STATE OF ARKANSAS

Term Contract

Vendor No. 100157824
Contact Stacey Holt
Your reference SP-12-0039

FIRST CHOICE MEDICAL SUPPLY
127 INTERSTATE DR
RICHLAND MS 39218

Contract No. 4600027445
Date 08/07/2012

Contact Judy Shirley
Telephone 501-324-9314
Fax 501-324-9311

Our ref. ST
Incoterms UPS
UNITED PARCEL SERVICE

Send Invoice To:
As referenced on the Agency Purchase Order.

Ship To:
STATEWIDE DELIVERY
LITTLE ROCK AR 72201

Valid from: 08/15/2012
Valid to: 08/14/2013

Reference Tracking No: SP-12-0039

Commodity: Incontinent Briefs

Region: Western Region (NASPO Regions)
Southern Region (NASPO Regions)
Midwestern Region (NASPO Regions)
Eastern Region (NASPO Regions

Vendor Contact: Stacey Holt
Phone: (800)-809-4556
Fax: 800-921-2334
Email: stacey.holt@fcms.com

Contract Term: TERM

THIS IS A NASPO COOPERATIVE TERM CONTRACT ISSUED BY THE STATE OF ARKANSAS. THIS DOES NOT REPRESENT YOUR AUTHORITY TO SHIP. THE ORDERING AGENCY WILL ISSUE A PURCHASE ORDER TO AUTHORIZE SHIPMENT.

Contract Period: August 15, 2012 through August 13, 2013 with option(s) to revew in six (6) one (1) year increments or a portion thereof upon mutual agreement. The total term of contract not to exceed seven (7) years.

SCOPE: This is to establish a TERM contract to provide Incontinent Briefs for the State of Arkansas as well as to all participating National Association of State Procurement Officials (NASPO) members, on an as-requested basis, at various locations throughout the geographic regions of all participating NASPO members.

GENERAL CONDITIONS AND INSTRUCTIONS TO VENDOR:
All purchasing rules and regulations defined by the State of Arkansas apply to this document.

Purchasing Official/Fiscal Officer

08.15.12
Date

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The resulting contract(s) will be permissive use price agreements for NASPO participating states, for use in the participating states as provided in each state's Participating Addendum. this is a NASPO Cooperative TERM Contract issued by the State of Arkansas to provide Incontinenet Briefs through the NASPO Multi-State Agreement.

Pricing: Refer to the State of Arkansas website, http://www.dfa.arkansas.gov/Pages/default.aspx. This contract represents usage against #SP-12-0039 only.

This is a firm fixed price contract. Prices may not be increased except at the end of each contract period. As new products become available additional pricing and items may be added to the Contract. Contractor warrants that prices of materials, equipment and services, set forth herein do not exceed those charged by the contractor to any other customer purchasing the same goods or services under silimar conditions and in like or similar quantities. Contract is for the indefinite delivery and indefinite quanity for the supplies/services specified.

Item	Material/Description	Target QtyUM		Unit Price	Amount
0001	10024189 INCONTINENT BRIEF, MISC,EACH	732,468.72	Lump Sum	1.00	$ 732,468.72
		Estimated Net Value			**732,468.72**

Contact:

Judy Shirley, CPPB
DFA/Office of State Procurement
1509 W. 7th Street, Room 300
Little Rock, AR 72201
(501) 324-9316

PROPRIETARY INFORMATION

Proprietary information submitted in response will be processed in accordance with applicable State of Arkansas procurement procedures. Bids and documents pertaining to the (IFB) become the property of the State and shall be open to public inspection subsequent to bid opening. It is the responsibility of the Vendor to identify all proprietary information. The vendor should submit one complete copy of the response from which any proprietary information has been removed, i.e., a redacted copy. The redacted copy should reflect the same pagination as the original, show the empty space from which information was redacted, and should be submitted on a CD or flash drive. Except for the redacted information, the redacted copy must be identical to the original hard copy. The vendor is responsible for ensuring the redacted copy on CD/flash drive is protected against restoration of redacted data. The redacted copy will be open to public inspection under the Freedom of Information Act (FOIA) without further notice to the vendor. If you do not send a redacted copy your entire proposal will be open to public inspection with the exception of financial data (other than pricing). If the State of Arkansas deems redacted information to be subject to the FOIA the vendor will be contacted prior to sending out the information.

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NASPO INFORMATION: NASPO is a non-profit association dedicated to strengthening the procurement community through education, research and communication. The procurement strategy adopted for the Invitation for Bid has been approved by the NASPO Cooperative Purchasing Committee.

NASPO is comprised of the directors of the central purchasing offices in each of the fifty (50) states, the District of Columbia and the territories of the United States. NASPO is an organization though which member purchasing officials provide leadership in professional public purchasing, and improving the quality of purchasing and procurement, by exchanging information and cooperation to attain greater efficiency and economy.

The NASPO Cooperative Purchasing Incontinent Briefs Contract is a cooperative group-contracting consortium for state government departments, institutions and political subdivisions (i.e colleges, school districts, counties, cities, and other authorized entities) for the various states. The purpose of establishing an Incontinent Briefs contract is to enable participating states and the purchasing entities within those participating states, to join together in a cooperative multi-state contracting alliance, to achieve cost effective and efficient acquisition of quality products.

A state or authorized entity may elect to execute a "Participating Addendum" with the Contractors and submit a copy of the executed agreement to the Arkansas Office of State Procurement. The initial intent is to develop an Incontinent Briefs contract for use by the following states that have submitted an Intent to Participate with NASPO: Hawaii, Montana, and North Dakota.

Participation by any state, regardless of geographic location, or specific NASPO region, is permitted at any time during the term of the contract and upon any contract extensions by executing a "Participating Addendum" with the Contractors and submitting a copy to the Arkansas Office of State Procurement. Contractor must accept orders from and extend the contract prices to all participating states. The Contractors must allow qualified new state agencies, participating states facilities and political subdivisions joining the NASPO Cooperative Incontinent Briefs to be added to the current participants list and access contract prices throughout the term of the contract. The Arkansas Office of State Procurement reserves the right to add and delete other members, states, and political subdivision facilities during the term of this contract at the request of the Participating State and/or purchasing entity.

The laws of the State of Arkansas in accordance with the Uniform Commercial Code (UCC) as adopted by the State of Arkansas shall govern this procurement and any resulting contract. The laws of each participating state shall govern for purchases made by each respective participating state. A copy of the State of Arkansas Procurement Law and Regulations can be found at:

http://www.dfa.arkansas.gov/offices/procurement/guidelines/Pages/default.aspx
CONTRACT ADMINISTRATION AND CORRESPONDENCE: The State of Arkansas, Office of State Procurement, is the issuing state for this procurement and has been designated as the lead and administrative state for contract administration.

TERM OF CONTRACT: The term of this contract shall be for a period of twelve (12) months with option to renew in six (6) one (1) year increments or a portion thereof upon mutual agreement. Total term of contract not to exceed seven (7) years.

PRICE CHANGE CLAUSE: Prices will remain firm for the first twelve (12) months of the contract period. If adjustments are necessary at the end of the period, a request for increase must be submitted in writing to the Office of State Procurement with supporting manufacturer's documentation indicating percentage of increase and effective date. This increase must be for all customers in all states, not applicable to this contract alone. The State further

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reserves the right to reject any proposed price increase, cancel the contract and re-bid if determined to be in the best interest of the State. The Office of State Procurement will consider and rule on all price increase requests within twenty (20) working days of receipt of all required documentation from the contractor. Price increases are limited to one time per contract period in accordance with the terms of the Price Change Clause. The Price Change Clause will remain in effect for any agreed upon periods of extension.

It is understood and agreed in the event of a reduction in the manufacturer's price, the State of Arkansas will be given the full benefit of any such decline in price immediately upon the effective date of reduction. The State of Arkansas may monitor reductions by requesting the manufacturer to provide cost comparison data at any time after the first six months of the contract to reflect base cost (at time of award) to current cost (at time of request).

DEFINITIONS:

"IFB" means Invitation for Bid.

"Lead State" is the State of Arkansas.

"Multiple Award is a contract whereby more than one vendor is awarded the same line item allowing the end user to purchase based on availability of item and best price.

"NASPO" means the NATIONAL ASSOCIATION of STATE PROCUREMENT OFFICIALS, which is a non-profit association dedicated to strengthening the procurement community through education, research, and communication. It is made up of the directors of the central purchasing offices in each of the (50) states, the District of Columbia and the territories of the United States. NASPO is an organization through which the member purchasing officials provide leadership in professional public purchasing, improve the quality of purchasing and procurement, exchange information and cooperate to attain greater efficiency and economy.

"NASPO Initial States" are states that have indicated their intent to participate at the time of IFB release.

"Ordering Entity" a state or entity which has executed a Participating Addendum or other public agency authorized to place orders against the resulting contract.

QUANTITY: The quantities stated within are estimated for bidding purposes only. The State(s) may order more or less as is required during the term of the contract.

CUSTOMER SERVICE REPRESENTATIVES: Contractors must designate a Contract Manager, as well as a network of technical experts, customer service representatives and sales representatives capable of adequately serving all Ordering Entities under the resulting contract.

ORDERING PROCEDURES: Contractor must establish and maintain a toll-free phone number as well an Internet-based ordering system for order placement, order inquiry, price and availability inquiries. Contractor must maintain a web site, accessible by both the Ordering Entity and the State of Arkansas/Office of State Procurement, for the resulting contract. All orders placed against the resulting contract are subject to the Terms and Conditions of the contract. In the event of a conflict, the contract terms supersede. The website, at a minimum must provide:

1. Participating Entities to search Contractor's catalog based on key word, brand name, description, etc.;

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2. List Price, Discount Information, and Contract Pricing.

3. Participating Entities to place an order on-line, with a secure means for storing procurement card information;

4. Tracking/status information after an order is submitted.

5. A database for each Participating Entity, identifying the entity by a unique number, and containing an up-to-date listing of equipment and supplies which have been ordered during the life of the contract; the date and status of each order (including the date of delivery); the quantity and pricing; as well as the contact information for the individual at the Participating Entity that placed the order.

6. Contact information for ordering, billing, credit, service and other complaints/issues.

NOTE: Provide information as to how the above requirements will be met.

BACK-ORDERS: Contractor will take every precaution to prevent back-order and out of stock contract items necessary for the operation of the Ordering Entities' facilities.

ADDITIONS TO CONTRACT: The State intends to obtain for the duration of this contract or any contract extensions thereof, products that reflect the industry's latest medical technology. The State recognizes that there will be medical technological modifications and improvements that will become available during the life of this contract that will be unavailable on the date of the contract award.

Manufacturer's may make upgrades consistent with the National Retail Price List; however all items offered under this IFB must remain within the scope of the contract in price and functionality.

New items may be included as they become available (when added to the Contractor's catalog or ordering site) during the term of the Contract, after obtaining the approval of the NASPO Contract Administrator, in accordance with the provisions of the resulting contract. Pricing of new items to be introduced at the same or lesser price, including percentage discount, as equally specified items bid.

The State reserves the right to determine acceptability of new products offered, based on overall performance and specifications.

ADMINISTRATIVE FEE: The Contract prices proposed by Contractor and paid by Participating Entities shall include a contract usage administrative fee of one-half of one percent (0.5%). The percentage shall represent NASPO's contract usage administrative fee. No less than quarterly, the Contractor shall remit an amount equal to 0.5% of the Contractor's net (sales minus credits) quarterly Contract purchases to:
NASPO
Attn: Lee Ann Pope
201 East Main Street, Suite 1405
Lexington, KY 40507

The Administrative Fee will be accompanied by the corresponding quarterly report for all sales (See Reporting).
In each Participating Addendum, participating states may add language establishing dollar requirements, require permissive or mandatory use of the Contract for their respective state, or other criteria required by each State, depending on their statutes, policies and procedures, or as mandated by each State Purchasing/Procurement

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Director as outlined in their individual Participating Addendum. Each state may also negotiate with the contractor to establish an additional administrative fee back to that particular state, for purchases made by Ordering Entities within the state. The negotiation of any additional administrative fees as well as any other state-specific terms and conditions, will be solely up to each state and the Contractor, and must be memorialized in that state's Participating Addendum.

Reporting Time Line:

1st Quarter	July 1 - September 30
2nd Quarter	October 1 - December 31
3rd Quarter	January 1 - March 31
4th Quarter	April 1 - June 30

The reports should be in the same format as designated in NASPO Report Form (See attachment).

MINIMUM ORDERS: A minimum of $50.00 per order (including shipping) must be acceptable to contractors. The ordering entity is responsible for all shipping costs on order's less than $50.00.

Ordering Entities requesting special handling (FedEx, UPS Next Day, etc.) may be required by the Contractor to pay additional freight charges not to exceed the carrier's actual freight charges.

DELIVERY (FOB Destination, freight paid - Normal) is requested within ten (10) working days after receipt of order.

Repeated failure to meet specified delivery requirements may result in Contract termination, or the State may pursue any other remedies that may be available to it, at its discretion.

Deliveries requiring additional charges to remote locations must be negotiated separately between the Contractor and State authorizes. Remote locations being those not serviced by FedEx, UPS, DHL, United Postal Service, or other nationwide delivery services.

Definition - Normal Delivery: Unit prices quoted include, at no additional charge, the contractor providing "normal delivery" service. "Normal delivery" is defined in this contract as: "Delivery to a building with an accessible dock to one specific room or area by use of material handling equipment without breaking shipping container to hand truck deliver individual cartons."

Delivery locations falling in the perimeters of this definition will not be subject to additional delivery charges. Agencies are encouraged to check with the vendor prior to ordering to ascertain any possible additional delivery charge amounts.

PACKAGING: Finished items shall be packaged and cartoned so as to protect contents from damage during shipment, handling and storage. All cartons should indicate on the outside the name of item and the quantity contained if applicable.

RETURN OF ITEMS: Supplies which are unacceptable because of quality problems, duplicated shipments, outdated product, breakage, or other issues related to Contractor or product performance, shall be returned at Contractor's expense within five (5) business days after receipt of notification from the Ordering Entity; with no restocking charge. If the original packaging cannot be utilized for the return, Contractor will supply the Ordering Entity with appropriate

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return packaging within the five (5) business day period. Postage will be paid by Contractor, by issuing an appropriate label to the Ordering Entity via e-mail; and Contractor will assume the risk of loss in transit. The returned product shall either be replaced with acceptable supplies; or the Ordering Entity shall receive a credit or refund for the purchase price, at the Ordering Entity's discretion.

Supplies ordered in error by the Ordering Entities will be returned for credit within fifteen (15) days of receipt, at Ordering Entity's expense. However, they must be in a resalable condition (original container, unused). There shall be no restocking fee if returned products are resalable.

INVOICING: DO NOT INVOICE THE STATE OF ARKANSAS, OFFICE OF STATE PROCUREMENT. Contractor will invoice the Ordering Entity. All invoices must list the Entity name; unique identification number assigned by Contractor; Contract Number; date ordered; ship date; item description, including manufacturer name and model number, list price, discount applied; and net cost to Ordering Entity.

CUSTOMER ACCOUNT NUMBERS: Contractor must establish customer/account identification for use by each individual Ordering Entity. Some Ordering Entities may require (and Contractor will provide) multiple customer/account numbers (Agencies with multiple locations of service).

Contractor must establish each Participating State Contract Administrator with an account number for the review of pricing information.

STATE PURCHASING CARD: The successful vendor must accept both VISA and MasterCard Procurement/Purchasing Cards.

REGIONS:

Western Region to include: Washington, Oregon, California, Alaska, Hawaii, Montana, Idaho, Wyoming, Nevada, Utah, Colorado, Arizona, New Mexico.

Southern Region to include: Texas, Oklahoma, Arkansas, Louisiana, Mississippi, Tennessee, Kentucky, West Virginia, Virginia, North Carolina, South Carolina, Georgia, Alabama, Florida

Midwestern Region to include: North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri, Wisconsin, Illinois, Indiana, Michigan, Ohio

Eastern Region to include: Maine, New Hampshire, Vermont, New York, Pennsylvania, District of Columbia, Maryland, Delaware, New Jersey, Connecticut, Rhode Island, Massachusetts

Atlantic Territories to include: Purerto Rico, US Virgin Islands

Pacific Territories to include: American Samoa, Guam

Specifications

Product requirement:

Standard Brief Product Performance

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Size	Maximum inches	Minimum inches	Waist	ROA < seconds	Rewet < grams	Capacity > grams
Youth	21.0	15.0	15-22"	45.0	0.5	1,100
Small	26.0	17.5	20-31"	45.0	0.5	1,300
Medium	31.0	24.0	32-44"	45.0	0.5	1,500
Regular	33.0	27.0	40-48"	45.0	0.5	1,800
Large	36.5	29.5	45-58"	45.0	0.5	2,100
Extra Large	38.0	31.0	56-64"	45.0	0.5	2,100
Extra Extra Large	38.0	33.5	62-67"	45.0	0.5	2,100

Wings # Choice Plus , *First Quality or Prevail, - Brand Referenced - "No Substitute"

Robust Fastening System
" Two over-sized hook tabs per side attach anywhere to the front of the brief.
" Refastenable easy to apply and reposition.
" Strong hold resists pop-offs.
" Not impacted by sick care products. Retains fastenability, even after contact with creams, lotions, and powders.
" No adhesive to contact skin. Tabs have no exposed adhesive, minimizing potential for blistering or other irritation.

Anatomically Contoured Mat
" Provides maximum absorbency and dryness.
" Co-mingled polymer and fluff for odor-free protection.
" Blue dryness strip keeps skin dry.
" Diamond linear channeling wicks away moisture for improved comfort and skin protection.
" Leg gathers for superior fit and containment.

Breathable Side Panels
" No plastic
" Allows air to pass through, keeping skin dry and comfortable.

Cloth-like Backing
" Ultrasonically bonded for "quilted" look and feel.
" Soft and quiet.
" Enhanced comfort and dignity.

Capacity
" Requested at .5 grams or less

Sizes
Requested in all sizes. See Specifications for sizing options.

Additional Brands Bid: MSDS Sheets on the additional brand(s) bid should be included with bid response

Must meet or exceed the "Brands Referenced" as No Substitutions
Must be available in sizes indicated as No Substitutions
Must be ideal for extended & overnight usage
Worn exactly like underwear, pulls on and off

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Soft and gentle for a secure and comfortable fit
Must contain specially designed ventilated panels to ensure breath ability and comfort.
Must maintain healthy skin while ensuring clothing and bedding stay dry.
No plastic
Leg gathers for superior fit and comfortable
Protection against heavy incontinence
Easy-Lock Fastener® (ELF®) is requested
Retains fastenability with a refasten zone, even after contact with creams, lotions, and powders.
No adhesive to contact skin. Tabs have no exposed adhesive, minimizing potential for blistering or other irritation
Odor control features requested
Containment zones requested
Cannot be inventory of discontinued brands
Must retain the capacity levels requested at .5 grams or less
No repackaged items will be accepted

REPORTING REQUIREMENTS:

Quarterly Reports: Every three (3) months the Contractor will furnish quarterly reports to NASPO and the State of Arkansas/Office of State Procurement. Quarterly reports will accompany each Administrative Fee payment required under the resulting contract; and will be furnished electronically, in the format provided as NASPO request (or other format that the state may designate). These reports will include, for each account number, a listing of all items purchased during the prior quarter indicating the Item # and description, the unit list prices, unit net prices after discount, and the total dollar amount (as well as all other elements identified on Attachment B). The Contractor's report shall include the names of the accounts corresponding to the account numbers, as well as the home state for each account.

The reports are to be provided by the Contractor promptly, within thirty (30) days following the end of the quarter, along with the Administrative Fees. Failure to do so may result in breach of contract and may be cause for cancellation of contract for default.

Quarterly reports are to be sent to:
Arkansas Office of State Procurement
1509 West 7th Street, Room 300
Little Rock, AR 72201
E-mail: judy.shirley@dfa.arkansas.gov

Administrative Service Fee of 0.5% of total sales for the previous quarter will be sent to the following:

Lee Ann Pope
NASPO Cooperative Purchasing Venture Revolving Fund
Direct Deposit Account to Be Established

NOTE: FAILURE OF THE CONTRACTORS TO SUBMIT QUARTERLY USAGE REPORTS TO THE ARKANSAS OFFICE OF STATE PROCUREMENT, AND/OR FAILURE TO REMIT ADMINISTRATIVE FEE TO THE "NASPO COOPERATIVE PURCHASING VENTURE REVOLVING FUND" ON A QUARTERLY BASIS MAY BE CONSIDERED CONTRACT DEFAULT. FAILURE TO SUBMIT REMITTANCE OF EITHER ARTICLE WITHIN THIRTY - (30) DAYS AFTER THE END OF EACH QUARTER MAY BE CAUSE FOR CONTRACT CANCELLATION

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BY THE ARKANSAS OFFICE OF STATE PROCUREMENT.

The Contractor shall pay the administration fee in accordance with the Terms and Conditions of this contract. The NASPO Board of Directors and the NASPO Cooperative Purchasing Committee approved the administration fee. The administration fee is not negotiable. Some States may require an additional fee be paid directly to the participating States on purchases made by the purchasing entities within the State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporate in the "Participating Addendum" that is made part of the contract. All such agreements shall have no effect on the administrative fees or prices associated with the resulting primary contract.

RECORDS MAINTENANCE: The Contractor shall be required to maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and other procedures specified by the State of Arkansas. Access will be granted upon request, to State or Federal Government entities or any of their duly authorized representatives.

Financial and accounting records shall be made available, upon request, to the State of Arkansas' designee(s) at any time during the contract period and any extension thereof, and for five (5) years from expiration date and final payment on the contract or extension thereof.

GENERAL INFORMATION

SUBSTITUTION OF BRAND: Any substitutions of brand under this contract after award must be approved in writing by the Office of State Procurement prior to delivery. Brand substitutes must be in the same or higher GRADE with same or better brightness level. Any delivery of unauthorized substitutions will be considered contract default.

CANCELLATION: In the event the State no longer needs the service or commodity specified in the contract or purchase order due to program changes, changes in laws, rules, or regulations, relocation of offices, or lack of appropriated funding, the State may cancel the contract or purchase order by giving the contractor written notice of such cancellation 30 days prior to the date of cancellation.

Any purchase orders issued and received by the vendor prior to the cancellation date may be processed by the vendor and paid for but this does not obligate the State to continue the contract beyond the cancellation date.

SAMPLES: Prior to award, when requested, samples must be furnished free of expense to the state. Each sample should be marked with the bidder's name and address, bid number and item number. If samples are not destroyed during reasonable examination they will be returned at bidder's expense, if requested, within ten days following the opening of bids. All demonstrators will be returned after reasonable examination.

INVOICING: An itemized invoice addressed to the ordering entity reflecting entity's purchase order number, quantity, contract number SP-12-0039, description, and unit price is required.

OUTLINE AGREEMENT AWARD TERMS AND CONDITIONS

1. GENERAL: All terms and conditions stated in the invitation for bid govern this contract.

2. PRICES: Prices are firm and not subject to escalation, unless otherwise specified in the invitation for bid.

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3. DISCOUNTS: All cash discounts offered will be taken if earned.

4. TAXES: Most state agencies must pay state sales tax. Before billing, the contractor should contact the ordering agency to find out if that agency must pay sales tax. Itemize state sales tax when applicable on invoices.

5. BRAND NAME REFERENCES: The contractor guarantees that the commodity delivered is the same as specified in the bid.

6. GUARANTY: All items delivered are to be newly manufactured, in first- class condition, latest model and design, including, where applicable, containers suitable for shipment and storage unless otherwise indicated in the bid invitation. The contractor guarantees that everything furnished hereunder will be free from defects in design, workmanship, and material; that if sold by drawing, sample or specification, it will conform thereto and will serve the function for which furnished. The contractor further guarantees that if the items furnished hereunder are to be installed by the contractor, such items will function properly when installed. The contractor also guarantees that all applicable laws have been complied with relating to construction, packaging, labeling, and registration. The contractor's obligations under this paragraph shall survive for a period of one year from the date of delivery, unless otherwise specified in the invitation for bid.

7. AWARD: This contract award does not authorize shipment. Shipment against this contract is authorized by the receipt of a purchase order from the ordering agency. A written purchase order mailed or otherwise furnished to the contractor results in a binding obligation without further action by either party.

8. DELIVERY: The term of the contract is shown on the face of the contract award. The contractor is required to supply the state's needs during this term. The number of days required to place the commodity in the receiving agency's designated location under normal conditions is also shown. Consistent failure to meet delivery without a valid reason may cause removal from the bidders' list or suspension of eligibility for award.

9. BACK ORDERS OR DELAY IN DELIVERY: Back orders or failure to deliver within the time required may be default of the contract. The contractor must give written notice to the Office of State Procurement and ordering agency of the reason and the expected delivery date. If the reason is not acceptable, the contractor is in default. The Office of State Procurement has the right to extend delivery if reasons appear valid. If the date is not acceptable, the agency may buy elsewhere.

10.DELIVERY REQUIREMENTS: No substitutions or cancellations are permitted without written approval of the Office of State Procurement. Delivery shall be made during agency work hours only, 8:00 a.m. to 4:30 p.m., unless prior approval for other delivery has been obtained from the agency. Packing memoranda shall be enclosed with each shipment.

11.STORAGE: The ordering agency is responsible for storage if the contractor delivers within the time required and the agency cannot accept delivery.

12.DEFAULT: All commodities furnished will be subject to inspection and acceptance of the ordering agency after delivery. Default in promised delivery or failure to meet specifications authorizes the Office of State Procurement to cancel this contract or any portion of same and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting contractor.

13.VARIATION IN QUANTITY: The state assumes no liability for commodities produced, processed or shipped in

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excess of the amount specified herein.

14.INVOICING: The contractor shall submit an original and two copies of an itemized invoice showing the bid number and purchase request number when itemized in the invitation for bid. Invoices must be sent to "Invoice to" point shown on the purchase order.

15.STATE PROPERTY: Any specifications, drawing, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the contractor hereunder or in contemplation hereof or developed by the contractor for the use hereunder shall remain property of the state, be kept confidential, be used only as expressly authorized, and be returned at the contractor's expense to the F.O.B. point, properly identifying what is being returned.

16.ASSIGNMENT: This contract is not assignable nor the duties hereunder delegable by either party without the written consent of the other party to the contract.

17.OTHER REMEDIES: In addition to the remedies outlined herein, the contractor and the state have the right to pursue any other remedy permitted by law or in equity.

18.LACK OF FUNDS: The state may cancel this contract to the extent funds are no longer legally available for expenditures under this contract. Any delivered but unpaid for goods will be returned in normal condition to the contractor by the state. If the state is unable to return the commodities in normal condition and there are no funds legally available to pay for the goods, the contractor may file a claim with the Arkansas Claims Commission. If the contractor has provided services and there are no longer funds legally available to pay for the services, the contractor may file a claim.

19.QUANTITIES: The state may order more or less than the estimated quantity in the invitation for bid.

20.DISCLOSURE: Failure to make any disclosure required by the Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.

WSCA - NASPO TERMS AND CONDITIONS

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

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

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

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

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

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

DEFINITIONS:

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

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

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

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

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

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

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

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

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

GENERAL CONDITIONS AND INSTRUCTIONS TO VENDOR:

All purchasing rules and regulations defined by the State of Arkansas apply to this document.

STATE OF ARKANSAS

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

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

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

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

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

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

AWARD: Multiple master price agreements may be awarded as a result of this solicitation. Awards in requests for proposals (competitive sealed proposals) shall be made to the responsible offeror(s) whose proposals are determined to the most advantageous to the Participating States, taking into consideration price and the other evaluation factors set forth in the solicitation. Unless otherwise stated in the solicitation, an award in a solicitation denominated as an invitation to bid will be made to the lowest responsive and responsible bidder(s) meeting specifications and all bid terms and conditions. The Participating States reserve the right to award items separately or by grouping items, or by total lot.

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

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

GENERAL CONDITIONS AND INSTRUCTIONS TO VENDOR:

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DEFAULT AND REMEDIES:

A. Any of the following shall constitute cause to declare the master price agreement or any order under this master price agreement in default:
(1) Nonperformance of contractual requirements; or
(2) A material breach of any term or condition of this master price agreement.

B. A written notice of default, and an opportunity to cure, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the master price agreement), a Participating State (in the case of a breach of the Participating Addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.

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

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

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

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

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

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

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

GENERAL CONDITIONS AND INSTRUCTIONS TO VENDOR:
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DELIVERY: The prices offered shall be the delivered price to any NASPO state agency or purchasing entity. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

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

The contractor agrees to warrant and assume responsibility for each hardware, firmware, and/or software product (hereafter called the product) that it licenses, or sells, to the Purchasing Entity under this master price agreement. When applicable, Contractor warrants that product(s) furnished pursuant to this contract shall, when used in accordance with the product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a contractor proposes or an acquisition requires that specific products must perform as a package or system, this warranty shall apply to the products as a system.

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

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

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

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

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NONDISCRIMINATION: The offeror agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. The offeror further agrees to furnish information and reports to Participating State(s), upon request, for the purpose of determining compliance with these statutes. Offeror agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This master price agreement may be canceled if the offeror fails to comply with the provisions of these laws and regulations. The offeror must include this provision in every subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

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

INSPECTIONS: Goods furnished under this master price agreement shall be subject to inspection and testing by the Purchasing Entity at times and places determined by the Purchasing Entity. If the Purchasing Entity finds goods furnished to be incomplete or not in compliance with proposal specifications, the Purchasing Entity may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Purchasing Entity, the Purchasing Entity may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Purchasing Entity's rights including the rights and remedies under the Uniform Commercial Code.

PAYMENT: Payment for completion of a master price agreement order is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. The Contractor may assess overdue account charges on the outstanding balance in accordance with, and up to the maximum allowed by, the laws of the participating state. Payments may be remitted by mail or electronic funds transfer. Payments may also be made via a Purchasing Entity's "Purchasing Card".

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

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

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

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

GENERAL CONDITIONS AND INSTRUCTIONS TO VENDOR:

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

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

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

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

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

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

CERTIFICATION REGARDING DEBARMENT: The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by NASPO.

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

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

PRICES AS CEILING:

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

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

In instances NOT related to the established standards, committed volumes or volume bulk purchases of a participating state or states, the awarded vendor agrees to negotiate in good faith to reestablish ceiling prices or

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other more favorable terms and conditions applicable to future orders.

STATE PARTICIPATION/UNIQUE TERMS AND CONDITIONS:

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

After the solicitation has closed and an award has been made, additional NASPO Procurement Cooperative member States may be added with the consent of the contractor and the Lead State (on behalf of the NASPO Participating States) through execution of a Participating Addendum.

RENTAL AND LEASES:

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

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

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

Non-Appropriation:
The terms of the Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the goods or services due for multiple year agreements, or if operations of the

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paying entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.
A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order.

WSCA/NASPO eMARKET CENTER:
Awarded responders are required to participate in the WSCA/NASPO eMarket Center and, working through WSCA's contractor (SciQuest), connect with the eMarket Center. The ideal situation would be to use either configurations hosted (by SciQuest) or Punchout Level 2 catalog technology, but actual requirements will be determined by the Lead State Contract Administrator, WSCA, WSCA's contractor (SciQuest) and the awarded contractor, after award. Participation does not require an awarded responder to have any special level of technology or technological understanding.