

INVITATION TO BID

State of Ohio
Department of Administrative Services
General Services Division
Office of Procurement Services

The Original Signed Bid must be submitted to the Office of Procurement Services to receive consideration for award.		BIDDER NAME	
BID NUMBER <u>OT904010</u>	OPENING DATE (1:00 p.m.) <u>OCTOBER 26, 2009</u>	STREET ADDRESS <input type="checkbox"/> Check if remit address is different and list on separate sheet	
General Services Division Office of Procurement Services 4200 Surface Road Columbus, OH 43228-1395 Attn: Bid Desk		CITY STATE ZIP	
		COUNTY	MBE/EDGE CERTIFICATE NUMBER
		TELEPHONE NO. ()	TOLL FREE NO. 1 - ()
		CONTACT PERSON	FAX NO. ()
REQ./INDEX NO. DOH017	BID NOTICE DATE OCTOBER 1, 2009	CONTRACTOR'S E-MAIL ADDRESS	
SELECT YOUR PREFERRED METHOD OF RECEIVING PURCHASE ORDERS AND ENTER THE E-MAIL OR FAX NUMBER INFORMATION (ONLY SELECT ONE METHOD) <input type="checkbox"/> E-Mail <input type="checkbox"/> Fax			
In addition to the standard terms for payment, the payment terms for state agency(ies) will be 2%, 10 Days, Net 30 Days unless otherwise stated in the following space. If no discount is offered, bidder should circle "Net 30 Days". ____%, ____Days, Net 30 Days			
PARTICIPATING AGENCY(IES): LIMITED TO OHIO DOH/WIC; INDIANA AND WISCONSIN WIC PROGRAMS; AND OTHER STATE WIC PROGRAMS AUTHORIZED BY THE NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS (NASPO)			
ADDENDUM FOR CHANGE ADDENDUM NO.: 1 REVISION DATE: 09/30/09			
THE DEPARTMENT OF ADMINISTRATIVE SERVICES, OFFICE OF PROCUREMENT SERVICES IS SOLICITING BIDS FOR: WIC INFANT FOODS REBATE PROGRAM			
This addendum is issued to include the NASPO (National Association of State Procurement Officials) Cooperative Purchasing language.			
The State of Ohio in cooperation with NASPO is issuing a multi-state Invitation to Bid for the procurement of these services this language signifies this and includes the terms and conditions as pertaining to NASPO.			
Please insert pages 5, and 22-28 to this Bid document.			

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		TELEPHONE NO. ()	TOLL FREE NO. 1 - ()
		CONTACT PERSON	FAX NO. ()
REQ./INDEX NO. DOH017	BID NOTICE DATE SEPTEMBER 29, 2009	CONTRACTOR'S E-MAIL ADDRESS	
SELECT YOUR PREFERRED METHOD OF RECEIVING PURCHASE ORDERS AND ENTER THE E-MAIL OR FAX NUMBER INFORMATION (ONLY SELECT ONE METHOD)			
<input type="checkbox"/> E-Mail <input type="checkbox"/> Fax			
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PARTICIPATING AGENCY(IES): LIMITED TO OHIO DOH/WIC; INDIANA AND WISCONSIN WIC PROGRAMS; AND OTHER STATE WIC PROGRAMS AUTHORIZED BY THE NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS (NASPO)			
<p><u>THE DEPARTMENT OF ADMINISTRATIVE SERVICES, OFFICE OF PROCUREMENT SERVICES, IS SOLICITING BIDS FOR:</u></p> <p>WIC INFANT FOODS REBATE PROGRAM</p> <p>TERM OF CONTRACT: This Invitation to Bid is to establish a requirements contract to procure the described supplies or services on behalf of the above participating agency(ies). The agency(ies) may place orders against the Contract beginning 02/01/10 or upon the date when DAS signs the Contract, whichever is later in time. The Contract will expire 01/31/13 unless DAS terminates the Contract based upon reasons set forth in Article I-C of the Standard Contract Terms and Conditions. No agencies may place purchase orders against the Contract beyond the expiration date unless DAS renews the Contract by amendment or letter. The Contractor may begin performance under the Contract only upon receipt of a valid order from a participating state agency.</p> <p>INSTRUCTIONS TO BIDDERS AND CONTRACT TERMS AND CONDITIONS, Revised 10-01-07, are a part of this Invitation to Bid. Copies may be downloaded by clicking on this link: Instructions: Terms and Conditions for Bidding, Standard Contract Terms and Conditions, and Supplemental Contract Terms and Conditions. All prior versions of Instructions to Bidders, Contract Terms and Conditions are null and void.</p> <p>By submitting this Invitation to Bid, the Contractor certifies that Contractor has truthfully disclosed the location(s) where all services are to be performed; the location(s) where all applicable State contract data is to be maintained or made available; and the principal location of business for the Contractor and all subcontractors. The Contractor further certifies and acknowledges that Contractor will not change the country of the location(s) where services are performed and will not change the country of the location(s) where data is maintained or made available without prior written consent of the State.</p> <p>Any questions or clarifications regarding this Invitation to Bid should be directed to the Office of Procurement Services through the Internet at www.ohio.gov/procure. All questions should be submitted a minimum of five (5) working days prior to the bid opening date.</p>			
PRINTED/TYPED SIGNATURE	AUTHORIZED SIGNATURE (ORIGINAL SIGNATURE ONLY) (Please sign in blue ink)	DATE	

The ORIGINAL signed Bid must be submitted to the Office of Procurement Services by 1:00 o'clock p.m., on the above listed opening date to receive consideration for award. It is requested that the Bidder NOT sign their bid in BLACK ink. BIDDER CERTIFIES, by signature affixed to its bid, that the information provided by it in its bid including the certified statements, is accurate and complete. Bidder declares to have read and understood and agrees to be bound by all of the instructions, terms, conditions and specifications of this Invitation to Bid and agrees to fulfill the requirements of any awarded contract at the prices bid.

SPECIAL CONTRACT TERMS AND CONDITIONS

CANCELLATION AND TERMINATION: Any Contract awarded pursuant to this Bid may be terminated by either party upon at least one hundred and eighty (180) days advance written notice to the other party, subject to the following limitations. The Contractor shall not terminate any Contract awarded pursuant to this Bid prior to June 30, 2012. Failure to provide services in accordance with the requirements of any Contract awarded pursuant to this Bid may be cause for immediate termination by the State WIC Agency. In this case, the State WIC Agency agrees to provide at least thirty (30) days written notice to the Contractor to resolve the problem. Satisfactory resolution of the problem shall be determined by the State WIC Agency. In its notice, the State WIC Agency will specify what "satisfactory resolution of the problem" means.

Failure of the State WIC Agency to insist on strict performance on any Contract awarded pursuant to this Bid or to terminate any Contract awarded pursuant to this Bid after giving the Contractor the opportunity to resolve problems does not waive the State WIC Agency's right to insist on subsequent strict performance. In addition, any Contract awarded pursuant to this Bid shall automatically terminate under the circumstances specified in the following paragraph (Liquidated Damages). Notice of written cancellation or termination must be sent to the State WIC Agency or the Contractor by certified mail, return receipt requested or delivered in person, with proof of delivery.

LIQUIDATED DAMAGES: In the event that the Contractor fails or refuses to provide services as agreed in any Contract awarded pursuant to this Bid or terminates any Contract awarded pursuant to this Bid at any time during the term of the Contract or any extension of the Contract, the Contractor shall pay to the State WIC Agency monthly payments equal to the rebate amount the State WIC Agency would receive to maintain the net price per ounce of Contract brand infant foods established pursuant to this Bid, as if the Contract were still in effect. The Contractor shall continue to make such payments each month until the date the Contract or extension to the Contract has been scheduled by the State WIC Agency to expire as provided herein, or until the State WIC Agency has executed a Contract with another Contractor to provide substantially the same services as named in any Contract awarded pursuant to this Bid and the term of such Contract has commenced, whichever is sooner. Payments by the Contractor pursuant to this term shall be made in accordance with Section III, Item C

Payments by the Contractor shall be liquidated damages and not a penalty, and shall enable the State WIC Agency to continue to provide Contract brand infant foods to its then-current caseload of WIC participants within the funding amount appropriated to the State WIC Agency for that purpose.

The State WIC Agency shall make its best efforts to mitigate the liquidated damages obligation of the Contractor by securing another Contractor to provide substantially the same services as named in any Contract awarded pursuant to this Bid. It is estimated to require three (3) to five (5) months from the date the Contractor ceases provision of services to the date another Contractor commences provision of services. This section does not apply to disputed invoices.

FDA REGISTRATION: Pursuant to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) all domestic and foreign facilities that manufacture, process, pack or hold food for human or animal consumption in the United States are required to be registered with the Food & Drug Administration (FDA) no later than December 12, 2003. This registration includes owners, operators, or agents in charge of domestic or foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States. All domestic facilities, whether or not food enters interstate commerce, are required to register. Facilities may complete their registration with the FDA online at: <http://www.cfsan.fda.gov/~furl/ovffreg.html>

When applicable, by signature affixed on Page 1, the Bidder, or their supplier, certifies that they comply with this requirement.

***NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS (NASPO):** NASPO is a non-profit association dedicated to strengthening the procurement community through education, research, and communication. The procurement strategy adopted for this 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 50 states, the District of Columbia and the territories of the United States. NASPO is an organization through 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. See Exhibit One

*NASPO language inserted. See also Exhibit One.

EXHIBIT ONE

NASPO is a non-profit association dedicated to strengthening the procurement community through education, research, and communication. The procurement strategy adopted for this 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 50 states, the District of Columbia and the territories of the United States. NASPO is an organization through 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 WIC Infant Foods Rebate Program Contract is a cooperative group-Contracting consortium for state government departments for the various states. The purpose of establishing a WIC Infant Foods Rebate Program Contract is to enable participating states and the purchasing entities within those participating states, to join in a cooperative multi-state Contracting alliance, to achieve cost effective and efficient acquisition of quality products.

A state may elect to execute a "Participating Addendum" with the Contractors and submit a copy of the executed agreement to the State of Ohio - Office of Procurement Services. The initial intent is to develop a WIC Infant Foods Rebate Program Contract for use by the following states: Indiana and Wisconsin.

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 State of Ohio - Office of Procurement Services. 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 Purchasing WIC Infant Foods Rebate Program Contract to be added to the current participants list and access Contract prices throughout the term of the Contract. The State of Ohio - Office of Procurement Services 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 Ohio in accordance with the Ohio Revised Code (ORC) as adopted by the State of Ohio shall govern this procurement and any resulting Contract. The laws of each participating state shall govern for purchases made by each respective participating state.

EXHIBIT ONE

Standard Contract Terms and Conditions
National Association of State Procurement Officials (NASPO) Cooperative Procurements

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.

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

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

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

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

DEFINITIONS:

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

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

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

“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.

“Signatory State” means any State who is a member of NASPO that has executed the Memorandum of Agreement (MOA) required to become a member of the NASPO Procurement Cooperative.

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

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

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

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

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

DEFAULT AND REMEDIES:

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

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

EXHIBIT ONE

Standard Contract Terms and Conditions
National Association of State Procurement Officials (NASPO) Cooperative Procurements

- 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 terms and conditions specified by the lead state and any participating states 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.

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.

EXHIBIT ONE

Standard Contract Terms and Conditions
National Association of State Procurement Officials (NASPO) Cooperative Procurements

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.

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".

EXHIBIT ONE

Standard Contract Terms and Conditions
National Association of State Procurement Officials (NASPO) Cooperative Procurements

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.

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

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

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

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

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

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

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

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.

EXHIBIT ONE

Standard Contract Terms and Conditions
National Association of State Procurement Officials (NASPO) Cooperative Procurements

PRICES AS CEILING:

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

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

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

STATE PARTICIPATION/UNIQUE TERMS AND CONDITIONS:

Apart from the Lead State conducting the solicitation, the participating States have signified their initial intent to participate in a Master Price Agreement resulting from this Solicitation. 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.

Revision Date: November 27, 2006