



PROCUREMENT OF ACQUISITION SUPPORT SERVICES (PASS)
Led by the State of **Hawaii**

Master Agreement #: 19-19-03 *(hereinafter "Master Agreement")*

Contractor: BERRY DUNN MCNEIL & PARKER, LLC *(hereinafter "Contractor")*

Participating Entity: STATE OF HAWAII *(hereinafter "Participating State")*

State of Hawaii, State Procurement Office (SPO) Price List Contract No. 19-19

This Addendum will add the State of Hawaii as a Participating State to purchase from the NASPO ValuePoint Master Agreement Number 19-19-03 with Berry Dunn McNeil & Parker, LLC.

1. Scope:

This addendum covers NASPO ValuePoint Acquisition Support Services lead by State of Hawaii for use by state agencies and other entities located in the Participating State authorized by the state's statutes to utilize state contracts.

2. Participation:

All jurisdictions located within the State of Hawaii, which have obtained prior written approval by its Chief Procurement Officer, will be allowed to purchase from the Master Agreement. Private nonprofit health or human services organizations with current purchase of service contracts governed by Hawaii Revised Statutes (HRS) chapter 103F are eligible to participate in the SPO price/vendor list contracts upon mutual agreement between the Contractor and the non-profit. (Each such participating jurisdiction and participating nonprofit is hereinafter referred to as a "Participating Entity"). Issues of interpretation and eligibility for participation are solely within the authority of the Administrator, State Procurement Office.

3. Changes:

A. Usage Reports. Contractor shall submit a quarterly gross sales report (including zero-dollar sales) in EXCEL to the contact person listed in the Participating Addendum, Paragraph 6 (or as amended) in accordance with the following schedule (or as requested):

<u>Quarter Ending</u>	<u>Report Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

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The report shall identify each transaction and include the following information:

Department/Agency Name
Date of Purchase
Product/Service Description
Quantity
Unit of Measure
Item No. Part Number (if applicable)
MSRP List Price
NASPO ValuePoint Contract Price

The quarterly report shall also include any adjustment from prior periods (i.e. exchanges and/or return).

- B. The validity of this Addendum, any of its terms or provisions, as well as the right and duties of the parties in this Addendum, shall be governed by the laws of the State of Hawaii. A copy of the Attorney General's General Conditions, which is made a part of this Addendum, can be found at <http://spo.hawaii.gov/wp-content/uploads/2014/02/103D-General-Conditions.pdf>. Any action at law or in equity to enforce or interpret the provisions of this Addendum shall be brought in a court of competent jurisdiction in Honolulu, Hawaii.
- C. Inspection of Facilities. Pursuant to HRS § 103D-316, the Participating State, at reasonable times, may inspect the part of the plant or place of business of the Contractor or any subcontractor that is related to the performance of a Master Agreement and this Addendum.
- D. Campaign Contributions. The Contractor is notified of the applicability of HRS § 11-355, which prohibits campaign contributions from Contractor during the term of the Addendum if the contractor is paid with funds appropriated by the Hawaii State Legislature.
- E. Purchases by State of Hawaii government entities under this Master Agreement is not mandatory. This Addendum is secondary and non-exclusive.
- F. The State of Hawaii's purchasing card (pCard) is required to be used by the State's executive departments/agencies (excluding the Department of Education, the Hawaii Health System Corporation, the Office of Hawaiian Affairs, and the University of Hawaii) for all orders totaling less than \$2,500. For purchases of \$2,500 or more, agencies may use the pCard, subject to its credit limit or issue a purchase order.

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Contractor(s) shall forward original invoice(s), directly to the ordering agency. General excise tax shall not be applied to the delivery charge.

Pursuant to HRS § 103-10, Participating State and any agency of the Participating State or any county, shall have thirty (30) calendar days after receipt of invoice or satisfactory delivery of goods to make payment. Any interest for delinquent payment shall be as allowed by HRS § 103-10.

- G. Pursuant to HRS §103D-310(c), if Contractor is doing business in the Participating State, Contractor is required to comply with all laws governing entities doing business in the Participating State, including the following HRS chapters.
1. Chapter 237, General Excise Tax Law;
 2. Chapter 383, Hawaii Employment Security Law;
 3. Chapter 386, Workers' Compensation;
 4. Chapter 392, Temporary Disability Insurance;
 5. Chapter 393, Prepaid Health Care Act; and

A Certificate of Good Standing is required for entities doing business in the State.

The Hawaii Compliance Express (HCE) is utilized for verification of compliance. The SPO will conduct periodic checks to confirm Contractor's compliance on HCE throughout the term of the Addendum.

Alternatively, Contractors not utilizing HCE to demonstrate compliance shall provide paper certificates to the SPO as instructed below. All certificates must be valid on the date it is received by the SPO. All applications for applicable clearances are the responsibility of the Contractor.

HRS Chapter 237 tax clearance requirement. Pursuant to Section 103D-328, HRS, Contractor shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate.

The Tax Clearance Application, Form A-6, and its completion and filing instructions, are available on the DOTAX website: <http://tax.hawaii.gov/forms/>.

HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements. Pursuant to Section 103D-310(c) Contractor shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue. A photocopy of the certificate is acceptable to the SPO.

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The DLIR Form LIR#27 Application for Certificate of Compliance with Section 3-122-112, HAR, and its filing instructions are available on the DLIR website: <http://labor.hawaii.gov/forms/>.

Compliance with Section 103D-310(c), HRS, for an entity doing business in the State. Contractor shall be required to submit a Certificate of Good Standing (COGS) issued by the State of Hawaii Department of Commerce and Consumer Affairs (DCCA) – Business Registration Division (BREG). The Certificate is valid for six (6) months from date of issue. A photocopy of the certificate is acceptable to the SPO.

To obtain the Certificate, the Offeror must be registered with the BREG. A sole proprietorship is not required to register with the BREG and is therefore not required to submit the certificate.

For more information regarding online business registration and the COGS is available at <http://cca.hawaii.gov/breg/>.

H. Effective Date and Contract Period. This Addendum is effective upon the date of execution by the Participating State and shall continue for the term set forth in the Master Agreement.

4. Licensing

Offerors (Bidders) and Contractors must be properly licensed and capable of performing the Work as described in the RFP(IFB), at the time of submission of the Proposal (Bid), in accordance with the Professional and Vocational licensing laws of the state. Contractors under Participating Addendums must maintain any and all required licenses through the duration of the contract and Participating Addendum.

5. Lease Agreements:

Leasing is not authorized by this Addendum

6. Primary Contact:

The primary contact individuals for this Addendum are as follows (or their named successors):

Participating State

Name:	Donn Tsuruda-Kashiwabara
Address:	State Procurement Office 1151 Punchbowl Street, Room 416 Honolulu, HI 96813
Telephone:	808-586-0565



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Fax: (808) 586-0570
E-Mail: donna.tsuruda-kashiwabara@hawaii.gov

Contractor

Name: Charles K. Leadbetter
Address: 100 Middle Street
Portland, ME 04101
Telephone: 207-541-2249
Fax: 207-541-2323
E-Mail: cleadbetter@berrydunn.com

7. Subcontractors:

Subcontractors are allowed under this Addendum.

8. Freight Charges (unless otherwise stated in the master contract):

Prices proposed will be the delivered price to any state agency or political subdivision. All deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Buyer except as to latent defects, fraud, and Contractor's warranty obligations. Any portion of a full order originally shipped without transportation charges (that failed to ship with the original order, thereby becoming back-ordered) will also be shipped without transportation charges.

9. Purchase Order and Payment Instructions:

All purchase orders issued by Participating Entities under this Addendum shall include the Participating State contract number: SPO Price List Contract No. 19-19 and the NASPO ValuePoint Master Agreement Number 19-19-03.

- Purchase Orders and Payments shall be made to Berry Dunn McNeil & Parker, LLC or authorized subcontractors, if any.

10. Participating Entity as Individual Customer:

Each Participating Entity shall be treated as an individual customer. Except to the extent modified by this Addendum, each Participating Entity will be responsible to follow the terms and conditions of the Master Agreement; and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each Participating Entity will be responsible for its own charges, fees, and liabilities. Each Participating Entity will have the same rights to any indemnity or to recover any costs

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allowed in the Master Agreement for their purchases. The Contractor will apply the charges to each Participating Entity individually.

11. Entire Contract:

This Addendum, the Master Agreement, and the Attorney General's General Conditions, set forth the entire agreement, and all the conditions, understandings, promises, warranties and representations among the parties with respect to this Addendum and the Master Agreement, and supersedes any prior 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 Addendum, the Master Agreement, and the Attorney General's General Conditions that are included in any purchase order or other document shall be void. The terms and conditions of this Addendum, the Master Agreement, and the Attorney General's General Conditions, shall govern in the case of any such inconsistent, contrary, or additional terms.

12. **Ordering Procedures**

(Mandatory for Hawaii Purchasing Entities, Optional for other State Entities and other Participating Entities)

Note: For the purposes of this RFP, statement of work describes the services within a Task Order when requesting quotes from awarded Contractor(s).

Pursuant to Hawaii Revised Statutes (HRS) §103D-405(d) "Outside Contractors may be utilized to prepare specifications and work statements in the development of a solicitation. Contractors paid for those services shall be precluded from bidding on or receiving a contract when they participated in any way in the development of the solicitation package or any resulting contract." Because of the nature of the Master Agreement, the organizational conflicts of interest procedures and limitations set forth for the State of Hawaii in this request for proposals shall apply to Orders placed by ValuePoint Participating Entities.

- a. Agency shall prepare a uniform request for quotations to obtain responses from at least three (3) Contractors. Agencies may use the Uniform Request for Quotes, or a similar form. fillable version of the form available on the SPO site (link to be provided in SPO VL instructions). It is the agency's responsibility to give the Contractors a reasonable amount of time to prepare and submit the quote.
- b. Each RFQ will describe the project needs based on the Scope of Work categories one through thirteen of the RFP. Task Orders will include a statement of work which defines the services and deliverables.
- c. Each RFQ will require the Contractor to submit the names of each team member who will provide services throughout the contract period. The rate and description of each team member will be identified by the labor category as submitted by the

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Offeror (now Contractor). Agencies may request resumès or any other additional information about the team members to find out more about the expert level and experience that make up the team.

- d. Contractor responds by due date specified and shall submit a breakdown of the number of hours for requested tasks and pricing for requested services. The total price **shall be a firm fixed fee**.
- e. The tasks will be based on the Contractor's assessment and recommendations accepted by the requesting agency. Deliverables will be described within each task that will trigger decision points and aid in further defining the subsequent tasks, if applicable. While this is a decisional phased approach, the order of the tasks and activities listed does not imply a strict sequential approach to project delivery. It is expected that the selected Contractor will describe in its quote how these tasks and activities will be performed and the scheduling of these activities based on the Contractor's expertise and proposed delivery model.
- f. Contractor will also describe Schedule of Performance Payment Milestones and provide project schedule.
- g. Agency reviews and evaluates all quotes received. If a Contractor fails to respond by the due date specified, the agency shall document such failure in the procurement file. If a Contractor submits a late quote, it is the agency's decision to accept or reject a late quote submittal. The agency shall document the late submittal in the procurement file.
- h. Agency determines best value based on agency's requirements of task order needs. Best value will be determined by price, technical and/or business requirements/service viability, past performance and other pertinent factors determined by the using agency. Such determination shall be in writing and placed in the procurement file.
- i. The Task Order Document shall be signed by the agency and Contractor.

13. **Liability Insurance**

The Contractor shall maintain in full force and effect during the life of this contract, liability and property damage insurance to protect the Contractor and his Subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under this contract, whether such operations be by the Contractor or by Subcontractor or anyone directly or indirectly employed by either of them. If any Subcontractor is involved, the insurance policy or policies shall name the Subcontractor as additional insured.

As an alternative to the Contractor providing insurance to cover operations performed by a Subcontractor and naming the Subcontractor as additional insured, the Contractor may require the Subcontractor to provide its own insurance, which meets the requirements



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herein. It is understood that a Subcontractor's insurance policy or policies are in addition to the Contractor's own policy or policies.

The following minimum insurance coverage(s) and limit(s) shall be provided by the Contractor, including its Subcontractor(s) where appropriate.

<u>Coverage</u>	<u>Limits</u>
Commercial General Liability (occurrence form)	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability	\$1,000,000 per accident
Professional Liability	\$1,000,000 per claim \$2,000,000 aggregate

Professional Liability shall be required from Contractors providing professional services requiring a license to conduct its business such as an engineer, architect, accountant, lawyer, information technology services etc.

Each insurance policy required by this contract (with the exception of the Professional Liability policy), including a Subcontractor's policy, shall contain the following clauses:

- A. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."
- B. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

A Waiver of Subrogation shall apply to the General Liability, Automobile Liability and Worker's Compensation insurance policies and shall be in favor of the State of Hawaii.

Prior to award, the Contractor agrees to deposit with the State of Hawaii certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this RFP have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the State during the entire term of the price list and price list extensions, if any, including those of its Subcontractor(s), where appropriate. Upon request by the State, Contractor shall be responsible for furnishing a copy of the policy or policies.





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Failure of the Contractor to provide and keep in force such insurance shall be regarded as material default, entitling the State to exercise any or all of the remedies provided in the contract and this RFP for a default by the Contractor.

The procuring of such required insurance shall not be construed to limit the Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this RFP. Notwithstanding said policy or policies of insurance, the Contractor shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this price list.

IN VIEW OF THE ABOVE, the parties execute this Addendum by their signatures, on the dates below.

Participating State: STATE OF HAWAII	Contractor: Berry Dunn McNeil & Parker, LLC
Signature: 	Signature: 
Name: SARAH ALLEN	Name: Timothy Masse
Title: Administrator, SPO	Title: Principal
Date: 8/16/19	Date: 5/15/2019

APPROVED AS TO FORM:



 Deputy Attorney General