

# Cooperative Contracting

102

## WSCA Process

Western States Contracting Alliance

Paul Stembler

WSCA/NASPO Cooperative Development Director

## Terms and Conditions

1. NASPO/WSCA Terms
  - 1) Apply to all participants
  - 2) Very limited ability to negotiate changes
  - 3) Scored
2. Lead State Critical Terms
  - 1) Apply to all participants
  - 2) Lead state limits apply to negotiations
  - 3) Scored
3. Lead State Specific Terms
  - 1) Apply ONLY to lead state
  - 2) Lead state limits apply to negotiations
  - 3) Scored ONLY for lead state award/participation
4. Participating State Unique, Specific Terms
  - 1) Apply ONLY to the specified state
  - 2) Specified state free to negotiate based on its own standards
  - 3) Not scored

July, 2008

Cooperative Contracting 102

2

## Terms and Conditions?

- "NASPO Cooperative"
  - NASPO has created a cooperative based on execution of a "memorandum of understanding" between ALL the signatory states
  - A NASPO Cooperative Committee, made up of two representatives from each of the NASPO regions and some other individuals with cooperative contracting experience, has been created and is setting in place guidelines and acting as a clearing house for cooperative contracting
    - If a contract wants to be "branded" with the NASPO label, this committee must be involved and its processes followed
  - Cooperative Committee wants to see a budget and an outline of the need
    - Both of which are subject to amendment
    - Cooperative Committee passes recommendations on to NASPO Board for their final approval - again, subject to amendment

July, 2008

Cooperative Contracting 102

3

## Basic NASPO T's & C's

### DEFINITIONS:

- "Lead State" means the State conducting this cooperative solicitation and centrally administering any resulting master price agreement with the permission of the Signatory States.
- "Master Price Agreement" means this cooperative solicitation and contract, between the designated Lead State and the awarded contractors.
- "Offer" or "Bid" or "Proposal" refers to the offer submitted in response to a solicitation, whether denominated as an invitation to bid, invitation for bid, request for proposal, or otherwise.
- "Bidder" or "Offeror" similarly refers to the person, company, or other entity submitting the bid or proposal that constitutes an offer capable of acceptance, regardless of the solicitation method used.
- "Permissive Price Agreement" means that placement of orders through the price agreement is discretionary with Purchasing Entities. They may satisfy their requirements through the master price agreement without using statutory or regulatory procedures (e.g. invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the master price agreement so long as applicable procurement statutes and rules are followed.

July, 2008

Cooperative Contracting 102

4

## Basic NASPO T's & C'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.
- "Participating State" means a Signatory State that has indicated its intent to participate in a specific cooperative procurement/master price agreement by executing an Intent to Participate, or who has subsequently executed a Participating Addendum where required.
- "Purchasing Entity" means a Participating State, or other legal entity, properly authorized by a Participating State to enter into a contract for the purchase of goods and/or services described in the cooperative procurement. Unless otherwise limited in the cooperative procurement or in a Participating Addendum, political subdivisions of Participating States are deemed Purchasing Entities.
- "Signatory State" means any State who is a member of NASPO that has executed the Memorandum of Agreement (MOA) required to become a member of the NASPO Procurement Cooperative.

July, 2008

Cooperative Contracting 102

5

## Basic NASPO T's & C's

- **POLITICAL SUBDIVISION PARTICIPATION:** Participation under this master price agreement by political subdivisions (i.e., statutorily eligible colleges, school districts, counties, cities, etc..) of the NASPO participating states shall be voluntarily determined by the political subdivision.
- After the solicitation has closed, and an award has been made, additional non-NASPO purchasing entities in non-Participating States may be added with the consent of the chief procurement official in the non-Participating State, the contractor and the Lead State (on behalf of the NASPO Participating States) through the execution of an agreement as required by the lead state, and the execution of a Participating Addendum.
- The contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

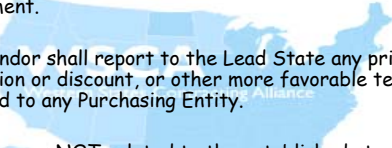
July, 2008

Cooperative Contracting 102

6

## Basic NASPO T's & C's

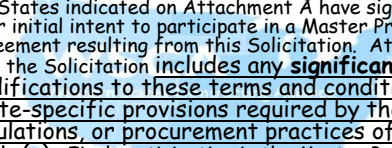
- **PRICES AS CEILING:**
- Master Price Agreement prices represent ceiling prices for the supplies and services priced in the master price agreement.
- The vendor shall report to the Lead State any price reduction or discount, or other more favorable terms, offered to any Purchasing Entity.
- In instances NOT related to the established standards, committed volumes or volume bulk purchases of a participating state or states, the awarded vendor agrees to negotiate in good faith to reestablish ceiling prices or other more favorable terms and conditions applicable to future orders.



July, 2008 Cooperative Contracting 102 7

## Basic NASPO T's & C's

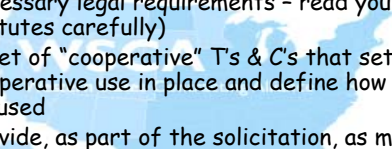
- **STATE PARTICIPATION/UNIQUE TERMS AND CONDITIONS:**
- Apart from the Lead State conducting the solicitation, the States indicated on Attachment A have signified their initial intent to participate in a Master Price Agreement resulting from this Solicitation. Attachment A of the Solicitation includes any significant modifications to these terms and conditions or State-specific provisions required by the laws, regulations, or procurement practices of the State(s). Final participation in the Master Price Agreement by the State(s) shall be signified through the execution of a Participating Addendum.
- After the solicitation has closed and an award has been made, additional NASPO Procurement Cooperative member States may be added with the consent of the contractor and the Lead State (on behalf of the NASPO Participating States) through execution of a Participating Addendum.



July, 2008 Cooperative Contracting 102 8

## Terms and Conditions?

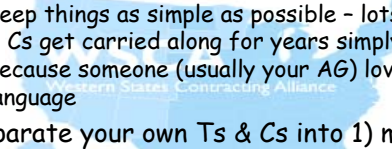
- **WSCA Approach:**
  - Basic T's & C's from lead state (to meet basic, necessary legal requirements - read your statutes carefully)
  - A set of "cooperative" T's & C's that set cooperative use in place and define how it can be used
  - Provide, as part of the solicitation, as many unique T's & C's from named potential participants as possible - key word is **UNIQUE** (this gives potential responders knowledge of the lay of the land before they respond)



July, 2008 Cooperative Contracting 102 9

## Terms and Conditions?

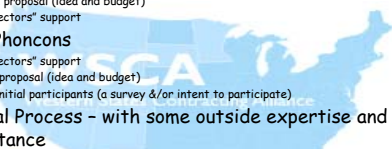
- **De-conflict NASPO/WSCA Ts & Cs with your lead state Ts & Cs**
  - Keep things as simple as possible - lots of Ts & Cs get carried along for years simply because someone (usually your AG) loves the language
- **Separate your own Ts & Cs into 1) must have and 2) apply only to us**
  - Read the actual statute or requirement, do not simply say "this has always been"



July, 2008 Cooperative Contracting 102 10

## Four clusters of activity

- Annual Conference/On-going Phoncons**
  - Get an idea (might include a survey of interest)
  - Analyze options and alternatives
  - Create a proposal (idea and budget)
  - Get "directors" support
- Monthly Phoncons**
  - Get "directors" support
  - Finalize proposal (idea and budget)
  - Gather initial participants (a survey &/or intent to participate)
- Your Usual Process - with some outside expertise and assistance**
  - Create solicitation
  - Publish solicitation
  - Evaluate solicitations
- Monthly Phoncons and Negotiations Process**
  - Get award approved
  - Issue Master Price Agreements
  - Announce contracts to participants
  - Manage contracts (use, amendments and extensions)

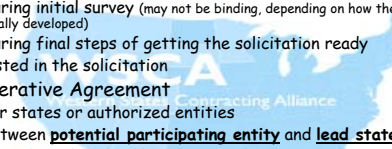


July, 2008 Cooperative Contracting 102 11

## Participation?

How does WSCA set the parameters:

- **Intent to Participate** (may be two rounds)
  - During initial survey (may not be binding, depending on how the solicitation is finally developed)
  - During final steps of getting the solicitation ready
  - Listed in the solicitation
- **Cooperative Agreement**
  - For states or authorized entities
  - Between potential participating entity and lead state
  - NOT directly related to the actual master price agreement, but to the use of the master price agreement, based on a participating addendum
- **Participating Addendum**
  - Between participating entity and manufacturer
  - DOES NOT over-ride master price agreement
  - Allows local requirements and additions



July, 2008 Cooperative Contracting 102 12

## Small Business/Special Programs?

- Cooperative contracts exist on two levels
  - Cooperative level - multiple award, focus on manufacturer or largest players
  - Local level - based on local choices and options
- Local Choices are very open
  - Require use of local sources, development of local options
  - Use as a basis for local competition

Choices and options are really dependent on local decisions

July, 2008

Cooperative Contracting 102

13

## Questions ??



Plenty of time this afternoon and during the rest of the meeting, so make a list if you think of any.