

# NASPO Cooperative Purchasing Organization, LLC

## MEMORANDUM OF AGREEMENT FOR WSCA-NASPO COOPERATIVE PURCHASING PROGRAM

February 11, 2013

# CONTENTS

- I. Scope and Background
- II. Purposes
- III. Goals and Definitions
- IV. Authorization
- V. Organization and Operation
  - A. Membership and Participation
  - B. Organization
- VI. Procedures and Responsibilities
  - A. Cooperative Procurement
  - B. Claims and Protests
  - C. Commodity or Item Selection
- VII. Contracts
  - A. Documents
- VIII. Parties to this Memorandum of Agreement

# NASPO Cooperative Purchasing Organization, LLC

## MEMORANDUM OF AGREEMENT

### I. SCOPE AND BACKGROUND

The National Association of State Procurement Officials, Inc. (NASPO) consists of chief procurement officials from the fifty states, District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. NASPO promotes public procurement objectives that include cooperation to attain greater efficiency, economy, and customer satisfaction. Cooperative procurement is one means of achieving those objectives. On August 28, 2007, a Memorandum of Agreement (MOA) for NASPO cooperative procurement was signed to govern NASPO cooperative procurement (the "2007 NASPO MOA"). On September 24, 2007, the Western States Contracting Alliance (WSCA) executed a MOA to reaffirm and refine the WSCA cooperative agreement among the fifteen WSCA states (the "2007 WSCA MOA").

On October 10, 2012, NASPO formed NASPO Cooperative Purchasing Organization, LLC (the "Cooperative Organization"), a single member limited liability company, with NASPO as its sole member, to combine and operate the WSCA/NASPO cooperative purchasing programs under a single enterprise in order to improve the quality and efficiency of the public procurement function. The Cooperative Organization will do business as the "WSCA/NASPO Cooperative Purchasing Organization" or such other name as is approved in accordance with the Articles of Organization and Operating Agreement of the Cooperative Organization.

This Memorandum of Agreement (MOA) supersedes the 2007 NASPO MOA and the 2007 WSCA MOA as it is executed.

### II. PURPOSES

The purpose of this MOA is to establish the WSCA/NASPO Cooperative Purchasing Program (the "Cooperative Program") that is managed and administered by the Cooperative Organization, by which Participating States (as defined below) may join together in cooperative multi-state contracting, consistent with their respective procurement laws, where cooperative procurement is considered advantageous to the Participating States. This MOA outlines the contracting process, and the organization and operating policies in conducting cooperative

procurements. This MOA does not commit Signatory States (as defined below) to the expenditure of any public funds.

The purpose of the Cooperative Program is to implement multi-state contracting, where appropriate, to achieve cost-effective and efficient acquisition of quality products and services, through the standardization of specifications and/or the aggregation of like business and technical requirements to achieve more advantageous pricing or other terms.

Signing this MOA does not prohibit any state from entering into other group purchasing agreements. Nor does signing this MOA obligate any state to use contracts administered or entered into by the Cooperative Organization. All signing states will be eligible to be a Lead State (as defined below) and participate on contract sourcing teams.

### III. GOALS AND DEFINITIONS

#### A. Goals

1. Maximize cost savings for goods and services.
2. Reduce administrative costs.
3. Standardize specifications and consolidate requirements to encourage product availability and market competition.
4. Promote purchase of environmentally preferred products and services, including but not limited to, products and services that encourage pollution prevention, waste reduction and energy conservation.

#### B. Definitions

1. **“Chief Procurement Official”** means the head of the central procurement office of a NASPO member state (or commonwealth, district, or territory), or his or her designee.
2. **“Cooperative Agreement”** is a joint powers agreement (approved by the Cooperative Organization) that may be required between states that establishes the legal structure and authority for that entity to legally use a NASPO cooperative opportunity. This MOA serves as a cooperative agreement among Signatory States.

3. **“Cooperative Organization”** means NASPO Cooperative Purchasing Organization, LLC (a single member limited liability company, with NASPO as its sole member), which is responsible for management of the Cooperative Organization and administration of this MOA.
4. **“Intent to Participate”** means the form executed by a state Chief Procurement Official, or his or her designee, that describes the cooperative procurement and signifies the state’s initial intent to participate in the procurement, prior to solicitation being issued; subject to execution of a Participating Addendum, as defined in B.8 below.
5. **“Lead State”** means the state conducting the cooperative procurement and centrally administering any resulting agreement(s) with the assistance of the Cooperative Organization.
6. **“Master Agreement(s)”** means the cooperative agreement(s) when awarded and executed by the Lead State with awardee(s) of the cooperative procurement.
7. **“Member”** or **“membership”** means a member state of NASPO who has executed this MOA, i.e. a Signatory State.
8. **“Participating Addendum”** means a bilateral agreement executed by a contractor and a Participating State (or a political subdivision or other eligible entity with the written consent of its state’s Chief Procurement Official) that clarifies the terms and conditions of the Participating State related to the master agreement, e.g. ordering procedures specific to a state, or adds other state-specific language or other requirements.
9. **“Participating State”** means a Signatory State (or Commonwealth, District, or Territory) that has indicated its intent to participate in a specific cooperative procurement by executing an Intent to Participate, or who has subsequently executed a Participating Addendum. In instances where a Signatory State decides not to execute a Participating Addendum for a cooperative opportunity or for a contractor(s) awarded a Master Agreement, and with the written permission of the State’s Chief Procurement Official, political subdivision or other eligible entities may be given permission to execute Participating Addenda, thus becoming a **“Participating Entity”**.

10. **“Purchasing Entity”** means a Participating State, or other political subdivision (or nonprofit, if authorized by the Participating State), 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 a Participating Addendum, political subdivisions and other eligible entities of Participating States are deemed Purchasing Entities.
11. **“Signatory State”** means any State (or Commonwealth, District, or Territory) who is a member of NASPO that has executed this MOA.
12. **“Sourcing Team”** means the group of individuals, approved by the Lead State and the Cooperative Organization, who represents state purchasing operations or are subject matter experts in the area being solicited as a cooperative, who works with the Lead State to develop, create, evaluate, award and manage the cooperative opportunity.

#### IV. AUTHORIZATION

This MOA is entered into by Signatory States pursuant to their respective laws, rules and regulations authorizing cooperative procurement. This MOA may only be modified by a written amendment duly executed by the parties to this MOA. The Management Board of the Cooperative Organization has the authority to sign amendments with Signatory States.

#### V. ORGANIZATION AND OPERATION

##### A. Membership and Participation

1. The Cooperative Program shall consist of the Signatory States. Signatory States become Participating States on any procurement by execution of the Intent to Participate, or Participating Addendum after award. Unless otherwise limited in a Participating Addendum, political subdivisions of Participating States may participate in the awarded Master Agreements as Purchasing Entities. Political subdivisions or other eligible entities of states that are not Participating States may participate in NASPO cooperative procurements if permitted by the Chief Procurement Official of the relevant state, working through the Cooperative Organization.
2. Participation in this Cooperative Program and any specific cooperative procurement is voluntary. Participation in this Cooperative Program may be

initiated at any time by submitting to the Cooperative Organization this MOA signed by the state's Chief Procurement Official. Participation in this Cooperative Program may be discontinued by submitting a letter to that effect, signed by the state's Chief Procurement Official, to the Cooperative Organization. Participation in the Cooperative Program may not be discontinued until any Master Agreements in which the Participating State participates have expired, been terminated, or the contractual obligation of the Participating State has otherwise ended in accordance with the terms of the Master Agreement(s) or Participating Addendum.

#### B. Organization

This MOA shall be administered by the Cooperative Organization in accordance with this MOA and the Cooperative Organization's Operating Agreement.

### VI. PROCEDURES AND RESPONSIBILITIES

#### A. Cooperative Procurement

1. Cooperative contracting may occur when two or more Signatory States agree to solicit a product or service and combine their requirements in a single solicitation. If the Signatory States wish to use the WSCA/NASPO name and/or logo for the cooperative contract, the solicitation and process must be conducted in accordance with the terms of this MOA, and approved by the Cooperative Organization.
2. Any Signatory State with the desire to develop a cooperative contract using the WSCA/NASPO name and/or logo will notify the Cooperative Organization and provide all cooperative members with an equal opportunity to join with them in that endeavor; each member is responsible to coordinate such communication with the cooperative organization.
3. Participation in each cooperative contract is voluntary; however, initially two Signatory States must agree to participate in a cooperative procurement prior to the solicitation of any bid or proposal. Initial participation shall be signified using an executed Intent to Participate, prepared by the Lead State with the assistance of the Cooperative Organization.

4. Once an Intent to Participate has been executed and a Master Agreement has been awarded, the Participating State agrees to participate consistent with the terms of this MOA, the Master Agreement, and its Participating Addendum.
  
5. The Lead State, with the assistance of the Cooperative Organization, shall:
  - a. Develop a procurement plan including the time schedule, specifications/ requirements description, and the preliminary solicitation/contract document. The Cooperative Organization shall identify requirements necessary to integrate the proposed contract with the WSCA/NASPO eMarket Center.
  - b. Develop, in coordination with the Cooperative Organization, a budget for the cooperative opportunity.
  - c. Conduct surveys and market research, as required.
  - d. Prepare the Intent to Participate form for distribution to Signatory States that includes:
    - a recitation of why the cooperative procurement appears warranted;
    - a description of the scope of the contract and requirement/specifications;
    - an expected solicitation type and basis for award/evaluation criteria;
    - whether a single or multiple award is anticipated, and whether Participating States will be able to select and administer additional contracts (e.g. local or multiple awards);
    - the amount of the Cooperative Organization administrative fee, if any, that will be charged to vendors for orders placed under the contract, with the approval of the Cooperative Organization;
    - the term of the master contract and options;
    - the time being permitted for submission of bids and proposals;
    - any additional information requested by the Cooperative Organization or Lead State, such as:
      - o usage information
      - o known limitations on a Participating State's ability to order goods or services (such as those already on a state

- contract)
  - o unique state-specific terms and conditions applicable to orders in the Participating State, etc.
- e. Coordinate contract development, document review and approval with the Sourcing Team, in coordination with the Cooperative Organization; and use Cooperative Organization-approved forms where practicable, with changes approved by the Lead State's Chief Procurement Official and the Cooperative Organization.
- f. Issue the solicitation and receive the responses.
- g. Coordinate evaluation and award recommendations. Lead States may not apply preferences to the award of the agreement on behalf of Participating States, unless all preferences are identical. Lead States should use Participating Addenda for their own state to accommodate local awards based on state-specific preferences.
- h. Conduct final analysis and present award recommendation, through the state Chief Procurement Official, to the Cooperative Organization for approval.
- i. Execute the Master Agreement(s).
- j. Administer and manage the Master Agreement(s) with the support of the Sourcing Team, to include but not limited to:
  - 1. Coordinate with the Cooperative Organization to ensure that all Participating States sign the Participating Addendum, where required.
  - 2. Issue all contract modifications, or contract cancellation if required, with the assistance of the Cooperative Organization, except as concerns Participating Addendum terms and conditions unique to the Participating State.
  - 3. Provide copies of all contractual or related documents to all Participating States.
  - 4. Handle all protests in response to solicitations in accordance with its state laws and regulations, and confer with the Cooperative Organization to determine funding or other resources provided by the Cooperative Organization that may be required.
  - 5. Resolve any contract or supplier problems that cannot be resolved by Participating States individually and confer with the Cooperative Organization to determine funding or other

resources provided by the Cooperative Organization that may be required.

6. Participating States shall:

- a. Designate, by mutual agreement and after consultation with the Cooperative Organization, a state to be known as the Lead State, who on behalf of all participating states will conduct the procurement and administer the awarded Master Agreement(s) with the assistance of the Cooperative Organization.
- b. Participate, by providing members of a Sourcing Team or responding to requests from the Lead State and the Sourcing Team, in the development of documents and other related requirements such as: the development of bid lists; the solicitation of bids or proposals; bid evaluation and analysis; and contract award determination.
- c. Publish the notice of the solicitation posting by the Lead State consistent with each state's requirements.
- d. Prepare all necessary copies and distribute them to contract users within their state or jurisdiction.
- e. Submit orders independently and directly to the contractor who will ship and bill each ordering member in accordance with contractual requirements.
- f. Handle contract administration and expediting required for the orders they place, and communicate any unresolved problems to the Lead State.
- g. Modify the Participating Addendum as concerns terms and conditions unique to the Participating State.

B. Claims or Protests

1. Claims.

Any vendor or third party claims against a Participating or Lead State resulting from the cooperative

contracting process must be brought in the courts, or before the administrative body of that state in accordance with the laws of that state and will not be negotiated, arbitrated, or settled on its behalf by any of the other states. Lead States shall confer with the Cooperative Organization to determine funding or other resources that the Cooperative Organization in its discretion may make available to defend claims arising out of master contract issues.

## 2. Protests.

The Lead State shall be responsible for all protests in response to its solicitation in accordance with its state laws and regulations. Any state that receives a protest concerning a cooperative procurement conducted under this MOA will immediately notify the Cooperative Organization and Lead State, who shall notify all Participating States. Lead States shall confer with the Cooperative Organization to determine funding or other resources that the Cooperative Organization in its discretion may make available to defend protests arising out of cooperative procurements.

### C. Commodity or Service Selection

Commodities or services for cooperative contracting shall be approved by the Cooperative Organization, based on the following criteria:

1. Products or services that when purchased in volume will result in reduced costs.
2. Products or services that have a sustained recurring requirement.
3. Products or services with a supplier base to provide potentially adequate competition.
4. Products or services where cooperative contracting has been determined practicable, acceptable and economically feasible by participants in the cooperative effort.

## VII. CONTRACTS

### A. Documents

1. Master Agreements shall include the standard contractual requirements as prescribed by the Cooperative Organization, subject to the revisions authorized by section VI.A.5.
2. Master Agreements shall clearly delineate requirements for contract use, cancellation and withdrawal.
3. Each Master Agreement shall provide that the law of the Lead State shall apply to the procurement and resulting Master Agreement, and the law of the Participating State shall apply to the construction and effect of any Participating Addendum or order against the Master Agreement. Venue for any litigation between the contractor and Lead State concerning the construction and effect of the Master Agreement shall be in the Lead State. Venue for any litigation

concerning an order placed against the Master Agreement, or the effect of any Participating Addendum, shall be in the Participating States. Further, each state's administrative or judicatory hearing process shall be followed by the contractor if issues arise in a particular state.

4. Unless otherwise agreed by the Participating States, contracts shall not include any binding arbitration provisions.

5. Purchasing Entities in each Participating State shall issue their own purchase documents against the Master Agreement and conduct their own expediting or required follow-up.

VIII. PARTIES TO THIS MOA

Signatory States identified by separately affixed signatures agree to follow the procedures as set forth herein.

Kent D Beers  
CPO

Utah  
State

3/27/13  
Date

\_\_\_\_\_  
Douglas G. Richins, CEO  
NASPO Cooperative Purchasing Organization, LLC

\_\_\_\_\_  
Date