

PARTICIPATING ADDENDUM
NASPO ValuePoint
Body Armor Products
Administered by the State of Colorado hereinafter "Lead State")

MASTER AGREEMENT
KDH Defense Systems, Inc.
Master Agreement No: 2016-182
(hereinafter "Contractor")

And

State of North Carolina
(hereinafter "Participating State")

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1. **Scope:** This addendum covers the **Body Armor Products** led by the State of Colorado for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts with the prior approval of the State's Chief Procurement Official.
2. **Participation:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state/entity contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. **Participating State/Entity Modifications or Additions to Master Agreement:**
(These modifications or additions apply only to actions and relationships within the Participating Entity.)

Participating State to check one box.

No changes to the terms and conditions of the Master Agreement are required

The following changes are modifying or supplementing the Master Agreement terms and conditions.

a. **NORTH CAROLINA GENERAL TERMS AND CONDITIONS**

1. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the Contractor to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.
2. **AVAILABILITY OF FUNDS:** Any and all payments to the Contractor are dependent upon and subject to the availability of funds to the agency for the purpose set forth in this agreement.
3. **TAXES:** Any applicable taxes shall be invoiced as a separate item.
 - a. G.S. §143-59.1 bars the Secretary of Administration from entering into Contracts with Contractors if the Contractor or its affiliates meet one of the conditions of G. S. §105-164.8(b) and refuses to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G. S. §105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the Contractor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the bid document the Contractor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
 - b. All agencies participating in this Contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the Contractor will be executed and returned by the using agency.
 - c. Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.

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4. **SITUS:** The place of this Contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in Contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.
5. **GOVERNING LAWS:** This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules.
6. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after date of correct invoice. The Contractor will not invoice until items have shipped. The using agency is responsible for all payments to the Contractor under the Contract. Payment by some agencies may be made by procurement card, if the Contractor accepts that card (Visa, MasterCard, etc.) from other customers, and it shall be accepted by the Contractor for payment under the same terms and conditions as any other method of payment accepted by the Contractor. If payment is made by procurement card, then payment may be processed immediately by the Contractor.
7. **AFFIRMATIVE ACTION:** The Contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.
8. **CONDITION AND PACKAGING:** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
9. **STANDARDS:** All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and /or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.

The complete product(s) offered herein, and NOT merely its component parts or subsystems, must comply with the above requirement for safety listing. Having the appropriate certification or safety label affixed to any device delivered pursuant to this solicitation, under the conditions described above, is a material condition of any contract awarded as a result of this solicitation. All costs for product and industry certifications and listings, and any other actions required to supply conforming products to the State as described in the Master Contract, are the sole responsibility of the Contractor. The certification or safety label shall be affixed and be visible on the OUTSIDE of the all products that require a certification or safety label in order to pass the State Quality Acceptance Inspection.
10. **ADVERTISING:** Contractor agrees not to use the existence of this Contract or the name of the State of North Carolina as part of any commercial advertising or marketing of products or services. A Contractor may inquire whether the State is willing to act as a reference by providing factual information directly to other prospective customers.

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11. **ACCESS TO PERSONS AND RECORDS:** During and after the term hereof, the State Auditor and any using agency's internal auditors shall have access to persons and records related to this Contract to verify accounts and data affecting fees or performance under the Contract, as provided in G. S. §143-49(9).
12. **ASSIGNMENT:** No assignment of the Contractor's obligations or the Contractor's right to receive payment hereunder shall be permitted.

However, upon written request approved by the issuing purchasing authority and solely as a convenience to the Contractor, the State may:

- a. Forward the Contractor's payment check directly to any person or entity designated by the Contractor, and
- b. Include any person or entity designated by Contractor as a joint payee on the Contractor's payment check.

In no event shall such approval and action obligate the State to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all Contract obligations. Upon advance written request, the State may, in its unfettered discretion, approve an assignment to the surviving entity of a merger, acquisition or corporate reorganization, if made as part of the transfer of all or substantially all of the Contractor's assets. Any purported assignment made in violation of this provision shall be void and a material breach of this Contract.

13. **GENERAL INDEMNITY:** Contractor shall indemnify and hold harmless the State and its officers, agents, and employees against any and all liability, damages, costs and expenses, including without limitation reasonable attorneys' fees, which the State may incur, suffer, become liable for, or which may be asserted or claimed against the State to the extent proximately caused by a defect of the applicable Products except those caused by the State or otherwise arising out of or attributed, directly or indirectly, to the conduct, operations or performance of the State; *provided, that*, any such indemnity provided under this clause shall be conditioned on the State performing and satisfying all of its duties and obligations.

Contractor and the State each hereby agree that any indemnification provided shall be conditioned on the following: the State shall give prompt written notice to Contractor, of the commencement or assertion of any claim in respect of which the State will seek indemnification hereunder (each a "Claim"), which notice shall state, to the extent known to the State, the basis on which the Claim for indemnification is made, the facts giving rise to or the alleged basis of the Claim, and the amount (which may be estimated) of liability asserted by reason of the Claim; such notice shall also include a copy of the document (if any) by or in which the Claim is commenced or asserted; after receipt of such notice, Contractor shall have the opportunity to assume sole control over the defense and all negotiations for a settlement or compromise of the Claim with counsel of its own choosing; the State shall be entitled to participate at its own expense in the defense of the Claim; *provided, that*, the State shall not be entitled to control the defense or negotiations for a settlement or compromise of the Claim; Contractor shall not be responsible for any settlement of a Claim that it does not approve in writing; and in no event shall either Party be responsible to the other for any compensation, reimbursement or damages on account of consequential damages including the loss of prospective profits or anticipated sales or for any expenditures, investments or other commitments made in connection with this Agreement in an aggregate amount greater than five million dollars (\$5,000,000.00).

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14. **ELECTRONIC PROCUREMENT:** (a) Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The Contractor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.
- (b) **THE SUCCESSFUL BIDDER(S) SHALL PAY A TRANSACTION FEE OF 1.75% (.0175) ON THE TOTAL DOLLAR AMOUNT (EXCLUDING SALES TAXES) OF GOODS INCLUDED ON EACH PURCHASE ORDER ISSUED THROUGH THE STATEWIDE E-PROCUREMENT SERVICE.** This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall not be stated or included as a separate item on the invoice. There are no additional fees or charges to the Contractor for the services rendered by the Supplier Manager under this contract. Contractor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Contractor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the contract.
- (c) Contractor or its Authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on a) purchase activity for the prior month, or b) purchases for which the supplier invoice has been paid. Unless Supplier Manager receives written notice from the Contractor identifying with specificity any errors in an invoice for the transaction fee within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Contractor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Contractor is due to the account designated by the State within thirty (30) days after receipt of the invoice for the transaction fee. If payment of the transaction fee is not received by the State within this payment period, it shall be considered a material breach of contract. Pursuant to North Carolina General Statute §147-86.23, the Service will charge interest and late payment penalties on past due balances. Interest shall be charged at the rate set by the Secretary of Revenue pursuant to N.C.G.S. §105-241.21 as of the date the balances are past due. The late-payment penalty will be ten percent (10%) of the account receivable. Within thirty (30) days of the receipt of invoice, Contractor may dispute in writing the accuracy of an invoice. No interest shall be charged on disputed and overdue amounts to the extent the State agrees to reduce or adjust the amount in dispute. The Supplier Manager shall provide, whenever reasonably requested by the Contractor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.
- (d) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Contractor on State Contract. The State or State-approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of contract, and the payment for goods delivered.
- (e) Contractor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If Contractor is a corporation, partnership or other legal entity, then the Contractor may authorize its employees to use its password. Contractor shall be responsible for all activity and all charges by such employees. Contractor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Contractor's account, Contractor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Contractor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

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CONTRACTOR IS AND SHALL REMAIN RESPONSIBLE FOR PAYING THE TRANSACTION FEE ON BEHALF OF ANY SUB-CONTRACTOR OR DEALER INVOLVED IN PERFORMANCE UNDER THIS CONTRACT IN THE EVENT THAT SUCH SUB-CONTRACTOR OR DEALER DEFAULTS ON PAYMENT.

15. **COMPLIANCE WITH LAWS:** Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and performance in accordance with this contract, including those of federal, state, and local agencies having jurisdiction and/or authority.
16. **ENTIRE AGREEMENT:** The Master Agreement, including generally applicable addendums thereto, this Participating Addendum and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. If there is any conflict between or among documents constituting this contract, this Participating Addendum shall have the highest precedence.

All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.
17. **AMENDMENTS:** This Participating Addendum may be amended only by written amendments duly executed by the State and the Contractor. The NC Division of Purchase and Contract shall give prior approval to any amendment to a contract awarded through that office.
18. **WAIVER:** The failure to enforce or the waiver by the State of any right or of breach or default on one occasion or instance shall not constitute the waiver of such right, breach or default on any subsequent occasion or instance.
19. **FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

b. SPECIAL TERMS AND CONDITIONS

1. **CERTIFICATIONS:** Contractor certifies each of to the following:
 - a) that this bid is submitted competitively and without collusion, as required by G.S. 143-54;
 - b) that none of its officers, directors or controlling owners has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2);
 - c) that it is not an ineligible Contractor as set forth in G.S. 143-59.1;
 - d) that no employee or agent of Contractor has offered, and no State employee has accepted, any gift or gratuity in connection this contract, in violation of N.C.G.S. § 133-32; and
 - e) that it, and each of its sub-contractors under this contract, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system, As required by G.S. §143-48.5.

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2. **REPORTING:** In addition to the reporting requirements in NASPO Value Point Master Price Agreement 2016-182 the Contractor shall provide Quarterly Management Reports to the NC Division of Purchase and Contract. This report shall include, at a minimum, information on: items purchased, manufacturer product description, purchased quantities, List Price, price paid, manufacturer name, unit of measure, any additional delivery charges such as specialty packaging or overnight delivery, ordering entity, delivery location, order date, and delivery date. These reports should be well organized and easy to read. The Contractor shall submit these reports electronically using Microsoft Excel and, as needed, either Microsoft PowerPoint or Microsoft Word. The Contractor shall submit the Quarterly Management Reports via email to pcreports@doa.nc.gov by the end of the month following the end of the quarter. For consistency, quarters shall be considered to end on the last day of March, June, September, and December of each calendar year. Quarterly reports are required even if no activity has occurred.
3. **PERIODIC MANAGEMENT REVIEWS:** The Contractor, at the request of the State, shall meet periodically (e.g., quarterly) with the State for Management Review meetings. The purpose of these meetings will be to review the quarterly management report, discuss Contractor and State performance, address issues, review item and sales data, review continuous improvement and cost saving ideas, discuss market trends, and discuss any other pertinent topics.
4. **NOTICE TO VENDORS – IRAN DIVESTMENT ACT:** Pursuant to G.S. 143C-6A-6, any person identified as engaging in investment activities in Iran, determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 143C-6A-4, is ineligible to contract with the State of North Carolina or any political subdivision of the State. The Iran Divestment Act of 2015, G.S. 143C-6A-1 et seq. requires that each Vendor, prior to contracting with the State, complete the following form.

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c. CERTIFICATION OF ELIGIBILITY
Under the Iran Divestment Act

Pursuant to G.S. 143C-6A-6, any person identified as engaging in investment activities in Iran, determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 143C-6A-4, is ineligible to contract with the State of North Carolina or any political subdivision of the State. The Iran Divestment Act of 2015, G.S. 143C-6A-1 *et seq.* requires that each vendor, prior to contracting with the State certify, and the undersigned on behalf of the Vendor does hereby certify, to the following:

1. that the Vendor is not identified on the Final Divestment List of entities that the State Treasurer has determined engages in investment activities in Iran;
2. that the Vendor shall not utilize on any contract with the State agency any subcontractor that is identified on the Final Divestment List; and
3. that the undersigned is authorized by the Vendor to make this Certification.

Vendor: KDH DEFENSE SYSTEMS, INC.

By: Deborah Bolinsky 4/28/2016
Signature Date

DEBORAH BOLINSKY SR ACCOUNTANT
Printed Name Title

The State Treasurer's Final Divestment List can be found on the State Treasurer's website <https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Iran-Divestment-Act-Resources.aspx> and will be updated every 180 days. For questions about the Department of State Treasurer's Iran Divestment Policy, please contact Meryl Murtagh at Meryl.Murtagh@nctreasurer.com or (919) 814-3852.

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4. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name	Julie Kiselica, Director of Sales
Address	750A Fieldcrest Rd., Eden, NC 27288
Telephone	(214) 406-7539
E-mail	jkiselica@kdhdefense.com

Participating Entity

Name	Grant Braley
Address	116 West Jones Street, Raleigh NC 27603
Telephone	(919) 807-4519
Fax	(919) 807-4510
E-mail	grant.braley@doa.nc.gov

5. **Subcontractors:** All KDH Defense Systems, Inc. Distributors authorized in the State of North Carolina, as shown on the dedicated KDH Defense Systems, Inc. NASPO ValuePoint website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The Contractor's Distributor's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
6. **Orders:** Any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

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

Participating State: STATE OF NORTH CAROLINA	Contractor: KDH DEFENSE SYSTEMS, INC.
By: <i>Sherrri Garte</i>	By: <i>Deborah Bolinsky</i>
Name: Sherrri Garte	Name: <i>DEBORAH BOLINSKY</i>
Title: Deputy State Purchasing Officer	Title: <i>SR. ACCOUNTANT</i>
Date: <i>4/29/16</i>	Date: <i>4/28/2016</i>