as “discontinued products or operations.”
 2. When required liability insurance policy uses any form of “claims-first made trigger:”
 - a. Policy issued by same insurer for Contract Party as of effective date of Contract between State and Contract Party or by comparable insurer providing renewal insurance policy of 1-same coverage terms and conditions of prior expired policy or 2-coverage at least equal to that required by Contract.
 - b. Provide coverage with a retroactive date on or before the effective date of the Contract or at the beginning of Contract work.
 - c. Such coverage must be provided for a period of not less than five (5) years after the later of:
 - i. when the Contract has ended; or
 - ii. when products or services have been put to intended use; or

- iii. when hardware, software, buildings, other physical structures or repairs have been put to intended use.
- d. Such required insurance can be provided by annual insurance policies or by single runoff policy commonly referred to as “discontinued products or operations.”
- e. If “claims-first made” liability insurance policy is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract date, the Contract Party must purchase extended reporting coverage for a minimum of five (5) years after completion of work.
- f. **Required Insurance** limits to be provided by single insurance policy or through “follow form primary” layered excess insurance policies to obtain overall required limit(s).
- g. Contract Party’s subcontractors to maintain same insurance.
- h. Any insurance obtained by Contract Party that includes an “insured vs. insured” exclusion must be revised to exclude State as Additional Insured.
- i. State Purchasing Agent reserves the right to consider and accept alternative forms and plans of insurance or to require additional more extensive coverage for any individual requirement and can modify types of insurance and revise limits required of Contract Party at any time during the term of this Contract.

Required Insurance:

1. Commercial General Liability Insurance. Commercial General Liability Insurance (“CGL”) based on Insurance Services Office (“ISO”) most recent version of Commercial General Liability policy form CG00 01, or its equivalent:
 - a. Covering bodily injury (including death), broad form property damage, personal and advertising injury, independent contractors, products and completed operations and contractual liability.
 - b. Such insurance coverage is subject to a minimum combined single limit of \$1,000,000 per occurrence, \$1,000,000 general aggregate and \$1,000,000 products/completed operations aggregate.
 - d. The general aggregate must be on a “per project” or “per location” basis.
 - e. Shall include waiver of subrogation in favor of State.
 - f. Include State as additional insureds on a primary and non-contributory basis.
 - g. The Contract Party shall submit a copy of any policy endorsement, or blanket endorsement, evidencing the State as additional insureds on a primary and non-contributory basis and a waiver of subrogation in favor of the State⁷. All endorsements shall be subject to review and approval by the authorized State personnel.
2. Automobile Liability Insurance. Automobile Liability Insurance based on ISO most recent version of Business Automobile Policy (“BAP”) CA 00 01, or its equivalent:
 - a. Covering bodily injury and property damage for any vehicles used in conjunction with the performance of this Contract including owned, non-owned, and hired vehicles.
 - b. If a Contract Party does not own any vehicle at any time during the duration of this Contract then the Contract Party can seek hired and non-owned automobile coverage as provided by BAP or by hired non-owned automobile coverage endorsement to CGL.
 - c. At a minimum Contract Party must maintain hired and non-owned automobile coverage for the full duration of this Contract.

⁷ Any time Contract Party is responsible for construction of any kind the additional status for State shall include additional Insured-products/completed operations in addition to additional insured-premises/operations.

- d. Such insurance coverage is subject to a minimum combined single limit of \$1,000,000 per occurrence.
- e. Shall include waiver of subrogation in favor of State.
- f. Include State as additional insureds on a primary and non-contributory basis.
- g. The Contract Party shall submit a copy of any policy endorsement, or blanket endorsement, evidencing the State as additional insureds on a primary and non-contributory basis and a waiver of subrogation in favor of the State. All endorsements shall be subject to review and approval by the authorized State personnel

3. Workers' Compensation and Employers' Liability.

- a. Statutory coverage as required by the workers' compensation laws of the State of Rhode Island, plus any applicable state law other than State of Rhode Island if employee(s) state of hire is other than State of Rhode Island or employee(s) work related to the Contract is not in the State of Rhode Island.
- b. Policy form based on NCCI or its equivalent.
- c. Employers' Liability with minimum limits of \$100,000 each accident, \$100,000 disease or policy limit and \$100,000 each employee or minimum amount necessary for Contract Party.
- d. A Contract Party neither eligible for, nor entitled to, Worker's Compensation who is an independent Contract Party under Rhode Island law must comply with the statutory procedure precluding an independent Contract Party from bringing a workers' compensation claim against the State.
- e. Policy to include waiver of subrogation in favor of State.
- f. The Contract Party shall submit a copy of any policy endorsement or blanket endorsement evidencing the waiver of subrogation in favor of the State. All endorsements shall be subject to review and approval by the State authorized personnel.

If Contract Party's technology, hardware, software or professional services to State ***does not provide Contract Party access to Confidential Information*** as defined in Number 5(a) below:

- 4. Technology Errors and Omissions Coverage.** Technology Errors and Omissions Insurance covering any damages caused by any error, omission, wrongful act or breach of Contract by Contract Party. Coverage to include, but not be limited to: product failure, security failure, professional liability, intellectual property infringement and personal injury if limited or uninsured under commercial general liability insurance. Combined single limit per occurrence shall not be less than \$5,000,000. Annual aggregate shall not be less than \$5,000,000.

If Contract Party's technology, hardware, software, or professional services to State ***does provide Contract Party with access to Confidential Information*** as defined in Number 5(a) below:

- 5. Information Technology/Cyber Privacy.** Errors and Omission Insurance covering damages to Insured Parties caused by any error, omission, wrongful act or breach of Contract in performance of contracted professional services by Contractor.
- a. Such insurance to have minimum limits of \$5,000,000 per occurrence and \$5,000,000 annual aggregate. If Contract Party provides: a) key back office services Contract Party shall have a minimum limit of \$10,000,000 per occurrence and \$10,000,000 annual aggregate; b) if Contract Party has access to Protected Health Information as defined in HIPAA and its implementing regulations, Personal Information as defined in in R.I. Gen. Laws § 11-49.3-1, *et seq.*, or as otherwise defined in the Contract (together Confidential Information"), Contract Party shall have as a minimum the per occurrence,

- per annual aggregate, the total rounded product of projected number of persons data multiplied by \$25 per person breach response expense per occurrence; but no less than \$5,000,000 per occurrence, per annual aggregate; or, c) if the Contract Party provides or has access to mission critical services, network architecture and/or the totality of confidential data \$20,000,000 per occurrence and in the annual aggregate.
- b. Such insurance to include insuring agreements as identified below either as modules in master policy or as separate insurance policies.

Information Technology

Minimum coverage for Contract Party is liability insuring agreements for loss resulting from: (1) technology services, (2) technology products, (3) media content, (4) network security breaches and breach expenses incurred by State.

Cyber/Privacy Insurance

Coverage for Contract Party to include:

- i. Regulatory liability;
 - ii. Information security and privacy, regardless of the media involved;
 - iii. Network interruption and/or business interruption;
 - iv. Digital asset loss of State;
 - v. Event breach costs including but not limited to crisis management (such as forensic investigation, legal fees), public relations, notification costs, call center operation costs, credit file monitoring and identity theft insurance;
 - vi. Placing and lifting of security freezes;
 - vii. Cyber extortion;
 - viii. Online media liability (i.e. including but not limited to website content);
 - ix. Costs to defend, including but limited attorney fees and settle; and,
 - x. Fines and penalties when insurable under appropriate state or federal law.
- c. Coverage to include but not be limited to damage by Contract Party to States' records (whether e-data or other) product failure, security failure, privacy failure of e-data records, privacy failure of other than e-data records, intellectual property infringement, and personal injury as customarily insured by this type of insurance policy.

Crime Insurance as applicable to the procurement or solicitation:

6. Crime Insurance. Crime Insurance to cover dishonest acts of Contract Party that result in a loss of any State property, including funds or securities of any kind, plus any other entity or person's property, including funds or securities of any kind, entrusted to the State that is in the custody or control of the Contract Party. The policy shall:
 - a. Include insuring agreements for employee dishonesty, forgery/alteration, theft of money and securities, robbery and safe burglary, money order and counterfeit currency, computer crime and funds transfer fraud.
 - b. Include an endorsement for "Client's Property" using ISO form CR04010813 or the equivalent.
 - c. Have minimum combined limits of not less than \$500,000 per occurrence; however, in no instance shall the combined limits be less than fifty per cent (50%) of the value of the Contract or based on the amount of funds that may be diverted, whichever is greater.
 - d. Name the State as loss payee based on ISO CR20141010 or the equivalent.
 - e. Not contain a condition requiring an arrest.
 - f. When Contract Party has custody of State funds in excess of \$250,000 then Contract Party must have crime coverage commonly referred to as Social Engineering Fraud

("SEF") in an amount equal to Computer Crime limit and/or Fraudulent Funds Transfer limit.

All Required Insurance shall be:

1. Placed with insurers:
 - a. Authorized to do business in Rhode Island.
 - b. Rated "A-," class X or better by A.M. Best Company, Inc.
 - c. Any insurer with a lesser financial rating must be approved by the authorized State personnel.
2. The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary.
3. As evidence of the insurance required by this Contract, the Contract Party shall furnish to State Certificates of Insurance, including confirmation of all required policy endorsements including, but not limited to, additional insured endorsements:
 - a. In form acceptable to the State to the Department of Administration, Division of Purchases prior to a Division of Purchases award. Failure to comply with this provision may result in rejection of the bid offer.
 - b. All certificates of insurance, whenever issued, shall include the requirement of the insurer for thirty (30) days advance written notice of cancellation or non-renewal of any insurance policy to Department of Administration, Division of Purchases Attn: Purchasing Agent, One Capitol Hill, Providence, RI 02908. Contract Party shall also immediately notify the State if the Required Insurance is cancelled, non-renewed, potential exhaustion of policy limits or otherwise changed.
 - c. Certificates of Insurance and required endorsements shall thereafter be submitted annually or earlier upon expiration and renewal of any of the policies.
 - d. All Certificates of Insurance and to the extent possible endorsements shall reference the State procurement number.
 - e. State retains the right to demand a certified copy of any **Required Insurance** policy, Certificate of Insurance or endorsement.
4. The Contract Party shall be responsible to obtain and maintain insurance on any real or personal property owned, leased or used by State that is in the care, custody or control of Contract Party. All property insurance of Contract Party must include a waiver of subrogation that shall apply in favor of the State.
5. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Contract Party for the Contract Party's operations. These are solely minimums that have been established to protect the interest of the State.
3. State shall be indemnified and held harmless as required by the Contract and to the full extent of any coverage actually secured by the Contract Party in excess of the minimum requirements set forth above.
4. The Contract Party shall use at its own risk and insure at its own cost any of its owned, leased or used real or personal property. All such insurance of Contract Party must include a waiver of subrogation that shall apply in favor of the State.
8. The Contract Party shall comply with any other insurance requirements including, but not limited to, additional coverages or limits contained in the procurement or solicitation.
9. Failure to comply with these Insurance Requirements is a material breach entitling the State to terminate or suspend the Contract immediately.

10. These Insurance Requirements shall survive expiration or termination of the Contract.

Schedule A4 – Public Works

As contained in the AIA documents and as required below. If the AIA documents' insurance provisions and the following insurance requirements conflict, the AIA documents' insurance requirements control.

Contract Party shall procure **Required Insurance** as defined herein:

- a. At the sole cost and expense of Contract Party.
- b. Obtain and maintain such **Required Insurance** in full force and effect during the entire term of the Contract until all obligations of Contract Party have been discharged, including any warranty periods or extended reporting periods, against claims that may arise out of, are alleged to arise out of, directly or indirectly, in whole or in part, from or in connection with the Contract and/or result from the performance of the Contract.
- c. Any deductible, self-insured retention, or form of self-insurance under the policies shall be the sole responsibility of the Contract Party and shall be disclosed to and acceptable to the State authorized personnel.
- d. Any required liability insurance policy that is to insure any form of products liability and/or completed operations exposure created by Contract Party must provide extended coverage as follows:
 1. When required liability insurance policy uses "Occurrence" coverage trigger (Including that known as "Reported Occurrence"):
 - a. Policy issued by same insurer for Contract Party as of effective date of Contract between State and Contract Party or by comparable insurer providing renewal insurance policy of 1-same coverage terms and conditions of prior expired policy or 2-coverage at least equal to that required by Contract.
 - b. Such coverage must be provided for a period of not less than five (5) years after the later of:
 - i. when the Contract has ended; or
 - ii. when products or services have been put to intended use; or
 - iii. when hardware, software, buildings, other physical structures or repairs have been put to intended use.
 - c. Such required insurance can be provided by annual insurance policies or by single runoff policy commonly referred to as "discontinued products or operations."
 2. When required liability insurance policy uses any form of "claims-first made trigger:"
 - a. Policy issued by same insurer for Contract Party as of effective date of Contract between State and Contract Party or by comparable insurer providing renewal insurance policy of 1-same coverage terms and conditions of prior expired policy or 2-coverage at least equal to that required by Contract.
 - b. Provide coverage with a retroactive date on or before the effective date of the Contract or at the beginning of Contract work.
 - c. Such coverage must be provided for a period of not less than five (5) years after the later of:
 - i. when the Contract has ended; or
 - ii. when products or services have been put to intended use; or
 - iii. when hardware, software, buildings, other physical structures or repairs have been put to intended use.

- d. Such required insurance can be provided by annual insurance policies or by single runoff policy commonly referred to as “discontinued products or operations”.
- e. If “claims-first made” liability insurance policy is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract date, the Contract Party must purchase extended reporting coverage for a minimum of five (5) years after completion of work.
- f. **Required Insurance** limits to be provided by single insurance policy or through “follow form primary” layered excess insurance policies to obtain overall required limit(s).
- g. Contract Party’s subcontractors to maintain same insurance.
- h. Any insurance obtained by Contract Party that includes an “insured vs. insured” exclusion must be revised to exclude State as Additional Insured.
- i. State Purchasing Agent reserves the right to consider and accept alternative forms and plans of insurance or to require additional more extensive coverage for any individual requirement and can modify types of insurance and revise limits required of Contract Party at any time during the term of this Contract.

Required Insurance:

1. Commercial General Liability Insurance. Commercial General Liability Insurance (“CGL”) based on Insurance Services Office (“ISO”) most recent version of Commercial General Liability policy form CG00 01, or its equivalent:
 - a. Covering bodily injury (including death), broad form property damage, personal and advertising injury, independent contractors, products and completed operations and contractual liability.
 - b. Such insurance coverage is subject to a minimum combined single limit of \$1,000,000 per occurrence, \$1,000,000 general aggregate and \$1,000,000 products/completed operations aggregate.
 - c. The general aggregate must be on a “per project” or “per location” basis.
 - d. Shall include waiver of subrogation in favor of State.
 - e. Include State as additional insured on a primary and non-contributory basis.
 - f. The Contract Party shall submit a copy of any policy endorsement, or blanket endorsement, evidencing the State as additional insured⁸ on a primary and non-contributory basis and a waiver of subrogation in favor of State. All endorsements shall be subject to review and approval by the authorized State personnel.
2. Automobile Liability Insurance. Automobile Liability Insurance based on ISO most recent version of Business Automobile Policy (“BAP”) CA 00 01, or its equivalent:
 - a. Covering bodily injury and property damage for any vehicles used in conjunction with the performance of this Contract including owned, non-owned, and hired vehicles.
 - b. If a Contract Party does not own any vehicle at any time during the duration of this Contract then the Contract Party can seek hired and non-owned automobile coverage as provided by BAP or by hired non-owned automobile coverage endorsement to CGL.
 - c. At a minimum Contract Party must maintain hired and non-owned automobile coverage for the full duration of this Contract.
 - d. Such insurance coverage is subject to a minimum combined single limit of \$1,000,000 per occurrence.
 - e. Shall include waiver of subrogation in favor of State.
 - f. Include State as additional insured on a primary and non-contributory basis.

⁸Any time Contract Party is responsible for construction of any kind the additional status for State shall include additional Insured-products/completed operations in addition to additional insured-premises/operations.

- g. The Contract Party shall submit a copy of any policy endorsement, or blanket endorsement, evidencing the State as additional insureds on a primary and non-contributory basis and a waiver of subrogation in favor of State. All endorsements shall be subject to review and approval by the authorized State personnel.
3. Workers' Compensation and Employers' Liability.
- a. Statutory coverage as required by the workers' compensation laws of the State of Rhode Island, plus any applicable state law other than State of Rhode Island if employee(s) state of hire is other than State of Rhode Island or employee(s) work related to the Contract is not in the State of Rhode Island.
 - b. Policy form based on NCCI or its equivalent.
 - c. Employers' Liability with minimum limits of \$100,000 each accident, \$100,000 disease or policy limit and \$100,000 each employee or minimum amount necessary for umbrella/excess liability policy of Contract Party.
 - d. A Contract Party neither eligible for, nor entitled to, Worker's Compensation who is an independent Contract Party under Rhode Island law must comply with the statutory procedure precluding an independent Contract Party from bringing a workers' compensation claim against the State.
 - e. Policy to include waiver of subrogation in favor of State.
 - f. The Contract Party shall submit a copy of any policy endorsement or blanket endorsement evidencing the waiver of subrogation in favor of the State. All endorsements shall be subject to review and approval by the State authorized personnel.

All Required Insurance shall be:

- 1. Placed with insurers:
 - a. Authorized to do business in Rhode Island.
 - b. Rated "A-," class X or better by A.M. Best Company, Inc.
 - c. Any insurer with a lesser financial rating must be approved by the authorized State personnel.
- 2. The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary.
- 3. As evidence of the insurance required by this Contract, the Contract Party shall furnish to State Certificates of Insurance, including confirmation of all required policy endorsements including, but not limited to, additional insured endorsements:
 - a. In form acceptable to the State to the Department of Administration, Division of Purchases prior to a Division of Purchases award. Failure to comply with this provision may result in rejection of the bid offer.
 - b. All certificates of insurance, whenever issued, shall include the requirement of the insurer for thirty (30) days advance written notice of cancellation or non-renewal of any insurance policy to Department of Administration, Division of Purchases Attn: Purchasing Agent, One Capitol Hill, Providence, RI 02908. Contract Party shall also immediately notify the State if the Required Insurance is cancelled, non-renewed, potential exhaustion of policy limits or otherwise changed.
 - c. Certificates of Insurance and required endorsements shall thereafter be submitted annually or earlier upon expiration and renewal of any of the policies.
 - d. All Certificates of Insurance and to the extent possible endorsements shall reference the State procurement number.
 - e. State retains the right to demand a certified copy of any **Required Insurance** policy, Certificate of Insurance or endorsement.

4. The Contract Party shall be responsible to obtain and maintain insurance on any real or personal property owned, leased or used by State that is in the care, custody or control of Contract Party. All property insurance of Contract Party must include a waiver of subrogation that shall apply in favor of the Insured Parties.
5. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Contract Party for the Contract Party's operations. These are solely minimums that have been established to protect the interest of the State.
6. State shall be indemnified and held harmless as required by the Contract and to the full extent of any coverage actually secured by the Contract Party in excess of the minimum requirements set forth above.
7. The Contract Party shall use at its own risk and insure at its own cost any of its owned, leased or used real or personal property. All such insurance of Contract Party must include a waiver of subrogation that shall apply in favor of the State.
8. The Contract Party shall comply with any other insurance requirements including, but not limited to, additional coverages or limits contained in the procurement or solicitation.
9. Failure to comply with these Insurance Requirements is a material breach entitling the State to terminate or suspend the Contract immediately.
10. These Insurance Requirements shall survive expiration or termination of the Contract.

Schedule A5 – Department of Transportation Projects

As contained in the State of Rhode Island Department of Transportation's Standard Specifications for Road and Bridge Design document commonly referenced as the Rhode Island Department of Transportation's "Blue Book" located at www.dot.ri.gov/business/bluebook.php and as required below. If the Blue Book's insurance requirements and the following insurance requirements conflict, the Blue Books' insurance requirements control.

Required Insurance

Contract Party shall procure **Required Insurance** as defined herein:

- a. At the sole cost and expense of Contract Party.
- b. Obtain and maintain such **Required Insurance** in full force and effect during the entire term of the Contract until all obligations of Contract Party have been discharged, including any warranty periods or extended reporting periods, against claims that may arise out of, are alleged to arise out of, directly or indirectly, in whole or in part, from or in connection with the Contract and/or result from the performance of the Contract.
- c. Any deductible, self-insured retention, or form of self-insurance under the policies shall be the sole responsibility of the Contract Party and shall be disclosed to and acceptable to the State authorized personnel.
- d. Any required liability insurance policy that is to insure any form of products liability and/or completed operations exposure created by Contract Party must provide extended coverage as follows:
 1. When required liability insurance policy uses "Occurrence" coverage trigger (Including that known as "Reported Occurrence"):
 - a. Policy issued by same insurer for Contract Party as of effective date of Contract between State and Contract Party or by comparable insurer providing renewal insurance policy of 1-same coverage terms and conditions of prior expired policy or 2-coverage at least equal to that required by Contract.
 - b. Such coverage must be provided for a period of not less than five (5) years after the later of:
 - i. when the Contract has ended; or
 - ii. when products or services have been put to intended use; or
 - iii. when hardware, software, buildings, other physical structures or repairs have been put to intended use.
 - c. Such required insurance can be provided by annual insurance policies or by single runoff policy commonly referred to as "discontinued products or operations."
 2. When required liability insurance policy uses any form of "claims-first made trigger:"
 - a. Policy issued by same insurer for Contract Party as of effective date of Contract between State and Contract Party or by comparable insurer providing renewal insurance policy of 1-same coverage terms and conditions of prior expired policy or 2-coverage at least equal to that required by Contract.
 - b. Provide coverage with a retroactive date on or before the effective date of the Contract or at the beginning of Contract work.
 - c. Such coverage must be provided for a period of not less than five (5) years after the later of:
 - i. when the Contract has ended; or
 - ii. when products or services have been put to intended use; or

- iii. when hardware, software, buildings, other physical structures or repairs have been put to intended use.
- d. Such required insurance can be provided by annual insurance policies or by single runoff policy commonly referred to as “discontinued products or operations”.
- e. If “claims-first made” liability insurance policy is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract date, the Contract Party must purchase extended reporting coverage for a minimum of five (5) years after completion of work.
- f. **Required Insurance** limits to be provided by single insurance policy or through “follow form primary” layered excess insurance policies to obtain overall required limit(s).
- g. Contract Party’s subcontractors to maintain same insurance.
- h. Any insurance obtained by Contract Party that includes an “insured vs. insured” exclusion must be revised to exclude State as Additional Insured.
- i. State Purchasing Agent reserves the right to consider and accept alternative forms and plans of insurance or to require additional more extensive coverage for any individual requirement and can modify types of insurance and revise limits required of Contract Party at any time during the term of this Contract.

Required Insurance:

1. Commercial General Liability Insurance. Commercial General Liability Insurance (“CGL”) based on Insurance Services Office (“ISO”) most recent version of Commercial General Liability policy form CG00 01, or its equivalent:
 - a. Covering bodily injury (including death), broad form property damage, personal and advertising injury, independent contractors, products and completed operations and contractual liability.
 - b. Such insurance coverage is subject to a minimum combined single limit of \$1,000,000 per occurrence, \$1,000,000 general aggregate and \$1,000,000 products/completed operations aggregate.
 - c. The general aggregate must be on a “per project” or “per location” basis.
 - d. Shall include waiver of subrogation in favor of State.
 - e. Include State as additional insured on a primary and non-contributory basis.
 - f. The Contract Party shall submit a copy of any policy endorsement, or blanket endorsement, evidencing the State as additional insured⁹ on a primary and non-contributory basis and a waiver of subrogation in favor of State. All endorsements shall be subject to review and approval by the authorized State personnel.
2. Automobile Liability Insurance. Automobile Liability Insurance based on ISO most recent version of Business Automobile Policy (“BAP”) CA 00 01, or its equivalent:
 - a. Covering bodily injury and property damage for any vehicles used in conjunction with the performance of this Contract including owned, non-owned, and hired vehicles.
 - b. If a Contract Party does not own any vehicle at any time during the duration of this Contract then the Contract Party can seek hired and non-owned automobile coverage as provided by BAP or by hired non-owned automobile coverage endorsement to CGL.
 - c. At a minimum Contract Party must maintain hired and non-owned automobile coverage for the full duration of this Contract.
 - d. Such insurance coverage is subject to a minimum combined single limit of \$1,000,000 per occurrence.
 - e. Shall include waiver of subrogation in favor of State.
 - f. Include State as additional insured on a primary and non-contributory basis.

⁹Any time Contract Party is responsible for construction of any kind the additional status for State shall include additional Insured-products/completed operations in addition to additional insured-premises/operations.

- g. The Contract Party shall submit a copy of any policy endorsement, or blanket endorsement, evidencing the State as additional insureds on a primary and non-contributory basis and a waiver of subrogation in favor of State. All endorsements shall be subject to review and approval by the authorized State personnel.
3. Workers' Compensation and Employers' Liability.
- a. Statutory coverage as required by the workers' compensation laws of the State of Rhode Island, plus any applicable state law other than State of Rhode Island if employee(s) state of hire is other than State of Rhode Island or employee(s) work related to the Contract is not in the State of Rhode Island.
 - b. Policy form based on NCCI or its equivalent.
 - c. Employers' Liability with minimum limits of \$100,000 each accident, \$100,000 disease or policy limit and \$100,000 each employee or minimum amount necessary for umbrella/excess liability policy of Contract Party.
 - d. A Contract Party neither eligible for, nor entitled to, Worker's Compensation who is an independent Contract Party under Rhode Island law must comply with the statutory procedure precluding an independent Contract Party from bringing a workers' compensation claim against the State.
 - e. Policy to include waiver of subrogation in favor of State.
 - f. The Contract Party shall submit a copy of any policy endorsement or blanket endorsement evidencing the waiver of subrogation in favor of the State. All endorsements shall be subject to review and approval by the State authorized personnel.

All Required Insurance shall be:

- 1. Placed with insurers:
 - a. Authorized to do business in Rhode Island.
 - b. Rated "A-," class X or better by A.M. Best Company, Inc.
 - c. Any insurer with a lesser financial rating must be approved by the authorized State personnel.
- 2. The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary.
- 3. As evidence of the insurance required by this Contract, the Contract Party shall furnish to State Certificates of Insurance, including confirmation of all required policy endorsements including, but not limited to, additional insured endorsements:
 - a. In form acceptable to the State to the Department of Administration, Division of Purchases prior to a Division of Purchases award. Failure to comply with this provision may result in rejection of the bid offer.
 - b. All certificates of insurance, whenever issued, shall include the requirement of the insurer for thirty (30) days advance written notice of cancellation or non-renewal of any insurance policy to Department of Administration, Division of Purchases Attn: Purchasing Agent, One Capitol Hill, Providence, RI 02908. Contract Party shall also immediately notify the State if the Required Insurance is cancelled, non-renewed, potential exhaustion of policy limits or otherwise changed.
 - c. Certificates of Insurance and required endorsements shall thereafter be submitted annually or earlier upon expiration and renewal of any of the policies.
 - d. All Certificates of Insurance and to the extent possible endorsements shall reference the State procurement number.
 - e. State retains the right to demand a certified copy of any **Required Insurance** policy, Certificate of Insurance or endorsement.

4. The Contract Party shall be responsible to obtain and maintain insurance on any real or personal property owned, leased or used by State that is in the care, custody or control of Contract Party. All property insurance of Contract Party must include a waiver of subrogation that shall apply in favor of the State.
5. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Contract Party for the Contract Party's operations. These are solely minimums that have been established to protect the interest of the State.
6. State shall be indemnified and held harmless as required by the Contract and to the full extent of any coverage actually secured by the Contract Party in excess of the minimum requirements set forth above.
7. The Contract Party shall use at its own risk and insure at its own cost any of its owned, leased or used real or personal property. All such insurance of Contract Party must include a waiver of subrogation that shall apply in favor of the State.
8. The Contract Party shall comply with any other insurance requirements including, but not limited to, additional coverages or limits contained in the procurement or solicitation.
9. Failure to comply with these Insurance Requirements is a material breach entitling the State to terminate or suspend the Contract immediately.
10. These Insurance Requirements shall survive expiration or termination of the Contract.

Attachment N

ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR GOODS AND SERVICES

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
 - a) "**Confidential Information**" means information that is deemed as confidential under applicable state and federal laws, including personal information. The Eligible User reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
 - b) "**Contract**" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" shall include any purchase orders that result from this Contract.
 - c) "**Contract Signature Page(s)**" means the State of Utah cover page(s) that the Division and Contractor signed.
 - d) "**Contractor**" means the individual or entity delivering the Procurement Item identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
 - e) "**Custom Deliverable**" means the Work Product that Contractor is required to deliver to the Eligible User under this Contract.
 - f) "**Division**" means the Division of Purchasing and General Services.
 - g) "**Eligible User(s)**" means those authorized to use State Cooperative Contracts and includes the State of Utah's government departments, institutions, agencies, political subdivisions (e.g., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.
 - h) "**End User Agreement**" means any agreement that Eligible Users are required to sign in order to participate in this Contract, including an end user agreement, customer agreement, memorandum of understanding, statement of work, lease agreement, service level agreement, or any other named separate agreement.
 - i) "**Procurement Item**" means a supply, a service, Custom Deliverable, construction, or technology that Contractor is required to deliver to the Eligible User under this Contract.
 - j) "**Response**" means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the Solicitation.
 - k) "**Solicitation**" means an invitation for bids, request for proposals, notice of a sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
 - l) "**State of Utah**" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - m) "**Subcontractors**" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction, including a trade contractor or specialty contractor.
 - n) "**Work Product**" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the Eligible User. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by Eligible Users to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.
5. **PERMITS:** If necessary Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of this Contract.
6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, to sole sources that are included within a Request for Proposal, and when Contractor employs any personnel in Utah.
 - a. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.

- b. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 - c. Contractor's failure to comply with this section will be considered a material breach of this Contract.
7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the Division or the State of Utah, unless disclosure has been made to the Division.
 8. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the Division or the State of Utah.
 9. **CONTRACTOR RESPONSIBILITY:** Contractor is solely responsible for fulfilling the contract, with responsibility for all Procurement Items delivered and/or performed as stated in this Contract. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor's responsibilities under this Contract into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the Eligible Users under this Contract. Moreover, Contractor is responsible for its Subcontractors compliance under this Contract.
 10. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, the Eligible Users and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract to the extent caused by any intentional wrongful act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the fault of an Eligible User. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
 11. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees. Contractor agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
 12. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
 13. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, or declared ineligible by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
 14. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the Division, upon thirty (30) days written termination notice being given to the Contractor. The Division and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.

On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved and conforming Procurement Items ordered prior to date of termination. In no event shall the Eligible Users be liable to the Contractor for compensation for any Procurement Item neither requested nor accepted by an Eligible User. In no event shall the Division's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the Eligible Users for any damages or claims arising under this Contract.

15. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, a purchase order that results from this Contract may be terminated in whole or in part at the sole discretion of an Eligible User, if an Eligible User reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects an Eligible User's ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered under this section, an Eligible User will reimburse Contractor for the Procurement Item(s) properly ordered and/or properly performed until the effective date of said notice. An Eligible User will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

16. **SALES TAX EXEMPTION:** The Procurement Item(s) under this Contract will be paid for from an Eligible User's funds and used in the exercise of an Eligible Users essential functions. Upon request, an Eligible User will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request an Eligible User's sales tax exemption number. It also

is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.

17. **WARRANTY OF PROCUREMENT ITEM(S):** Contractor warrants, represents and conveys full ownership and clear title, free of all liens and encumbrances, to the Procurement Item(s) delivered to an Eligible User under this Contract. Contractor warrants for a period of one (1) year that: (i) the Procurement Item(s) perform according to all specific claims that Contractor made in its Response; (ii) the Procurement Item(s) are suitable for the ordinary purposes for which such Procurement Item(s) are used; (iii) the Procurement Item(s) are suitable for any special purposes identified in the Contractor's Response; (iv) the Procurement Item(s) are designed and manufactured in a commercially reasonable manner; (v) the Procurement Item(s) are manufactured and in all other respects create no harm to persons or property; and (vi) the Procurement Item(s) are free of defects. Unless otherwise specified, all Procurement Item(s) provided shall be new and unused of the latest model or design.

Remedies available to an Eligible User under this section include, but are not limited to, the following: Contractor will repair or replace Procurement Item(s) at no charge to the Eligible User within ten (10) days of any written notification informing Contractor of the Procurement Items not performing as required under this Contract. If the repaired and/or replaced Procurement Item(s) prove to be inadequate, or fail its essential purpose, Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies an Eligible User may otherwise have under this Contract.

18. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:
- Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
 - Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate.
 - Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
 - Other insurance policies required in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the State before the Contract may commence.

The State reserves the right to require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

19. **RESERVED.**

20. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the Division, Contractor also agrees that the Contractor's Response will be a public document, and copies may be given to the public as permitted under GRAMA. The Division, the Eligible Users, and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.

21. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to an Eligible User, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract.

22. **ACCEPTANCE AND REJECTION:** An Eligible User shall have thirty (30) days after delivery of the Procurement Item(s) to perform an inspection of the Procurement Item(s) to determine whether the Procurement Item(s) conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Procurement Item(s) by the Eligible User.

If Contractor delivers nonconforming Procurement Item(s), an Eligible User may, at its option and at Contractor's expense: (i) return the Procurement Item(s) for a full refund; (ii) require Contractor to promptly correct or replace the nonconforming Procurement Item(s); or (iii) obtain replacement Procurement Item(s) from another source, subject to Contractor being responsible for any cover costs. Contractor shall not redeliver corrected or rejected Procurement Item(s) without: first, disclosing the former rejection or requirement for correction; and second, obtaining written consent of the Eligible User to redeliver the corrected Procurement Item(s). Repair, replacement, and other correction and redelivery shall be subject to the terms of this Contract.

23. **INVOICING:** Contractor will submit invoices within thirty (30) days after the delivery date of the Procurement Item(s) to the Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a discount at the time

of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.

24. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by an Eligible User, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the Eligible User within ten (10) business days of receipt of final payment, shall release the Eligible User from all claims and all liability to the Contractor. An Eligible User's payment for the Procurement Item(s) and/or Services shall not be deemed an acceptance of the Procurement Item(s) and is without prejudice to any and all claims that the Eligible User may have against Contractor. Contractor shall not charge Eligible Users electronic payment fees of any kind.
25. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the Division, the Eligible Users, and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the Division, the Eligible User, or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.
26. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The Division, the Eligible User, and Contractor each recognizes that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All Procurement Item(s), documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the Eligible User.
27. **OWNERSHIP IN CUSTOM DELIVERABLES:** In the event that Contractor provides Custom Deliverables to the Eligible User, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for the Eligible User and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the Eligible User, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the Eligible User any and all copyrights in and to the Custom Deliverables, subject to the following:
 1. Contractor has received payment for the Custom Deliverables,
 2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and
 3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of the Eligible User (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.
 4. Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by the Eligible User.

Contractor agrees to grant to the Eligible User a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for the Eligible User and the State of Utah to use the Custom Deliverables. The Eligible User reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the Eligible User's and the State of Utah's internal purposes, such Custom Deliverables. For the Goods delivered that consist of Contractor's scripts and code and are not considered Custom Deliverables or Work Product, for any reason whatsoever, Contractor grants the Eligible User a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for the Eligible User's and the State of Utah's internal business operation under this Contract. The Eligible User and the State of Utah may not participate in the transfer or sale of, create derivative works from, or in any way exploit Contractor's Intellectual Property Rights, in whole or in part.
28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the Division.
29. **REMEDIES:** Any of the following events will constitute cause for an Eligible User to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. An Eligible User may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, an Eligible User may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the Division; or (v) demand a full refund of any payment that the Eligible User has made to Contractor under this Contract for Procurement Item(s) that do not conform to this Contract.

30. **FORCE MAJEURE:** Neither an Eligible User nor Contractor will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. An Eligible User may terminate a purchase order resulting from this Contract after determining such delay will prevent Contractor's successful performance of this Contract.
31. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify an Eligible User of any potential or actual misuse or misappropriation of Confidential Information.
- Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the Eligible User, including anyone for whom the Eligible User is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.
- Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the Eligible User or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.
32. **LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
33. **ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Procurement Items based upon the same terms, conditions, and prices of this Contract.
34. **INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Procurement Items from this Contract will be treated as individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
35. **REPORTS AND FEES:**
- a. **Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the State in the form of a check, EFT or online payment through the Division's Automated Vendor Usage Management System. Checks will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, Attn: Cooperative Contracts, PO Box 141061, Salt Lake City, UT 84114-1061. The Administrative Fee will be the amount listed in the Solicitation and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.
- b. **Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the dollar volume of purchases by each Eligible User. The quarterly report will be provided in secure electronic format through the Division's Automated Vendor Usage Management System found at: <https://statecontracts.utah.gov/Vendor..>
- c. **Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:
- | Period End | Reports Due |
|--------------|-------------|
| March 31 | April 30 |
| June 30 | July 31 |
| September 30 | October 31 |
| December 31 | January 31 |
- d. **Fee Payment:** After the Division receives the quarterly utilization report, it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
- e. **Timely Reports and Fees:** If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.
36. **ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.
37. **END USER AGREEMENTS:** If Eligible Users are required by Contractor to sign an End User Agreement before participating in this Contract, then a copy of the End User Agreement must be attached to this Contract as an attachment. The term of the End User Agreement shall not exceed the term of this Contract, and the End User Agreement will automatically terminate upon the completion of termination of this Contract. An End User Agreement must reference this Contract, and may not be amended or changed unless approved in writing by the Division. Eligible Users will not be responsible or obligated for any early termination fees if the End User Agreement terminates as a result of completion or termination of this Contract.
38. **PUBLICITY:** Contractor shall submit to the Division for written approval all advertising and publicity matters relating to this Contract. It is within the Division's sole discretion whether to provide approval, which approval must be in writing.
39. **WORK ON STATE OF UTAH OR ELIGIBLE USER PREMISES:** Contractor shall ensure that personnel working on the premises of an Eligible User shall: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized

areas; (iii) follow all instructions; and (iv) be subject to a background check, prior to entering the premises. The Eligible User may remove any individual for a violation hereunder.

40. **CONTRACT INFORMATION:** During the duration of this Contract the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies within the State of Utah.
41. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
42. **SUSPENSION OF WORK:** Should circumstances arise which would cause an Eligible User to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the Eligible User.
43. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
44. **CHANGES IN SCOPE:** Any changes in the scope of the services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.
45. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
46. **TRAVEL COSTS:** If travel expenses are permitted by the Solicitation All travel costs associated with the delivery of Services under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to the vendor for correction.
47. **PERFORMANCE EVALUATION:** The Division may conduct a performance evaluation of Contractor, including Contractor's Subcontractors. Results of any evaluation may be made available to Contractor upon request.
48. **STANDARD OF CARE:** The services performed by Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the services that are the subject of this Contract. Contractor shall be liable to the Eligible User for claims, liabilities, additional burdens, penalties, damages, or third party claims (e.g., another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.
49. **REVIEWS:** The Division reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.
50. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The Division or an Eligible User, after consultation with Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the Division or an Eligible User appoints such an expert or panel, the Division or the Eligible User and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
51. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of an Eligible User, the Division, or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.
52. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice Eligible Users' right to enforce this Contract with respect to any default of this Contract or defect in the Procurement Item(s) that has not been cured, or of any of the following clauses, including: Governing Law and Venue, Laws and Regulations, Records Administration, Remedies, Dispute Resolution, Indemnity, Newly Manufactured, Indemnification Relating to Intellectual Property, Warranty of Procurement Item(s), Insurance.
53. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
54. **ERRORS AND OMISSIONS:** Contractor shall not take advantage of any errors and/or omissions in this Contract. The Contractor must promptly notify the Division of any errors and/or omissions that are discovered.
55. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
56. **ANTI-BOYCOTT ISRAEL:** In accordance with Utah Statute 63G-27-101, Contractor certifies that it is not currently engaged in a boycott of the State of Israel and agrees not to engage in a boycott of the State of Israel for the duration of the contract.

Attachment O

The following changes are modifying or supplementing the Master Agreement terms and conditions. The Master Agreement and the Participating Addendum together are referred to herein as the "Contract."

State of Montana Terms and Conditions

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

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

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

DEFENSE, INDEMNIFICATION /HOLD HARMLESS: Contractor shall defend, indemnify and hold harmless the State of Montana and the contracting agency hereunder and their elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, demands, causes of action, liabilities, damages, judgments, expenses or fees, including the reasonable cost of defense thereof and attorney fees, arising or awarded in favor of Contractor's or its subcontractor's employees or agents or third parties for bodily or personal injuries, death, damage to property, or financial or other loss resulting or allegedly resulting in whole or part from (i) the services performed or products provided or (ii) other acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of Participating Entity or the contracting agency.

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

CHOICE OF LAW AND VENUE: Montana law governs this Contract. The parties agree that any litigation concerning this bid, proposal, or this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees, except as provided in **Defense, Indemnification/Hold Harmless**.

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

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

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

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

DELIVERY: Weekends and holidays excepted, deliveries shall be **F.O.B. DESTINATION**, to the location shown below. The term "F.O.B. destination" as used in this clause, means free of expense to the Participating Entity or contracting agency and delivered to the location specified. The Contractor shall:

- Pack and mark the shipment to comply with specifications; or if the specifications do not contain specific packing or marking instructions, pack and mark the shipment in accordance with prevailing commercial practices and in such a manner as to ensure delivery in good condition and as required by this IFB;
- Prepare and distribute commercial bills of lading and Material Safety Data Sheets (MSDS) as appropriate;
- Deliver the shipment in good order and condition to the point of delivery specified in the IFB;
- Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the Participating Entity or contracting agency at the delivery point specified in the IFB;
- Furnish a delivery schedule and designate the mode of delivering carrier; and
- Pay and bear all charges to the specified points of delivery.

Federal Terms and Conditions

(Non-Construction)

1. NONDISCRIMINATION

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

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

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

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

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

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

2. LOBBYING

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

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

3. DRUG-FREE WORK PLACE

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

4. ENVIRONMENTAL PROTECTION

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

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

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

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

5. USE OF UNITED STATES FLAG VESSELS

a. The Contactor agrees that travel under this contract shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive

Practices Act of 1974 (49 U.S.C. 40118) and the inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

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

6. DEBARMENT AND SUSPENSION

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

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

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

7. BUY AMERICAN ACT

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

8. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY POLICES

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

9. COPELAND "ANTI-KICKBACK" ACT

The Contractor agrees that it will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this contract, the Copeland "Anti-Kickback" Act makes it unlawful to induce, by force, intimidation, threat or procuring dismissal from

employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

10. CONTRACT WORK HOURS AND SAFETY STANDARDS

The Contractor agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act.(40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1 1/2 times the basic rate of pay.

11. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

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

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

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

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

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

14. PROCUREMENT OF RECOVERED MATERIALS

Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the

highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

15. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

The Contractor agrees it will not provide or use covered telecommunications equipment or services in the performance of this contract in compliance with 2 CFR 200.216. Covered telecommunications equipment or services has the meaning provided in Public Law 115-232, section 889.