Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY MANAGEMENT AND BUDGET
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

February 2, 2012

CHANGE NOTICE NO. 6
TO
CONTRACT NO. 071B0200032
between
THE STATE OF MICHIGAN
And

Fax: (248) 356-8200

NAME & ADDRESS OF CONTRACTOR **Neopost USA, Inc.** **478 Wheelers Farm Rd.** **Milford, CT 06461** **Email: lisa.hunt@neopost.com**	TELEPHONE Roger Williams **Office (248) 356-2200. 2801** **Cell (248) 372-1350** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-9776 **Paula Hurst**
Contract Compliance Inspector: Paula Hurst **Postage and Mail ProcessEquipment, Accessories Services and Supplies - DMB**	
CONTRACT PERIOD: 1yr. + 2 one-year options From: **October 1, 2009** To: **November 13, 2012**	
TERMS **Net 30 days**	SHIPMENT **See Specifications**
F.O.B. **Delivered**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

NATURE OF CHANGE(S):

Effective February 2, 2012, this contract is DECREASED by $50,000.00. These funds are transferred to the following contract:

#071B0200028 (Pitney Bowes)

All other terms, conditions, pricing and specifications remain unchanged.

AUTHORITY/REASON:

Per DTMB Procurement.

DECREASE: $50,000.00

TOTAL REVISED ESTIMATED CONTRACT VALUE: $50,000.00

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

June 30, 2011

CHANGE NOTICE NO. 5
TO
CONTRACT NO. 071B0200032
between
THE STATE OF MICHIGAN
And

Fax: (248) 356-8200

NAME & ADDRESS OF CONTRACTOR **Neopost USA, Inc.** **478 Wheelers Farm Rd.** **Milford, CT 06461** **Email: lisa.hunt@neopost.com**	TELEPHONE Roger Williams **Office (248) 356-2200. 2801** **Cell (248) 372-1350** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-9776 **Paula Hurst**
Contract Compliance Inspector: Paula Hurst **Postage and Mail ProcessEquipment, Accessories Services and Supplies - DMB**	
CONTRACT PERIOD: 1yr. + 2 one-year options From: **October 1, 2009** To: **November 13, 2012**	
TERMS **Net 30 days**	SHIPMENT **See Specifications**
F.O.B. **Delivered**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

NATURE OF CHANGE(S):

Effective June 30, 2011, the final one-year option available on this Contract is utilized. The new Contract end date is November 13, 2012.

All other terms, conditions, pricing and specifications remain unchanged.

AUTHORITY/REASON:

Per vendor agreement dated June 29, 2011, and approval from DTMB Purchasing Operations.

TOTAL CONTRACT VALUE REMAINS: $100,000.00

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

March 28, 2011

CHANGE NOTICE NO. 4
TO
CONTRACT NO. 071B0200032
between
THE STATE OF MICHIGAN
And

Fax: (248) 356-8200

NAME & ADDRESS OF CONTRACTOR **Neopost USA, Inc.** **478 Wheelers Farm Rd.** **Milford, CT 06461** **Email: lisa.hunt@neopost.com**	TELEPHONE Roger Williams **Office (248) 356-2200. 2801** **Cell (248) 372-1350** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-9776 **Paula Greathouse**
Contract Compliance Inspector: Paula Greathouse **Postage and Mail ProcessEquipment, Accessories Services and Supplies - DMB**	
CONTRACT PERIOD: **1yr. + 2 one-year options** From: **October 1, 2009** To: **November 13, 2011**	
TERMS **Net 30 days**	SHIPMENT **See Specifications**
F.O.B. **Delivered**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

NATURE OF CHANGE(S):

Effective November 24, 2010, this Contract is DECREASED by $100,000.00. These funds are transferred to the following Contract:

#071B0200028 (Pitney Bowes)

All other terms, conditions, pricing and specifications remain unchanged.

AUTHORITY/REASON:

Per DTMB Purchasing Operations.

TOTAL REVISED CONTRACT VALUE: $100,000.00

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY MANAGEMENT AND BUDGET **March 15, 2011**
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 3
TO
CONTRACT NO. 071B0200032
between
THE STATE OF MICHIGAN
And

Fax: (248) 356-8200

NAME & ADDRESS OF CONTRACTOR **Neopost USA, Inc.** **478 Wheelers Farm Rd.** **Milford, CT 06461** **Email: lisa.hunt@neopost.com**	TELEPHONE Roger Williams **Office (248) 356-2200. 2801** **Cell (248) 372-1350** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-9776 **Paula Greathouse**
Contract Compliance Inspector: Paula Greathouse **Postage and Mail ProcessEquipment, Accessories Services and Supplies - DMB**	
CONTRACT PERIOD: **1yr. + 2 one-year options** From: **October 1, 2009** To: **November 13, 2011**	
TERMS **Net 30 days**	SHIPMENT **See Specifications**
F.O.B. **Delivered**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

NATURE OF CHANGE(S):

Effective March 15, 2011, the buyer and the Contract Compliance Inspector are both hereby CHANGED. The new buyer and Contract Compliance Inspector will both be Paula Greathouse. All other terms, conditions, specifications and pricing remain the same.

AUTHORITY/REASON:

Per DTMB Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: $200,000.00

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

December 9, 2010

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B0200032
between
THE STATE OF MICHIGAN
And

Fax: (248) 356-8200

NAME & ADDRESS OF CONTRACTOR **Neopost USA, Inc.** **478 Wheelers Farm Rd.** **Milford, CT 06461** **Email: lisa.hunt@neopost.com**	TELEPHONE Roger Williams **Office (248) 356-2200. 2801** **Cell (248) 372-1350** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-7374 **Joan Bosheff**
Contract Compliance Inspector: Jan Bosheff **Postage and Mail ProcessEquipment, Accessories Services and Supplies - DMB**	
CONTRACT PERIOD: 1yr. + 2 one-year options From: **October 1, 2009** To: **November 13, 2011**	
TERMS **Net 30 days**	SHIPMENT **See Specifications**
F.O.B. **Delivered**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

NATURE OF CHANGE(S):

Effective immediately one (1) option year is hereby exercised on this Contract. The new Contract expiration date is November 13, 2011.

AUTHORITY/REASON:

Per DMB Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: $200,000.00

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

November 6, 2009

CHANGE NOTICE NO. 1
OF
CONTRACT NO. 071B0200032
between
THE STATE OF MICHIGAN
And

Fax: (248) 356-8200

NAME & ADDRESS OF CONTRACTOR **Neopost, Inc.** **FME Corporation** **478 Wheelers Farm Rd.** **Milford, CT 06461** **Email: lisa.hunt@neopost.com**	TELEPHONE Roger Williams **Office (248) 356-2200. 2801** **Cell (248) 372-1350** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-7374 **Joan Bosheff**
Contract Compliance Inspector: Jan Bosheff **Postage and Mail ProcessEquipment, Accessories Services and Supplies - DMB**	
CONTRACT PERIOD: 1yr. + 2 one-year options From: **October 1, 2009** To: **November 13, 2010**	
TERMS **Net 30 days**	SHIPMENT **See Specifications**
F.O.B. **Delivered**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

NATURE OF CHANGE(S):

Effective immediately there is a correction to the vendor phone numbers as follows:

Roger Williams
Office: 248-356-2200 ext. 2801
Cell: 248-372-1350
Fax: 248-356-8200
Email: ro.williams@neopost.com

All other terms, conditions, specifications and pricing.

AUTHORITY/REASON:

Per DMB Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: $200,000.00

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

October 26, 2009

NOTICE
OF
CONTRACT NO. 071B0200032
between
THE STATE OF MICHIGAN
And

Fax: (248) 356-8200

NAME & ADDRESS OF CONTRACTOR **Neopost, Inc.** **FME Corporation** **478 Wheelers Farm Rd.** **Milford, CT 06461** **Email: l.hunt@neopost.com**	TELEPHONE Roger Williams **Office (248) 356-7419 ext. 2801** **Cell (248) 356-8200** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-7374 **Joan Bosheff**
Contract Compliance Inspector: Jan Bosheff **Postage and Mail ProcessEquipment, Accessories Services and Supplies - DMB**	
CONTRACT PERIOD: 1yr. + 2 one-year options From: **October 1, 2009** To: **November 13, 2010**	
TERMS **Net 30 days**	SHIPMENT **See Specifications**
F.O.B. **Delivered**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

The terms and conditions of this Contract are those of REQ #071R9200479, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: $200,000.00

Please Note:

The above Contract Expirations Date has been changed to November 13, 2010 and Section 2.243 Liquidated Damages is Deleted in its entirety.

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CONTRACT NO. 071B0200032
between
THE STATE OF MICHIGAN
And

Fax: (248) 356-8200

NAME & ADDRESS OF CONTRACTOR	TELEPHONE Roger Williams
Neopost, Inc. **FME Corporation** **478 Wheelers Farm Rd.** **Milford, CT 06461** **Email: l.hunt@neopost.com**	**Office (248) 356-7419 ext. 2801** **Cell (248) 356-8200** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-7374 **Joan Bosheff**

Contract Compliance Inspector: Jan Bosheff
Postage and Mail ProcessEquipment, Accessories Services and Supplies - DMB

CONTRACT PERIOD: **1yr. + 2 one-year options** From: **October 1, 2009** To: **September 30, 2010**

TERMS	SHIPMENT
Net 30 days	**See Specifications**
F.O.B.	SHIPPED FROM
Delivered	**N/A**

MINIMUM DELIVERY REQUIREMENTS
N/A

MISCELLANEOUS INFORMATION:

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

The terms and conditions of this Contract are those of REQ #071R9200479, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: $200,000.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the REQ No. 071R9200479. Orders for delivery will be issued directly by the Department of Management and Budget through the issuance of a Purchase Order Form.

All terms and conditions of the invitation to bid are made a part hereof.

FOR THE CONTRACTOR:	**FOR THE STATE:**
Neopost, Inc. Firm Name	Signature
Authorized Agent Signature	**Joan Bosheff, Buyer Specialist** Name/Title
Authorized Agent (Print or Type)	**Commodities Division, Purchasing Operations** Division
Date	Date

PARTICIPATING ADDENDUM FOR:
UNDER THE NASPO EASTERN STATES CONTRACTING ALLIANCE (NESCA)

MULTI-STATE POSTAGE AND MAIL PROCESSING EQUIPMENT, ACCESSORIES, SERVICES AND SUPPLIES
MASTER PRICE AGREEMENT OFF22

1. **Scope:** Unless otherwise defined, all capitalized terms in this Participating Addendum shall have the meanings ascribed to them in the Northeast States Contracting Alliance, Multi-State Postage and Mail Processing Equipment, Accessories, Services and Supplies Master Price Agreement, #OFF22 (the "NESCA Master Agreement").

The Commonwealth of Massachusetts, through the Operational Services Division, is the "Lead State" on behalf of the National Association of State Procurement Officials (NASPO) organization and in conjunction with the States of Connecticut, New Hampshire, Vermont, Arkansas and Hawaii soliciting bids for new digital postage equipment and mail processing equipment, accessories, supplies and services as well as predecessor services and supplies for all equipment categories.

The following are authorized Purchasing Entities under this Participating Addendum:

All State of Michigan agencies and political subdivisions such as any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college as defined in Public Act 431 of 1984.

2. **Changes**:

a) State Administrative Fee

The Contractor must collect an Administrative Fee on the sales transacted under this Contract. The Contractor must remit the Administrative Fee in U.S. dollars within 30 days after the end of the quarterly sales reporting period. The Administrative Fee equals one percent of the total quarterly sales reported. Contractor must include the Administrative Fee in their prices.

The Contractor must remit any monies due as a result of the close-out report at the time the close-out report is submitted to Purchasing Operations.

The Contractor must pay the Administrative Fee by check. To ensure the payment is credited properly, the Contractor must identify the check as an "Administrative Fee" and include the following information with the payment: *Applicable State BPO Number, report amount(s), and reporting period covered.*

Contractor must forward the check to the following address:

Department of Management and Budget
Financial Services – Cashier Unit
Lewis Cass Building
320 South Walnut St.
P.O. Box 30681
Lansing, MI 48909

Please make check payable to: State of Michigan

b) Refer to additional State Michigan Terms and Conditions attached to this document.

3. **Lease Agreements**: All equipment leased under the NESCA Master Agreement OFF22 will be procured utilizing the OFF22 Equipment Confirmation Form under the terms specified in the master agreement. Lease documents will not be signed by the participating Eligible Entities.

4. **Primary Contact**: Participating Entity's primary contact for this Participating Addendum is:

Name:	Tony Des Chenes, Director, Commodities Division Purchasing Operations Michigan Department of Management and Budget
Address:	530 West Allegan Street 2nd Floor, Mason Building Lansing, Michigan 48933
Telephone:	(517) 335-1559
Fax:	(517) 335-0046
E-mail:	deschenesa1@michigan.gov

5. **Price Agreement Number**: All Purchase Orders issued by Purchasing Entities within the jurisdiction of this Participating Addendum shall include **NESCA Master Agreement number: OFF22**

6. **Purchase Orders**: All Purchasing Entities issuing valid Purchase Orders will be bound by the terms and conditions of the NESCA Master Agreement including, without limitation, the obligation to pay Contractor for Service and Equipment provided. The parties acknowledge and agree that orders submitted to Contractor from a Purchasing Entity through the Purchasing Entity's Business Procurement Card are authorized Purchase Orders under the NESCA Master Agreement.

7. **Order of Precedence**: The parties acknowledge and agree that:

(a) In the event of a conflict between the terms contained in the NESCA Master Agreement and this Participating Addendum, the terms and conditions of this Participating Addendum will control as between Contractor and the Participating Entity.

This Participating Addendum and the NESCA Master Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the NESCA Master Agreement, together with its exhibits, shall not be added to or incorporated into this Participating Addendum or the NESCA Master Agreement and its exhibits, by any subsequent Purchase Order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum and the NESCA Master Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

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

Participating Entity:_____	Contractor: _____
By:_____	By: _____
Name:_____	Name:_____
Title:_____	Title:_____
Date:_____	Date:_____

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

OPERATIONAL SERVICES DIVISION

ONE ASHBURTON PLACE, 10TH FLOOR, ROOM 1017, BOSTON, MASSACHUSETTS 02108-1552

MULTI-STATE POSTAGE AND MAIL PROCESSING EQUIPMENT, ACCESSORIES, SERVICES AND SUPPLIES

CONTRACT #OFF22

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SECTION 1

GENERAL RFR INFORMATION FOR ALL CATEGORIES

The terms of 801 CMR 21.00: Procurement of Commodities and Services (and 808 CMR 1.00: Compliance, Reporting and Auditing for Human and Social Services, if applicable) are incorporated by reference into this RFR. Words used in this RFR shall have the meanings defined in 801 CMR 21.00 (and 808 CMR 1.00, if applicable). Additional definitions may also be identified in this RFR. Unless otherwise specified in this RFR, all communications, responses, and documentation must be in English, all measurements must be provided in feet, inches, and pounds and all cost proposals or figures in U.S. currency. All responses must be submitted in accordance with the specific terms of this RFR. No electronic responses may be submitted in response to this RFR.

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.

ADMINISTRATIVE FEE. The Contractor shall pay the administrative fee in accordance with the Terms and Conditions of this contract. The NASPO Cooperative Purchasing Committee approved the administrative fee. The administrative fee is not negotiable. The NASPO administrative fee shall be included in the prices offered and paid by Purchasing Entities under this contract. It will not be a separate line item or charge.

The administrative fee for this contract is **0.5% (.005)** of the total sales for the previous calendar quarter. For example, 0.5% (.005) of $1,000.00 equals $5.00.

If this contract is executed during a calendar quarter, the first administrative fee payment and utilization report would be due thirty (30) days after the end of the calendar quarter in which the first sales under the contract took place.

The contractor will pay the administrative fee within thirty (30) days following the end of each calendar quarter. Failure to do so may result in breach of contract and may be cause for cancellation of the contract for cause.

Quarterly payments must be made out to National Association of State Purchasing Officials (NASPO) and sent to:

NASPO Program Manager
201 East Main Street, Suite 1405
Lexington, KY 40507

A quarterly sales report shall be submitted with the payment via e-mail in Microsoft Excel spreadsheet format. This quarterly sales report shall include the net (gross sales minus returns) sales for the period subtotaled by Purchasing Entity name, within the Purchasing Entity's state name. This report is not the detailed quarterly utilization report outlined in **Section 3.36**, but a summary of net sales that allows for the balancing of the administrative fee payment.

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.

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.

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.

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.

COMM-PASS. For the life of any Statewide Contract awarded pursuant to this RFR, each awarded vendor must maintain a Comm-PASS Subscriber account, which is payable by credit card and created and managed by the vendor on line at **www.comm-pass.com**. The annual Comm-PASS Subscription fee is currently $275.00 per email address. The fee was established with the approval of the Executive Office for Administration and Finance and is subject to change, if necessary. The Comm-PASS Subscription fee is utilized solely for the operation, maintenance and development of Comm-PASS.

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.

COSTS. Costs which are not specifically identified in the bidder's response, and accepted by an Eligible Entity as part of a contract, will not be compensated under any contract awarded pursuant to this RFR. The Commonwealth will not be responsible for any costs or expenses incurred by bidders responding to this RFR.

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.

EQUIPMENT LEASE CLARIFICATION. Although pursuant to Section 4, Contract Termination Or Suspension, of the Commonwealth Terms and Conditions, the Commonwealth is allowed to terminate without cause, the Commonwealth hereby notifies all Bidders that it **will not** exercise the termination without cause provision for all leased equipment under a contract resulting from this RFR.

This clarification **does not** apply to equipment purchased pursuant to this RFR.

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

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.

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.

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.

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.

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.

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.

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.

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

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.

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.

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.

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.

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.

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.

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".

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.

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 utilizing the **"Promotional Opportunities"** noted below.

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.

PROMOTIONAL OPPORTUNITIES. The OSD Contract Manager and the PMT reserve the right to create a promotional price discount opportunity such as a "Big Buy/Save Smart" for all Eligible Entities during the Term of the Contract. In addition, Contractors may present promotional discount opportunities such as extended warranties, discounted lease rates, service and/or supply cost reductions to the OSD Contract Manager and PMT for review and approval prior to the promotional opportunity being offered to Eligible Entities.

If promotional opportunities are approved by the OSD Contract Manager and the PMT then the promotional opportunity must be available to all Eligible Entities by the Contractor(s).

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.

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

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.

STATE PARTICIPATION/UNIQUE TERMS AND CONDITIONS. Apart from the Lead State conducting the solicitation, the States indicated within the RFR A have signified their initial intent to participate in a Master Price Agreement resulting from this Solicitation. Each individual State may include 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.

SUBCONTRACTING POLICIES. Prior approval of the Eligible Entity is required for any subcontracted service of the contract. Contractors are responsible for the satisfactory performance and adequate oversight of its subcontractors. Subcontractors are required to meet the same state and federal financial and program reporting requirements and are held to the same reimbursable cost standards as contractors.

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.

TERMS AND CONDITIONS. All bidders awarded a Statewide Contract **must** provide the same terms and conditions to all Eligible Entities identified in this RFR. The Contractor(s) is prohibited from negotiating separate contracts, agreements, licenses, or other terms and conditions with any Eligible Entity that differ from or are in addition to the terms and conditions negotiated as part of the Statewide Contract unless agreed to in writing by the OSD Contract Manager. Breach of this requirement will result in sanctions determined by the OSD Contract Manager and PMT.

TRADE-IN POLICY. The Commonwealth reserves the right to offer used equipment as a discount trade for the purpose of decreasing the purchase and/or lease costs in accordance with values in effect at the time of trade-in to the extent allowed by the surplus property regulations. Bidders must submit used equipment trade-in values with the semi-annual report. Trade-ins are open market items. All trade-in equipment will be on an "as is basis," and there will be no guarantee as to its condition or should any be inferred. All trade-in equipment must be picked up by the Contractor at the location indicated by the Eligible Entity and must be removed at no cost to the Eligible Entity within 10 business days from acceptance of the new equipment.

PARTICIPATION IN THE ANNUAL OSD MARKETING EVENTS (STAR AND EPP VENDOR FAIRS).**OSD hosts two annual marketing and training events to educate public purchasers on the commodities and services available on Statewide Contracts, to highlight innovative Environmentally Preferable Products and to provide marketing and networking opportunities to the business community:**

- The Statewide Training And Resource (STAR) Exposition takes place in the Spring (April or May) of each year, and

- The Environmentally Preferable Products (EPP) Vendor Fair and Conference is conducted in the Fall (October or early November).

Both events are well attended by public purchasers representing all Commonwealth agencies, cities and towns across the Commonwealth, independent authorities, higher education and eligible not for profit human and social service organizations. These events provide exceptional opportunities for Statewide Contractors to market directly to thousands of attendees. OSD believes that these events have significant marketing value and are extremely cost effective.

The one-day STAR event is held currently at the Bayside Expo Center in Boston and only Statewide Contractors may be exhibitors. The cost to exhibit is approximately $1,000. OSD believes that the STAR event is important because it provides public purchasers with an opportunity to meet over 300 Statewide Contractors at one event and receive important information on new products, services and technologies. Also, it provides Statewide Contractors with the opportunity to meet and renew business relationships with existing customers and to market their business to approximately 2,000 attendees, many of whom represent potential new customers.

The one-day EPP Vendor Fair and Conference event is held in Worcester at the DCU Center. The target audience is the same as STAR but with a focus on EPPs (e.g. products made with recycled content, or those able to save energy, conserve water or other resources, reduce waste, etc.). The exhibitors are both Statewide Contractors and businesses that offer EPPs and seek to do more business with the Commonwealth. The estimated cost to exhibit is $600. The key benefits include the opportunity for EPP vendors to showcase their companies and environmentally friendly products/services to over 1000 attendees and to make contacts with a host of facility and environmental managers. The PMT reserves the right to determine if a particular awarded Contractor will be considered an EPP Vendor.

Please note that participation in these events is not required and no points will be awarded to those Bidders who commit to participate in these events. Bidders should indicate their willingness to participate in the STAR event and/or the EPP event in their RFR Response and will be expected to honor their commitments for the duration of their Contract if awarded a Contract.

WORLD TRADE ORGANIZATION GOVERNMENT PROCUREMENT AGREEMENT. This Request for Response is subject to the **World Trade Organization Government Procurement Agreement (WTO/GPA).** for advertisement of the RFR for forty (40) days prior to the due date because the procurement is greater than $477,000 dollars over the entire term of the procurement. The forty (40) days may include both the notice of intent and the time the RFR is available.

SECTION 2

PROCUREMENT SCOPE AND GENERAL REQUIREMENTS FOR ALL CATEGORIES

2.1 PURPOSE OF PROCUREMENT (SCOPE). The Commonwealth of Massachusetts, through the Operational Services Division, is the "Lead State" on behalf of the National Association of State Procurement Officials (NASPO) organization and in conjunction with the States of Connecticut, New Hampshire, Vermont, Arkansas, Hawaii, Rhode Island and New Mexico soliciting bids for new digital postage equipment and mail processing equipment, accessories, supplies and services as well as predecessor services and supplies for all equipment categories.

Category 1 - Postage and Mailing Systems Equipment, Accessories, Service and Supplies

- Including full equipment and accessory product line,
    - Service maintenance levels –
        - Plan A - Annual plan -normal business hours rate,
        - Plan B - Time and Materials – Hourly Rate normal business hours, % off Parts,
        - Time and Materials – Hourly Rate weekend business hours, % off Parts,
        - Time and Materials – Hourly Rate holiday business hours, % off Parts,
        - Time and Materials – Hourly Rate 24x7 business hours, % off Parts,
        - Time and Materials – Hourly Rate 2 hour emergency response normal business hours, % off Parts,
- Supplies and consumables- % discount off, dated catalog specific to contract scope,
- Mailroom furniture- % discount off, dated catalog specific to contract scope.

Category 2- Mail Processing Equipment, Accessories, Service and Supplies

- Including full equipment and accessory product line,
    - Service maintenance levels –
        - Plan A - Annual plan -normal business hours rate,
        - Plan B - Time and Materials – Hourly Rate normal business hours, % off Parts,
        - Time and Materials – Hourly Rate weekend business hours, % off Parts,
        - Time and Materials – Hourly Rate holiday business hours, % off Parts,
        - Time and Materials – Hourly Rate 24x7 business hours, % off Parts,
        - Time and Materials – Hourly Rate 2 hour emergency response normal business hours, % off Parts,
- Supplies and consumables- % discount off, dated supply catalog specific to contract scope, for the following sub-categories;
- Mail processing furniture- % discount off, dated catalog specific to contract scope

2A. Folding/Inserting Equipment
2B. Folding Equipment
2C. Tabbing Equipment
2D. Sorting Equipment
2E. Mail/Letter Opening Equipment
2F. Pressure Sealing Equipment
2G. Check Imprinting/Endorsing Equipment
2H. Bursting Equipment

2.2 LIMITED MULTIPLE AWARDS. The Commonwealth of Massachusetts will make the following maximum limited multiple number of awards per category and sub-categories as detailed below. The PMT reserves the right to limit bidder equipment awards to one **(1) manufacturer brand per award**.

Category and Sub-Category	Maximum Number of Awards
Category 1	3 Awards
Category 2, Sub-Category 2A	3 Awards
Category 2, Sub-Category 2B	3 Awards
Category 2, Sub-Category 2C	3 Awards
Category 2, Sub-Category 2D	3 Awards
Category 2, Sub-Category 2E	3 Awards
Category 2, Sub-Category 2F	3 Awards
Category 2, Sub-Category 2G	3 Awards
Category 2, Sub-Category 2H	3 Awards

The State of New Hampshire intends to use the contract awards in two ways:

First – For purchases that would normally be put out for bid, our intention instead would be to utilize the awarded contractors in each Category and Sub-Category who have the lowest equipment costs.

Second – For equipment that would normally be purchased by the State as a "Sole Source" (purchase of equipment that would need to be compatible with existing equipment) we would purchase equipment from that particular manufacturer or their representative in the State.

The State of New Hampshire reserves the right to put any item(s) out to bid at any time in the future.

The Commonwealth reserves the right to render more or less than the identified maximum number of awards in a particular category(ies) and/or sub-categories in the event that the Commonwealth's needs are not sufficiently covered by the awarded qualified Bidders. During the term of the contract, the PMT reserves the right to, without duplication of manufacture brand and subject to the Bidders acceptance, award additional Bidders in the order of the evaluation scores.

The Bidder **must** accept all the terms and conditions of the RFR including a contract term concurrent with the original contract term.

If the original list of Bidders is exhausted or the Team determines that it is in the best interest of the Commonwealth to open enroll then the OSD Contract Manager and PMT reserve the right to allow an open enrollment period during the contract term for one or more categories and/or sub-categories.

2.2.1 Open Enrollment. The OSD Contract Manager and PMT Manager reserve the right to allow an "Open Enrollment" period during the term of the contract if it is determined to be in the best interest of the Commonwealth of Massachusetts. After the initial award of this RFR, the PMT may allow bidders an opportunity to submit responses in accordance with an "Open Enrollment" period at a time specified by the PMT during the contract period. The PMT would evaluate responses based upon the evaluation criteria and make awards for those Bidders who qualified based upon the evaluation criteria. Contracts awarded as a result of the "Open Enrollment Period" process will run concurrently with the other awarded OFF22 contracts.

2.2.2 Technological Advancements. In the event that future technology enhancements create a situation where equipment exceeds the current minimum technical requirements per category(ies) and/or sub-category(ies) then the OSD Contract Manager and PMT reserve the right to modify or create a category and/or sub-category at anytime during the contract term and negotiate with the current contractors or allow an open enrollment for the category(ies) and/or sub-category(ies) for new bid submissions.

2.3 ELIGIBLE ENTITIES. This Statewide Contract may be used by all Eligible Entities as defined under the Issuer(s) tab for the OFF22 open solicitation on Comm-PASS.

2.3.1 Entities other than State "Eligible Entities" as defined in the Definitions section can acquire equipment through all acquisition options under this Contract. However, the Commonwealth is not responsible for any financial obligations, obligation for default or breach of terms on behalf of these other Eligible Entities.

2.3.2 Cooperative Purchasing. Any contract resulting from this RFR, including option years, may be extended to other designated State Purchasing Authorities for the purchase of commodities and services, in contract years, subject to the Commonwealth of Massachusetts' State Contract, which may be supplemented by each State's terms and conditions. During the contract years if a State decides to partner with the Commonwealth of Massachusetts existing contract, the OSD Contract Manager and the PMT may require the contractors affected within a category and/or sub-category to re-negotiate their pricing structure to reflect the enhanced potential procurement power of the contract.

2.4 CONTRACT TERM AND EXTENSIONS. The initial term of this Contract is three (3) year(s). In addition, this contract has two (2) options to renew of up to one (1) year each with a maximum contract term of five (5) years (including the initial term and all possible renewal options)

2.4.1 Performance and payment time frames which continue beyond the duration of the contract. All term leases, rentals, maintenance or other agreements for services entered into during the duration of this contract and whose performance and payment time frames extend beyond the duration of this contract shall remain in effect for performance and payment purposes (limited to the time frame and services established per each written agreement). No new leases, rentals, maintenance or other **agreements** for services may be executed after the contract has expired. Any contract termination or suspension shall not automatically terminate any leases, rentals, maintenance or other agreements for services already in place unless the Eligible Entity also terminates said leases, rentals, maintenance or other agreements for service, which were executed pursuant to the main contract.

2.5 ESTIMATED QUANTITIES. Any quantity(ies) listed in this RFR are estimated only and may be increased or decreased in accordance with the actual requirements of the Commonwealth Eligible Entities based upon an estimated five (5) year period.

- **Massachusetts – $15,000,000.00**
- **Connecticut –$6,000,000.00**
- **Vermont –$1,750,000.00**
- **New Hampshire –$2,500,000.00**
- **Hawaii – None Available.**
- **Arkansas – $10,000,000.00**
- **Rhode Island - $3,875,000.00**
- **New Mexico - $None Available**

These figures are estimated and were obtained from quarterly and/or semi-annual reports obtained from the current Contractors.

2.6 PRICE ADJUSTMENTS. The Percentage (%) Off the suggested retail price for equipment, accessories and supplies will remain fixed for the term of the contract. All dated suggested retail price lists utilized in the bid submission may not be increased for the initial **twelve (12) months** of the contract award. If necessary, ninety (90) days prior to the end of the initial twelve (12) month period, Contractors must submit a cover letter explaining the updated suggested retail price information as well as the appropriate dated price lists/catalog's and/or cost sheets for the OSD Contract Manager and the PMT's review.

For equipment under a Term Lease or Rental, no escalation in the amount of the lease, rental, maintenance or supply payments will be permitted for the length of the term lease or rental.

Any increased percentage (%) off or decreased suggested retail price which results in a cost decrease is encouraged at anytime during the term of the contract but must be reviewed and accepted by the OSD Contract Manager and PMT prior to implementation. Once approved, the cost decrease must be made available to all Eligible Entities.

2.6.1 PROMPT PAY DISCOUNT (PPD) A Bidder must participate in the prompt payment discount program by completing the **"Prompt Payment Discount Form"(Attachment 9)**. A Bidder may receive additional evaluation points if the Bidder offers a prompt payment discount of 2% or greater for the 20 day period.

2.7 CONTRACT MANAGEMENT. Robert Guerard, Procurement Team Leader, Office, Recreational and Educational Equipment, Supplies & Services shall be the primary contact for any Contract resulting from this RFR. The OSD Contract Manager shall have the final authority, with the approval of the Procurement Management Team (PMT), in all operational matters pursuant to the Contract. The OSD Contract Manager prior to implementation or performance must approve substitutions, additions or modifications to this contract.

2.7.1 Office Recreational and Educational Equipment, Supplies & Services Procurement Management Team (PMT). The members of the PMT perform several functions in regard to this RFR and the subsequent awarded Contracts with the Bidder(s). The functions include research, product evaluation with only payment of supplies, contract management/execution and performance management.

The OSD Contract Manager in consultation with the PMT at any time can add, delete, and/or make any changes to items on this Contract during the contract term and or its extension years. Any changes may include but are not limited to the following:

- Adding, deleting, or modifying equipment, equipment supplies and/or maintenance
- The capacity to provide written warning or enforce a financial penalty for a contract violation.
- The capacity to remove a Contractor from this Contract for poor/non-performance or for a contract violation.
- The capacity to replace a former Contractor.
- The capacity to modify the terms and conditions of the contract due to a change in the industry.

2.8 ACCOUNT MANAGER. The Commonwealth requires that each bidder provide a single point of contact resulting from this RFR. The bidder **must** provide the name of an individual who will be the Account Manager for the term of the Contract. The Account Manager will be responsible for proper operation and administration of the Contract by the Contractor, its agents and any and all subcontractors. The Account Manager shall respond in a timely manner, in writing unless instructed otherwise, to all information requests from the OSD Contract Manager. The Account Manager shall, upon request, attend meetings at OSD or at other sites, as indicated by the OSD Contract Manager. The Account Manager will be required to provide all periodic reports required under various sections of this RFR and to serve as the liaison between the Contractor, and OSD and the Eligible Entities. The Commonwealth/OSD may require the Contractor to relieve the Account Manager if in his/her opinion it appears that:

- The Account Manager does not perform at the applicable skill level specified in the Contract:
- The Account Manager does not deliver work which conforms to the performance standards of the Commonwealth in the contract; or
- Personality conflicts with the OSD Contract Manager hinder the effective functioning of the Contract.

2.9 BIDDER COMMUNICATIONS. Bidders should note that oral communications are not binding on the Commonwealth. All requests/questions must be submitted in writing and if response(s) are posted on Comm-PASS then the response(s) are binding on the Commonwealth.

2.9.1 WRITTEN QUESTIONS VIA THE BIDDER'S FORUM

Prospective Bidders may submit questions to the Procurement Management Team (PMT) regarding this solicitation. All Bidders' questions regarding the solicitation must be submitted within the timeframe of and only through the *publicly accessible* electronic Bidder's Forum found on Comm-PASS at **www.comm-pass.com** To find the forum related to this solicitation, first refer to the RFR in order to check the start and end dates of the Forum.

To access the Ask Question functionality during the Online Question Period

1. Navigate to **www.comm-pass.com**
2. Select the "Forums" tab from the main navigation bar
3. Select the "Search Forums" option
4. Enter the Solicitation Document Number in the "Referenced Solicitation Number" field OFF22
5. Select the "Search" button
6. The system will return a results link at the top of the "Search for a Bidder's Forum" page
7. Select the result link
8. Select the View icon (eyeglasses) for the related Solicitation from the list of records returned
9. If the Online Question period is open, the Ask a Question link will be offered
10. Select the link to ask at least one question.

2.9.2 ALTERNATE MEDIUMS NOT ACKNOWLEDGED

The PMT will not respond to any questions that are submitted to the PMT via any other medium, including those that are sent via mail, fax, email or voicemail.

2.9.3 REVIEW EXISTING QUESTIONS

In an effort to reduce the possibility of redundant or duplicate questions, the PMT asks that prospective Bidders review all questions that may have been previously submitted in order to determine whether or not your specific question may have already been asked.

2.10 ADDENDA TO RFR. If it becomes necessary to revise any part of this RFR, or if additional data is necessary to clarify any of its provisions, an addendum will be posted on Comm-PASS.

2.11 OPEN RATINGS/DUN AND BRADSTREET REPORTS. The Commonwealth and the PMT have chosen to utilize an independent party, Open Ratings & Dun and Bradstreet Information Services (D&B), to assist in the evaluation process in two (2) specific areas, past supplier performance and supplier evaluation. Bidders **must** supply information online and upload **Attachment 7 as part of your bid response with the correlating information provided to Open Ratings online tool.**

Submit your request online to Open Ratings as soon as possible in order to ensure a timely report. It takes approximately fifteen (15) to eighteen (18) business days to finalize a report. Failure to contact Open Ratings prior to the RFR due date and time **may** disqualify a Bidders response. Open Ratings & D&B will assist in evaluating the following areas and submit the resulting reports directly to the PMT with a copy sent to the Bidder:

- **Past Supplier Performance Evaluation— All** Bidders **must** submit a Past Supplier Performance Evaluation Report with their RFR response. To obtain this report, it is **required** that Bidders complete ten (10) Business References and submit these to Open Ratings. Open Ratings & D&B will then develop the report. These ten (10) Business References should include two of the Bidder's largest customers based on purchase volume.

- **Supplier Evaluation Report— All** Bidders **must** submit a Supplier Evaluation Report with their RFR response. This report measures the company's financial strength.
- It is **highly desirable** that a Bidder receive a rating of 70 or greater on the Past Supplier Performance Evaluation and receive a rating of 6 or less on the Supplier Evaluation Report.

Both reports are required and the cost for these **two (2) reports is $175.00 payable to Open Ratings, Inc. To order both reports you must order online at www.ppereports.com and following the instructions provided on the website. If you have problems placing an on line order please contact Maggie Banta below;**

OPEN RATINGS, INC.
Telephone # 1-727-329-1184
Contact Person: Maggie Banta, Process Coordinator
E-mail: reports@openratings.com

When placing an order for the Past Supplier Performance Evaluation Report and the Supplier Evaluation Report identify yourself as ordering the reports to meet requirements of **RFR #OFF22, Multi-State Postage and Mail Processing Equipment, Accessories, Services and Supplies Request for Response (RFR).** It is required that, **all** Bidders make arrangements with Open Ratings to pay for both reports prior to the due date for RFR Responses. Failure to supply both reports may result in disqualification from this RFR. After the PMT receive both reports, the PMT will allow the bidder two (2) weeks to contest the result(s). The Bidder will have to provide written notification to the PMT and Open Ratings of its interest to contest the results. The Bidder must provide evidence as to why the final report(s) does not depict a true account of the Bidders financial and/or performance status. After review of the evidence provided by the Bidder, the PMT may consult with Open Ratings to decide whether the evidence provided warrants a recalculation of one or both of the Bidders reports.

References will be called between the hours of 9:00 A.M. and 5:00 P.M. Monday through Friday. The PMT may reject references not available during this time frame.

NOTE: The following list of PMT Members/Advisors can not be utilized as D & B references.

PMT MEMBERS	ELIGIBLE ENTITY
Marie Killackey	City of Cambridge
Joseph M. Bellofatto	Department of Revenue
Mark Rousseau	Department of Workforce Development
Ali Nabelsi	Department of Environmental Protection
Deborah Combra	Operational Services Division
Kerry Sutton	Department of Correction
Karen E. Glass	Department of Mental Retardation
Dmitriy Nikolayev	Operational Services Division
Jack Shea	Information Technology Division
William Ferringo	Executive Office of Transportation
Mark Anderson	Department of Revenue
John McIntyre	State of Vermont
Robert Lawson	State of New Hampshire
Robert Zalucki	State of Connecticut
Bonnie A. Kahakui	State of Hawaii
Judy Shirley	State of Arkansas

2.12 GENERAL DEFINITIONS.

A. **Affirmative Market Partner –** Massachusetts Certified M/WBE that currently meets the requirements of the RFR included on the Prime Contractors AMP Plan.

B. **Affirmative Market Program (AMP) -** Massachusetts Executive Order 390 established a policy to promote the award of state contracts in a manner that develops and strengthens Minority and Women Business Enterprises (M/WBEs).

C. **"Big Buy/Save Smart"** – A promotional opportunity created by the OSD Contract Manager and PMT in an effort to aggregate volume purchases and to obtain the best possible market price for the specific range(s) of equipment.

D. **Commencement Date -** With respect to each Item of Equipment means the date when the term of any Item of Equipment, Term Lease or Rental begins, this date shall be the date the Equipment is accepted by an Eligible Entity as indicated on the Equipment Confirmation Form.

E. **Commonwealth -** The Commonwealth of Massachusetts. The Operational Services Division (OSD), The Executive Office for Administration and Finance (ANF) and the Office Equipment, Recreational and Educational Supplies & Services Procurement Management Team (PMT) will be the key representatives of the Commonwealth for the purposes of this procurement.

F. **Eligible Entities -** All agencies of the Commonwealth of Massachusetts including all constitutional offices, the legislature, the executive branch, the judiciary, cities, towns, municipalities, counties and other political subdivisions of the Commonwealth, including schools, and other service districts; authorities, commissions, Massachusetts Higher Ed Consortium, public institutions of higher education, and quasi-public agencies, military division, and eligible Not-For-Profit entities currently contracting with the Commonwealth to provide human and social services; and other eligible entities designated in writing by the State Purchasing Agent may use this contract.

G. **Energy Star® –** a program created by the U.S Environmental Protection Agency (EPA) and the U.S Department of Energy (DOE) to promote the purchase of energy efficient equipment. EnergyStar features (also referred to as energy saving or power management features) are specified in the Memoranda of Understanding (MOUs) between the EPA and equipment manufacturers. Such specifications include but are not limited to such equipment characteristics as energy saving features available and power consumption limits for each equipment modes. Compliance with EnergyStar specifications implies compliance with **all** the requirements set in the most current MOU

H. **Environmentally Preferable Product (EPP) -** A product or service that has a lesser or reduced effect on human health and the environment when compared with the competing products or services that serve the same purpose. Such products or services may include, but are not limited to those, which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxins either disposed of or consumed.

I. **Fiscal Year -** The year beginning with July first and ending with the following June thirtieth as defined in M.G.L. c. 4 §7. This may also be referred to as the "State fiscal year."

J. **Item -** means a single unit.

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

L. **Limited Multiple Awards –** The Procurement Managements Teams (PMT) intent is to limit the number of awards in relation to number of bids received in all categories and/or sub-categories.

M. **Manufacturing Status -** New machines are units which have not been used previously and are being actively marketed by the vendor. Factory-Produced New Model is equipment that has been converted to new model status, which maintains features and/or functions of the previous model and adds new features and/or functions not available on the previous model. The Factory-Produced New Model has been disassembled to a predetermined standard, and manufactured to new model status. Factory-Produced New Model equipment is given a new serial number. Newly Manufactured is equipment that has been assembled for the first time from new parts (it may contain some reprocessed parts or components that meet new parts or components performance standards).

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

O. **M/WBE** – A Minority Business Enterprise (MBE) or a Woman Business Enterprise (WBE) is defined as a business that has been certified as such by the State Office of Minority and Women Business Assistance (SOMWBA).

P. **OEM -** Original Equipment Manufacturer. Indicates the name of the actual manufacturer of the equipment

Q. **"Offer"** or **"Bid"** or **"Proposal" or "Request for Resoponse"** 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.

R. **Operational Services Division (OSD) -** An Eligible Entity of the Commonwealth, within the Executive Office for Administration and Finance, established pursuant to St. 1989, c.731, which is responsible for the management and oversight of procurement activity in the Commonwealth.

S. **"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.

T. **"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.

U. **"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.

V. **Post-Consumer Recycled Content** - Products generated by a business or consumer which have served their intended end uses, and which have been separated or diverted from solid waste for the purpose of collection, recycling and disposition.

W. **Procurement Management Team (PMT) -** A Team of Eligible Entity personnel that develop specifications and procurements, conducts evaluations and selects Bidders for Contract negotiation and execution. The PMT also monitors Contractor performance and the level of customer satisfaction throughout the duration of the Contract.

X. **"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.

Y. **Recyclable** - The ability of a product or material to be recovered from or otherwise diverted from the solid waste stream for the purpose of recycling. A material is only considered recyclable if you can recycle it in your business or local community recycling program.

Z. **Request for Response (RFR) –** A **bid** developed by the Procurement Management Team (PMT) for competitive responses by the bidding community.

AA. **"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

BB. **SRP (USA; Canada) -** The current suggested retail price of the equipment, in the United States and Canada, as established by the manufacturer.(excluding options).

CC. **Statewide Contractor/Contractor/Prime Contractor -** An individual or organization that enters into a Contract with an Eligible Entity or the Commonwealth to provide Commodities or Services and is listed in the MMARS Vendor file and is the manufacturer or supplier of the Equipment, Supplies and Services as well as the agents or dealers of the manufacturer and supplier of supplies and/or maintenance services.

2.12.1 Acquisition Methods Definitions.

A. **Acceptance Date –** Acceptance date of the Equipment, Supplies and/or Services by an Eligible Entity shall be the date the Eligible Entity confirms delivery, installation, training, startup supplies, supplies and/or services have been delivered and the equipment is operational. If installation and/or training are not needed then the acceptance date is the date of receipt after inspection of the equipment, supplies and/or services. This confirmation of the acceptance of Equipment may be made by the Eligible Entities execution of the Equipment Confirmation Form indicating the date of acceptance or receipt and payment for supplies and services. If the Equipment Confirmation Form is utilized, then a copy of the form may be faxed to the Contractor.

B. **Acquisition Cost** - means the total cost of the equipment including accessories, start up supplies, transportation, installation and training costs.

C. **Equipment Confirmation Form -** (Outright Purchase, Term Lease or Rental) a form issued under this Statewide Contract to be used by Contractors to quote Equipment price costs for an Outright Purchase, Term Lease or Rental. The Equipment Confirmation Form, (Outright Purchase, Term Lease or Rental), will be executed by an Eligible Entity to confirm the acceptance of an Outright Purchase, Term Lease or Rental quote from a Contractor. The Confirmation Form will also document acceptance of the Equipment to trigger the start date for Outright Purchase, Term Lease or Rental obligations. The Equipment Confirmation Form will be available prior to or after Contract award. Contractors **may not** require an Eligible Entity to execute any additional documents or paperwork for an outright purchase, term lease or rental.

D. **Rental** - for the purposes of this RFR shall mean a Rental of Equipment for temporary use by an Eligible Entity, for an aggregate or total accrued period not to exceed a maximum of six (6) months.

E. **Term Lease or Rental Payments** - with respect to an Item of Equipment means the payments under a Term Lease or Rental for Items of Equipment under the Statewide Contract. Regardless of the acceptance

date of Equipment, Term Lease or Rental payments shall be made according to the approved schedule for Term Lease or Rental.

F. **Term -** means the period for which the Contractor and Eligible Entity agree to for Term Lease or Rental shall be in force.

G. **Term Lease -** for the purposes of this RFR shall mean an Operational Term Lease for a period longer than six (6) months for the temporary use of Equipment by an Eligible Entity without the intention to gain title, to purchase or to buyout the Equipment.

SECTION 3

PART I - BUSINESS SPECIFICATIONS

3.1 INTRODUCTION. All specifications in this section apply to all bidders for equipment, supplies and service who receive an award resulting from this RFR. The responses, as submitted, **must** meet or exceed all of the specifications contained within this RFR. All bidders **must** meet the minimum levels of specifications within this RFR. If the bidder can exceed the minimum requirement, **evaluation** points **may be** accessed, per specification, depending on the level of added value. This may contribute to the overall evaluation of a bidder's performance.

3.1.1 Years in Business. All Bidders **must** have been in business for at least **five (5) years** preceding the release date of the RFR. Points **may** be awarded based upon the number of years in business greater than five (5) years.

3.2 BIDDER COMPANY PERSONNEL AND OR AUTHORIZED SALES & SERVICE SUB-CONTRACTOR COMPANY INFORMATION. (Attachment 5 AND/OR 5A) The bidder **must** provide the PMT with the current number of authorized sales support, service technicians and customer support personnel that would be utilized in support of the contract statewide. If an OEM Manufacturer is utilizing authorized dealers for coverage statewide the Manufacturer **must** indicate which States the authorized dealer will support for sales, service and customer support utilizing Attachment 5A. The OSD Contract Manager and PMT may require an updated Attachment 5A at anytime during the term of the contract.

3.3 DELIVERY. Contractor(s) **must** deliver equipment and/or supplies statewide. Delivery **must** be F.O.B. destination with **no delivery or travel expenses** paid by the Eligible Entity.

Exception, for those items shipped outside the 48 contiguous States, on which there are extraordinary freight charges that cannot reasonably be covered by the contract price, vendors may negotiate with those non-contiguous States regarding delivery terms and charges.

Shipping is to be FOB destination to the contiguous 48 states, Washington DC and **point of exportation** for Alaska, Hawaii, Puerto Rico, etc. for shipments outside the 48 contiguous states. The point of exportation location must be agreed to by the vendor and the negotiating State. From that point, shipping terms, charges and conditions should be negotiated with the end-user. The State must be notified in advance of the possible shipping charges and agree to the final contract price and arrangements.

The Contractor(s) shall furnish equipment within fifteen (15) to twenty (20) business days after receipt of written order or a delivery time mutually agreed upon by the Eligible Entity and the Contractor. Contractors **must** notify the Eligible Entity in advance of delivery of equipment so that the Eligible Entity can make necessary delivery and installation arrangements. Delivery of start-up supplies **must** be made upon delivery of equipment. Delivery shall be made in accordance with instructions (time and quantities ordered) from the Eligible Entity in reference to a Purchase Order Number. If there is a discrepancy between the purchase order and what is listed on the contract, it is the Contractor's obligation to seek clarification from the Eligible Entity and, if necessary, from the OSD Contract Manager.

All deliveries and installation work shall be performed during regular working hours, usually 8:00 A.M. to 5:00 P.M. Monday through Friday. Changes thereto may be granted with written approval of the Eligible Entity. **Any delivery required to be performed after working hours or on Saturdays, Sundays or legal holidays, as may be reasonably required consistent with contractual obligations and agreeable to both the Contractor and the Eligible Entity, shall be performed at a negotiated additional expense to the Eligible Entity.** The Contractor shall obtain prior approval from the Eligible Entity for performance of work

after regular working hours or non-regular workdays at least 24 hours prior to the commencement of overtime, unless such overtime work is caused by an emergency.

The Contractor shall be responsible for the delivery of equipment in first class condition at the point of delivery, and in accordance with good commercial practice. Contractors will also be responsible for the removal of all package material from the premises.

- Packing for shipment shall be provided to adequately protect the product and ensure safe shipment.
- Shipping cases shall be marked to show the name of the Contractor/Manufacturer's, name and address of receiving Eligible Entity and Purchase Order number.

Equipment provided **must** be strictly in accordance with those contained in contract award. Eligible Entities are authorized to order and Contractors are authorized to ship only those items approved and on contract. If a review of orders placed by any Eligible Entity reveals that items other than those approved and on contract has been ordered and delivered, the OSD Contract Manager will take such steps as are necessary to have the items returned by the Eligible Entities, regardless of the time lapsed between the date of delivery and discovery of the violation. Full credit will be required. Violation may result in the suspension of the offending Contractor for a period determined by the OSD Contract Manager and PMT.

3.3.1 Equipment Confirmation Form. The Eligible Entity and the Contractor must complete the equipment confirmation form prior to issuing an order. Contractors **can not** require an Eligible Entity to execute any additional documents or paperwork for an purchase, term lease or rental. Any additional documents or paperwork executed by an Eligible Entity and/or Contractor will be considered void.

3.4 INSTALLATION. All equipment prices **must** include delivery and installation statewide. If installation is not required by the Eligible Entity, then the Eligible Entity will deduct the cost for installation.

Contractor **must** affix a label or a decal to the equipment at the time of installation showing warranty period by dates, and the name, address, and telephone number of the OEM or Reseller responsible for warranty service of the equipment.

It will be the Contractor's responsibility prior to delivery, to survey and review the particular installation location to ensure the existing proposed location meet the manufacturer's established installation criteria. If special installation is required, such as but not limited to rigging, the Contractor and Eligible Entity must negotiate and agree on a cost for the special installation and note it on the equipment confirmation form prior to releasing a purchase order. Should the proposed installation location not meet established installation criteria, the Contractor and the ordering Eligible Entity will attempt to locate an alternate mutually agreeable location for the equipment at the particular site.

In the event that a mutually agreeable location for the equipment, meeting the manufacturer's established installation criteria, is not available, the Contractor must not deliver the equipment and will request the Eligible Entity to cancel the order with no further obligations. Contractors not familiar with any location are strongly advised to personally view those locations prior to delivery. A lack of familiarity with a delivery location will in no way relieve a Contractor from its responsibility to fulfill its contractual obligations.

All equipment identified as EnergyStar compliant **must** be delivered and installed with the EnergyStar or similar power management features enabled.

3.5 TRAINING & TECHNICAL SUPPORT SERVICES. Upon delivery and installation of specified equipment, Contractors and/or authorized reseller **must** agree to provide training to personnel designated by the Eligible Entity. Operational Training must be provided to the designated personnel within an Eligible Entity until the personnel are able to operate the equipment independently. The amount of training is

determined by the complexity of the equipment purchased or leased by the Eligible Entity. If training is not required by the Eligible Entity, then the Eligible Entity will deduct the cost for installation.

The Contractor must agree to maintain a toll-free technical support telephone line. The telephone line shall be accessible to Eligible Entity personnel who need to obtain competent technical assistance regarding the installation or operation of the Contractors equipment.

Any such training performed upon delivery or at any point throughout the duration of the contract **must** also include information on all environmental features of each item, including but not limited to: energy efficiency modes and their operation, double sided copying operations and double sided default programming, extent to which any supplies and other packaging may be for recycling, remanufacturing, and the environmental and economic benefits of these features. It is **desirable** that Bidders develop a fact sheet and/or brochure to leave with Eligible Entities concerning these environmental and other training issues.

3.6 SERVICE MAINTENANCE FOR PURCHASED OR TERM LEASE EQUIPMENT. The Bidder must offer both yearly and time and material service maintenance plans as detailed on each cost sheet attachment. All yearly maintenance plan cost must include all materials necessary to repair and maintain equipment as detailed below.

The Contractor must respond within **two (2) hours** after it receives written or oral notice of a service call for a breakdown in the equipment.

The Contractor **must** send a service technician to repair the equipment within one of the following mutually agreed upon timeframes; **four (4) hours, eight (8) hours, twelve (12) hours or twenty four (24) hours** of the service call and must repair the Equipment on the same business day if the call is placed before 1:00 P.M. or provide replacement parts for the Equipment by the next business day, regardless of geographic location. All return service calls and onsite responses shall be made during Eligible Entity business hours unless otherwise specified by the Eligible Entity.

Standard business hours are 8:00 A.M. to 5:00 P.M. Monday through Friday. After Hour Service (after 5:01 P.M. Monday-Friday, Weekends and Holidays).

All parts that needs to be maintained by a service technician are to be included and considered part of the yearly service maintenance plan, and must be replaced at no charge to the Eligible Entity. Routine consumable supplies shall be billed separately from service maintenance payments.

If the equipment includes licensed software, the Contractor shall provide software support. All payments for maintenance service will be made to the Contractor.

If the OSD Contract Manager and the PMT receive written complaints of non-compliance with the service requirements then the OSD Contract Manager and the PMT reserve the right to negotiate with the Contractor, a reasonable penalty, based upon the degree of the non-compliance. The following penalties are examples that the OSD Contract Manager and PMT have, at their disposal, to negotiate with the Contractor:

- Written warning to the Contractor with the Contractor providing the Eligible Entity(ies) with an apology letter with an action plan detailed to prevent non-compliance of service.
- Free Service maintenance for the Eligible Entities affected by the poor service response for a period of time and value determined by the OSD Contract Manager and PMT.
- Negotiated financial penalty for recurring incidents of non-performance.
- Free Supplies for the Eligible Entities affected by the poor service response for a period of time and value determined by the OSD Contract Manager and PMT.

- The OSD Contract Manager and PMT reserve the right to make additional awards in a category or sub-category if it is determined that current Contractors are not providing adequate service maintenance as determined by the OSD Contract Manager and PMT.
- The OSD Contract Manager and PMT reserve the right to terminate the contract.

3.8 LOANER EQUIPMENT. Eligible Entities have the option to exercise the request for loaner equipment if the existing downed equipment necessitates off-site repair. The loaner equipment **must** be of comparable or better production capability and **must** be available, delivered, installed and configured for equipment that cannot be repaired on site, at no extra charge. Delivery, installation, configuration and basic training **must** be completed within one (1) business day or a timeframe mutually agreed upon between the Eligible Entity and Contractor if custom equipment needs to be provided from the time a service technician determines that the equipment cannot be repaired on site. Loaners will remain in place until the equipment has been repaired, reinstalled and confirmed operational by the Eligible Entity. If equipment is not available for loan due to postal regulations or custom configuration, the Contractor must provide an alternate piece of equipment for the Eligible Entity to continue operation.

3.9 SECURITY DEPOSIT OR ADDITIONAL INSURANCE. A Contractor **may not** charge an Eligible Entity a security deposit or additional insurance for any commodity or service under this Statewide Contract.

3.10 EQUIPMENT AND CONTRACTOR WARRANTIES. Contractors **must** provide a minimum of **12-month warranty** that includes all parts and labor on all equipment on Contract. It is **highly desirable** that Contractors offer a **warranty period** greater than the minimum at no additional cost. All manufacturer warranties will be passed through and shall be available to the Eligible Entity. A Contractor hereby irrevocably appoints a contracting Eligible Entity its agent and attorney-in-fact during the Term Lease or Rental Term of every item of equipment, so long as the Eligible Entity shall not be in default hereunder, for the sole purpose of asserting from time to time whatever claims and rights, including warranties of the equipment, which the Contractor may have against the manufacturer of the equipment. Rented equipment may be new, used or remanufactured. However, if the rented equipment is used or remanufactured, the rented equipment shall meet all manufacturer's published performance standards, and all other performance standards in this RFR.

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 Eligible 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

3.11 USE OF THE EQUIPMENT. Eligible Entities will not install, use, operate or maintain the Purchased, Leased or Rented equipment under this Contract improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Contract. Eligible Entities shall provide all permits and licenses, if any, necessary for the installation, operation and use of the equipment. Where an Eligible Entity is required to or exercises any right that it may have to return any item of equipment under the terms and conditions of this Contract, the Eligible Entity shall return the equipment in a condition which will permit the Contractor to be eligible for the manufacturer's or supplier's standard maintenance contract without incurring any expense to repair or rehabilitate the equipment, normal wear and tear for the term of the Term Lease or Rental is excepted. An Eligible Entity shall keep the equipment acquired under this Contract through Term Lease or Rental free from levies, liens and encumbrances.

3.12 RELOCATION OF LEASED EQUIPMENT. An Eligible Entity will not move or relocate equipment without prior notice to and approval by the Contractor, which shall not be unreasonably withheld. The Contractor and Eligible Entity shall negotiate whether the Eligible Entity or Contractor shall move the equipment, provided however, that the Contractor's approved movement of the equipment by the Eligible Entity shall not void or affect any warranties or other responsibilities of the Contractor under this Contract. The Eligible Entity shall be responsible for any costs for restoring the equipment to its original performance including payments to the Contractor if the Contractor requires performance of on-site installation. The Contractor can not charge an Eligible Entity for costs associated with relocation, reinstallation and confirmation that the equipment is operational if the relocation is located **on the Eligible Entities same floor.** The Contractor may negotiate with the Eligible Entity for costs associated with relocation of the equipment, reinstallation and confirmation that the equipment is operational for relocation **not on the Eligible Entities same floor.** The following are some examples of costs that are negotiable between the Eligible Entity and Contractor: special rigging needed for relocation delivery, stairway delivery for a location with no elevator access for relocation. The Eligible Entity shall not be responsible for damage caused by the Contractor during relocation of the equipment by the Contractor and the Contractor shall be responsible for any additional costs associated with restoring the equipment to its original performance. Costs for relocation of equipment must be paid for separately by the Eligible Entity as an additional service cost.

3.13 PERSONAL PROPERTY, USE AND INSPECTION. All Term Lease or Rented equipment under this Contract shall at all times be and remain, personal property notwithstanding that the equipment or any part thereof may be, or may hereafter become, in any manner affixed or attached to real property. A Contractor hereby covenants that its agents and assignees will not interfere with all Eligible Entity's use of the equipment during the Term Lease or Rental so long as the Eligible Entity is not in default under a Term Lease or Rental. A Contractor shall have the right by appointment at a reasonable time during business hours to enter into and upon the property of an Eligible Entity for the purpose of inspecting the equipment.

3.14 TITLE, LIABILITY, RISK OF LOSS AND INSURANCE. An Eligible Entity shall not hold title to equipment under a Term Lease or Rental. The Contractor (and its insurers, if any) shall bear all risk of loss to

the equipment. The Contractor shall hold title to all items of equipment and be fully responsible for the risk of loss and insurance costs for any loss, damage or liability associated with the equipment. The Eligible Entity shall be liable for loss or damage to the equipment due to the negligence of the Eligible Entity, theft by a state employee or for damage due to nuclear reaction, nuclear radiation or radioactive contamination arising out of the use by an Eligible Entity of radioactive materials. The Commonwealth is self-**INSURED** and an Eligible Entity shall not be obligated to purchase separate insurance for any **TERM** Lease or Rental. Limitations of liability contained in any documentation submitted by a Bidder or a Contractor under this RFR or under any Term Lease or Rental executed by an Eligible Entity shall be deemed void.

3.15 REPLACEMENT OR REPAIR OF DEFECTIVE EQUIPMENT. The Contractor agrees that all Outright Purchase, Term Lease or Rented Equipment shall be operational and perform in accordance with standard equipment performance specifications and warranties for the equipment.

The Contractor also agrees that since the equipment purchased, Leased or Rented is essential for Eligible Entity operations, that neither an Eligible Entity nor the Commonwealth will have any obligation to continue to pay Term Lease or Rental payments for defective Equipment that can not be repaired or **REPLACED** by the Contractor within the required periods outlined in this RFR.

Contractors shall repair any defective equipment in accordance with standard performance specifications and warranties for that equipment. Contractors shall be responsible for all repair and equipment defects and failures during the term of the Term Lease or Rental. In addition to this coverage, all equipment shall be covered by the manufacturer's standard warranties for that equipment. If the equipment cannot be repaired within the required periods outlined in this RFR, the Contractor shall immediately replace the equipment with identical or comparable equipment. The Contractor shall be responsible for all transportation, shipping, delivery, installation costs and other costs associated with the replacement of defective equipment. The Contractor may not charge a fee, penalty or increase the Term Lease or Rental payments for replacement of defective equipment with identical or comparable equipment. If the equipment replacement must be different equipment due to a defect in the model of the original equipment, then it is the responsibility of the Contractor to honor the original Term Lease, Rental or Purchase cost of the original equipment. The Contractor is required to deliver the "Startup" Supplies defined in this RFR as well as provide a credit and pick-up for the supplies purchased for the prior defective equipment.

If the Contractor is unable to provide identical or comparable replacement equipment for the defective equipment within a reasonable time, the Eligible Entity may terminate the Term Lease or Rental and negotiate the Term Lease or Rental of **EQUIPMENT** from another Contractor. The Contractor shall be obligated to remove the defective equipment at no cost to the Eligible Entity. The Contractor may not penalize the Eligible Entity, accelerate Term Lease or Rental payments or make any additional charges for the termination of a Term Lease or Rental of defective equipment that cannot be repaired or replaced by the Contractor.

Equivalent loaner equipment of comparable or better production capability **must** be available, delivered, installed and configured for equipment that cannot be repaired on site, at no extra charge. Delivery, installation, configuration and basic training **must** be completed within one (1) business day from the time a service technician determines that the equipment cannot be repaired on site. Loaners will remain in place until the equipment has been repaired, reinstalled and confirmed operational by the Eligible Entity. If equipment is not available for loan due to postal regulations or custom configuration, the Contractor must provide an alternate piece of equipment for the Eligible Entity to continue operation.

3.16 UPGRADE OR REPLACEMENT OF NON-DEFECTIVE EQUIPMENT DURING PERIOD OF TERM LEASE OR RENTAL. During the period of a Term Lease or Rental, an Eligible Entity and the current Contractor may negotiate an upgrade to or replacement of equipment with a newer model, higher performance or equipment better suited to the Eligible Entity's business needs. The Eligible Entity shall not be

charged any penalties, an acceleration of Term Lease or Rental fees, or other charges for a negotiated upgrade or replacement of contract equipment. If there is a balance on the term lease or rental of the current equipment prior to an upgrade or replacement request, the Eligible Entity and the current Contractor must negotiate the "buyout" cost that would be incorporated in the term lease or rental payment of the upgrade or replacement equipment. If all parties agree to the "buyout" costs and the "buyout" costs are depicted on the equipment confirmation form of the upgrade or replacement equipment then it is accepted. The removal of the existing equipment and the delivery of the upgrade or replacement equipment will be at no charge to the Eligible Entity.

The Eligible Entity and the current Contractor **may not** negotiate (even if requested by an Eligible Entity), as part of a Term Lease or Rental, for an "option" for an upgrade or replacement which requires the Eligible Entity to pay a higher Term Lease or Rental price or a premium for the availability of the "option" during the Term Lease or Rental Term than the Eligible Entity would have paid without the option. Failure of the current Contractor to adhere to this requirement shall be considered a material breach and the current Contractor shall be required to reimburse to the Eligible Entity or the Commonwealth any amounts paid for such an option that exceeded the amount of the Term Lease or Rental payments without such an option.

3.17 MODIFICATION OR ALTERATION OF EQUIPMENT BY ELIGIBLE ENTITY. Upon prior written approval of the Contractor, an Eligible Entity shall have the right at its own cost and expense (which may be included under the Term Lease or Rental) of making additions, modifications or improvements to the equipment which will be included under the terms of the Term Lease or Rental as part of the equipment, provided, however that:

such remodeling, additions, modifications or improvements shall not in anyway damage the equipment, cause the equipment to be used for purposes other than those authorized under the constitutional provisions and laws applicable to Eligible Entity, or adversely affect the Contractor's title to, or the validity or perfection of any security interest of the Contractor in, the Equipment; and

- the equipment, as improved (or altered upon completion of remodeling, additions or modifications made) shall be of a value not less than the value of the equipment immediately prior to the remodeling or the making of such additions, modifications or improvements; and
- an Eligible Entity may not permit any mechanic's or other lien to be established or remain against the equipment for labor or materials furnished in connection with any remodeling, substitutions, additions, modifications or improvements so made by Eligible Entity or for any other reason without the Contractor's prior written consent; and
- the equipment warranties on the original equipment must remain valid and;
- the Eligible Entity and Contractor shall renegotiate any modifications to the Term Lease or Rental payment amounts to reflect the additions, modifications or improvements.

3.18 PROHIBITION OF TERM LEASE RENEWALS AND RETURN OF EQUIPMENT AT END OF TERM. At the termination of a Term Lease the Term Lease **may not** be renewed or otherwise extended under its original terms and rates except for Category 1 postage meter devices which can be renewed annually. In the rare event that a Term Lease needs to be extended for any reason, the Contractor and Eligible Entity **must** renegotiate a short term, Term Lease that reflects the depreciated value of the equipment. A Contractor's renewal of a Term Lease, even at the request of an Eligible Entity, without re-negotiation and reduction of the Term Lease price shall be considered a material breach by the Contractor and the Contractor shall be obligated to reimburse the Commonwealth for all Term Lease payment amounts made by an Eligible Entity which exceed the amounts that would have been charged under a re-negotiated and reduced Term Lease. It is presumed that all Term Leases negotiated under this RFR are temporary and that all Leased equipment will be returned at the end of the Term Lease. It is the responsibility of the Eligible Entity to schedule the return of the equipment and it is the Contractor's responsibility to pick-up the equipment within 10 business days of the scheduled return at no cost to the Eligible Entity. If the equipment is not picked-up within 10 business days of the scheduled return, a charge of **$50 per business day** will be assessed upon the Contractor for each day the

equipment remains on the Eligible Entity's premises, which the Eligible Entity may deduct from any outstanding charges or collect if no outstanding charges exist.

3.19 PROHIBITION OF RENTAL RENEWALS AND RETURN OF EQUIPMENT AT END OF TERM. At the termination of a Rental Term which has run a maximum of six (6) total accrued months, that Rental **may not** be renewed or otherwise extended under its original terms and rates. In the rare event that a Rental Term needs to be extended for any reason, the Contractor and Eligible Entity must renegotiate the Rental as a short term, Term Lease which reflects the value of the equipment, and which represents a reduced rate as compared to the Rental rate. A Contractor's renewal of a Rental Term past the maximum of six (6) total accrued months, even at the request of an Eligible Entity, without re-negotiation and reduction of the Rental price to a short term Term Lease price shall be considered a material breach by the Contractor and the Contractor shall be obligated to reimburse the Eligible Entity for all Rental payment amounts made by an Eligible Entity which exceed the amounts that would have been charged under a re-negotiated short term, Term Lease. It is presumed that Rentals negotiated under this RFR are temporary and that all Rented equipment will be returned to the Contractor at the end of the Rental Term. . It is the responsibility of the Eligible Entity to schedule the return of the equipment and it is the Contractor's responsibility to pick-up the equipment within 10 business days of the scheduled return at no cost to the Eligible Entity. If the equipment is not picked-up within 10 business days of the scheduled return, a charge of **$50 per business day** will be assessed upon the Contractor for each day the equipment remains on the Eligible Entity's premises, which the Eligible Entity may deduct from any outstanding charges or collect if no outstanding charges exist.

3.20 OUTRIGHT PURCHASE OF TERM LEASE EQUIPMENT AT END OF TERM LEASE. It is presumed that all Term Lease negotiated under this RFR are temporary and that all Term Leased equipment will be returned to the Contractor at the end of the Term Lease. Early buy-out or purchase options during the period of the Term Lease may not be negotiated as part of any Term Lease. However, in the rare event the Eligible Entity wishes to purchase the equipment during the Term Lease, or at the end of the Term Lease, instead of returning the equipment, the Contractor and Eligible Entity may negotiate the **fair market value** of the equipment at the time of purchase. The Eligible Entity shall not be obligated to pay any additional Term Lease payments, fees, acceleration of payments, penalties or other charges in addition to the fair market value of the equipment.

3.21 APPROPRIATION/FUNDING OF TERM LEASE OR RENTAL PAYMENTS. Appropriation/Funding for expenditures by Eligible Entities of the Commonwealth, and authorizations to spend for particular purposes, are made on a fiscal year basis. The fiscal year of the Commonwealth is a twelve-month period ending June 30th of each year. The obligations of the Eligible Entities under this Term Lease or Rental for each and every fiscal year following the fiscal year in which a Term Lease or Rental is executed are subject to the appropriation to the Eligible Entities of funds sufficient to discharge the Eligible Entities' obligations which accrue in that fiscal year, and authorization to spend such funds for the purposes of the Term Lease or Rental. The Commonwealth will not be obligated to appropriate funds for payment of Term Lease or Rental payments.

An Eligible Entity seeking to terminate a Term Lease due to non-appropriation is required to notify the Contractor with written notice in a timely manner detailing the funding situation. The following are some points the Eligible Entity may want to address within the written notice to the Contractor:

- Eligible Entity has exhausted all funds legally available from other sources for the payment of all or Term Lease Payments with respect to such equipment;
- Eligible Entity properly and in a timely manner requested sufficient funds to satisfy the obligation due under the Term Lease with respect to such equipment in the fiscal period for which funds were not appropriated and Eligible Entity diligently pursued and exercised best efforts to obtain such funds from the governing body which controls such appropriation;

- Funds have not been budgeted or appropriated to Eligible Entity and funds will not be extended by Eligible Entity during the first fiscal period following an event of non-appropriation for which funds have not been appropriated hereunder to Term Lease or otherwise acquire equipment or services performing functions similar to that of the terminated equipment.

Upon occurrence of such non-appropriation, and the satisfaction of all of the conditions to Eligible Entities right of termination, including written notice of termination, an Eligible Entity shall not be obligated to make payment of any Term Lease Payments with respect to the terminated equipment through any fiscal period for which funds have not been so appropriated.

An Eligible Entity agrees to make reasonable efforts to obtain funding and all necessary authorizations, and to notify the Contractor promptly when it appears certain these will not be obtained. An Eligible Entities obligation under a Term Lease or Rental is severable and the cancellation of an Eligible Entities obligations under a particular Term Lease or Rental due to non-appropriation shall not affect the obligations of the remaining Eligible Entities, nor will such cancellation affect such Eligible Entities obligations under any other Term Lease or Rentals to which it is a party.

It is the responsibility of the Eligible Entity to schedule the return of the equipment and it is the Contractor's responsibility to pick-up the equipment within 10 business days of the scheduled return at no cost to the Eligible Entity. If the equipment is not picked-up within 10 business days of the scheduled return, a charge of **$50 per business day** will be assessed upon the Contractor for each day the equipment remains on the Eligible Entity's premises, which the Eligible Entity may deduct from any outstanding charges or collect if no outstanding charges exist.

Note: The intercept by the Commonwealth of any Contractor Term Lease or Rental payment(s), timely issued by an Eligible Entity, to reimburse the Commonwealth for an outstanding debt of the Contractor to the Commonwealth shall not be deemed or considered a default by the Eligible Entity under a Term Lease or Rental.

3.22 TERM LEASE OR RENTAL OBLIGATIONS NOT A DEBT. A Contractor and an Eligible Entity understand and intend that the obligation of the Eligible Entity to make Term Lease or Rental payments shall constitute a current expense from lawfully appropriated funds or other legally available funds and shall not in any way be construed to be a debt of the Eligible Entity or the Commonwealth in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Eligible Entities, nor shall anything contained herein constitute a pledge of tax revenues or funds of the Eligible Entity or the Commonwealth.

3.23 EARLY TERMINATION OF TERM LEASE OR RENTAL. The term for a Term Lease or Rental shall terminate upon the earliest of the following events:

- Full payment of all Term Lease or Rental payments. Following the termination of a Term Lease or Rental an Eligible Entity shall make arrangements to have the equipment returned to the Contractor at no cost to the Eligible Entity, or in the alternative negotiate an outright purchase of the equipment at a negotiated fair market value price as a separate transaction from the Term Lease or Rental.
- A default by the Eligible Entity or the Contractor and a decision by the other party to terminate the Term Lease or Rental.
- Termination by the Commonwealth as provided in the Commonwealth's Terms and Conditions.
- It is the responsibility of the Eligible Entity to schedule the return of the Term Leased or Rental equipment and it is the Contractors responsibility to pick-up the equipment within 10 business days of the scheduled return at no cost to the Eligible Entity. If the equipment is not picked-up within 10 business days of the scheduled return, a charge of **$50 per business day** will be assessed upon the Contractor for each day the

equipment remains on the Eligible Entity's premises, which the Eligible Entity may deduct from any outstanding charges or collect if no outstanding charges exist.

3.24 CONDITIONS FOR ELIGIBLE ENTITIES EARLY TERMINATION OF RENTAL. It is presumed under this Statewide Contract that Rentals of equipment shall be made on a monthly basis and can be cancelled at will, without penalty, by an Eligible Entity upon proper notice to the Contractor. An Eligible Entity may terminate a Rental without cause prior to the scheduled end of the Rental Term by providing prior written notice of at least fifteen (15) calendar days to the Contractor. The notice shall specify the date that the Contractor can remove the equipment during normal business hours or a timeframe mutually agreed upon by the Eligible Entity and Contractor. The Eligible Entity shall be responsible for all rental payments prior to the pick-up date specified in the notice for equipment removal. . It is the responsibility of the Eligible Entity to schedule the return of the equipment and it is the Contractor's responsibility to pick-up the equipment within 10 business days of the scheduled return at no cost to the Eligible Entity. If the equipment is not picked-up within 10 business days of the scheduled return, a charge of **$50 per business day** will be assessed upon the Contractor for each day the equipment remains on the Eligible Entity's premises, which the Eligible Entity may deduct from any outstanding charges or collect if no outstanding charges exist.

3.25 REPLACEMENT OF EQUIPMENT AFTER A DEFAULT. In the event an Eligible Entity defaults under a Term Lease or Rental and returns the equipment to the Contractor, the Eligible Entity shall not be prohibited from acquiring the same or similar equipment from another Contractor during the period of the former Term Lease or Rental agreement. It is recommended that the Eligible Entity offer the opportunity to the Contractor, for which they defaulted, the first opportunity to present a more cost effective equipment option.

3.26 NO CREDIT APPLICATION. The Eligible Entities, for credit ratings related to Term Lease or Rental under this Contract, will make no application, nor may a Contractor seek such ratings from the Eligible Entities.

3.27 SECURITIZATION. A Contractor may not sell the note for any Term Lease or Rental agreement but may borrow against the value of the note during the term lease or rental period as long as it does not effect the status of the note during the Term Lease or Rental period.

3.28 ASSIGNABILITY. The Contractor may assign its payment interests in a Term Lease or Rental, with prior approval from the OSD Contract Manager and PMT, but may not assign its duties, responsibilities or liabilities under a Term Lease or Rental. The Contractor agrees that any assignment of interest will be limited so that it does not constitute a public offering. Regardless of any such assignment, the Contractor will continue to act as principal with regard to carrying out all responsibilities and duties under the contract. Upon prior approval of the Contractor, which shall not be unreasonably withheld, an Eligible Entity may assign the equipment and its duties under a Term Lease or Rental to another Eligible Entity, provided the assignee Eligible Entity can demonstrate that it can assume all the duties and fiscal responsibilities under the Term Lease or Rental and the Eligible Entities execute the necessary documentation to transfer the equipment and Term Lease or Rental obligations and payments.

3.29 SECURITY INTEREST IN EQUIPMENT. In addition to title in the equipment that is held by the Contractor until all payments are made by an Eligible Entity, the Eligible Entity grants to the Contractor the ability to purchase security interest in the equipment and any additions, attachments or improvements. An Eligible Entity shall execute such additional documentation to establish and maintain the Contractor's security interest in the equipment provided such documentation has received prior review and approval by the OSD Contract Manager and PMT.

3.30 CONTRACTOR QUALIFICATIONS.

3.30.1 Qualification of OEM or Authorized Reseller of Equipment, Supplies and Services/Maintenance. Responses **must** be submitted only by the Original Equipment Manufacturer (hereinafter referred to as *"OEM")* or a qualified OEM designated authorized reseller for the purposes of the purchase and lease of

equipment, accessories, OEM/Remanufactured/Generic supplies and service/maintenance of new and/or remanufactured equipment. Only OEM or an authorized OEM designated reseller will be awarded contracts for equipment.

All bidders submitting a response to this RFR **must** submit written certification for each manufacturer having product represented in the response, stating that the bidder is an authorized reseller for equipment, supplies and service/maintenance for specific regions of the state or statewide.

The certification(s) shall be on the official letterhead of the OEM and signed by an authorized official of the company. An authorized official is defined as a company employee who has the requisite authority to commit, obligate and contractually bind the OEM Company.

The certification must identify the bidder and the bid identification number - OFF22. Failure to comply with the certification requirement **may** result in the rejection of the response for each manufacturer not certified.

The Commonwealth reserves the right to ask for documentation from each Bidder verifying their service technician's training

3.30.2 OEM Bidding with Authorized Reseller Network Representation. OEMs **must** include in their response a list of authorized resellers authorized to represent them per the terms and conditions of this RFR. It is the bidding manufacturer's responsibility to ensure complete coverage of service throughout all counties within the Commonwealth of Massachusetts. Invoices shall be directly from the **Prime Contractor (OEM Manufacturer or Authorized Reseller) or the AMP Partner, with a direct pay relation, approved by the OSD Contract Manager and PMT as the Prime Contractor.**

The OEM, as Prime Contractor, shall be fully responsible for meeting all of the terms of any contract resulting from this RFR. The OEM will have full responsibility for any authorized reseller(s) performance. Contractors will be responsible for the training and education of authorized resellers to ensure contract compliance.

Awarded Contractors **must** notify the OSD Contract Manager of any authorized reseller changes, additions and deletions throughout the term of the Contract. The OSD Contract Manager and PMT will have the right to deny approval of any authorized reseller additions and/or substitutions.

3.31 MAINTENANCE PARTS OBSOLESCENCE. Manufacturers directly or through the designated authorized reseller **must** guarantee the availability of parts for all models proposed for a minimum period of seven (7) years from the last date of manufacture.

3.32 AFFIRMATIVE MARKET PROGRAM (AMP). Massachusetts Executive Order 390 established a policy to promote the award of State Contracts in a manner that develops and strengthens Minority and/or Women Business Enterprises (M/WBEs). As a result, M/WBEs are strongly encouraged to submit bid responses to this solicitation, either as prime vendors, joint venture partners or subcontractors. All Bidders, regardless of their certification status, are **required** to submit a completed AMP Plan Form as part of their response for evaluation. It is required that Affirmative Market Program participation accounts for no less than 10% of the total points in the evaluation.

Higher evaluation points may be awarded to AMP Plans that show more commitments for use of certified vendors in the primary industry directly related to the scope of the solicitation, subcontracting expenditures and or ancillary partnerships for the purpose of contracting with the Commonwealth.

The PMT requires Bidders to make a significant commitment to partner with certified Minority and Women-Owned Businesses in order to be awarded a contract. A SOMWBA-certified Bidder may not list itself as being an Affirmative Market Program Partner to its own company. In addition, a narrative statement can be included to supplement the AMP Plan Form providing further details of the AMP commitments. The submission of this

narrative statement does not replace the requirement of the AMP Plan Form. Bidders must submit one form for each M/WBE AMP Relationship. All certified businesses that are included in the Bidder's AMP proposal are required to submit an up to date copy of their SOMWBA certification letter or a copy of the letter stating the partner has applied for certification online with **SOMWBA**. Please note that no Bidder will be awarded a contract unless and until they agree to commit to at least one (1) of following two (2) AMP Components selected by the PMT:

- Subcontracting: If Bidder commits to Subcontracting in their AMP plan, then they must commit to subcontract a specific dollar amount, or a minimum percentage of dollars earned through an awarded contract, with a SOMWBA-certified company or a company that has applied for certification. Although this is only one of the two available options to meet the requirements for participation in the Affirmative Market Program, Bidder's submission of subcontracting commitments may be weighted most heavily. The PMT will set timelines for progress reviews (either quarterly or semi-annually) for the purpose of compliance and tracking of submitted commitments. Please note that all subcontracting partnerships require inclusion of that contract between the Bidder and the M/WBE subcontractor in the Bidder's bid package
- Ancillary Uses of SOMWBA Certified M/WBE Company(ies): If a Bidder commits to Ancillary Uses of certified M/WBE Firm(s) (or companies that have applied for certification) in their AMP plan, then they must include dollar or percentage expenditure commitments for use of these firm(s) with or without the use of written commitments between the Bidder and the M/WBE Firm(s). A description of the ancillary uses of certified M/WBEs, if any, must be included on the AMP Plan Form.

The following are just a few examples of potential successful AMP Partnerships for Bidders to research and develop;

- Sub-Contracting AMP Partnership examples;
  - AMP Partnership to sell and deliver supplies for equipment.
  - AMP Partnership to sell, deliver and provide installation and training for equipment.
  - AMP Partnership to finance leased equipment
  - AMP Partnership to deliver or pickup and relocate equipment.
- Ancillary AMP Partnership examples;
  - AMP Partnership for printing marketing materials.
  - AMP Partnership for web design and maintenance.
  - AMP Partnership to support pickup of recycled products.
  - AMP Partnership to purchase office and/or operational supplies for internal use.

Resources available to assist Prime Bidders in finding potential M/WBE partners can be found at: **http://www.mass.gov/Aosd/docs/mwbe/AMP%20Resources%20and%20Guidance.doc as well as under the Specification Tab under "OFF22 Potential AMP Partnership Guide."**

3.32.1 Certification Information. Minority and Women owned business enterprises that are not currently SOMWBA certified and would like to be considered as an M/WBE for this RFR should submit an application for certification prior to the RFR bid response due date. A copy of the certification application **must** be submitted as part of the bid response as a form of verification. For further information on SOMWBA certification, contact their office at 1-617-727-8692 or via the Internet at **mass.gov/somwba.**

3.33 DISTRIBUTION OF ADVERTISING LITERATURE, MANUALS, CATALOGS AND PRICE LISTS. Bidders awarded any Contract resulting from this RFR **must** submit all advertising literature with regards to OFF22, including but not limited to, brochures, catalogs, and price lists to the OSD Contract Manager and the PMT for review and approval prior to it being provided to any Eligible Entity. Non-compliance with this requirement will result in a penalty assessment negotiated by the OSD Contract Manager,

PMT and Contractor. It is **desirable** if a bidder agrees to use a minimum of 30% post consumer recycled content (PCRC) in all printed marketing materials and other literature for OFF22.

3.34 EQUIPMENT, SUPPLY, AND/OR NEW/PREDECESSOR PRICE LISTS AND CATALOGS. All bidders **must** submit with their bids a dated manufacturer's catalog and the corresponding dated price list covering each item being bid. Each catalog or price list **must** be clearly identified with the name, address, telephone, and fax number of the submitting bidder. All references in this RFR to the catalog or price list shall refer exclusively to manufacturer issued catalogs and price lists.

The awarded bidder(s) shall, within forty-five (45) calendar days after receipt of the bidder award notice, publish a "Massachusetts Price List." Such price list shall contain the manufacturers list price, net prices to the Commonwealth, possible volume discount prices, Contractor's name, contact person, telephone numbers and **must** be submitted to the OSD Contract Manager for approval by the PMT **prior to its issuance** to Eligible Entities.

The Contractor shall provide, with a delivery or within ten (10) business days of a request by an Eligible Entity, catalogs or price lists complete with the contract number, contact name and specific directions on how to order.

3.35 PRICING PLAN REQUIRED. Options under which equipment, supplies and service may be procured:

- Purchase – Equipment, Supplies and Services all Categories
- Term Lease: 12 Months (Postage Meter Heads Only) 36, 48 & 60 months – Equipment, Supplies and Services all Categories
- Rental: Six- (6) month maximum (non-renewable) – Equipment, Supplies and Services all Categories.

3.36 QUARTERLY REPORTING REQUIREMENTS. This Section of the Bidder's Response should indicate the Bidder's ability to fulfill the reporting requirements listed below. The Statewide information should be provided to the OSD Contract Manager. The Contractors and OSD Contract Manager will identify spreadsheet format after award.

3.36.1 Reports. The Contractor **must** provide and maintain access to a database which is capable of detailed tracking of customer accounts, purchase orders, proof of delivery, deliveries, billing, and payments in a comprehensive manner. Complete format will be provided upon award.

The Contractor **must** provide, to the OSD Contract Manager, **quarterly and annual reports** of all product purchases made under the Contract. The Contractor **must** provide the OSD Contract Manager with information on purchases of environmentally preferable products made by Commonwealth Eligible Entities upon request. The reporting requirements outlined herein can be, if required by the OSD Contract Manager, modified to facilitate the Commonwealth's needs for the term of the contract.

Failure to meet the reporting requirements established herein may result in contract termination.

The following list represents information that **must** be included in quarterly and annual reports, and identified for each category awarded:

Total dollars spent in each category of the Contract, separated by Commonwealth fiscal years (July 1 to June 30).

- Total equipment, supplies and service dollars spent in each category of the Contract by individual Agencies, Cities, Towns, Political Sub-divisions, and other Eligible Entities with each ordering category totaled individually.
- Total detailed list of each item purchased during the reporting period and maintaned "year to date" (Y-T-D) including all lease end dates.

- A breakout of recycled and environmentally preferable product purchases by Commonwealth Eligible Entities within the individual categories (with information on current and/or potential savings if requested).
- List all certified M/WBE sub-contract activity and purchase of supplies by Contractor and/or supplier. Also, listed separately, the total dollars spent within all the categories compared to M/WBE total dollars participation on this contract.
- List other M/WBE activity such as Joint Ventures, Mentoring, etc.
- List number of Customer Service complaints and issues within the following categories:
  - Delivery Issues
  - Total number of complaint issues
  - Total number of resolved issues
  - Total number of unresolved issues listed alphabetically by Eligible Entity.
  - A detailed explanation will be required upon request by the OSD Contract Manager and or the PMT of unresolved issues in excess of 10 business days.
  - Proof of Deliveries must be maintained for a minimum of eighteen (18) months after deliveries
  - List of Eligible Entities whose payments due are over 45 days. The OSD Contract Manager will assist in resolving overdue payments between the Eligible Entity and Contractor.

The submission deadline for quarterly reports (work completed in the period ending) will be:

Period Ending	Submission Deadline
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

3.37 CUSTOMER SURVEY. All Contractors will be required to provide a survey for each equipment placement and semi-annually for for supplies and services. The Eligible Entity is encouraged to complete and return to the OSD Contract Manager. The surveys will assist the PMT in the evaluation of a Contractors performance during the term of the contract.

3.38 BILLING/INVOICING. Invoices shall be directly from the OEM Manufacturer, Authorized Reseller or Affirmative Market Partner, with a direct pay relation, approved by the OSD Contract Manager and PMT as the Prime Contractor.

- Billing for Maintenance/Service **must** be done at a minimum monthly, and it is **highly desirable** if it can be done quarterly, semi-annually or annually upon the Eligible Entities request.
- Bidders may be required to provide, upon request of the Eligible Entity, consolidated billing. All equipment, supplies and service invoices **must** have a separate line item within the invoice for all three elements or a separate invoice for each of the three elements.
- Invoices for purchases and software fees are not due and payable until successful completion of any applicable acceptance testing. Invoices for services are not due and payable until after services are rendered.

3.40 WEBSITE PAGE. It is required that the awarded Contractor(s) develop a web page to be utilized by the OSD Contract Manager and PMT to advertise the contract pricing and terms and conditions. The website page must be developed and approved by the OSD Contract Manager and the PMT, prior to publication, within 90 days after contract execution and during the contract term when changes/updates are necessary. The website page must be accessible without the need of a password by an Eligible Entity. The website page must include the minimum elements;

- Active and approved Contractors Cost Sheets by Category and Model Numbers,

- Archive Section for prior approved Contractors Cost Sheets by Category and Model Numbers for equipment no longer available,
- Detailed Equipment Specifications by model numbers,
- Affirmative Market Partnership (AMP) aggreement with AMP Partners contact information; Company Name & Address, Contract Name, Telephone #, Fax # and E-mail address,
- Equipment Confirmation Form in word and PDF formats,
- Training contract highlights with contact information i.e. Name(s), Telephone #'s, E-mails,
- Installation contract highlights,
- Related Links section to include a link to the OFF22 main page, link to the OFF22 RFR/Contract terms and conditions, link to the OFF22 OSD Update once it is released,
- Promotional Section to highlight any current or planned **approved** contract promotions,
- How to Buy Section to highlight how to utilize the contract. This section should include the Telephone, Fax and E-mail information for the Contractor(s) Contract Manager, Sales, Service and Customer Service personnel dedicated to the contract,
- Environmental Information section to cover the topics including but not limited to: information on and the benefits of operating equipment features that allow to save energy (e.g. EnergyStar), paper (e.g. duplexing, printing multiple pages on a single sheet, etc.) and supplies (e.g. draft printing), use and benefits of remanufactured supplies, equipment and supply Material Safety Data Sheets MSDS), Contractors' current and future environmental commitment(s), policies and initiatives (e.g. packaging reduction, toxics reduction, equipment end-of-life management, etc.) and other relevant topics.

The OSD Contract Manager and the PMT reserve the right to request modifications to the website page during the term of the contract. Any modifications, changes or updates **must** be reviewed and approved by the OSD Contract Manager and PMT prior to publication. Non-compliance with this requirement will result in a penalty assessment negotiated by the OSD Contract Manager, PMT and Contractor.

SECTION 3

PART II - TECHNICAL SPECIFICATIONS

3.41 INTRODUCTION. All specifications in this section apply to all equipment awarded under any contract resulting from this RFR. The responses, as submitted, **must** meet or exceed all of the required specifications contained within this RFR. If a Bidder can exceed minimum requirements, points may be assessed, per category, depending on the level of added value.

Only current production equipment, available for sale at the time of the bid opening date, for this contract, can be included. Bids for discontinued equipment not being actively marketed by the OEM for domestic sales are not to be offered, and will not be considered. The Commonwealth reserves the right to require OEM documentation to confirm equipment eligibility under this contract.

Equipment under this contract shall be new and carry a maintenance guarantee for a period of at least seven (7) years from date of acceptance with the exception of postage meter devices, loaner or rental equipment which can be either new or pre-owned. All equipment shall be in excellent working condition and shall include new OEM equipment guarantee.

3.42 CONTRACTOR CERTIFICATION THAT EQUIPMENT IS TIME DATE FUNCTIONAL. By executing a Contract under this Statewide Contract the Contractor certifies and warrants that the Information Technology for any equipment provided for Outright Purchase, Term Lease or Rental under this Statewide Contract is time date functional. Time date functional compliance means Information Technology that accurately processes date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations. Furthermore, time date functionality compliant Information Technology, when used in combination with other Information Technology, shall accurately process date/time data if the other Information Technology properly exchanges date/time data with it. This warranty shall survive the expiration or termination of this Statewide Contract. This warranty is in addition to all other Contractor generated warranties, disclaimers, or remedies to Contractor Programs, Media, and Services.

3.43 EQUIPMENT CATEGORIES. The PMT has established the minimum functional specifications per category and sub-category(ies) with the intent to allow bidders the opportunity to submit the complete manufacturer's product line for a given category and sub-category. **Utilize the appropriate equipment cost file attachment for each equipment model in a particular sub-category.**

3.43.1 .Category 1 Postage and Mailing Systems Equipment, Accessories, Service and Supplies. Equipment within the scope of Category 1 includes the full product line for digital postage meters, mailing systems, scales, mailroom furniture and related accessories (e.g. software, print output devices), service and supplies.

The following is a detailed list of **minimum** functional specifications for Category 1 product;

3.43.1.1 Equipment. Digital postage meters and mailing systems that process the mail in low, medium and high volume speeds with accessories needed for multiple configurations based upon the needs of the Eligible Entities. The low volume equipment may be manual, semi-automatic and or automatic while the medium to high volume equipment may be semi-automatic and automatic in their ability to process mail pieces. Mailing systems with accessories that allow the Eligible Entity the ability to mix weight and size materials must be included as an accessory item on the appropriate equipment models Category 1 cost sheet.

All scales must provide accurate weight and postage rates with all various weight capacities within a manufacturer's product line. Scales must be able to interface with the appropriate mailing systems within the manufacturer's product line and be able to be updated with the current and future postal rates with all

appropriate software tools necessary for the new rates. Software updates are the responsibility of the Contractor to integrate with current equipment and future USPS postal regulations.

The lease of postage meters shall include unlimited resets at no charge to the Eligible Entity during the term of the lease.

Contractors shall update or replace any postage meters, which do not meet United States Postal Service (USPS) regulations or are defective at no charge to the Eligible Entity and will bill the Eligible Entity only at the current meter lease rates. Suppliers shall be responsible for notifying all Eligible Entitites of meter updates required by the USPS.

Contractors shall modify any leased equipment, which can be modified, to accept new or updated postage meters at no charge to Eligible Entity.

Contractors shall modify owned equipment, which can be modified, at the contract costs for the appropriate accessory(ies) in order for the equipment to accept new or updated postage meters.

The following is the monthly volume bands that the Team has established for the entire product line of equipment for cost evaluation purposes.

Volume Bands	Minimum Monthly Volume
LOW	25,000
MEDIUM	100,000
HIGH	250,000

3.43.1.2 Accessories. Mailroom furniture accessories must be appropriate for a mailroom operation. Mailroom work tables, free standing mail sorter tables and bins must be constructed of wood, steel or plastic bases with steel, laminate or wood tops that can support the daily use and weight of mailroom product and equipment.

All accessories related to Category 1 equipment configurations must be identified on the equipment cost sheets (Attachment 1) for each equipment model with the associated percentage % discount(s) off the manufacturer's suggested retail price.

3.43.1.3 Services. All bidders must provide the following service plans A and B for the Eligible Entities to utilize;

- Plan A – Yearly Service Plan during normal business hours (8:00 AM – 5:00 PM) or mutually agreed upon by the Eligible Entity and Contractor,
- Plan B – Time and Material Discount Plan during normal business hours (8:00 AM – 5:00 PM) or mutually agreed upon by the Eligible Entity and Contactor,
- Optional Service Plans – One or more of the optional service plans detailed on each cost sheet per Category and Sub-Category are **highly desirable** and not required if the bidder cannot provide one or more of the optional service plans.

Plan A and B Service plans will be utilized for both new and predecessor equivalent equipment models.

Insert the proper requested yearly rate, hourly rates, dated catalog and percentage % off in the appropriate cost sheets.

3.43.1.4 Supplies. All related equipment supplies and costs must be provided on the appropriate equipment cost sheets. The supply costs information including the dated catalog, supply description, manufacturer brand, part number, yield per ink cartridge, manufacturer suggested retail price (MSRP) and the percentage % discount for each supply cost must be provided on the appropriate equipment cost sheet per model.

The percentage % off the dated catalog will also include all predecessor supplies for equipment currently utilized that are no longer manufactured.

3.43.2 Category 2, Sub-Category 2A Folding/Inserting Equipment, Accessories, Service and Supplies. Equipment within the scope of Category 2, Sub-Category 2A includes the full product line for inserting equipment and related accessories, services and supplies.

The following is a detailed list of **minimum** functional specifications for Category 2, Sub-Category 2A product;

3.43.2.1 Equipment. Automatic desktop (low) through production (high) inserting/folding equipment that folds and inserts documents into the appropriate various sized envelopes. Desktop equipment must be able to fold documents with a minimum of one fold type and must be able to adjust to various sized envelopes for mailing. Production equipment must have multiple folding options and it is desirable if the equipment can be customized with additional stackers if required by the Eligible Entity.

The following is the monthly volume bands that the Team has established for the entire product line of equipment for cost evaluation purposes.

Volume Bands	Minimum Monthly Volume
LOW	100,000
MEDIUM	250,000
HIGH	500,000

3.43.2.2 Accessories. Inserter folding equipment furniture accessories must be appropriate for the equipment's operation. e.g., work tables, height adjustable tables with shelves and doors with or without locks, constructed of wood, steel or plastic bases with a steel, laminate or wood tops that can support the daily use and weight of the equipment.

All accessories related to Category 2, Sub-Category 2A equipment configurations must be identified on the equipment cost sheets (Attachment 2A) for each equipment model with the associated percentage % discount(s) off the manufacturer's suggested retail price.

3.43.2.3 Services. All bidders must provide the following service plans A and B for the Eligible Entities to utilize;

- Plan A – Yearly Service Plan during normal business hours (8:00 AM – 5:00 PM) or mutually agreed upon by the Eligible Entity and Contractor,
- Plan B – Time and Material Discount Plan during normal business hours (8:00 AM – 5:00 PM) or mutually agreed upon by the Eligible Entity and Contactor,
- Optional Service Plans – One or more of the optional service plans detailed on each cost sheet per Category and Sub-Category are **highly desirable** and not required if the bidder cannot provide one or more of the optional service plans.

Plan A and B Service plans will be utilized for both new and predecessor equivalent equipment models.

Insert the proper requested yearly rate, hourly rates, dated catalog and percentage % off in the appropriate cost sheets.

3.43.2.4 Supplies. All related equipment supplies and costs must be provided on the appropriate equipment cost sheets. The supply costs information including the dated catalog, supply description, manufacturer brand, part number, yield per ink cartridge (if applicable), manufacturer suggested retail price (MSRP) and the percentage % discount for each supply cost must be provided on the appropriate equipment cost sheet per model.

The percentage % off the dated catalog will also include all predecessor supplies for equipment currently utilized that are no longer manufactured.

3.43.3 Category 2, Sub-Category 2B Folding Equipment, Accessories, Service and Supplies. Equipment within the scope of Category 2, Sub-Category 2B includes the full product line for folding equipment and related accessories, services and supplies.

The following is a detailed list of **minimum** functional specifications for Category 2, Sub-Category 2B product;

3.43.3.1 Equipment. Automatic desktop (low) through production (high) folding equipment that folds single and multiple sheets into a single fold output. Production equipment should have multiple folding style options for output.

The following is the monthly volume bands that the Team has established for the entire product line of equipment for cost evaluation purposes.

Volume Bands	Minimum Monthly Volume
LOW	25,000
MEDIUM	100,000
HIGH	250,000

3.43.3.2 Accessories. Folding equipment furniture accessories must be appropriate for the equipment's operation. e.g., work tables, height adjustable tables with shelves and doors with or without locks, constructed of wood, steel or plastic bases with a steel, laminate or wood tops that can support the daily use and weight of the equipment.

All accessories related to Category 2, Sub-Category 2B equipment configurations must be identified on the equipment cost sheets (Attachment 2B) for each equipment model with the associated % percentage discount(s) off the manufacturer's suggested retail price.

3.43.3.3 Services. All bidders must provide the following service plans A and B for the Eligible Entities to utilize;

- Plan A – Yearly Service Plan during normal business hours (8:00 AM – 5:00 PM) or mutually agreed upon by the Eligible Entity and Contractor,
- Plan B – Time and Material Discount Plan during normal business hours (8:00 AM – 5:00 PM) or mutually agreed upon by the Eligible Entity and Contactor,

- Optional Service Plans – One or more of the optional service plans detailed on each cost sheet per Category and Sub-Category are **highly desirable** and not required if the bidder cannot provide one or more of the optional service plans.

Plan A and B Service plans will be utilized for both new and predecessor equivalent equipment models.

Insert the proper requested yearly rate, hourly rates, dated catalog and percentage % off in the appropriate cost sheets.

3.43.3.4 Supplies. All related equipment supplies and costs must be provided on the appropriate equipment cost sheets. The supply costs information including the dated catalog, supply description, manufacturer brand, part number, yield per ink cartridge (if applicable), manufacturer suggested retail price (MSRP) and the percentage % discount for each supply cost must be provided on the appropriate equipment cost sheet per model.

The percentage % off the dated catalog will also include all predecessor supplies for equipment currently utilized that are no longer manufactured.

3.43.4 .Category 2, Sub-Category 2C Tabbing Equipment, Accessories, Service and Supplies. Equipment within the scope of Category 2, Sub-Category 2C includes the full product line for tabbing equipment and related accessories, services and supplies.

The following is a detailed list of **minimum** functional specifications for Category 2, Sub-Category 2C product;

3.43.4.1 Equipment. Automatic desktop (low) through production (high) tabbing equipment that will apply the selected tab on non-envelope, self-mailers required by the United States Postal Service (USPS) in order to receive discounted postal rates. Tabbing equipment must have a feeder stacker capable of accepting various sized documents for tabbing. It is highly desirable that production tabbing equipment have a post production conveyer stacker accessories indicated on the cost sheet attachment for large volume jobs.

The following is the monthly volume bands that the Team has established for the entire product line of equipment for cost evaluation purposes.

Volume Bands	Minimum Monthly Volume
LOW	25,000
MEDIUM	100,000
HIGH	250,000

3.43.4.2 Accessories. Tabbing equipment furniture accessories must be appropriate for the equipment's operation. e.g., work tables, height adjustable tables with shelves and doors with or without locks, constructed of wood, steel or plastic bases with a steel, laminate or wood tops that can support the daily use and weight of the equipment.

All accessories related to Category 2, Sub-Category 2C equipment configurations must be identified on the equipment cost sheets (Attachment 2C) for each equipment model with the associated % percentage discount(s) off the manufacturer's suggested retail price.

3.43.4.3 Services All bidders must provide the following service plans A and B for the Eligible Entities to utilize;

- Plan A – Yearly Service Plan during normal business hours (8:00 AM – 5:00 PM) or mutually agreed upon by the Eligible Entity and Contractor,
- Plan B – Time and Material Discount Plan during normal business hours (8:00 AM – 5:00 PM) or mutually agreed upon by the Eligible Entity and Contactor,
- Optional Service Plans – One or more of the optional service plans detailed on each cost sheet per Category and Sub-Category are **highly desirable** and not required if the bidder cannot provide one or more of the optional service plans.

Plan A and B Service plans will be utilized for both new and predecessor equivalent equipment models.

Insert the proper requested yearly rate, hourly rates, dated catalog and percentage % off in the appropriate cost sheets.

3.43.4.4 Supplies All related equipment supplies and costs must be provided on the appropriate equipment cost sheets. The supply costs information including the dated catalog, supply description, manufacturer brand, part number, yield per ink cartridge (if applicable), manufacturer suggested retail price (MSRP) and the percentage % discount for each supply cost must be provided on the appropriate equipment cost sheet per model.

The percentage % off the dated catalog will also include all predecessor supplies for equipment currently utilized that are no longer manufactured.

3.43.5 .Category 2, Sub-Category 2D Sorting Equipment, Accessories, Service and Supplies. Equipment within the scope of Category 2, Sub-Category 2D includes the full product line for sorter equipment and related accessories, services and supplies.

The following is a detailed list of **minimum** functional specifications for Category 2, Sub-Category 2D product;

3.43.5.1 Equipment. Automatic sorter equipment that has the ability to sort various sizes of envelopes, flats and packages at various rates of speed from low through production high sorting speeds. The equipment must be able to process the entire range of USPS with the appropriate feed table and numerous bin options based on specific needs.

The following is the monthly volume bands that the Team has established for the entire product line of equipment for cost evaluation purposes.

Volume Bands	Minimum Monthly Volume
LOW	100,000
MEDIUM	500,000
HIGH	750,000

3.43.5.2 Accessories. Sorter equipment furniture accessories must be appropriate for the equipment's operation. e.g., work tables, height adjustable tables with shelves and doors with or without locks, constructed of wood, steel or plastic bases with a steel, laminate or wood tops that can support the daily use and weight of the equipment.

All accessories related to Category 2, Sub-Category 2D equipment configurations must be identified on the equipment cost sheets (Attachment 2D) for each equipment model with the associated % percentage discount(s) off the manufacturer's suggested retail price.

3.43.5.3 Services All bidders must provide the following service plans A and B for the Eligible Entities to utilize;

- Plan A – Yearly Service Plan during normal business hours (8:00 AM – 5:00 PM) or mutually agreed upon by the Eligible Entity and Contractor,
- Plan B – Time and Material Discount Plan during normal business hours (8:00 AM – 5:00 PM) or mutually agreed upon by the Eligible Entity and Contactor,
- Optional Service Plans – One or more of the optional service plans detailed on each cost sheet per Category and Sub-Category are **highly desirable** and not required if the bidder cannot provide one or more of the optional service plans.

Plan A and B Service plans will be utilized for both new and predecessor equivalent equipment models.

Insert the proper requested yearly rate, hourly rates, dated catalog and percentage % off in the appropriate cost sheets.

3.43.5.4 Supplies All related equipment supplies and costs must be provided on the appropriate equipment cost sheets. The supply costs information including the dated catalog, supply description, manufacturer brand, part number, yield per ink cartridge (if applicable), manufacturer suggested retail price (MSRP) and the percentage % discount for each supply cost must be provided on the appropriate equipment cost sheet per model.

The percentage % off the dated catalog will also include all predecessor supplies for equipment currently utilized that are no longer manufactured.

3.43.6 .Category 2, Sub-Category 2E Mail/Letter Opening Equipment, Accessories, Service and Supplies. Equipment within the scope of Category 2, Sub-Category 2E includes the full product line for mail/letter openers equipment and related accessories, services and supplies.

The following is a detailed list of **minimum** functional specifications for Category 2, Sub-Category 2E product;

3.43.6.1 Equipment. Automatic desktop (low) through production (high) mail/letter openers that slice open the various envelope sizes in a minimum of one location protecting the internal documents. The mail/letter opener must be able to handle mixed-mail during processing.

The following is the monthly volume bands that the Team has established for the entire product line of equipment for cost evaluation purposes.

Volume Bands	Minimum Monthly Volume
LOW	10,000
MEDIUM	100,000
HIGH	250,000

3.43.6.2 Accessories. Mail/letter opener equipment furniture accessories must be appropriate for the equipment's operation. e.g., work tables, height adjustable tables with shelves and doors with or without locks, constructed of wood, steel or plastic bases with a steel, laminate or wood tops that can support the daily use and weight of the equipment.

All accessories related to Category 2, Sub-Category 2E equipment configurations must be identified on the equipment cost sheets (Attachment 2E) for each equipment model with the associated % percentage discount(s) off the manufacturer's suggested retail price.

3.43.6.3 Services All bidders must provide the following service plans A and B for the Eligible Entities to utilize;

- Plan A – Yearly Service Plan during normal business hours (8:00 AM – 5:00 PM) or mutually agreed upon by the Eligible Entity and Contractor,
- Plan B – Time and Material Discount Plan during normal business hours (8:00 AM – 5:00 PM) or mutually agreed upon by the Eligible Entity and Contactor,
- Optional Service Plans – One or more of the optional service plans detailed on each cost sheet per Category and Sub-Category are **highly desirable** and not required if the bidder cannot provide one or more of the optional service plans.

Plan A and B Service plans will be utilized for both new and predecessor equivalent equipment models.

Insert the proper requested yearly rate, hourly rates, dated catalog and percentage % off in the appropriate cost sheets.

3.43.6.4 Supplies All related equipment supplies and costs must be provided on the appropriate equipment cost sheets. The supply costs information including the dated catalog, supply description, manufacturer brand, part number, yield per ink cartridge (if applicable), manufacturer suggested retail price (MSRP) and the % percentage discount for each supply cost must be provided on the appropriate equipment cost sheet per model.

The percentage % off the dated catalog will also include all predecessor supplies for equipment current utilized that are no longer manufactured.

3.43.7 .Category 2, Sub-Category 2F Pressure Sealing Equipment, Accessories, Service and Supplies. Equipment within the scope of Category 2, Sub-Category 2F includes the full product line for pressure sealer equipment and related accessories, services and supplies.

The following is a detailed list of **minimum** functional specifications for Category 2, Sub-Category 2F product;

3.43.7.1 Equipment. Automatic desktop (low) through production (high) pressure sealer equipment that creates a single piece mailer from a full range of stock or custom forms with a continuous seal formed to assure security and confidentiality. Equipment models must be able to detect when "double documents" are processed or documents jam during production.

The following is the monthly volume bands that the Team has established for the entire product line of equipment for cost evaluation purposes.

Volume Bands	Minimum Monthly Volume
LOW	25,000
MEDIUM	100,000
HIGH	250,000

3.43.7.2 Accessories. Pressure sealer equipment furniture accessories must be appropriate for the equipment's operation. e.g., work tables, height adjustable tables with shelves and doors with or without locks, constructed of wood, steel or plastic bases with a steel, laminate or wood tops that can support the daily use and weight of the equipment.

All accessories related to Category 2, Sub-Category 2F equipment configurations must be identified on the equipment cost sheets (Attachment 2F) for each equipment model with the associated % percentage discount(s) off the manufacturer's suggested retail price.

3.43.7.3 Services All bidders must provide the following service plans A and B for the Eligible Entities to utilize;

- Plan A – Yearly Service Plan during normal business hours (8:00 AM – 5:00 PM) or mutually agreed upon by the Eligible Entity and Contractor,
- Plan B – Time and Material Discount Plan during normal business hours (8:00 AM – 5:00 PM) or mutually agreed upon by the Eligible Entity and Contactor,
- Optional Service Plans – One or more of the optional service plans detailed on each cost sheet per Category and Sub-Category are **highly desirable** and not required if the bidder cannot provide one or more of the optional service plans.

Plan A and B Service plans will be utilized for both new and predecessor equivalent equipment models.

Insert the proper requested yearly rate, hourly rates, dated catalog and percentage % off in the appropriate cost sheets.

3.43.7.4 Supplies All related equipment supplies and costs must be provided on the appropriate equipment cost sheets. The supply costs information including the dated catalog, supply description, manufacturer brand, part number, yield per ink cartridge (if applicable), manufacturer suggested retail price (MSRP) and the % percentage discount for each supply cost must be provided on the appropriate equipment cost sheet per model.

The percentage % off the dated catalog will also include all predecessor supplies for equipment current utilized that are no longer manufactured.

3.43.8 .Category 2, Sub-Category 2G Check Imprinting/Endorsing Equipment, Accessories, Service and Supplies. Equipment within the scope of Category 2, Sub-Category 2G includes the full product line for check imprinters/endorser equipment and related accessories, services and supplies.

3.43.8.1 Equipment. Automatic desktop (low) through production (high) check imprinters/endorser equipment that utilized both cut sheet and continuous style documents. The equipment models must be able to provide a variety of options with regards to signatures, date stamps, seals and logos on various locations on the

document. It is desirable if the equipment has both a counter that can be reset and non-reset for audit purposes. It is desirable if the equipment offers tri-color and ultraviolet ink roll options.
The following is the monthly volume bands that the Team has established for the entire product line of equipment for cost evaluation purposes.

Volume Bands	Minimum Monthly Volume
LOW	25,000
MEDIUM	100,000
HIGH	250,000

3.43.8.2 Accessories. Check imprinters/endorser equipment furniture accessories must be appropriate for the equipment's operation. e.g., work tables, height adjustable tables with shelves and doors with or without locks, constructed of wood, steel or plastic bases with a steel, laminate or wood tops that can support the daily use and weight of the equipment.

All accessories related to Category 2, Sub-Category 2G equipment configurations must be identified on the equipment cost sheets (Attachment 2G) for each equipment model with the associated % percentage discount(s) off the manufacturer's suggested retail price.

3.43.8.3 Services All bidders must provide the following service plans A and B for the Eligible Entities to utilize;

- Plan A – Yearly Service Plan during normal business hours (8:00 AM – 5:00 PM) or mutually agreed upon by the Eligible Entity and Contractor,
- Plan B – Time and Material Discount Plan during normal business hours (8:00 AM – 5:00 PM) or mutually agreed upon by the Eligible Entity and Contractor,
- Optional Service Plans – One or more of the optional service plans detailed on each cost sheet per Category and Sub-Category are **highly desirable** and not required if the bidder cannot provide one or more of the optional service plans.

Plan A and B Service plans will be utilized for both new and predecessor equivalent equipment models.

Insert the proper requested yearly rate, hourly rates, dated catalog and percentage % off in the appropriate cost sheets.

3.43.8.4 Supplies All related equipment supplies and costs must be provided on the appropriate equipment cost sheets. The supply costs information including the dated catalog, supply description, manufacturer brand, part number, yield per ink cartridge (if applicable), manufacturer suggested retail price (MSRP) and the % percentage discount for each supply cost must be provided on the appropriate equipment cost sheet per model.

The percentage % off the dated catalog will also include all predecessor supplies for equipment current utilized that are no longer manufactured.

3.43.9 .Category 2, Sub-Category 2H Bursting Equipment, Accessories, Service and Supplies. Equipment within the scope of Category 2, Sub-Category 2H includes the full product line for burster equipment and related accessories, services and supplies.

The following is a detailed list of **minimum** functional specifications for Category 2, Sub-Category 2H product;

3.43.9.1 Equipment. Automatic desktop (low) through production (high) burster equipment that can burst cut sheet, burst at the perforation and stacked sequentially and continuous multipart documents burst at the horizontal perforations. It is highly desirable if the equipment can burst various locations of perforations for production (high) equipment.

The following is the monthly volume bands that the Team has established for the entire product line of equipment for cost evaluation purposes.

Volume Bands	Minimum Monthly Volume
LOW	50,000
MEDIUM	250,000
HIGH	500,000

3.43.9.2 Accessories. Inserting equipment furniture accessories must be appropriate for the equipment's operation. e.g., work tables, height adjustable tables with shelves and doors with or without locks, constructed of wood, steel or plastic bases with a steel, laminate or wood tops that can support the daily use and weight of the equipment.

All accessories related to Category 2, Sub-Category 2H equipment configurations must be identified on the equipment cost sheets (Attachment 2H) for each equipment model with the associated % percentage discount(s) off the manufacturer's suggested retail price.

3.43.9.3 Services All bidders must provide the following service plans A and B for the Eligible Entities to utilize;

- Plan A – Yearly Service Plan during normal business hours (8:00 AM – 5:00 PM) or mutually agreed upon by the Eligible Entity and Contractor,
- Plan B – Time and Material Discount Plan during normal business hours (8:00 AM – 5:00 PM) or mutually agreed upon by the Eligible Entity and Contactor,
- Optional Service Plans – One or more of the optional service plans detailed on each cost sheet per Category and Sub-Category are **highly desirable** and not required if the bidder cannot provide one or more of the optional service plans.

Plan A and B Service plans will be utilized for both new and predecessor equivalent equipment models.

Insert the proper requested yearly rate, hourly rates, dated catalog and percentage % off in the appropriate cost sheets.

3.43.9.4 Supplies All related equipment supplies and costs must be provided on the appropriate equipment cost sheets. The supply costs information including the dated catalog, supply description, manufacturer brand, part number, yield per ink cartridge (if applicable), manufacturer suggested retail price (MSRP) and the percentage % discount for each supply cost must be provided on the appropriate equipment cost sheet per model.

The percentage % off the dated catalog will also include all predecessor supplies for equipment currently utilized that are no longer manufactured.

3.44 ADDITIONAL FUNCTIONAL TECHNICAL REQUIREMENTS FOR ALL CATEGORIES OF EQUIPMENT. In addition, the following criteria **must be met:**

- All electrical equipment furnished **must** be UL approved or equivalent.
- All software for equipment accessories must be appropriate for the equipment operation and functionality dependent upon the configuration. The Contractor is responsible for software upgrades for purchased or leased equipment to ensure complete functionality of the equipment.
- It is the responsibility of the Contractor and Eligible Entity to ensure, where applicable, configurations of equipment or equipment attached to another piece of equipment as an accessory can effectively operate as designed.
- Design layout services, if required by an Eligible Entity, must be provided at no cost by the Contractor for whom the Eligible Entity is purchasing the furniture and equipment.
- American with Disabilty Act (ADA) - The Bidder **must** identify if the proposed equipment being submitted for bid meets the current Federal 508 Standards. Bidders must indicate on the appropriate equipment cost sheet per modell whether the proposed equipment meets the Federal 508 Standards and is readily accessible for use by individuals with disabilities.
- Power Protection - Bidders must include as part of their available accessories the ability to provide surge and ground noise protection product for all categories and sub-categories of equipment. Power Protections product shall be **ESP QC Power Protection** or equal. ligible Entities are encouraged to consider power protection, especially for high volume equipment. It is at the discretion of the Eligible Entity whether or not to purchase the Power Protection product at the time of purchase.

3.44.1 Equipment Substitutions. After award of contract, equipment that is subsequently discontinued from a manufacturer's line may be substituted upon approval by the OSD Contract Manager and the PMT. Bidders **must** submit manufacturer's specifications for the discontinued model(s) and for the new equipment model(s) requested to be substituted. All pricing, terms and conditions of discontinued model will apply to new equipment. Substituted equipment **must** meet or exceed the performance specification of the discontinued model. Additional fixed accessories can be accepted at no extra cost. Supplies and accessories pricing **must** be identical **or less** than pricing for discontinued equipment.

Replacement of obsolete equipment will be reviewed on an individual basis beginning **6 months** after commencement of this contract. Contractors can only submit a request for the Category(ies) and Manufacturer Brand(s) awarded. Each Contractor **must** submit a cover letter explaining the request accompanied by the following documentation for each equipment, supply or service within the appropriate category(ies) awarded. Contractors wishing to substitute equipment **must** include documentation for the items listed below;

- **Equipment Cost Sheet** - The equipment cost sheet(s) must be completed in its entirety with the equipment meeting the minimum technical requirements. Also, indicate each technical specification that the equipment may exceed. Submit one hard copy and an electronic copy to the OSD Contract Manager.
- **Substitutions –** In addition to the first bullet, also include a copy of the original approved cost sheet. The substituted equipment must meet the specifications, be in the same sub-category and at the same or lower price of the original equipment awarded.
- **OEM Technical Specifications Brochure/Sheet** - Each equipment add-on or substitution **must** be accompanied by a technical specification brochure/sheet that provides a detailed description that meets or exceeds the minimum specifications put forth in the original RFR to be considered for addition to the contract.
- **Substitutions** – In addition to the second bullet, also include a copy of the OEM Technical Specifications Brochure/Sheet of the original approved equipment.
- **OEM Certification** that the equipment has been "Nationally Launched"
- **A Price Comparison must be supplied** for each model comparing Statewide Contract pricing to: **GSA Pricing, Commercial/List Price** with GSA Pricing being used as a ceiling if GSA pricing is available.

- **Equipment, Supplies & Service Contractors must submit the appropriate updated Supply Costs and/or Service Maintenance Costs** if your requests result in any potential changes. All updates **must** be accompanied by a copy of the original award information.
- Three commercial references from customers, who are currently using the equipment, supplies or services.

Contractors and Eligible Entities will be promptly notified of the acceptance or rejection of new items. If rejected, the contractor can not offer the item(s) to any Eligible Entity as a contract item. Non-compliance may result in a written warning, penalty assessment and/or contract termination

All equipment submitted for substitution **must** be under manufacture at the time of submission. All equipment offered and placed for Eligible Entities shall be in excellent working order and produce good, clean images. All equipment will be expected to perform in an efficient manner with a minimum downtime. The user will report equipment that requires an excessive number of service calls to the OSD Contract Manager for PMT review and possible replacement.

The substitution guidelines are subject to change by the OSD Contract Manager and PMT throughout the term of the contract.

3.44.2 Supply Substitutions. After award of contract, supplies that are subsequently discontinued from a manufacturer's line may be substituted upon approval by the OSD Contract Manager and the PMT. Bidders **must** submit manufacturer's specifications for the discontinued supply item(s) and for the new supply item(s) requested to be substituted. All pricing, terms and conditions of discontinued items will apply to new items. Substituted items **must** meet or exceed the performance specification of the discontinued item(s).

Replacement of obsolete items will be reviewed on an individual basis beginning **6-months** after commencement of this contract.

Contractors and Eligible Entities will be promptly notified of the acceptance or rejection of new items. If rejected, the contractor will not offer the item(s) to any Eligible Entity as a contract item. Non-compliance may result in a written warning, penalty assessment and/or contract termination

3.44.3 Equipment Additions. Six (6) Months after award of contract, equipment that is new, may be requested to be added to the Category (ies) that the Contractor has been awarded. The OSD Contract Manager and the PMT will review the request and either approve or reject the request. Each Contractor **must** submit a cover letter explaining the request accompanied by the following documentation for each equipment, supply or service within the appropriate category(ies) awarded. Add-on request can be submitted, twice a year, one month prior to the six (6) month anniversary date of the contract.

- **Equipment Cost Sheet** - The equipment cost sheet(s) must be completed in its entirety with the equipment meeting the minimum technical requirements. Also, indicate each technical specification that the equipment may exceed. Submit one hard copy and an electronic copy to the OSD Contract Manager.
- **OEM Technical Specifications Brochure/Sheet** - Each equipment add-on or substitution **must** be accompanied by a technical specification brochure/sheet that provides a detailed description that meets or exceeds the minimum specifications put forth in the original RFR to be considered for addition to the contract.
- **OEM Certification** that the equipment has been "Nationally Launched"
- **A Price Comparison must be supplied** for each model comparing Statewide Contract pricing to: GSA Pricing, Commercial/List Price, with GSA Pricing being used as a ceiling if GSA pricing is available.
- **Equipment, Supplies & Service Contractors must submit the appropriate updated Supply Costs and/or Service Maintenance Costs** if your requests result in any potential changes. All updates **must** be accompanied by a copy of the original award information.
- Three commercial references from customers, who are currently using the equipment, supplies or services.

Contractors and Eligible Entities will be promptly notified of the acceptance or rejection of new items. If rejected, the contractor can not offer the item(s) to any Eligible Entity as a contract item. Non-compliance may result in a written warning, penalty assessment and/or contract termination

All equipment submitted for addition **must** be under manufacture at the time of submission. All equipment offered and placed for Eligible Entities shall be in excellent working order and produce good, clean images. All equipment will be expected to perform in an efficient manner with a minimum of downtime. The user will report equipment that requires an excessive number of service calls to the OSD Contract Manager for PMT review and possible replacement.

The addition guidelines are subject to change by the OSD Contract Manager and PMT throughout the term of the contract.

3.44.4 Supply Additions. **Six (6) Months** after award of contract, supply items that are new, can be requested to be added to the Category that the Contractor has been awarded. The OSD Contract Manager and the PMT will review the request and either approve or reject the request. Add-on request can be submitted, twice a year, one month prior to the six (6) month anniversary date of the contract.

To add remanufactured supplies, Contractors **must** submit manufacturer's specifications for the OEM supply item(s) and for the corresponding remanufactured supply item(s) requested to be added. All terms and conditions other than pricing of phased-out items **must** apply to the remanufactured items offered. The price of remanufactured supplies cannot be higher than the price of the equivalent OEM/generic supplies previously offered. Substituted items **must** meet or exceed the performance specification of the phased-out item(s).

Contractors and Eligible Entities will be promptly notified of the acceptance or rejection of new items. If rejected, the contractor can not offer the item(s) to any Eligible Entity as a contract item.

All supply items offered and placed for Eligible Entities shall be in excellent working condition free of defects.

The addition guidelines are subject to change by the OSD Contract Manager and PMT throughout the term of the contract.

3.44.5 Authorized Manufacturer Service Additions. **Six (6) Months** after award of contract, authorized manufacturer lines that are new may be requested to be added to the Category that the Contractor has been awarded. The OSD Contract Manager and the PMT will review the request and either approve or reject the request. Add-on request of authorized manufacturer service lines can be submitted, once a year, one month prior to the anniversary date of the contract.

Contractors and Eligible Entities will be promptly notified of the acceptance or rejection of new items. If rejected, the contractor can not offer the item(s) to any Eligible Entity as a contract item. Non-compliance may result in a written warning, penalty assessment and/or contract termination

The addition guidelines are subject to change by the OSD Contract Manager and PMT throughout the term of the contract.

3.45 REQUIRED ENVIRONMENTAL SPECIFICATIONS.

3.45.1 Recycled Paper and Envelopes. Some Eligible Entities intending to use this contract currently specify and purchase paper and envelopes with post-consumer recycled content ranging from a minimum of 30% to 100%. All equipment sold under this contract **must** be compatible and fully functional with recycled-content paper and envelopes purchased by the Eligible Entities.

It is the responsibility of the contractor to ensure that the equipment is configured in such a way as to meet the Eligible Entity's paper and envelope requirements. Equipment malfunctions **may not** be blamed on recycled

paper and envelopes purchased through an Eligible Entity's statewide or local contract. Should a Contractor fail to configure the equipment to comply with the above requirement, it may be required to bear the cost of additional equipment configuration and maintenance.

In the event that industry standards and/or Eligible Entity contract specifications for post-consumer recycled content for paper and/or envelopes change during the term of this contract, contractors **must** agree to provide Eligible Entities with the assurance that their equipment will operate using the new industry standard and/or contract specifications. If needed, contractors will be allowed a period of 90 days to test and demonstrate whether or not their equipment models will perform using the new standard and/or specifications.

If adequate performance cannot be demonstrated, contractors will be required to provide for approval by the PMT a plan containing the following information (a) schedule for re-calibration of all non-performing equipment models already sold to Eligible Entities, (b) schedule for bringing current product offering into compliance with the new standard and/or specifications. The PMT may suspend the sale of non-performing equipment models until compliance with the new standard and/or specifications is demonstrated. Failure to meet this requirement may result in penalties, including contract termination.

3.45.2 Environmental Plan. Bidders **must** agree to work with the PMT after contract award to examine the feasibility of the various aspects of an environmental plan. Such a plan may include, but not be limited to, the following initiatives:

- Periodically review and, upon mutual agreement, determine where additional recycled, remanufactured and/or other environmentally preferable equipment, supplies, or other products may be added to the contract,
- Consider the introduction of recycled and/or environmentally preferable products into other operational areas, such as using recycled paper that meets the federal standards for all printing and publishing needs (brochures, advertising, catalogs, etc.), vehicle maintenance (re-refined oil and antifreeze, retread tires),
- Develop a plan to implement collection and recycling of materials at the distributor's facility(ies),
- Work with the PMT to develop and distribute information and/or materials to Commonwealth customers on the vendor's environmental practices and initiatives.

Bidders may receive additional evaluation points for demonstrating that these specifications are met by completing **Attachment 6** and attaching appropriate documentation.

3.45.3 Energy Efficiency. All equipment **currently covered** by the U.S. EPA's ENERGY STAR® program **must** be labeled as such and **must** comply with the latest version of the ENERGY STAR specifications. If equipment is not covered by ENERGY STAR then the bidder must check off the cell for "No" on the apppropriate cost sheet. The specifications are available online:

www.energystar.gov/index.cfm?fuseaction=find_a_product.ShowProductGroup&pgw_code=MM

ENERGY STAR compliant equipment must be identified in the appropriate equipment cost sheet. All ENERGY STAR compliant equipment **must** be delivered with the power management features enabled. Contractors **may not** disable the power management features unless written approval is obtained from the PMT. Equipment trainings **must** include information on the ENERGY STAR and other environmentally preferable features of the equipment.

3.46 DESIRABLE ENVIRONMENTAL SPECIFICATIONS. In an effort to further minimize the environmental impact of manufacturing, use and disposal of mailing equipment and supplies, it is desirable that such equipment and supplies meet the following specifications. Bidders may receive additional evaluation points for demonstrating that these specifications are met by completing **Attachment 6 and attaching appropriate documentation.**

3.46.1 Environmentally Sensitive Materials. Consistent with the European RoHS (Restriction on the Use of Certain Hazardous Substances in Electrical and Electronic Equipment) Directive 2002/95/EC for the restriction on certain hazardous substances in electronic equipment (http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_037/l_03720030213en00190023.pdf), it is **desirable** that Bidders or manufacturers they represent offer equipment that does not contain the following constituents (see the Annex on the last page of the Directive for exempt applications):

- Polybrominated biphenyls (PBB) as flame retardants in plastics,
- Polybrominated diphenyl ethers (PBDE) as flame retardants in plastics,
- Lead,
- Mercury,
- Cadmium,
- Hexavalent chromium.

It is also **desirable** that Bidders demonstrate reduction or elimination of other environmentally sensitive constituents in their products, including but not limited to:

- Selenium,
- Short Chain Chlorinated Paraffins (SCCPs),
- Polyvinyl chloride plastics,
- CFC or HCFC compounds included on the A, B and C annex of the "Montreal Protocol on Substances that Deplete the Ozone Layer,"

3.46.2 Material Selection. It is desirable that Bidders or manufacturers they represent offer equipment and supplies that:

- Contains on average a minimum of 5% post-consumer recycled resin OR 25% pre-consumer recycled resin, measured as a percentage of total resin (by weight) in the product.
- Contains on average a minimum of 5% resins in which carbon is derived from a renewable resource via a biological process, measured as a percentage of total resin (by weight) in the product. This includes resins derived from plant resources (such as starch and cellulose) or produced by microbial fermentation.

3.46.3 Design for Recycling. It is **desirable** that:

- Equipment that is assembled in such a way that components may be dismantled easily so that individual components may be dissassembled, separated, identified and reused or recycled easily.
- Paints (including metallic paints) and coatings are not used on plastic parts over 25 grams by weight.
- Plastic parts over 25 grams by weight are material coded in accordance with the ISO 11469 standard, Generic Identification and Marking of Plastic Products. The standard is available at http://www.iso.org/iso/en/CatalogueDetailPage.CatalogueDetail?CSNUMBER=27946.
- Plastic enclosures do not contain molded-in or glued-in metal unless the use of metal inserts in minimized and those are easy to remove using standard tools at end of life.
- Equipment have larger circuit boards, and other components that contain hazardous materials, safely and easily identifiable and removable. The removal of materials and components is consistent with the requirements of the European WEEE (Waste Electrical and Electronic Equipment) Directive 2002/96/EC (http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_037/l_03720030213en00240038.pdf).
- Equipment contain at least 65% of the materials by weight that are reusable or recyclable using current infrastructure and technologies. Consistent with the European WEEE Directive 2002/96/EC, component reuse is counted toward the percentage but not full product reuse.

3.46.4 Packaging. It is desirable **that Bidders implement initiatives aimed at reducing or eliminating packaging, or making it less damaging to the environment. Examples of such measures include packaging which:**

- Contains recycled content and are recyclable in most local programs,

- Includes corrugated materials that exceeds 35% post-consumer recycled content,
- Promotes waste prevention and source reduction by reducing the extent of the packaging and/or offering packaging take-back services, or shipping carton return,
- Reduces or eliminates materials which have been bleached with chlorine or chlorine derivatives,
- Does not contain polyvinyl chloride (PVC), or polystyrene or heavy metals.

3.46.5 Corporate Performance. It is **desirable** that:

- Bidders or manufacturers they represent demonstrate the existence and public availability of a written corporate environmental policy consistent with the ISO 14001 standard. The standard is available at http://www.iso.org/iso/en/CatalogueDetailPage.CatalogueDetail?CSNUMBER=31807&ICS1=13&ICS2=20&ICS3=10.
- Bidders or manufacturers they represent demonstrate that their owned organizations engaged in the design or manufacture of the products intended for sale under this contract have an operational environmental management system that meets one of three recognized systems: ISO 14001, European EMAS (http://ec.europa.eu/environment/emas/index_en.htm) or U.S. EPA Performance Track (http://www.epa.gov/perftrac/).
- Bidders or manufacturers they represent produce an annual report that meets the first three reporting requirements of the U.S. EPA Performance Track or the Global Reporting Initiative (GRI) Sustainability Reporting Guidelines (http://www.globalreporting.org/).
- Bidders or manufacturers they represent demonstrate additional efforts to reduce the environmental impact of their operations as well as the environmental impact of the equipment and supplies they manufacture and/or sell.

3.46.7 Product Longevity. It is **desirable** that Bidders offer equipment that is easily upgradable, including but not limited to modular design which allows upgrades without special tools, expandable memory, ample slots for expansions and additional components.

3.46.8 End-of-Life Management. It is **desirable** that Bidders propose methods that will allow for the return of used equipment to the original manufacturer or 3rd party entity for reuse or recycling, preferably at no cost for contract users. Such take-back methods may include but are not limited to:

- One-for-one exchange of equipment offered by, or previously purchased from the Bidder, upon purchase of new equipment from said Bidder,
- Collection of any used equipment by Bidder or subcontractor for reuse or recycling, preferably including provisions to continue recycling operations should a subcontractor no longer be able to perform such activities.

The Bidder **must** make every effort to assure the environmentally responsible recycling or disposal of electronic equipment, which includes certification of final disposition, particularly the batteries.

3.46.9 Waste Reduction Measures (Category 1). It is **desirable** that Bidders offer equipment, software and/or services that increase the accuracy of mailings, reduce duplicate and erroneous mailings and otherwise reduce waste in the mailing operation. Capabilities that may be offered may include but not limited to:

- List validation or update using U.S. Postal Service databases
- Comparison of mailing lists against Eligible Entities' suppression lists or databases
- Duplicate address removal or flagging

It is **desirable** that equipment operation manuals be available for use electronically as opposed to in hardcopy. Should hardcopy materials be distributed, it is desirable that they be printed on recycled content paper which meets or exceed federal and state guidelines for recycled content (currently 30% post-consumer content).

3.46.10 Environmentally Preferable Supplies (Category 1). It is **desirable** that Bidders offer supplies that have environmentally preferable features, including but not limited to those that can be recharged and reused, are remanufactured, and/or are recyclables through most local recycling programs.

SECTION 3

PART III - COST REQUIREMENTS

3.49 TAX EXEMPTION. The Eligible Entity and the Commonwealth certify that the equipment to be acquired under this Statewide Contract will be used for necessary governmental purposes and will be exempt from all taxes presently assessed and levied with respect to personal property. Therefore, all invoices and contract documents must not include a sales tax entry. In the event the use, possession or acquisition of the equipment is found to be subject to taxation or other governmental charges, the Eligible Entity will pay such taxes or charges as a separate line item on the invoice.

3.50 PRICE OF EQUIPMENT. All equipment, accessories and service/maintenance pricing information **must** be entered on the applicable Equipment Cost Sheet**.** All bidders must complete an individual cost sheet for each piece of equipment offered within each volume band. Equipment bids **must** be stated in terms of purchase price, lease, and rental prices.

The net cost on each cost sheet should reflect the percentage (%) off discounts off of suggested retail prices presented on each equipment cost sheet for the minimum specified base equipment and service plans (A & B).

Outright Purchase, Term Lease and Rental costs for each proposed model submitted **must** include the following:

- Base Equipment Costs,
- Minimum of **12-months** Equipment Warranty Period,
- Bidders are required to include a startup set of supplies **for all equipment.** These **startup supplies must include one (1) complete set of supplies necessary to operate the equipment upon installation and training for a 1 month period based upon the monthly volumes identified (low, medium, high) in each category/sub-category.**

All equipment costs **must** not include service/maintenance or supply costs. Service and Supplies must be priced in the appropriate areas of the cost sheets. All costs must include all custom duties and charges and be net F.O.B. destination including installation, operational instruction/training of personnel, and one complete copy of the instruction manual.

3.51 SERVICE/MAINTENANCE PRICING. All Plan A and Plan B maintenance plans **must** be completed as detailed on the appropriate cost file attachment(s) per category and sub-category.

The following items are included but not limited to in all yearly service maintenance agreements:
(1) All parts, (2) Labor, (3) Preventive Maintenance.

3.52 EQUIPMENT SUPPLY PRICING. Pricing for equipment supplies **must** be submitted on the appropriate cost file attachment(s). All bids must include a Manufacturer's Dated Price List with the accompanied percentage % off discount. The Dated Catalog that will be used for the first 12 months must be submitted as part of your response. The percentage (%) off will remain firm for the term of the Contract and the Dated Catalog may be updated yearly on the anniversary date after the initial 12-month term.

3.53 EQUIPMENT FURNITURE PRICING. Pricing for related furniture **must** be submitted on the appropriate cost file attachment(s). All bids must include a Manufacturer's Dated Price List with the accompanied percentage % off discount. The Dated Catalog that will be used for the first 12 months must be submitted as part of your response. The percentage (%) off will remain firm for the term of the Contract and the Dated Catalog may be updated yearly on the anniversary date after the initial 12-month term.

SECTION 3

PART IV - EVALUATION METHODOLOGY

3.53 EVALUATION AND AWARD OF CONTRACT. Responses will be evaluated and awards made which will represent "The Best Value to the Commonwealth of Massachusetts." Awards will be made based on, but not limited to:

- Cost for Equipment (Equipment Costs and Service/Maintenance Costs.) **(Attachments 1 through 2H)**
- Desirable Specifications **(Attachment 3)**
- Bidder Company Personnel and Authorized Sales & Service Sub-Contractor Company Personnel Information **(Attachment 5 and 5A)**
- Environmental Initiatives **(Attachment 6)**
- Affirmative Market Partnerships **(Attachment 8)**
- Open Ratings/Dun Business Ratings Reports

The Commonwealth of Massachusetts will make the following maximum limited multiple number of awards per category and sub-categories as detailed below. The PMT reserves the right to limit bidder equipment awards to one **(1) manufacturer brand per bidder**.

Category and Sub-Category	Maximum Number of Awards
Category 1	3 Awards
Category 2, Sub-Category 2A	3 Awards
Category 2, Sub-Category 2B	3 Awards
Category 2, Sub-Category 2C	3 Awards
Category 2, Sub-Category 2D	3 Awards
Category 2, Sub-Category 2E	3 Awards
Category 2, Sub-Category 2F	3 Awards
Category 2, Sub-Category 2G	3 Awards
Category 2, Sub-Category 2H	3 Awards

The Commonwealth reserves the right to render more or less than the identified maximum number of awards in a particular category(ies) and/or sub-categories in the event that the Commonwealth's needs are not sufficiently covered by the awarded qualified Bidders. During the first year, the PMT reserves the right to, without duplication of manufacture brand and subject to the Bidders acceptance; award additional Bidders in the order of the evaluation scores. The Bidder **must** accept all the terms and conditions of the RFR including a contract term concurrent with the original contract term.

If more than a year has past or the original list of Bidders is exhausted then the OSD Contract Manager and PMT reserve the right to allow an open enrollment period during the contract term for one or more categories and/or sub-categories.

SECTION 3

PART V - PERFORMANCE REQUIREMENTS

3.54 INTRODUCTION. The Commonwealth is endeavoring to deliver the best value Contract to facilitate the needs of our customers. However, it is important to measure the Contractor's performance to ensure that the Contract is in compliance with what has been requested and what the Contractor has offered in this RFR. The Commonwealth recognizes that it is important to establish a partnership with the Contractor but the Commonwealth must put in place performance requirements to safeguard and ensure Contract performance.

3.55 PERFORMANCE MEASUREMENTS. The PMT has established the following criteria to monitor bidder performance for this contract. The measurement will be satisfactory or unsatisfactory. Each participating States Contract Manager will be responsible for resolving the individual states performance issues locally with the Contractors Contract Manager for the given State. If the particular States Contract Manager can not resolve the issue(s) locally the particular States Contract Manager will then escalate the performance issue to the Massachusetts Contract Manager for resolution. The following sections of specific performance areas will be subject to measurement:

3.55.1 Customer Satisfaction. It is required that the Contractor maintains customer satisfaction in the following areas:

- Customer Service: Include but not limited to timely response to shipping or billing inquiries. Service response by technicians as detailed in the RFR.
- Sales Support in presenting the contract terms and conditions including accurate price quotes to an Eligible Entity.
- Technical Support for equipment and network support

3.55.2 Equipment Performance. In the event that any equipment is inoperative due to equipment failure, through no fault or negligence of the Eligible Entity, and the total number of hours of downtime exceeds five percent (5%) of the total productive use of time for three consecutive calendar months, the Eligible Entity reserves the right to require a Contractor to replace the equipment or terminate the order with no termination or removal charges being assessed to the Eligible Entity. The Contractor will be notified in writing of the deficiency. After such notice, the Contractor must remove and replace the defective product(s) within ten (10) business days, at no cost to the Eligible Entity. Failure to respond in good faith may result in termination of the contract.

The effectiveness level for any equipment is computed by the formula: subtract the total number of downtime hours divided by the total productive time in the month. Total productive time shall be computed by multiplying 8 hours per day by the number of business days in the month (weekends, Federal and State Holidays excluded). Bidder shall supply a complete repair history on an as needed basis to the Commonwealth Eligible Entity using the equipment.

It is understood that equipment failure may not be attributed to the use of recycled paper and/or recycled/remanufactured supplies, as long as those products meet the specifications set by the Commonwealth.

3.55.3 Replacement of Unsatisfactory Equipment. Any Contractor shall grant a credit to the Eligible Entity for any equipment, which fails to perform at an effectiveness level of ninety five percent (95%) during any month, or out of service for more than three consecutive days. The purchase option credits for the replacement equipment shall be not less than the credits accrued from the date of installation of the original equipment, regardless of whether the replacement is made at the request of the Eligible Entity or for the convenience of the contractor. **During the warranty period it is an even exchange of equipment of equal or greater**

performance at no additional cost and after warranty the credit value would be either the amount paid at the time of purchase or the dollar amount paid x the number of lease payments made at the time of the identified poor performance.

3.55.4 Report Compliance. Awarded Contractors will be required to satisfy all reporting requirements within this RFR in the agreed format on a semi-annual basis and/or as requested.

3.55.5 Affirmative Market Program Compliance. Commitments made by each of the awarded bidders will be monitored and incorporated in each bidder's performance measurement criteria. Measurement criteria are to be determined according to each individual bid proposal.

3.55.6 Account Manager. It is required that the Contractor's Account Manager facilitates the needs of this Contract. The Contractor must replace an Account Manager when requested by the OSD Contract Manager. The OSD Contract Manager, in concert with the PMT, will monitor the performance of the Contractor(s) on an ongoing basis.

3.55.7 Complaints. It is required that Contractors accept the provisions of this RFR in its entirety. Complaints may be generated and submitted in writing to the Contractor Manager by Eligible Entities and other bidders.

The OSD Contract Manager and PMT may also submit complaints in writing to contract bidders for immediate resolution pertaining to any condition of compliance with contractual provisions.

Immediate attention and resolution given to complaints and the number of complaints filed will be the criteria used for measuring performance in this section.

3.56 UNSATISFACTORY PERFORMANCE REMEDIES. Failure to maintain a satisfactory rating yearly or per written incident will result in a negotiated penalty between the OSD Contract Manager, PMT and Contractor. The following is a list of penalties for unsatisfactory performance which the OSD Contract Manager and the PMT may utilize dependent upon the degree of unsatisfactory performance. This list is only an example and does not limit the OSD Contract Manager and PMT from creating additional penalties more appropriate for the individual situation.

- Free Service maintenance for the Eligible Entity(ies) affected by the unsatisfactory service response for a period of time and the value negotiated by the OSD Contract Manager, PMT and Contractor.
- Free Supplies for the Eligible Entity(ies) affected by the poor service response for a period of time and the value negotiated by the OSD Contract Manager, PMT and Contractor
- Service value credit per incident, per piece of equipment for non-performance.
- Suspend the Contractors ability to sell equipment in one or more categories.
- Terminate the Contractor’s contract in one or more categories.
- The OSD Contract Manager and PMT reserve the right to make additional awards in a category or sub-category if it is determined that current Contractors are not providing adequate service maintenance as determined by the OSD Contract Manager and PMT.

Contractor performance will be measured on an annual basis or as determined by the OSD Contract Manager and PMT. If a Contractor has not performed as required by the contract terms and conditions, action shall be taken to determine contract suspension, extensions and/or contract termination. Satisfactory performance rating is one element utilized in the decision process for renewals.

SECTION 3

PART VI – ONLINE SUBMISSION REQUIREMENTS

All Bidders must follow these requirements when submitting a bid online. Please name the files in the following format: Company Name, Attachment # and upload them in sequence beginning with the Category Cost Sheets.

3.57 ONLINE BID SUBMISSIONS ARE REQUIRED. It is required that Bidders responding to this RFR submit their responses online via the SmartBid Comm-PASS system by the Close Date and Time, as registered by the Comm-PASS system time clock. A free trial SmartBid subscription will be offered to all vendors wishing to participate in this solicitation. For additional information contact the Comm-PASS help line at 1-888-MA-STATE.

3.57.1 OBTAIN A FREE TRIAL SMARTBID ACCOUNT TO BID ONLINE. Any Bidder not already holding an Active SmartBid account may obtain a free, trial account that will enable all the features offered to paying Subscribers, including online response capability, for a period sufficient to support bid submission within the procurement requirements.

To obtain a trial account, Bidders must select the Interested in Bidding? link associated with the Open Solicitation and complete the Add Interested Bidder form 48 business hours prior to Solicitation Close Date & Time. For additional information contact the Comm-PASS help line at 1-888-MA-STATE.

3.57.2 TERMS OF THE FREE TRIAL SMARTBID ACCOUNT. Within one business day of completing our Add Interested Bidder form, you will receive an email message from comm-pass@osd.state.ma.us advising you that your account has been established.

The email will provide you with a LoginID-Password pair and instructions for completing your account profile to enable notifications, a Business Directory listing, and the online response capability.

Bidders who obtain a free trial account are subject to the same Terms of Use as paying subscribers. These terms will be accessible to you through your My Profile menu upon login.

In addition to the standard terms of use, OSD reserves the right to terminate a trial account for any Bidder who fails to submit a response by the Close Date, or for any Bidder who submits a response that OSD deems was submitted solely for the purpose of obtaining a free account.

Those bidders who submit a valid response will maintain free access to the account and all its features for 60 calendar days from the Solicitation Close Date. This period may be extended at OSD's discretion to support business associated with the procurement process.

After the Close Data arrives, OSD reserves the right to send email messages to trial account holders informing them of SmartBid features and benefits and explaining capabilities.

At the end of the trial period, OSD will alert by email (1) awarded contract vendors that they must now subscribe to Comm-PASS as a paying member as specified in the Required Specifications and (2) non-awarded bidders that they have the option to subscribe as a paying member.

3.57.3 SMARTBID ACCOUNT SUPPORT & TRAINING. (Page 3) Trial account holders will be offered the same support services all SmartBid account holders enjoy including Comm-PASS HelpDesk support via email

and toll-free telephone. In addition, OSD will offer online bid training sessions at the Operational Services Division; One Ashburton Place, Room 1017; Boston, MA 02108. Please refer to the procurement schedule for training session. To register for the training session please send an e-mail to comm-pass@osd.state.ma.us

3.57.4 SUBMITTING ONLINE. Bidders responding online via Comm-PASS are responsible for complying with all substantive and material bid requirements.However, online Bidders eliminate the need to produce and submit the following;

- paper originals;
- multiple paper copies;
- binder clips;
- plastic media associated with electronic files, e.g., CD-ROMs, floppy disks; and,

By submitting an online bid, Subscribers must acknowledge and accept electronically all conditions and requirements associated with files attached to the Solicitation's Forms & Terms page. This electronic signature is acceptable pursuant to MGL c.110G, § 1 et. seq., the Massachusetts Uniform Electronic Transaction Act (UETA).

Bidder agrees to submit any and all forms requiring a wet-ink signature in a paper format per the procurement schedule due date. Failure to submit the required forms will result in disqualification and the Bidder will not be able to participate in on-line auction event.

All interested Bidders, including online Bidders, may download and access all forms, terms, specifications, and file attachments at any time once the Solicitation is posted. **However, online Bidders cannot upload files or submit bids via Comm-PASS until the Amendment Deadline passes.** A link for Response Submission will appear after the Amendment deadline has passed. This does not delay or prevent any Bidder, online or otherwise, from beginning the bid response drafting process at any time after the RFR Release date.

All directions for using the online response tool are provided within the Comm-PASS online response pages. Bidders who require further technical assistance using the online response tools in Comm-PASS may refer to:

- the Comm-PASS Resource Center at www.mass.gov/osd for documents and guides;
- the Comm-PASS Helpdesk at comm-pass@osd.state.ma.us; or,
- the Comm-PASS Helpline at 1-888-MA-STATE.

3.58 BID RESPONSE METHOD. All Bidders must submit Responses online using tools available to Comm-PASS SmartBid Subscribers only. If a Bidder does not already have an active SmartBid subscription, the Bidder must obtain a free trial subscription, as follows:

- Select the "Interested in Bidding?" link associated with the "Open Solicitation" record with the Document Number that appears on the first page of this document, and complete the "Add Interested Bidder" form at least 48 hours prior to the Close Date listed on the Solicitation's Summary page.
- Bidders who miss the 48-hour deadline may opt to pay for a SmartBid subscription in order to access the online submission tools required to respond via Comm-PASS. To obtain a paid subscription, go to **www.comm-pass.com** and select the "Join" tab from the main navigation bar. Complete the SmartBid subscription process by following the links and using a credit card to create an account.
- It is required that Bidders submit their Responses online using the online submission tools available to Comm-PASS SmartBid Subscribers only.
- Comm-PASS SmartBid requires an annual subscription. To obtain a subscription, go to **www.comm-pass.com** and select the "Join" tab from the main navigation bar. Complete the SmartBid subscription process by following the links and using a credit card to create an account.

3.58.1 ONLINE BID SUBMISSION. Assistance with the SmartBid online submission tool Training sessions, if offered, are noted in the Procurement Calendar. Bidders must also check the Bidders' Forum, where any updates to the training schedule will be posted.

Directions for using the online submission tool are provided within the Comm-PASS Quick Tips section on the right-hand margin of each page associated with the online submission tools. In particular, all Bidders using the online submission tools should note the following:

- Regularly scheduled maintenance hours, during which Comm-PASS will be unavailable, are shown under the "Comm-PASS System Availability" link at the bottom of any Comm-PASS page.
- Bidders who require further technical assistance using the SmartBid Online Submission tools in Comm-PASS may access the Comm-PASS Resource Center at **www.mass.gov/osd** for documents and guides at any time. Bidders may also contact the Comm-PASS Helpdesk at **comm-pass@state.ma.us** or the Comm-PASS Helpline at 1-888-MA-STATE (1-888-627-8283) during standard business hours. Follow the "Help" link near the top of any Comm-PASS page for hours of operation.

3.58.2 RESPONSE DEADLINE. All Bids must be received by the Operational Services Division by the specified day, month, year and time displayed on the Solicitation's Summary page in the Close Date field. Times are Eastern Daylight Savings, as applicable.

Bidders are advised to allow adequate time for submission and to take into account potential delivery impediments such as Internet traffic, local hardware/software failures, Internet connection speed, file size, file volume, and issues associated with the Bidder's computers or internet connection.

Bidders may download and access all forms, terms, specifications, and file attachments at any time once the Solicitation is posted, however, Bidders will not be able to upload files until the Amendment Deadline passes. Bidders are able to, and strongly encouraged to, begin preparing documents for uploading in advance of the Amendment Deadline.

Bids are time stamped by the Comm-PASS system clock. Once the Amendment Deadline passes, subscribers may determine the difference, if any, between their computer's clock and the Comm-PASS clock by submitting a test Response to generate a receipt. The receipt is presented upon successful submission, then stored on the Online Submission Desktop. Bidders should then use the "Withdraw" function to retract the test Response. Bidders should use filenames and descriptions which are different from those which will be used for their actual Response.

3.58.3 REQUIRED DOCUMENTS FOR UPLOAD. The PMT requires all Bidders to complete and upload the following electronic documents located under the specification tabs prior to the close date and time noted on page 3 of the procurement calendar;

- **Category Equipment Cost Sheets (Category 1 through Category 2, Sub-Category 2H)** for each new model of equipment currrently manufactured. **Insert the required information in the blue cells. Do not change the format. You must insert the proper monthly volume based upon the defined monthly volume options in the RFR and as defined in the drop down on the excel file.**
    - **Upload the manufacturer's equipment model's specification sheet for each model.**
    - **Upload the appropriate dated catelog's for supplies and furniture.**
- Attachment 3 Desirable Submission Sheet
- Attachment 4 Mandatory Submission Sheet
- Attachment 5 Bidder Company Personnel Information
- Attachment 5A Bidder's Authorized Sales and Service Sub-Contractor Company Personnel Information
- Attachment 6 Compliance with Environmental Specifications (Upload additional documentation as needed.)
- Attachment 7 Open Ratings/Dun Business Information

OSD Update

The Operational Services Division
One Ashburton Place, Room 1017
Boston, MA 02108

Update # 08-08

To: Departments Heads, Affirmative Market Coordinators, POS Contract Managers, PMT Members, Chief Financial Officers, and MMARS Liaisons

From: Robert Guerard, Procurement Team Leader, Office

Date: 11/26/2007

RE: OFF22 - Multi-State Postage and Mail Processing Equipment, Accessories, Services and Supplies

Contract #: OFF22

MMARS #: OFF22

Contract Contains EPP: ☒ Contract Contains MBE/WBE: ☐ Contract Contains Prompt Pay: ☒

Purpose of Update: The OFF22 Procurement Management Team (PMT) announces the awards for multi-state postage and mail processing equipment, accessories, services and supplies. The contract awards provide Eligible Entities with multiple manufacturers and contractors to accommodate your mail processing equipment needs.

Contract Information: The Commonwealth of Massachusetts, Operational Services Division, as the "Lead State" on behalf of National Association of State Procurement Officials (NASPO) organization and in conjunction with the States of Connecticut, New Hampshire, Vermont, Arkansas, Hawaii, Rhode Island and New Mexico has awarded multiple contracts for **Category 1 Postage and Mailing Systems Equipment, Accessories, Service and Supplies and for Category 2, Mail Processing Equipment, Accessories, Service and Supplies.**

Contract Description: The contract consists of Category 1 and 2 described below with Category 2 consisting of Sub-Categories 2A through 2H.

- **Category 1 - Postage and Mailing Systems Equipment, Accessories, Service and Supplies** Including full equipment and accessory product lines and service maintenance levels for 4, 8, 12 and 24 hour response times for annual rates (Plan A) or time and material hourly rates (Plan B).

- **Category 2- Mail Processing Equipment, Accessories, Service and Supplies** Including full equipment and accessory product lines and service maintenance levels for 4, 8, 12 and 24 hour response times for annual rates (Plan A) or time and material hourly rates (Plan B).
    - Sub-Category 2A. Folding/Inserting Equipment
    - Sub-Category 2B. Folding Equipment
    - Sub-Category 2C. Tabbing Equipment
    - Sub-Category 2D. Sorting Equipment
    - Sub-Category 2E. Mail/Letter Opening Equipment

- Sub-Category 2F. Pressure Sealing Equipment
- Sub-Category 2G. Check Imprinting/Endorsing Equipment
- Sub-Category 2H. Bursting Equipment

Applicable Procurement Law: MGL c. 7, § 22; c. 30, § 51, § 52; 801 CMR 21.00

Contract Duration:
The contract period is from 11/14/2007 to 11/13/2010 with options to renew until 11/13/2012.

Contract Manager:
Robert Guerard, Procurement Team Leader, Office
Operational Services Division
Room 1017, One Ashburton Place
Boston, MA 02108
Phone: 617-720-3321
Fax: 617-727-4527
Email: robert.guerard@state.ma.us

Team Members:

Ali Nabelsi	Department of Environmental Protection
Deborah Combra	Operational Services Division
Dmitriy Nikolayev	Operational Services Division
Jack Shea	Information Technology Division
John McIntyre	State of Vermont
Joseph M. Bellofatto	Department of Revenue
Karen E. Glass	Department of Mental Retardation
Kerry Sutton	Department of Correction
Marie Killackey	City of Cambridge
Mark Anderson	Department of Revenue
Mark Rousseau	Department of Workforce Development
Robert Lawson	State of New Hampshire
Robert Zalucki	State of Connecticut

Eligible Entities:
01. Cities, towns, districts, counties and other political subdivisions;
02. Executive, Legislative and Judicial Branches, including all Departments and elected offices therein;
03. Independent public authorities, commissions and quasi-public agencies;
04. Local public libraries, public school districts, and charter schools;
05. Public hospitals, owned by the Commonwealth of Massachusetts;
06. Public institutions of higher education;
07. Public purchasing cooperatives;
08. Non-profit, UFR-certified organizations that are doing business with the Commonwealth of Massachusetts;
09. Other states and territories with no prior approval by the State Purchasing Agent required; and
10. Other entities when designated in writing by the State Purchasing Agent;
11. State of Connecticut, New Hampshire, Vermont, Rhode Island, Arkansas, New Mexico and Hawaii and all the Eligible Entities of the given State.

Contract Information:
If the contractor participates in one of the following programs, the appropriate icon will appear beneath the column heading. Programs include Affirmative Market Program (AMP), Environmentally Preferable Products Program and Prompt Pay Discount (PPD).

Contractor	Comments	AMP	EPP	PPD
Formax, Division of Bescorp Inc Contact: Eric Flinton Phone: 800-232-5535x37 Email: eflinton@formax.com Supply Line – 1-800-232-5535 Press 30 Service – 1-800-232-5535 Press 20 Billing Inquires – 1-800-232-5535 Press 4	**Awards for Category 2, Sub-Category 2A, 2B, 2C, 2E, 2F, 2G and 2H.**			**3%-10 Days** **2% - 15 Days** **2% - 20 Days** **1% - 30 Days**
Francotyp-Postalia, Inc. Contact: Joan Rader, Major Account Coordinator Phone: 800-341-6052 x5722 Email: Jrader@fp-usa.com Supply Line – 1-800-341-6052 Press 1 Postage by Phone – 1-800-341-6052 Press 1 Service – 1-800-341-6052 ext. 4992 Billing Inquires – 1-800-341-6052-ext. 4996	**Awards for Category 1, Category 2, Sub-Category 2A and 2E**			**2% - 20 Days**
Hasler, Inc. Contact: Robert Grant, Government Director, East Phone: 800-237-9154x2112 Email: rgrant@haslerinc.com Postage by Phone – 1-800-248-8013 Service – 1-800-937-2467 Billing Inquiries – 1-800-446-6027	**Awards for Category 1, Category 2, Sub-Category 2A and 2C equipment, accessories, services and supplies.**			**2% 20 Days**
Neopost Inc. Contact: Jim Leiby, Director, Government Sales Phone: 1-800-636-7678 ext. 2883 Email: j.leiby@neopost.com Supply Line – 1-800-636-7678 Press 2 Postage by Phone – 1-800-636-7678 Press 3 Service – 1-800-636-7678 522-0020 Press 4 Billing Inquires – 1-800-636-7678 Press 5	**Awards for Category 1, Category 2, Sub-Category 2A, 2B and 2C, equipment, accessories, services and supplies.**			**2% 20 Days**
Pitney Bowes Inc. Contact: Robert Mailo, State Government Contract Manager Phone: 1-800-322-8000 ext. 36770 Email: bob.mailo@pb.com Service – 1-800-522-0020 Supply Line – 1-800-243-7824 Postage by Phone – 1-800-243-7800 Billing Inquires – 1-800-228-1071	**Awards for Category 1, Category 2, Sub-Category 2A, 2D and 2E equipment, accessories, services and supplies**			**2% - 20 Days**

How to use the contract: Review the table above before requesting a quote to be sure that the Contractor(s) are authorized to quote and sell product within the specific categories and or sub-categories of equipment awarded. **Contractors do not have authorization to quote nor sell for all categories and sub-categories.** Each user is responsible for contacting the Contractor of their choice in order to obtain the approved equipment cost sheet(s). The equipment cost sheet will contain the contracted net costs for the base equipment, accessories, maintenance/service plan and supply cost. If you have a large volume of purchases an Eligible Entity should contact the Massachusetts Contract Manager to determine if the volume justifies the creation of a "SaveSmart" promotions conducted on your behalf with the appropriate contractors for a given category or sub-category. Eligible Entities are not required to sign any contractor documents (e.g. lease documents). An Eligible Entity can attach the documents to the equipment confirmation form unsigned.

For Massachusetts Eligible Entities who currently are paying for leased equipment under the prior OFF08 Massachusetts contract, your agreement and the terms and conditions of OFF08 remains in effect until the lease term ends and at that point your new procurement would be conducted under OFF22. Users are urged to "comparison shop" to obtain the best value. Many categories have multiple product lines and Contractors to facilitate this process.

The following are some of the more important terms and conditions that the Team believes are important for all Eligible Entities.

Delivery: Contractor(s) **must** deliver equipment and/or supplies statewide. Delivery **must** be F.O.B. destination with **no delivery or travel expenses** paid by the Eligible Entity.

Exception, for those items shipped outside the 48 contiguous States, on which there are extraordinary freight charges that cannot reasonably be covered by the contract price, vendors may negotiate with those non-contiguous States regarding delivery terms and charges.

Shipping is to be FOB destination to the contiguous 48 states, Washington DC and **point of exportation** for Alaska, Hawaii, Puerto Rico, etc. for shipments outside the 48 contiguous states. The point of exportation location must be agreed to by the vendor and the negotiating State. From that point, shipping terms, charges and conditions should be negotiated with the end-user. The State must be notified in advance of the possible shipping charges and agree to the final contract price and arrangements.

The Contractor(s) shall furnish equipment within fifteen (15) to twenty (20) business days after receipt of written order or a delivery time mutually agreed upon by the Eligible Entity and the Contractor. Contractors **must** notify the Eligible Entity in advance of delivery of equipment so that the Eligible Entity can make necessary delivery and installation arrangements. Delivery of start-up supplies **must** be made upon delivery of equipment. Delivery shall be made in accordance with instructions (time and quantities ordered) from the Eligible Entity in reference to a Purchase Order Number. If there is a discrepancy between the purchase order and what is listed on the contract, it is the Contractor's obligation to seek clarification from the Eligible Entity and, if necessary, from the OSD Contract Manager.

All deliveries and installation work shall be performed during regular working hours, usually 8:00 A.M. to 5:00 P.M. Monday through Friday. Changes thereto may be granted with written approval of the Eligible Entity. **Any delivery required to be performed after working hours or on Saturdays, Sundays or legal holidays, as may be reasonably required consistent with contractual obligations and agreeable to both the Contractor and the Eligible Entity, shall be performed at a negotiated additional expense to the Eligible Entity.** The Contractor shall obtain prior approval from the Eligible Entity for performance of work after regular working hours or non-regular workdays at least 24 hours prior to the commencement of overtime, unless such overtime work is caused by an emergency.

The Contractor shall be responsible for the delivery of equipment in first class condition at the point of delivery, and in accordance with good commercial practice. Contractors will also be responsible for the removal of all package material from the premises.

- Packing for shipment shall be provided to adequately protect the product and ensure safe shipment.
- Shipping cases shall be marked to show the name of the Contractor/Manufacturer's, name and address of receiving Eligible Entity and Purchase Order number.

Equipment provided **must** be strictly in accordance with those contained in contract award. Eligible Entities are authorized to order and Contractors are authorized to ship only those items approved and on contract. If a review of orders placed by any Eligible Entity reveals that items other than those approved and on contract has been ordered and delivered, the OSD Contract Manager will take such steps as are necessary to have the items returned by the Eligible Entities, regardless of the time lapsed between the date of delivery and discovery of the violation. Full credit will be required. Violation may result in the suspension of the offending Contractor for a period determined by the OSD Contract Manager and PMT.

Equipment Confirmation Form: The Eligible Entity and the Contractor must complete the equipment confirmation form prior to issuing an order. Contractors **can not** require an Eligible Entity to execute any additional documents or paperwork for a purchase, term lease or rental. Any additional documents or paperwork executed by an Eligible Entity and/or Contractor will be considered void.

Installation: All equipment prices **must** include delivery and installation statewide. If installation is not required by the Eligible Entity, then the Eligible Entity will deduct the cost for installation. Contractor **must** affix a label or a decal to the equipment at the time of installation showing warranty period by dates, and the name, address, and telephone number of the OEM or Reseller responsible for warranty service of the equipment.

It will be the Contractor's responsibility prior to delivery, to survey and review the particular installation location to ensure the existing proposed location meet the manufacturer's established installation criteria. If special installation is required, such as but not limited to rigging, the Contractor and Eligible Entity must negotiate and agree on a cost for the special installation and note it on the equipment confirmation form prior to releasing a purchase order. Should the proposed installation location not meet established installation criteria, the Contractor and the ordering Eligible Entity will attempt to locate an alternate mutually agreeable location for the equipment at the particular site.

In the event that a mutually agreeable location for the equipment, meeting the manufacturer's established installation criteria, is not available, the Contractor must not deliver the equipment and will request the Eligible Entity to cancel the order with no further obligations. Contractors not familiar with any location are strongly advised to personally view those locations prior to delivery. A lack of familiarity with a delivery location will in no way relieve a Contractor from its responsibility to fulfill its contractual obligations.

All equipment identified as EnergyStar compliant **must** be delivered and installed with the EnergyStar or similar power management features enabled.

Training & Technical Support Services. Upon delivery and installation of specified equipment, Contractors and/or authorized reseller **must** agree to provide training to personnel designated by the Eligible Entity. Operational Training must be provided to the designated personnel within an Eligible Entity until the personnel are able to operate the equipment independently. The amount of training is determined by the complexity of the equipment purchased or leased by the Eligible Entity. If training is not required by the Eligible Entity, then the Eligible Entity will deduct the cost for installation.
The Contractor must agree to maintain a toll-free technical support telephone line. The telephone line shall be accessible to Eligible Entity personnel who need to obtain competent technical assistance regarding the installation or operation of the Contractors equipment.

Any such training performed upon delivery or at any point throughout the duration of the contract **must** also include information on all environmental features of each item, including but not limited to: energy efficiency modes and their operation, double sided copying operations and double sided default programming, extent to which any supplies and other packaging may be for recycling, remanufacturing, and the environmental and economic benefits of these features. It is **desirable** that Bidders develop a fact sheet and/or brochure to leave with Eligible Entities concerning these environmental and other training issues.

Service Maintenance For Purchased or Term Lease Equipment. The Bidder must offer both yearly and time and material service maintenance plans as detailed on each cost sheet attachment. All yearly maintenance plan cost must include all materials necessary to repair and maintain equipment as detailed below.

The Contractor must respond within **two (2) hours** after it receives written or oral notice of a service call for a breakdown in the equipment.

The Contractor **must** send a service technician to repair the equipment within one of the following mutually agreed upon timeframes; **four (4) hours, eight (8) hours, twelve (12) hours or twenty four (24) hours** of the service call and must repair the Equipment on the same business day if the call is placed before 1:00 P.M. or provide replacement parts for the Equipment by the next business day, regardless of geographic location. All return service calls and onsite responses shall be made during Eligible Entity business hours unless otherwise specified by the Eligible Entity.

Standard business hours are 8:00 A.M. to 5:00 P.M. Monday through Friday. After Hour Service (after 5:00 P.M. Monday-Friday, Weekends and Holidays).

All parts that needs to be maintained by a service technician are to be included and considered part of the yearly service maintenance plan, and must be replaced at no charge to the Eligible Entity. Routine consumable supplies shall be billed separately from service maintenance payments.

If the equipment includes licensed software, the Contractor shall provide software support. All payments for maintenance service will be made to the Contractor.

If the OSD Contract Manager and the PMT receive written complaints of non-compliance with the service requirements then the OSD Contract Manager and the PMT reserve the right to negotiate with the Contractor, a reasonable penalty, based upon the degree of the non-compliance. The following penalties are examples that the OSD Contract Manager and PMT have, at their disposal, to negotiate with the Contractor:

- Written warning to the Contractor with the Contractor providing the Eligible Entity (ies) with an apology letter with an action plan detailed to prevent non-compliance of service.
- Free Service maintenance for the Eligible Entities affected by the poor service response for a period of time and value determined by the OSD Contract Manager and PMT.
- Negotiated financial penalty for recurring incidents of non-performance.
- Free Supplies for the Eligible Entities affected by the poor service response for a period of time and value determined by the OSD Contract Manager and PMT.
- The OSD Contract Manager and PMT reserve the right to make additional awards in a category or sub-category if it is determined that current Contractors are not providing adequate service maintenance as determined by the OSD Contract Manager and PMT.
- The OSD Contract Manager and PMT reserve the right to terminate the contract.

Loaner Equipment: Eligible Entities have the option to exercise the request for loaner equipment if the existing downed equipment necessitates off-site repair. The loaner equipment **must** be of comparable or better production capability and **must** be available, delivered, installed and configured for equipment that cannot be repaired on site, at no extra charge. Delivery, installation, configuration and basic training **must** be completed within one (1) business day or a timeframe mutually agreed upon between the Eligible Entity and Contractor if custom equipment needs to be provided from the time a service technician determines that the equipment cannot be repaired on site. Loaners will remain in place until the equipment has been repaired, reinstalled and confirmed operational by the Eligible Entity. If equipment is not available for loan due to postal regulations or custom configuration, the Contractor must provide an alternate piece of equipment for the Eligible Entity to continue operation.

Equipment and Contractor Warranties: Contractors **must** provide a minimum of **12-month warranty** that includes all parts and labor on all equipment on Contract. Review the equipment cost sheets for additional warranties. All manufacturer warranties will be passed through and shall be available to the Eligible Entity. A Contractor hereby irrevocably appoints a contracting Eligible Entity its agent and attorney-in-fact during the Term Lease or Rental Term of every item of equipment, so long as the Eligible Entity shall not be in default hereunder, for the sole purpose of asserting from time to time whatever claims and rights, including warranties of the equipment, which the Contractor may have against the manufacturer of the equipment. Rented equipment may be new, used or remanufactured. However, if the rented equipment is used or remanufactured, the rented equipment shall meet all manufacturers published performance standards, and all other performance standards in this RFR.

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 Eligible 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 from, including but not limited to the failure or untimely performance of such services.

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

Performance and payment time frames which continue beyond the duration of the contract. **All term leases, rentals, maintenance or other agreements for services entered into during the duration of this contract and whose performance and payment time frames extend beyond the duration of this contract shall remain in effect for performance and payment purposes (limited to the time frame and services established per each written agreement). No new leases, rentals, maintenance or other agreements for services may be executed after the**

contract has expired. Any contract termination or suspension shall not automatically terminate any leases, rentals, maintenance or other agreements for services already in place unless the Eligible Entity also terminates said leases, rentals, maintenance or other agreements for service, which were executed pursuant to the main contract.

Customer Survey: All Contractors will be required to provide a survey for each equipment placement and semi-annually for supplies and services. The Eligible Entity is encouraged to complete and return to the OSD Contract Manager. The surveys will assist the PMT in the evaluation of a Contractors performance during the term of the contract.

Billing/Invoicing: Invoices shall be directly from the Contractor approved by the OSD Contract Manager and PMT.

- Billing for Maintenance/Service **must** be done at a minimum monthly, and it is **highly desirable** if it can be done quarterly, semi-annually or annually upon the Eligible Entities request.
- Bidders may be required to provide, upon request of the Eligible Entity, consolidated billing. All equipment, supplies and service invoices **must** have a separate line item within the invoice for all three elements or a separate invoice for each of the three elements.
- Invoices for purchases and software fees are not due and payable until successful completion of any applicable acceptance testing. Invoices for services are not due and payable until after services are rendered.

Price & Acquisition: Options under which equipment, supplies and service may be procured:

- Purchase – Equipment, Supplies and Services all Categories
- Term Lease: 12 Months (Postage Meter Heads Only) 36, 48 & 60 months – Equipment, Supplies and Services all Categories
- Rental: Six- (6) month maximum (non-renewable) – Equipment, Supplies and Services all Categories.

Performance Measure & Vendor Reporting Requirements: The PMT has established the following criteria to monitor bidder performance for this contract. The measurement will be satisfactory or unsatisfactory. Each participating States Contract Manager will be responsible for resolving the individual states performance issues locally with the Contractors Contract Manager for the given State. If the particular States Contract Manager can not resolve the issue(s) locally the particular States Contract Manager will then escalate the performance issue to the Massachusetts Contract Manager for resolution. The following sections of specific performance areas will be subject to measurement:

Customer Satisfaction: It is required that the Contractor maintains customer satisfaction in the following areas:

- Customer Service: Include but not limited to timely response to shipping or billing inquiries. Service response by technicians as detailed in the RFR.
- Sales Support in presenting the contract terms and conditions including accurate price quotes to an Eligible Entity.
- Technical Support for equipment and network support

Equipment Performance: In the event that any equipment is inoperative due to equipment failure, through no fault or negligence of the Eligible Entity, and the total number of hours of downtime exceeds five percent (5%) of the total productive use of time for three consecutive calendar months, the Eligible Entity reserves the right to require a Contractor to replace the equipment or terminate the order with no termination or removal charges being assessed to the Eligible Entity. The Contractor will be notified in writing of the deficiency. After such notice, the Contractor must remove and replace the defective product(s) within ten (10) business days, at no cost to the Eligible Entity. Failure to respond in good faith may result in termination of the contract.

The effectiveness level for any equipment is computed by the formula: subtract the total number of downtime hours divided by the total productive time in the month. Total productive time shall be computed by multiplying 8 hours per day by the number of business days in the month (weekends, Federal and State Holidays excluded). Bidder shall supply a complete repair history on an as needed basis to the Commonwealth Eligible Entity using the equipment.

It is understood that equipment failure may not be attributed to the use of recycled paper and/or recycled/remanufactured supplies, as long as those products meet the specifications set by the Commonwealth.

Replacement of Unsatisfactory Equipment: Any Contractor shall grant a credit to the Eligible Entity for any equipment, which fails to perform at an effectiveness level of ninety five percent (95%) during any month, or out of service for more than three consecutive days. The purchase option credits for the replacement equipment shall be not less than the credits accrued from the date of installation of the original equipment, regardless of whether the replacement is made at the request of the Eligible Entity or for the convenience of the contractor. **During the warranty period it is an even exchange of equipment of equal or greater performance at no additional cost and after warranty the credit value would be either the amount paid at the time of purchase or the dollar amount paid x the number of lease payments made at the time of the identified poor performance.**

Complaints: It is required that Contractors accept the provisions of this RFR in its entirety. Complaints may be generated and submitted in writing to the Contractor Manager by Eligible Entities and other bidders.

The OSD Contract Manager and PMT may also submit complaints in writing to contract bidders for immediate resolution pertaining to any condition of compliance with contractual provisions.

Immediate attention and resolution given to complaints and the number of complaints filed will be the criteria used for measuring performance in this section.

Unsatisfactory performance remedies: Failure to maintain a satisfactory rating yearly or per written incident will result in a negotiated penalty between the OSD Contract Manager, PMT and Contractor. The following is a list of penalties for unsatisfactory performance which the OSD Contract Manager and the PMT may utilize dependent upon the degree of unsatisfactory performance. This list is only an example and does not limit the OSD Contract Manager and PMT from creating additional penalties more appropriate for the individual situation.

- Free Service maintenance for the Eligible Entity (ies) affected by the unsatisfactory service response for a period of time and the value negotiated by the OSD Contract Manager, PMT and Contractor.
- Free Supplies for the Eligible Entity (ies) affected by the poor service response for a period of time and the value negotiated by the OSD Contract Manager, PMT and Contractor
- Service value credit per incident, per piece of equipment for non-performance.
- Suspend the Contractors ability to sell equipment in one or more categories.
- Terminate the Contractor's contract in one or more categories.
- The OSD Contract Manager and PMT reserve the right to make additional awards in a category or sub-category if it is determined that current Contractors are not providing adequate service maintenance as determined by the OSD Contract Manager and PMT.

Contractor performance will be measured on an annual basis or as determined by the OSD Contract Manager and PMT. If a Contractor has not performed as required by the contract terms and conditions, action shall be taken to determine contract suspension, extensions and/or contract termination. Satisfactory performance rating is one element utilized in the decision process for renewals.

Location of Additional Information: The complete details of the contract are located on Comm-Pass at www.comm-pass.com It is recommended that you search Comm-Pass utilizing the following steps:

- Front page of Comm-Pass **select search for contracts link,**
- Search page – input **OFF22 in the document number box** and click search,
- Sentence Link – **Click on the sentence link** at the top of the search page and the contract title will appear,
- Click on the **eyeglasses** at the end of the active contract name,
- Click on the **Terms Tab** for additional contract information or click on the **Vendor Tab** to view the list of Contractors,
- Click on the **eyeglasses** for all Contractors to expand the view and at the bottom of the expanded view are the approved cost files. As a Contractor's websites are approved the **Contractors Name** will become a live link to the pricing which may replace the cost files at the bottom of the expanded view.

Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

Refer to Commonwealth of Massachusetts NASPO Contract OFF22 Multi-State Postage and Mail Processing Equipment, Accessories, Services and Supplies. To view a copy of the contract, go to the following website:

http://www.comm-pass.com, click on **search for contract** link, the **Search for a Contract** page will display, **Document Number**: enter **OFF22** (this is the MA contract number), click **Search,** click on the **There are 1 Contract(s) found that match your search criteria** link that appears at the top of the page, the NASPO Postage and Mail Processing Equipment, Accessories, Service and Supplies contract page will display, click on the **picture of the reading glasses** to view the contract.

To view pricing, once on the website, click on **Vendors** and select the vendor. Neopost's and Hasler's pricing can be found on the bottom of the page by clicking on **Equipment Contract Cost Sheets per Category and Model.** Pitney Bowes' pricing can be found under **Equipment Pricing** and **Additional Pitney Bowes Pricing**.

2.002 Options to Renew—Deleted. Not Applicable

2.003 Legal Effect

Contractor shall show acceptance of this Contract by signing two copies of the Contract and returning them to the Contract Administrator. The Contractor shall not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a contract release/purchase order that authorizes and defines specific performance requirements.

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that this Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

2.004 Attachments & Exhibits

All Attachments and Exhibits affixed to any and all Statement(s) of Work, or appended to or referencing this Contract, are incorporated in their entirety and form part of this Contract.

2.005 Ordering

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under this Contract. All orders are subject to the terms and conditions of this Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown; however, the Contractor will be required to furnish all such materials and services as may be ordered during the CONTRACT period.

2.006 Order of Precedence

(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005.**

(b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of the Contract, which may be modified or amended only by a formal Contract amendment.

2.007 Headings

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of the Contract.

2.008 Form, Function & Utility

If the Contract is for use of more than one State agency and if the Deliverable/Service does not the meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

2.009 Reformation and Severability

Each provision of the Contract is severable from all other provisions of the Contract and, if one or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract remain in full force and effect.

2.010 Consents and Approvals

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, the consent or approval must be in writing and must not be unreasonably withheld or delayed.

2.011 No Waiver of Default

If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.012 Survival

Any provisions of the Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.020 Contract Administration

2.021 Issuing Office

This Contract is issued by the Department of Management and Budget, Purchasing Operations, is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. Purchasing Operations **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.**

The Contractor Administrator within Purchasing Operations for this Contract is:

Joan Bosheff, Buyer Specialist
Purchasing Operations
Department of Management and Budget
Mason Bldg, 2nd Floor
P.O. Box 30026
Lansing, MI 48909
Email: bosheffj@michigan.gov
Phone: (517) 373-7374

2.022 Contract Compliance Inspector (CCI)—Deleted, Not Applicable

2.023 Project Manager—Deleted, Not Applicable

2.024 Change Requests

The State reserves the right to request from time to time any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create

Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the Contractor does not so notify the State, the Contractor has no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable.

Change Requests:

(a) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").

(b) No proposed Change must be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Purchasing Operations.

(c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of this Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices

Any notice given to a party under the Contract must be deemed effective, if addressed to the party as addressed below, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

State:
State of Michigan
Purchasing Operations
Attention: Joan Bosheff
P.O. Box 30026
530 West Allegan
Lansing, Michigan 48909

Contractor:
Neopost, Inc.
Attention: Roger Williams
29200 Northwestern Highway, #170

Southfield, Michigan 48034

Either party may change its address where notices are to be sent by giving notice according to this Section.

2.026 Binding Commitments

Representatives of Contractor must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in the table. Contractor may change the representatives from time to time upon written notice.

2.027 Relationship of the Parties

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of Contractor or any of its Subcontractors must be or must be deemed to be an employee, agent or servant of the State for any reason. Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

2.028 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless stated otherwise in the Contract, the parties will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

2.029 Assignments

(a) Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one entity continues.

(c) If the Contractor intends to assign the contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

2.030 General Provisions

2.031 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and Contract or project to which it relates shall not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

2.032 Contract Distribution

Purchasing Operations retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Purchasing Operations.

2.033 Permits

Contractor must obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.034 Website Incorporation

The State is not bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of the content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the State.

2.035 Future Bidding Preclusion

Contractor acknowledges that, to the extent this Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any Bidder if the State determines that the Bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP.

2.036 Freedom of Information

All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

2.037 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel

dedicated to providing Services/Deliverables under this Contract will provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

2.040 Financial Provisions

2.041 Fixed Prices for Services/Deliverables

Each Statement of Work or Purchase Order issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.042 Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

2.043 Services/Deliverables Covered

For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under this Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in this Contract.

2.044 Invoicing and Payment – In General—Deleted, Not Applicable

2.045 Pro-ration

To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.

2.046 Antitrust Assignment

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

2.047 Final Payment

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after

acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract shall constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 Electronic Payment Requirement

Electronic transfer of funds is required for payments on State Contracts. Contractors are required to register with the State electronically at http://www.cpexpress.state.mi.us. As stated in Public Act 431 of 1984, all contracts that the State enters into for the purchase of goods and services shall provide that payment will be made by electronic fund transfer (EFT).

2.050 Taxes

2.051 Employment Taxes

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes.

2.052 Sales and Use Taxes

Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining "two or more trades or businesses under common control" the term "organization" means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

2.060 Contract Management

2.061 Contractor Personnel Qualifications

All persons assigned by Contractor to the performance of Services under this Contract must be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and must be fully qualified to perform the work assigned to them. Contractor must include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role must be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

2.062 Contractor Key Personnel

(a) The Contractor must provide the Contract Compliance Inspector with the names of the Key Personnel.

(b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.

(c) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.

(d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.

(e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

2.063 Re-assignment of Personnel at the State's Request

The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

2.064 Contractor Personnel Location

All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

2.065 Contractor Identification

Contractor employees must be clearly identifiable while on State property by wearing a State-issued badge, as required. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

2.066 Cooperation with Third Parties

Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor will provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impede Contractor's performance under this Contract with the requests for access.

2.067 Contract Management Responsibilities

The Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of Subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve Subcontractors and to require the Contractor to replace Subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the Subcontractor to all provisions of the Contract. Any change in Subcontractors must be approved by the State, in writing, prior to such change.

2.068 Contractor Return of State Equipment/Resources

The Contractor must return to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

2.070 Subcontracting by Contractor

2.071 Contractor full Responsibility

Contractor shall have full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under this Contract, including payment of any and all charges for Services and Deliverables.

2.072 State Consent to delegation

Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Purchasing Operations has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work will not be counted in time agreed upon by the parties.

2.073 Subcontractor bound to Contract

In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract. Attached as **Exhibit A** is a list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract.

2.074 Flow Down

Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.031, 2.060, 2.100, 2.110, 2.120, 2.130, 2.200** in all of its agreements with any Subcontractors.

2.075 Competitive Selection

The Contractor shall select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

2.080 State Responsibilities

2.081 Equipment

The State will provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

2.082 Facilities

The State must designate space as long as it is available and as provided in the Statement of Work, to house the Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor must have reasonable access to, and unless agreed otherwise by the parties in writing must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

2.090 Security

2.091 Background Checks

On a case-by-case basis, the State may investigate the Contractor's personnel before they may have access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

All Contractor personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See http://www.michigan.gov/dit. Furthermore, Contractor personnel will be expected to agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. It is expected the Contractor will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

2.092 Security Breach Notification

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI Data Security Requirements—Deleted, Not Applicable

2.100 Confidentiality

2.101 Confidentiality

Contractor and the State each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor must mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary or with a similar designation. "Confidential Information" of the State must mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State under its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. "Confidential Information" excludes any information (including this Contract) that is publicly available under the Michigan FOIA.

2.102 Protection and Destruction of Confidential Information

The State and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

Promptly upon termination or cancellation of the Contract for any reason, Contractor must certify to the State that Contractor has destroyed all State Confidential Information.

2.103 Exclusions

Notwithstanding the foregoing, the provisions of **Section 2.100** will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of **Section 2.100** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights

Nothing contained in this Section must be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

2.105 Respective Obligations

The parties' respective obligations under this Section must survive the termination or expiration of this Contract for any reason.

2.110 Records and Inspections

2.111 Inspection of Work Performed

The State's authorized representatives must at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and must have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 Days prior written notice and at all reasonable times, the State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.

2.112 Examination of Records

For seven years after the Contractor provides any work under this Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing

Contractor's compliance with the Contract and with applicable laws and rules. The State must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

2.113 Retention of Records

Contractor must maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records must be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.114 Audit Resolution

If necessary, the Contractor and the State will meet to review each audit report promptly after issuance. The Contractor will respond to each audit report in writing within 30 days from receipt of the report, unless a shorter response time is specified in the report. The Contractor and the State must develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in the audit report.

2.115 Errors

(a) If the audit demonstrates any errors in the documents provided to the State, then the amount in error must be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four invoices. If a balance remains after four invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the contract, whichever is earlier.
(b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10%, then the Contractor must pay all of the reasonable costs of the audit.

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and must fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under this Contract.

(b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in this Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

(e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any Affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.

(h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.

(i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or the Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other Bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other Bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by the financial statements, reports, other information. Since the respective dates or periods covered by the financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.

(l) All written information furnished to the State by or for the Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading.

(m) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract.

(n) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after contract award, the Contractor is required to report those changes immediately to the Department of Management and Budget, Purchasing Operations.

2.122 Warranty of Merchantability

Goods provided by Contractor under this agreement shall be merchantable. All goods provided under this Contract shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the Contractor or on the container or label.

2.123 Warranty of Fitness for a Particular Purpose

When the Contractor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the Contractor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

2.124 Warranty of Title

Contractor shall, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by Contractor shall be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by Contractor, under this Contract, shall be delivered free of any rightful claim of any third person by of infringement or the like.

2.125 Equipment Warranty

Refer to State of Massachusetts NASPO contract OFF22.

2.126 Equipment to be New

If applicable, all equipment provided under this Contract by Contractor shall be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.

2.127 Prohibited Products

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Purchasing Operations has approved a change order pursuant to **Section 2.024**.

2.128 Consequences For Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, the breach may be considered as a default in the performance of a material obligation of this Contract.

2.130 Insurance

2.131 Liability Insurance

The Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether the services are performed by the Contractor, or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain under this Contract.

All insurance coverages provided relative to this Contract/Purchase Order are PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance must be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.

The insurers selected by Contractor must have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized

insurance rating agency. All policies of insurance required in this Contract must be issued by companies that have been approved to do business in the State.
See www.michigan.gov/dleg.

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State must be entitled to coverage to the extent of the higher limits.

The Contractor is required to pay for and provide the type and amount of insurance checked ☑ below:

☑ 1. Commercial General Liability with the following minimum coverage:

$2,000,000 General Aggregate Limit other than Products/Completed Operations
$2,000,000 Products/Completed Operations Aggregate Limit
$1,000,000 Personal & Advertising Injury Limit
$1,000,000 Each Occurrence Limit

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☑ 2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☑ 3. Workers' compensation coverage must be provided according to applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision must not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

☑ 4. Employers liability insurance with the following minimum limits:

$100,000 each accident

$100,000 each employee by disease
$500,000 aggregate disease

☐ 5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars ($1,000,000.00) with a maximum deductible of fifty thousand dollars ($50,000.00).

☐ 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars ($10,000,000.00), which must apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

☐ 7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars ($3,000,000.00) each occurrence and three million dollars ($3,000,000.00) annual aggregate.

☐ 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy must cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State must be endorsed on the policy as a loss payee as its interests appear.

2.132 Subcontractor Insurance Coverage

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor(s) must fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to DMB-PurchOps, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number

affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

The Contractor must maintain all required insurance coverage throughout the term of the Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and must not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance. If the Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, then the State may, after the State has given the Contractor at least 30 days written notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.

2.140 Indemnification

2.141 General Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its Subcontractors, or by anyone else for whose acts any of them may be liable.

2.142 Code Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

2.143 Employee Indemnification

In any claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its Subcontractors, the indemnification obligation under the Contract must not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its Subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater

specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

2.144 Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that the action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its Subcontractors, or the operation of the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if the option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if the option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract.

2.145 Continuation of Indemnification Obligations

The Contractor's duty to indemnify under this Section continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

2.146 Indemnification Procedures

The procedures set forth below must apply to all indemnity obligations under this Contract.

(a) After the State receives notice of the action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification

obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State may defend the claim in the manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor must promptly reimburse the State for all the reasonable costs and expenses.

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

If the Contractor breaches the contract, and the State in its sole discretion determines that the breach is curable, then the State will provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2.152 Termination for Cause

(a) The State may terminate this contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State

(b) If this Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under this Contract.

(c) If the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If the State terminates this Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in this Contract for a termination for convenience.

2.153 Termination for Convenience

The State may terminate this Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

2.154 Termination for Non-Appropriation

(a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State

must terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

(c) If the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section will not preclude Contractor from reducing or stopping Services/Deliverables or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.155 Termination for Criminal Conviction

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense related to a State, public or private Contract or subcontract.

2.156 Termination for Approvals Rescinded

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for only the work completed to that point under the Contract. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in the written notice.

2.157 Rights and Obligations upon Termination

(a) If the State terminates this Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any

potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) If the State terminates this Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under this Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

(c) Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for services and deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.158 Reservation of Rights

Any termination of this Contract or any Statement of Work issued under it by a party must be with full reservation of, and without prejudice to, any rights or remedies otherwise available to the party with respect to any claims arising before or as a result of the termination.

2.160 Termination by Contractor

2.161 Termination by Contractor

If the State breaches the Contract, and the Contractor in its sole discretion determines that the breach is curable, then the Contractor will provide the State with written notice of the breach and a time period (not less than 30 days) to cure the breach. The Notice of Breach and opportunity to cure is inapplicable for successive and repeated breaches.

The Contractor may terminate this Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under this Contract, (ii) breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.160** before it terminates the Contract.

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities—Deleted, Not Applicable

2.172 Contractor Personnel Transition

The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by this Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's Subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's Subcontractors or vendors. Contractor will notify all of Contractor's Subcontractors of procedures to be followed during transition.

2.173 Contractor Information Transition

The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under this Contract. The Contractor will provide the State with asset management data generated from the inception of this Contract through the date on which this Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor will deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

2.174 Contractor Software Transition

The Contractor must reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This must include any documentation being used by the Contractor to perform the Services under this Contract. If the State transfers any software licenses to the Contractor, those licenses must, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

2.175 Transition Payments

If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates agreed upon by the State. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.176 State Transition Responsibilities

In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

(a) Reconciling all accounts between the State and the Contractor;
(b) Completing any pending post-project reviews.

2.180 Stop Work

2.181 Stop Work Orders

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under **Section 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

2.182 Cancellation or Expiration of Stop Work Order

The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.024**.

2.183 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.153**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not being liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180.**

2.190 Dispute Resolution

2.191 In General

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work must be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

2.192 Informal Dispute Resolution

(a) All disputes between the parties must be resolved under the Contract Management procedures in this Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:

(i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.

(ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.

(iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.

(iv) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

(b) This Section will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under **Section 2.193**.

(c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work under the Contract.

2.193 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is the that the damages to the party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.194 Continued Performance

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.150**, as the case may be.

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

2.202 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, et seq., the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.203 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html.

2.204 Prevailing Wage

The rates of wages and fringe benefits to be paid each class of individuals employed by the Contractor, its Subcontractors, their Subcontractors, and all persons involved with the performance of this Contract in privity of contract with the Contractor shall not be less than the wage rates and fringe benefits established by the Michigan Department of Labor and Economic Development, Wage and Hour Bureau, schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Contractor shall include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or Subcontractors and persons in privity of contract with them.

The Contractor, its Subcontractors, their Subcontractors and all persons involved with the performance of this contract in privity of contract with the Contractor shall keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Labor and Economic Development, the office responsible for enforcement of the wage rates and fringe benefits. You shall keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual

employed in connection with this contract. This record shall be available to the State upon request for reasonable inspection.

If any trade is omitted from the list of wage rates and fringe benefits to be paid to each class of individuals by the Contractor, it is understood that the trades omitted shall also be paid not less than the wage rate and fringe benefits prevailing in the local where the work is to be performed.

2.210 Governing Law

2.211 Governing Law

The Contract must in all respects be governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

2.212 Compliance with Laws

Contractor shall comply with all applicable state, federal and local laws and ordinances in providing the Services/Deliverables.

2.213 Jurisdiction

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to the jurisdiction on the grounds of lack of personal jurisdiction of the court or the laying of venue of the court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

2.220 Limitation of Liability

2.221 Limitation of Liability

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The Contractor's liability for damages to the State is limited to two times the value of the Contract or $500,000 which ever is higher. The foregoing limitation of liability does not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Contractor is limited to the value of the Contract.

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

(b) Assurances. If any Proceeding disclosed to the State under this Section, or of which the State otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:

(i) the ability of Contractor (or a Subcontractor) to continue to perform this Contract according to its terms and conditions, or

(ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:

(a) Contractor and its Subcontractors will be able to continue to perform this Contract and any Statements of Work according to its terms and conditions, and

(b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

(c) Contractor must make the following notifications in writing:

(1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DMB PurchOps.

(2) Contractor must also notify DMB PurchOps within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

(3) Contractor must also notify DMB PurchOps within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure—Deleted, Not Applicable

2.233 Bankruptcy

The State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish the Works in Process by whatever appropriate method the State may deem expedient if:
(a) the Contractor files for protection under the bankruptcy laws;
(b) an involuntary petition is filed against the Contractor and not removed within 30 days;
(c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;
(d) the Contractor makes a general assignment for the benefit of creditors; or
(e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under this Contract.

Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

2.240 Performance

2.241 Time of Performance

(a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
(b) Without limiting the generality of **Section 2.241(a),** Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.
(c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.
(d) Should the State of Michigan issue an Executive Order thru the Office of State Employer mandating furlough days, the furlough days will not be considered a Business Day. The Contractor will not seek additional costs from the State for project schedule extensions to the extent such extensions are needed due to Contractor's inability to complete deliverables and milestones in accordance with the project schedule as a result of the above mentioned furlough days.

2.242 Service Level Agreements (SLAs)—Deleted, Not Applicable

2.243 Liquidated Damages

The parties acknowledge that late or improper completion of the Work will cause loss and damage to the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result. Therefore, Contractor and the State agree that if there is late or improper completion of the Work and the State does not elect to exercise its rights under **Section 2.141**, the State is entitled to collect liquidated damages in the amount of $5,000.00 and an additional $100.00 per day for each day Contractor fails to remedy the late or improper completion of the Work.

2.244 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. But the party must use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. A party must promptly notify the other party in writing immediately after the excusable failure occurs, and also when it abates or ends.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 10 Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State is not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or

omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.250 Approval of Deliverables

2.251 Delivery Responsibilities

Unless otherwise specified by the State within an individual order, the following must be applicable to all orders issued under this Contract.

(a) Shipment responsibilities - Services performed/Deliverables provided under this Contract must be delivered "F.O.B. Destination, within Government Premises." The Contractor must have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates will be specified on the individual purchase order.

(b) Delivery locations - Services will be performed/Deliverables will be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.

(c) Damage Disputes - At the time of delivery to State Locations, the State must examine all packages. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage.

Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within 14 days of receipt. Any damage must be reported to the Contractor within five days of inspection.

2.252 Delivery of Deliverables

Where applicable, the Statements of Work/POs contain lists of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable"), a good ("Physical Deliverable") or a Service. All Deliverables must be completed and delivered for State review and written approval and, where applicable, installed according to the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

2.253 Testing—Deleted, Not Applicable

2.254 Approval of Deliverables, In General

(a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, according to the following procedures. Formal approval by the State requires the State to confirm in writing that the Deliverable meets its specifications. Formal approval may include the successful completion of Testing as applicable in **Section 2.253**, to be led by the State with the support and

assistance of Contractor. The approval process will be facilitated by ongoing consultation between the parties, inspection of interim and intermediate Deliverables and collaboration on key decisions.

(b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.

(c) Before commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor according to **Section 2.253**.

(d) The State will approve in writing a Deliverable/Service after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, but is not be required to, conditionally approve in writing a Deliverable/Service that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable/Service that remain outstanding at the time of State approval.

(e) If, after three opportunities (the original and two repeat efforts), the Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to cure the failure at the sole expense of the Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the contract price plus an additional sum equal to 10% of the cost to cure the deficiency to cover the State's general expenses provided the State can furnish proof of the general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure the breach. Notwithstanding the foregoing, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if the process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable. If that happens, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery before resuming the testing or approval process.

2.255 Process For Approval of Written Deliverables

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (and if the Statement of Work does not state the State Review Period, it is by default five Business Days for Written Deliverables of 100 pages or less and 10 Business Days for Written Deliverables of more than 100 pages). The duration of the

State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable before its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State notifies the Contractor about deficiencies, the Contractor will correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.256 Process for Approval of Services

The State Review Period for approval of Services is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 Business Days for Services). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Services (or at the State's election, after approval of the Service). If the State delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. The Contractor's correction efforts will be made at no additional charge. Upon implementation of a corrected Service from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Service for conformity and that the identified deficiencies have been corrected.

2.257 Process for Approval of Physical Deliverables

The State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 continuous Business Days for a Physical Deliverable). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. The Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from the Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.258 Final Acceptance

Unless otherwise stated in the Article 1, Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable must occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.251-2.257**. Payment will be made for Deliverables installed and

accepted. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

2.260 Ownership

2.261 Ownership of Work Product by State—Deleted, Not Applicable

2.262 Vesting of Rights—Deleted, Not Applicable

2.263 Rights in Data—Deleted, Not Applicable

2.264 Ownership of Materials—Deleted, Not Applicable

2.270 State Standards

2.271 Existing Technology Standards—Deleted, Not Applicable

2.272 Acceptable Use Policy—Deleted, Not Applicable

2.273 Systems Changes—Deleted, Not Applicable

2.280 Extended Purchasing

2.281 MiDEAL

Public Act 431 of 1984 permits DMB to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. A current listing of approved program members is available at: http://www.michigan.gov/mideal. Unless otherwise stated, the Contractor must ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

The Contractor will supply Contract Services and equipment to these local governmental agencies at the established State of Michigan contract prices and terms to the extent applicable and where available. The Contractor must send its invoices to and pay the local unit of government on a direct and individual basis.

To the extent that authorized local units of government purchase quantities of Services and/or equipment under this Contract, the quantities of Services and/or equipment purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

Please Visit Mi DEAL at www.michigan.gov/mideal under MiDEAL.

Estimated requirements for authorized local units of government are not included in the quantities shown in this RFP.

2.282 State Employee Purchases—Deleted, Not Applicable

2.290 Environmental Provision

2.291 Environmental Provision

Energy Efficiency Purchasing Policy – The State seeks wherever possible to purchase energy efficient products. This includes giving preference to U.S. Environmental Protection Agency (EPA) certified 'Energy Star' products for any category of products for which EPA has established Energy Star certification. For other purchases, the State may include energy efficiency as one of the priority factors to consider when choosing among comparable products.

Environmental Purchasing Policy – The State of Michigan is committed to encouraging the use of products and services that impact the environment less than competing products. The State is accomplishing this by including environmental considerations in purchasing decisions, while remaining fiscally responsible, to promote practices that improve worker health, conserve natural resources, and prevent pollution. Environmental components that are to be considered include: recycled content and recyclability; energy efficiency; and the presence of undesirable materials in the products, especially those toxic chemicals which are persistent and bioaccumulative. The Contractor should be able to supply products containing recycled and environmentally preferable materials that meet performance requirements and is encouraged to offer such products throughout the duration of this Contract. Information on any relevant third party certification (such as Green Seal, Energy Star, etc.) should also be provided.

Hazardous Materials:
For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state or local laws governing the protection of the public health, natural resources or the environment. This includes, but is not limited to, materials the as batteries and circuit packs, and other materials that are regulated as (1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act.
(a) The Contractor must use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State and local laws. The State must provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the

State must advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor must immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.

(b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

Michigan has a Consumer Products Rule pertaining to labeling of certain products containing volatile organic compounds. For specific details visit http://www.michigan.gov/deq/0,1607,7-135-3310_4108-173523--,00.html

Refrigeration and Air Conditioning:
The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

Environmental Performance:
Waste Reduction Program - Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.).

2.300 Other Provisions

2.301 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials

Equipment, materials, or supplies, that will be furnished to the State under the Contract must not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

"Forced or indentured child labor" means all work or service: exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.