

PARTICIPATING ADDENDUM
NASPO VALUEPOINT COOPERATIVE PURCHASING PROGRAM
Laboratory Equipment and Supplies
Administered by the State of Idaho (hereinafter "Lead State")

Nikon Instruments, Inc.
Master Agreement No: MA16000234-3
(Hereinafter "Contractor")
And
State of Wisconsin
(Hereinafter "Participating State")

PARTICIPATING STATE CONTRACT NUMBER 505ENT-O18-LABEQPMENT-02

1. Scope: This Participating Addendum (PADD) covers the Laboratory Equipment and Supplies contract led by the State of Idaho (Master Agreement No. MA16000234-3) for use by state agencies and other entities located in the Participating State of Wisconsin, as provided below.
2. Participation: Use of NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities authorized by an individual state's statutes to use State of Wisconsin 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. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name	Jacquelyn L Perry
Address	1300 Walt Whitman Rd., Melville, NY 11747
Telephone	631-547-8526
Fax	631-944-9370
E-mail	niiorderscontracts@nikon.net

Participating State

Name	Mojgan Hall
Address	Wisconsin State Dept. of Administration P.O. Box 7867 Madison, WI 53707-7867
Telephone	(608) 261-6359
Fax	(608) 267-0600
E-mail	Mojgan.Hall@Wisconsin.gov

4. Participating State Modifications or Additions to Master Agreement:

The contract term will be coterminous with the Lead State contract term. The current term expires March 31, 2019; considering renewal terms, the final expiration is March 31, 2021.

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

☐ 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.

1. **Scope**

This Participating Addendum covers the purchase of Laboratory Equipment and Supplies for all State Agencies and will include all Wisconsin municipalities. As defined in s. 16.70(8), Wisconsin Statutes, "municipality" means a county, city, village, town, school district, board of school directors, sewer district, drainage district, technical college district or any other public or quasi-public corporation, officer, board or other body having the authority to award public contracts.

2. **Changes**

Changes to the terms of the signed Master Price Agreement are as follows:

- a. The state of Wisconsin's Participating Addendum will be governed by the Master Price Agreement, the State of Wisconsin's Standard Terms and Conditions (DOA- 3054, revision R08/2016) (Attachment 1) as well as Contract Exceptions (Appendix 1).
- b. The Contractor must sign and include the Wisconsin's Cooperative Purchasing Service (DOA-3333, revision R03/2004) to allow municipalities, as defined on the Agreement, to purchase through this addendum (Attachment 2).
- c. The State of Wisconsin Standard Terms and Conditions shall prevail if there is a conflict between the terms and conditions of the contractor's NASPO State of Wisconsin Master Price Agreement, packaging, invoices, catalogs, brochures, and technical data sheets.
- d. State of Idaho, Master Price Agreement number MA16000234-3 changed for Wisconsin to Contract Number 505ENT-O18-LABEQPMENT-02.
- e. Termination of the Contract:
The State of Wisconsin Department of Administration (DOA), State Bureau of Procurement (SBOP) may terminate this contract at any time upon 30 calendar day prior written notice. Upon termination or other expiration of this contract, each party will assist the other party in orderly termination of the contract and the transfer of all assets, tangible and intangible, as may facilitate the orderly, non-disrupted business continuation of each party. This provision shall not relieve the contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective

f. Reports:

Contractor shall submit reports to the Wisconsin Participating Agreement primary state government contact (or designee) for all Wisconsin purchase(s) providing the following information:

- Agency Name
- Agency Contact Name
- Agency Address
- Agency Telephone Number
- Purchase Order Number
- Purchase Order Date
- Type of lab supply Provided
- Total Purchase Order Amount
- Total Dollars for the quarter

A report is due even when there is no activity. Any report that does not follow the required format or excludes information will be deemed incomplete. Failure to submit reports on a timely basis may constitute grounds for suspension of this agreement. Reports will be submitted in accordance with the following schedule:

Calendar Quarter 1 (July 1 to September 30)	Due October 31
Calendar Quarter 2 (October 1 to December 31)	Due January 31
Calendar Quarter 3 (January 1 to March 31)	Due April 30
Calendar Quarter 4 (April 1 to June 30)	Due July 31

g. Effective Dates:

This Participating Addendum shall be effective upon approval by the State Bureau of Procurement Director and will continue until the End Date of the Master Price Agreement. Lead State amendments to extend the term date are automatically incorporated into this Participating Addendum unless terminated early in accordance with the terms and conditions of the Master Price Agreement or this Participating Addendum.



h. Subcontractors:

The contractor, at this time, will not be using subcontractors to provide any products or services.

5. 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. All orders issued by purchasing entities within the State of Wisconsin must include the Participating State contract number: 505ENT-O18-LABEQPMENT-02 as well as the Lead State Master Agreement No. MA16000234-3.

6. Entire Agreement: This PADD and the Master Agreement No. MA16000234-3, 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. The terms and conditions of this PADD shall prevail and govern in the case of any inconsistency or conflict with the terms and conditions of the Master Agreement, as to the Participating State, and shall otherwise have no impact on the Master Agreement and its exhibits.

The parties have executed this PADD as of the date of the last signature below.

Participating State: Wisconsin	Contractor: Nikon Instruments, Inc.
By: 	By: 
Name: Rick S. Hughes	Name: James Hamlin
Title: State Bureau of Procurement Director	Title: Vice President
Date: 6-29-2017	Date: 6-28-17

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator	Tim Hay
Telephone	503-428-5705
E-mail	THay@NASPOValuePoint.org

[Please email fully executed PDF copy of this document to PA@wsca-naspo.org to support documentation of participation and posting in appropriate data bases]

**Standard Terms and Conditions
(Request for Bids / Proposals)**

Attachment 1

- 1.0 SPECIFICATIONS:** The specifications in this request are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. The State of Wisconsin shall be the sole judge of equivalency. Bidders/proposers are cautioned to avoid bidding alternates to the specifications which may result in rejection of their bid/proposal.
- 2.0 DEVIATIONS AND EXCEPTIONS:** Deviations and exceptions from original text, terms, conditions, or specifications shall be described fully, on the bidder's/proposer's letterhead, signed, and attached to the request. In the absence of such statement, the bid/proposal shall be accepted as in strict compliance with all terms, conditions, and specifications and the bidders/proposers shall be held liable.
- 3.0 QUALITY:** Unless otherwise indicated in the request, all material shall be first quality. Items which are used, demonstrators, obsolete, seconds, or which have been discontinued are unacceptable without prior written approval by the State of Wisconsin.
- 4.0 QUANTITIES:** The quantities shown on this request are based on estimated needs. The state reserves the right to increase or decrease quantities to meet actual needs.
- 5.0 DELIVERY:** Deliveries shall be F.O.B. destination freight prepaid and included unless otherwise specified.
- 6.0 PRICING AND DISCOUNT:** The State of Wisconsin qualifies for governmental discounts and its educational institutions also qualify for educational discounts. Unit prices shall reflect these discounts.
- 6.1** Unit prices shown on the bid/proposal or contract shall be the price per unit of sale (e.g., gal., cs., doz., ea.) as stated on the request or contract. For any given item, the quantity multiplied by the unit price shall establish the extended price, the unit price shall govern in the bid/proposal evaluation and contract administration.
- 6.2** Prices established in continuing agreements and term contracts may be lowered due to general market conditions, but prices shall not be subject to increase for ninety (90) calendar days from the date of award. Any increase proposed shall be submitted to the contracting agency thirty (30) calendar days before the proposed effective date of the price increase, and shall be limited to fully documented cost increases to the contractor which are demonstrated to be industrywide. The conditions under which price increases may be granted shall be expressed in bid/proposal documents and contracts or agreements.
- 6.3** In determination of award, discounts for early payment will only be considered when all other conditions are equal and when payment terms allow at least fifteen (15) days, providing the discount terms are deemed favorable. All payment terms must allow the option of net thirty (30).
- 7.0 UNFAIR SALES ACT:** Prices quoted to the State of Wisconsin are not governed by the Unfair Sales Act.
- 8.0 ACCEPTANCE-REJECTION:** The State of Wisconsin reserves the right to accept or reject any or all bids/proposals, to waive any technicality in any bid/proposal submitted, and to accept any part of a bid/proposal as deemed to be in the best interests of the State of Wisconsin.
- Bids/proposals MUST be date and time stamped by the soliciting purchasing office on or before the date and time that the bid/proposal is due. Bids/proposals date and time stamped in another office will be rejected. Receipt of a bid/proposal by the mail system does not constitute receipt of a bid/proposal by the purchasing office.
- 9.0 METHOD OF AWARD:** Award shall be made to the lowest responsible, responsive bidder unless otherwise specified.
- 10.0 ORDERING:** Purchase orders or releases via purchasing cards shall be placed directly to the contractor by an authorized agency. No other purchase orders are authorized.
- 11.0 PAYMENT TERMS AND INVOICING:** The State of Wisconsin normally will pay properly submitted vendor invoices within thirty (30) days of receipt providing goods and/or services have been delivered, installed (if required), and accepted as specified.
- Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to purchase order number and submittal to the correct address for processing.
- A good faith dispute creates an exception to prompt payment.
- 12.0 TAXES:** The State of Wisconsin and its agencies are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below.
- The State of Wisconsin, including all its agencies, is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of Wisconsin sales or use tax on its purchases. The State of Wisconsin may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials.

- 13.0 GUARANTEED DELIVERY:** Failure of the contractor to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the contractor liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include the administrative costs.
- 14.0 ENTIRE AGREEMENT:** These Standard Terms and Conditions shall apply to any contract or order awarded as a result of this request except where special requirements are stated elsewhere in the request; in such cases, the special requirements shall apply. Further, the written contract and/or order with referenced parts and attachments shall constitute the entire agreement and no other terms and conditions in any document, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to in writing by the contracting authority.
- 15.0 APPLICABLE LAW AND COMPLIANCE:** This contract shall be governed under the laws of the State of Wisconsin. The contractor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. The State of Wisconsin reserves the right to cancel this contract if the contractor fails to follow the requirements of s. 77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax. The State of Wisconsin also reserves the right to cancel this contract with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.
- 16.0 ANTITRUST ASSIGNMENT:** The contractor and the State of Wisconsin recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Wisconsin (purchaser). Therefore, the contractor hereby assigns to the State of Wisconsin any and all claims for such overcharges as to goods, materials or services purchased in connection with this contract.
- 17.0 ASSIGNMENT:** No right or duty in whole or in part of the contractor under this contract may be assigned or delegated without the prior written consent of the State of Wisconsin.
- 18.0 WORK CENTER CRITERIA:** A work center must be certified under s. 16.752, Wis. Stats., and must ensure that when engaged in the production of materials, supplies or equipment or the performance of contractual services, not less than seventy-five percent (75%) of the total hours of direct labor are performed by severely handicapped individuals.
- 19.0 NONDISCRIMINATION / AFFIRMATIVE ACTION:** In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Wis. Stats., sexual orientation as defined in s. 111.32(13m), Wis. Stats., or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities.
- 19.1** Contracts estimated to be over fifty thousand dollars (\$50,000) require the submission of a written affirmative action plan by the contractor. An exemption occurs from this requirement if the contractor has a workforce of less than fifty (50) employees. Within fifteen (15) working days after the contract is awarded, the contractor must submit the plan to the contracting state agency for approval. Instructions on preparing the plan and technical assistance regarding this clause are available from the contracting state agency.
- 19.2** The contractor agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the contracting state agency that sets forth the provisions of the State of Wisconsin's nondiscrimination law.
- 19.3** Failure to comply with the conditions of this clause may result in the contractor's becoming declared an "ineligible" contractor, termination of the contract, or withholding of payment.
- 20.0 PATENT INFRINGEMENT:** The contractor selling to the State of Wisconsin the articles described herein guarantees the articles were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of the articles described herein will not infringe any United States patent. The contractor covenants that it will at its own expense defend every suit which shall be brought against the State of Wisconsin (provided that such contractor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.
- 21.0 SAFETY REQUIREMENTS:** All materials, equipment, and supplies provided to the State of Wisconsin must comply fully with all safety requirements as set forth by the Wisconsin Administrative Code and all applicable OSHA Standards.
- 22.0 WARRANTY:** Unless otherwise specifically stated by the bidder/proposer, equipment purchased as a result of this request shall be warranted against defects by the bidder/proposer for one (1) year from date of receipt. The equipment manufacturer's standard warranty shall apply as a minimum and must be honored by the contractor.
- 23.0 INSURANCE RESPONSIBILITY:** The contractor performing services for the State of Wisconsin shall:
- 23.1** Maintain worker's compensation insurance as required by Wisconsin Statutes, for all employees engaged in the work.
- 23.2** Maintain commercial liability, bodily injury and property damage insurance against any claim(s) which might occur in carrying out this agreement/contract. Minimum coverage shall be one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out this contract. Minimum coverage shall be one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.

- 23.3 The state reserves the right to require higher or lower limits where warranted.
- 24.0 **CANCELLATION:** The State of Wisconsin reserves the right to cancel any contract in whole or in part without penalty due to nonappropriation of funds or for failure of the contractor to comply with terms, conditions, and specifications of this contract.
- 25.0 **VENDOR TAX DELINQUENCY:** Vendors who have a delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.
- 26.0 **PUBLIC RECORDS ACCESS:** It is the intention of the state to maintain an open and public process in the solicitation, submission, review, and approval of procurement activities. Bid/proposal openings are public unless otherwise specified. Records may not be available for public inspection prior to issuance of the notice of intent to award or the award of the contract. Pursuant to §19.36 (3), Wis. Stats., all records of the contractor that are produced or collected under this contract are subject to disclosure pursuant to a public records request. Upon receipt of notice from the State of Wisconsin of a public records request for records produced or collected under this contract, the contractor shall provide the requested records to the contracting agency. The contractor, following final payment, shall retain all records produced or collected under this contract for six (6) years.
- 27.0 **PROPRIETARY INFORMATION:** Any restrictions on the use of data contained within a request, must be clearly stated in the bid/proposal itself. Proprietary information submitted in response to a request will be handled in accordance with applicable State of Wisconsin procurement regulations and the Wisconsin public records law. Proprietary restrictions normally are not accepted. However, when accepted, it is the vendor's responsibility to defend the determination in the event of an appeal or litigation.
- 27.1 Data contained in a bid/proposal, all documentation provided therein, and innovations developed as a result of the contracted commodities or services cannot be copyrighted or patented. All data, documentation, and innovations become the property of the State of Wisconsin.
- 27.2 Any material submitted by the vendor in response to this request that the vendor considers confidential and proprietary information and which qualifies as a trade secret, as provided in s. 19.36(5), Wis. Stats., or material which can be kept confidential under the Wisconsin public records law, must be identified on a Designation of Confidential and Proprietary Information form (DOA-3027). Bidders/proposers may request the form if it is not part of the Request for Bid/Request for Proposal package. Bid/proposal prices cannot be held confidential.
- 28.0 **DISCLOSURE:** If a state public official (s. 19.42, Wis. Stats.), a member of a state public official's immediate family, or any organization in which a state public official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to this agreement, and if this agreement involves payment of more than three thousand dollars (\$3,000) within a twelve (12) month period, this contract is voidable by the state unless appropriate disclosure is made according to s. 19.45(6), Wis. Stats., before signing the contract.
- Disclosure must be made to the State of Wisconsin Ethics Board, 44 East Mifflin Street, Suite 601, Madison, Wisconsin 53703 (Telephone 608-266-8123).
- State classified and former employees and certain University of Wisconsin faculty/staff are subject to separate disclosure requirements, s. 16.417, Wis. Stats.
- 29.0 **RECYCLED MATERIALS:** The State of Wisconsin is required to purchase products incorporating recycled materials whenever technically and economically feasible. Bidders are encouraged to bid products with recycled content which meet specifications.
- 30.0 **MATERIAL SAFETY DATA SHEET:** If any item(s) on an order(s) resulting from this award(s) is a hazardous chemical, as defined under 29CFR 1910.1200, provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).
- 31.0 **PROMOTIONAL ADVERTISING / NEWS RELEASES:** Reference to or use of the State of Wisconsin, any of its departments, agencies or other subunits, or any state official or employee for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the State of Wisconsin. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the contracting agency.
- 32.0 **HOLD HARMLESS:** The contractor will indemnify and save harmless the State of Wisconsin and all of its officers, agents and employees from all suits, actions, or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from the operations of the contractor, or of any of its contractors, in prosecuting work under this agreement.
- 33.0 **FOREIGN CORPORATION:** A foreign corporation (any corporation other than a Wisconsin corporation) which becomes a party to this Agreement is required to conform to all the requirements of Chapter 180, Wis. Stats., relating to a foreign corporation and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority. Any foreign corporation which desires to apply for a certificate of authority should contact the Department of Financial Institutions, Division of Corporation, P. O. Box 7846, Madison, WI 53707-7846; telephone (608) 261-7577.
- 34.0 **WORK CENTER PROGRAM:** The successful bidder/proposer shall agree to implement processes that allow the State agencies, including the University of Wisconsin System, to satisfy the State's obligation to purchase goods and services produced by work centers certified under the State Use Law, s.16.752, Wis. Stat. This shall result in requiring the successful bidder/proposer to include products provided by work centers in its catalog for State agencies and campuses or to block the sale of comparable items to State agencies and campuses.
- 35.0 **FORCE MAJEURE:** Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine

restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform

such must be beyond the reasonable control and without the fault or negligence of the party.

State of Wisconsin
Department of Administration
DOA-3333 (R03/2004)



Division of State Agency Services
State Bureau of Procurement

Vendor Agreement
Wisconsin's Cooperative Purchasing Service

Attachment 2

Wisconsin statutes (s. 16.73, Wis. Stats.) establish authority to allow Wisconsin municipalities to purchase from state contracts. Participating in the service gives vendors opportunities for additional sales without additional bidding. Municipalities use the service to expedite purchases. A "municipality" is defined as any county, city, village, town, school district, board of school directors, sewer district, drainage district, vocational, technical and adult education district, or any other public body having the authority to award public contracts (s. 16.70(8), Wis. Stats.). Federally recognized Indian tribes and bands in this state may participate in cooperative purchasing with the state or any municipality under ss. 66.0301(1) and (2), Wis. Stats.

Interested municipalities:

- will contact the contractor directly to place orders referencing the state agency contract number; and
- are responsible for receipt, acceptance, inspection of commodities directly from the contractor, and making payment directly to the contractor.

The State of Wisconsin is not a party to these purchases or any dispute arising from these purchases and is not liable for delivery or payment of any of these purchases.

The State of Wisconsin will determine the contractor's participation by checking a box below.

☐ MANDATORY: Bidders/Proposers must agree to furnish the commodities or services of this bid/proposal to Wisconsin municipalities. Vendors should note any special conditions below.

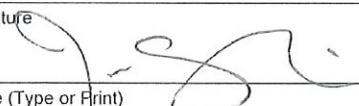
☒ OPTIONAL: Bidders/Proposers may or may not agree to furnish the commodities or services of this bid/proposal to Wisconsin municipalities. A vendor's decision on participating in this service has no effect on awarding this contract.

A vendor in the service may specify minimum order sizes by volume or dollar amount, additional charges beyond normal delivery areas, or other minimal changes for municipalities.

Vendor: please check one of the following boxes in response.

☒ I Agree to furnish the commodities or services of this bid/proposal to Wisconsin municipalities with any special conditions noted below.

☐ I Do Not Agree to furnish the commodities or services to Wisconsin municipalities.

Special Conditions (if applicable):	
Signature 	Date (mm/dd/ccyy) 6/28/2017
Name (Type or Print) James Hamlin	Title Vice President
Company Nikon Instruments, Inc.	Telephone (631-547-8526)

Address (Street)	City	State	ZIP + 4
1300 Walt Whitman Road	Melville	NY	11747
Commodity/Service		Request for Bid/Proposal Number	
Laboratory Equipment and Supplies		NA	

This form can be made available in accessible formats upon request to qualified individuals with disabilities.

Appendix 1 – Contract Exceptions
Laboratory Equipment and Supplies
Participating Addendum
NASPO ValuePoint Cooperative Purchasing Program
Master Agreement No. MA16000234-3
Wisconsin Department of Administration (DOA) Contract #505ENT-O18-LABEQPMENT-02

Section 1 (Specifications) of DOA's Contract Standard Terms and Conditions states:

The specifications in this request are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. The State of Wisconsin shall be the sole judge of equivalency. Bidders/proposers are cautioned to avoid bidding alternates to the specifications which may result in rejection of their bid/proposal.

Nikon's proposed revision states:

The specifications in this request are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability and/or performance level desired according to the manufacturers' model specifications. When alternates are bid/proposed, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. The State of Wisconsin shall be the sole judge of equivalency. Bidders/proposers are cautioned to avoid bidding alternates to the specifications which may result in rejection of their bid/proposal.

DOA's Response: DOA accepts Nikon's exception and therefore Section 1 is amended to include Nikon's proposed revision as stated in this Appendix 1.

Section 3 (Quality) of DOA's Contract Standard Terms and Conditions states:

Unless otherwise indicated in the request, all material shall be first quality. Items which are used, demonstrators, obsolete, seconds, or which have been discontinued are unacceptable without prior written approval by the State of Wisconsin.

Nikon's proposed revision states:

Unless otherwise indicated in the request, all material shall be first quality or new. Items which are used, demonstrators, obsolete, or which have been discontinued are unacceptable without prior written approval by the State of Wisconsin.

DOA's Response: DOA accepts Nikon's exception and therefore Section 3 is amended to include Nikon's proposed revision as stated in this Appendix 1.

Section 5 (Delivery) of DOA's Contract Standard Terms and Conditions states:

Deliveries shall be F.O.B. destination freight prepaid and included unless otherwise specified.

Nikon's proposed revision states:

Deliveries shall be F.O.B. destination freight prepaid and included on invoice unless otherwise specified and agreed upon by the Parties.

DOA's Response: DOA accepts Nikon's exception and therefore Section 5 is amended to include Nikon's proposed revision as stated in this Appendix 1.

Section 6 (Pricing and Discount) of DOA's Contract Standard Terms and Conditions states:

The State of Wisconsin qualifies for governmental discounts and its educational institutions also qualify for educational discounts. Unit prices shall reflect these discounts

Nikon's proposed revision states:

The State of Wisconsin may qualify for governmental discounts and educational institutions also qualify for educational discounts at the discretion of the Seller. Unit prices shall reflect these discounts.

DOA's Response: DOA accepts Nikon's exception and therefore Section 6 is amended to include Nikon's proposed revision as stated in this Appendix 1.

Section 6.2 (Pricing and Discount) of DOA's Contract Standard Terms and Conditions states:

Prices established in continuing agreements and term contracts may be lowered due to general market conditions, but prices shall not be subject to increase for ninety (90) calendar days from the date of award. Any increase proposed shall be submitted to the contracting agency thirty (30) calendar days before the proposed effective date of the price increase, and shall be limited to fully documented cost increases to the contractor which are demonstrated to be industrywide. The conditions under which price increases may be granted shall be expressed in bid/proposal documents and contracts or agreements.

Nikon's proposed revision states:

Prices established in continuing agreements and term contracts may be lowered due to general market conditions if applicable, but prices shall not be subject to increase for ninety (90) calendar days from the date of award. Any increase proposed shall be submitted to the contracting agency thirty (30) calendar days before the proposed effective date of the price increase, and shall be limited to fully documented cost increases to the contractor. The conditions under which price increases may be granted shall be expressed in bid/proposal documents and contracts or agreements.

DOA's Response: DOA accepts Nikon's exception and therefore Section 6.2 is amended to include Nikon's proposed revision as stated in this Appendix 1.

Section 13 (Guaranteed Delivery) of DOA's Contract Standard Terms and Conditions states:

Failure of the contractor to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the contractor liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include the administrative costs.

Nikon's proposed revision states:

Quoted delivery times by Contractor shall begin after receipt of a valid Purchase Order. If for any reason the products ordered cannot be delivered in the specified quoted time frame, Contractor shall promptly notify the Customer of the revised delivery date. Customer shall have the option of terminating the Purchase Order if the new delivery date is not acceptable.

DOA's Response: DOA accepts Nikon's exception and therefore Section 13 is amended to include Nikon's proposed revision as stated in this Appendix 1.

Section 16 (Antitrust Assignment) of DOA's Contract Standard Terms and Conditions states:

The contractor and the State of Wisconsin recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Wisconsin (purchaser). Therefore, the contractor hereby assigns to the State of Wisconsin any and all claims for such overcharges as to goods, materials or services purchased in connection with this contract.

Nikon's proposed revision states:

Remove Section 16 in its entirety.

DOA's Response: DOA accepts Nikon's exception and therefore Section 16 is removed from DOA's Standard Terms and Conditions as stated in this Appendix 1.

Section 18 (Work Center Criteria) of DOA's Contract Standard Terms and Conditions states:

A work center must be certified under s. 16.752, Wis. Stats., and must ensure that when engaged in the production of materials, supplies or equipment or the performance of contractual services, not less than seventy-five percent (75%) of the total hours of direct labor are performed by severely handicapped individuals.

Nikon's proposed revision states:

Remove Section 18 in its entirety.

DOA's Response: DOA accepts Nikon's exception and therefore Section 18 is removed from DOA's Standard Terms and Conditions as stated in this Appendix 1.

Section 19.2 (Nondiscrimination / Affirmative Action) of DOA's Contract Standard Terms and Conditions states:

The contractor agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the contracting state agency that sets forth the provisions of the State of Wisconsin's nondiscrimination law.

Nikon's proposed revision states:

The contractor agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided that sets forth the provisions of the State of New York's nondiscrimination law.

DOA's Response: DOA accepts Nikon's exception and therefore Section 19.2 is amended to include Nikon's proposed revision as stated in this Appendix 1.

Section 20 (Patent Infringement) of DOA's Contract Standard Terms and Conditions states:

The contractor selling to the State of Wisconsin the articles described herein guarantees the articles were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of the articles described herein will not infringe any United States patent. The contractor covenants that it will at its own expense defend every suit which shall be brought against the State of Wisconsin (provided that such contractor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.

Nikon's proposed revision states:

Contractor will defend, indemnify, and hold Customer harmless from any costs or damages as a result of any third party action or claim brought against Customer in any court of competent jurisdiction based on an allegation that a Product furnished by Contractor hereunder constitutes an infringement of a United States patent or copyright of a third party, provided Contractor is notified promptly in writing of such action or claim, shall have sole control of the defense or settlement of any such action or claim, and shall receive the full cooperation of Customer in its defense or settlement of any such action or claim. This indemnification shall apply only to actual cost and damages awarded against Customer and incorporated in a judgment by a court of last resort finding that such Product constitutes an infringement. In no event shall Contractor be responsible for any special, indirect, incidental or consequential damages of any kind whatsoever incurred by Customer or for any costs or settlements incurred without Contractor's prior written consent. In the event a final injunction shall be obtained against Customer's use of a Product by reason of such infringement or in the event, in Contractor's option, a Product is likely to become the subject of an action or claim of such infringement, Contractor will, at its option, (i) procure for Customer the right to continue using the Product, (ii) replace or modify the Product so that it becomes noninfringing, or (iii) give the Customer a credit for the Product at an amount based on a depreciated straight line basis over the lifetime of the Product as shall be determined by Contractor. In no event shall Contractor have any other liability to Customer. This indemnification shall not apply to any product that is modified or altered in any manner whatsoever by any party other than Contractor.

DOA's Response: DOA accepts Nikon's exception and therefore Section 20 is amended to include Nikon's proposed revision as stated in this Appendix 1.

Section 21 (Safety Requirements) of DOA's Contract Standard Terms and Conditions states:

All materials, equipment, and supplies provided to the State of Wisconsin must comply fully with all safety requirements as set forth by the Wisconsin Administrative Code and all applicable OSHA Standards.

Nikon's proposed revision states:

All materials, equipment, and supplies provided to the State of Wisconsin as applicable must comply fully with all safety requirements as set forth by the Wisconsin Administrative Code and all applicable OSHA Standards.

DOA's Response: DOA accepts Nikon's exception and therefore Section 21 is amended to include Nikon's proposed revision as stated in this Appendix 1.

Section 23.3 (Insurance Responsibility) of DOA's Contract Standard Terms and Conditions states:

The state reserves the right to require higher or lower limits where warranted.

Nikon's proposed revision states:

The state reserves the right to request higher or lower limits where warranted.

DOA's Response: DOA accepts Nikon's exception and therefore Section 23.3 is amended to include Nikon's proposed revision as stated in this Appendix 1.

Section 25 (Vendor Tax Delinquency) of DOA's Contract Standard Terms and Conditions states:

Vendors who have a delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.

Nikon's proposed revision states:

Remove Section 25 in its entirety.

DOA's Response: DOA accepts Nikon's exception and therefore Section 25 is removed from DOA's Standard Terms and Conditions as stated in this Appendix 1.

Section 32 (Hold Harmless) of DOA's Contract Standard Terms and Conditions states:

The contractor will indemnify and save harmless the State of Wisconsin and all of its officers, agents and employees from all suits, actions, or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from the operations of the contractor, or of any of its contractors, in prosecuting work under this agreement.

Nikon's proposed revision states:

Each Party shall, at its expense, indemnify and hold the other Party harmless from any costs, expenses (including attorney's fees), losses, damages, and liabilities which the other Party may hereafter incur, become responsible for, or pay out as a result of death or personal injury (including bodily injury) to any person, destruction or damage to any property to the extent caused by negligent or willful acts, errors, or omissions by the indemnifying Party, its employees, officers, agents, representatives, or subcontractors in the performance of this Agreement.

DOA's Response: DOA accepts Nikon's exception and therefore Section 32 is amended to include Nikon's proposed revision as stated in this Appendix 1.

Section 34 (Work Center Program) of DOA's Contract Standard Terms and Conditions states:

The successful bidder/proposer shall agree to implement processes that allow the State agencies, including the University of Wisconsin System, to satisfy the State's obligation to purchase goods and services produced by work centers certified under the State Use Law, s.16.752, Wis. Stat. This shall result in requiring the successful bidder/proposer to include products provided by work centers in its catalog for State agencies and campuses or to block the sale of comparable items to State agencies and campuses.

Nikon's proposed revision states:

Remove Section 34 in its entirety.

DOA's Response: DOA accepts Nikon's exception and therefore Section 34 is removed from DOA's Standard Terms and Conditions as stated in this Appendix 1.