

# **Oklahoma Higher Education Procurement Cooperative**

## **Memorandum of Agreement**

November 8, 2017

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## **I. Scope and Background**

The Oklahoma Higher Education Procurement Cooperative ("OHEPC") consists of chief procurement or designated business officials from public higher education agencies in the State of Oklahoma. The sole goal of OHEPC is to promote public procurement objectives that include cooperation to attain greater efficiency, economy, and customer satisfaction. Cooperative procurement is one means of achieving those objectives.

## **II. Purpose**

The purpose of this Memorandum of Agreement ("MOA") is to establish the OHEPC purchasing program (the "Cooperative Program") that is managed and administered by the Cooperative Organization, by which Agencies (as defined below) may join together in cooperative multi-agency contracting, consistent with their respective procurement governance, where cooperative procurement is considered to be advantageous to the public agency. This MOA outlines the contracting process, and the organization and operating policies in conducting cooperative procurements. This MOA does not commit Agencies to the expenditure of any public funds.

The purpose of the Cooperative Program is to implement multi-agency contracting, where appropriate, to achieve cost-effective and efficient acquisition of quality products and services, through the standardization of specifications and/or the aggregation of like business and technical requirements to achieve more advantageous pricing or other terms.

Signing this MOA does not prohibit any Agency from entering into other group purchasing agreements, or does signing this MOA obligate any Agency to use contracts administered or entered into by the Cooperative Organization. All signatory Agencies are eligible to be a Lead Agency (as defined below) and participate on Sourcing Teams (as defined below).

## **III. Objectives**

1. Maximize value received when purchasing goods and services.
2. Reduce administrative costs.
3. Standardize specifications and consolidate requirements to encourage product availability and market competition.
4. Promote purchase of environmentally preferred products and services, including but not limited to, products and services that encourage pollution prevention, waste reduction and energy conservation.

## IV. Definitions

1. **"Agencies or Agency"** means public institutions of higher education as recognized by the Oklahoma State Regents for Higher Education.
2. **"Chief Procurement Official"** means the head of the procurement office of an Agency, or his or her designee.
3. **"Cooperative Organization"** consists of the Agencies participating in this Memorandum of Agreement who have joined together to conduct public solicitations to improve value or enhance efficiency due to economies of scale.
4. **"Cooperative Organization Designated Leader"** means the Agency Chief Procurement Official that the Cooperative Organization elects to serve as the chairman of the cooperative. The Cooperative Organization Designated Leader shall be elected by majority vote of the Chief Procurement Officials at each Agency. The Cooperative Organization Designated Leader may be replaced by majority vote of the Chief Procurement Officials at each Agency.
5. **"Intent to Participate"** means the inclusion of Participating Agency's business requirements on a public solicitation. The solicitation will contain business specific needs and requirements for all Agencies which have expressed interest in participating in a contract award resulting from a solicitation. Inclusion of business requirements by an agency in no way obligates the agency to participate in resulting contractual agreements. Communicating the Agency business needs prior to the solicitation being issued signifies the Agency's initial intent to participate in the procurement and is subject to execution of a Participating Addendum with the awarded supplier(s).
6. **"Lead Agency"** means the Agency issuing the competitive solicitation for the benefit of all Participating Agencies, thereby leading the cooperative procurement and centrally administering any resulting agreement(s) with the assistance of the Cooperative Organization.
7. **"Master Agreement(s)"** means the cooperative agreement(s) when awarded and executed by the Lead Agency with awardee(s) of the cooperative procurement.
8. **"Member" or "Membership"** means an Agency who has executed this MOA.
9. **"Participating Addendum"** means a bilateral agreement executed by an awarded supplier and a Participating Agency or other eligible entity that clarifies the terms and conditions of the Participating Agency related to the Master Agreement, e.g. ordering procedures specific to an Agency, or additions of other specific language or business requirements in order to comply with internal governance or business needs of an Agency. A Participating Addendum will be required with each Agency and supplier to participate in the contract award.
10. **"Participating Agency"** means a signatory agency that has indicated its Intent to Participate in a specific cooperative procurement by including the Agency's business requirements on a given solicitation, or who has subsequently executed a Participating Addendum. In the absence of an Agency's Intent to Participate prior to solicitation of a cooperative opportunity, an Agency may be authorized by the Lead Agency Chief Procurement Official to execute a Participating Addenda with the supplier(s) awarded a Master Agreement, thus becoming a "Participating Agency".
11. **"Sourcing Team"** means the group of individuals, invited by the Lead Agency and the Cooperative Organization, who represent Agencies' purchasing operations or are subject matter experts in the area being solicited as a cooperative, who works with the Lead Agency to develop, create, evaluate, award and manage the cooperative opportunity.

## **V. Authorization**

This MOA is entered into by Agencies pursuant to their respective governance authorities, policies, rules, and regulations authorizing cooperative procurement. This MOA may only be modified by a written amendment duly executed by the parties to this MOA.

## **VI. Organization and Operation**

1. The Cooperative Program shall consist of the Members. Members become Participating Agencies on any procurement by communicating an Intent to Participate evidenced by the inclusion of business requirements on a solicitation, or by signing a Participating Addendum after contract(s) have been awarded.
2. Participation in this Cooperative Program and any specific cooperative procurement is voluntary. Participation in this Cooperative Program may be initiated at any time by making a request to the Cooperative Organization Designated Leader. This MOA signed by the Cooperative Program Designated Leader will be necessary to participate. Participation in this Cooperative Program may be discontinued by submitting a letter to that effect, signed by the Agency Chief Procurement Official or business officer, to the Cooperative Organization Designated Leader. Participation in the Cooperative Program may not be discontinued until any Master Agreements in which the Participating Agency participates have expired, been terminated, or the contractual obligation of the Participating Agency has otherwise ended in accordance with the terms of the Master Agreement(s) or Participating Addendum.

## **VII. Cooperative Procurement Procedures and Responsibilities**

1. Cooperative contracting may occur when two or more Members agree to solicit a product or service and combine their requirements in a single solicitation. If the Members wish to use the OHEPC name for the cooperative contract, the solicitation and process must be conducted in accordance with the terms of this MOA and be approved by the Cooperative Organization. Approval by Cooperative Organization is by majority vote.
2. Any member with the desire to develop a cooperative contract using the OHEPC name will notify the Cooperative Organization and provide all Members with an equal opportunity to join with them in that endeavor; each Member is responsible to coordinate such communication with the Cooperative Organization.
3. Participation in each cooperative contract is voluntary; however, initially two members must agree to participate in a cooperative procurement prior to the solicitation of any bid or proposal. Initial participation shall be signified by communicating the Agency's business requirements for the particular category to be sourced for aggregation into a solicitation. The requirements for each Agency will be combined by the Lead Agency with the assistance of the Cooperative Organization.

4. Once an Intent to Participate has been executed and a Master Agreement has been awarded, the Participating Agency agrees to participate consistent with the terms of this MOA, the Master Agreement, and its Participating Addendum.

## **VIII. Lead Agency Responsibilities**

The Lead Agency, with the assistance of the Cooperative Organization, shall:

1. Develop a procurement plan including the time schedule, specifications or requirements, description, and the preliminary solicitation/contract document.
2. In coordination with the Cooperative Organization determine resources needed to complete the cooperative sourcing event and award Master Agreements to selected suppliers.
3. Conduct surveys and market research, as required. Identify suppliers and develop a bidders list that will provide maximum practical competition.
4. Gather information from Agencies' Intent to Participate that indicate interest by providing information for the solicitation.
5. Develop a description of the scope of the contract, any requirements or specifications, an expected solicitation type and basis for award, and evaluation criteria in advance of publishing the public solicitation, as well as determine whether a single or multiple award is anticipated.
6. Discuss and determine any administrative fee that will be charged to suppliers for orders placed under the contract, with the approval of the Cooperative Organization;
7. Determine the term of the Master Agreement and options for renewal, price adjustment intervals, contract usage reporting, etc.
8. Determine the time permitted for submission of bids and proposals, how and when questions will be answered for bidders, and how and where amendments will be posted.
  - a. Participating Agencies shall provide any additional information requested by the Cooperative Organization or Lead Agency, such as a bidders list, usage information, or known limitations on a Participating Agency's ability to order goods or services (such as those already on a contract.)
  - b. If necessary, Participating Agencies shall provide unique Agency specific terms and conditions applicable to orders by the Participating Agency, etc.
9. Coordinate contract development, document review and approval with the Sourcing Team, in coordination with the Cooperative Organization.
10. Issue the solicitation, receive the responses and distribute to the Sourcing Team.

11. Coordinate evaluation and award recommendations. Lead Agencies may not apply preferences to the award of the Master Agreement on behalf of Participating Agencies, unless all preferences are identical.
12. Conduct final analysis and present award recommendation, through the Agency Chief Procurement Official, to the Cooperative Organization for approval.
13. Execute the Master Agreement(s).
  - a. Administer and manage the Master Agreement(s) with the support of the Sourcing Team, to include but not limited to:
  - b. Coordinate with the Cooperative Organization to ensure that all Participating Agencies sign the Participating Addendum, where required.
  - c. Issue all contract modifications, or contract cancellation if required, with the assistance of the Cooperative Organization, except as concerns Participating Addendum terms and conditions unique to the Participating Agency.
  - d. Provide copies of all contractual or related documents to all Participating Agencies.
  - e. Handle all protests in response to solicitations in accordance with the Lead Agency's stated policies and applicable administrative rules of the State of Oklahoma.
    - i. Advise the cooperative organization of the outcome of the protest.
  - f. Respond to all Open Records requests for documents related to the procurement.
  - g. Resolve any contract or supplier problems that cannot be resolved by Participating Agencies individually and confer with the Cooperative Organization.

## **IX. Participating Agency Responsibilities**

1. Designate, by vote of the Participating Agencies and after consultation with the Cooperative Organization, an Agency to be known as the Lead Agency, who on behalf of all Participating Agencies will conduct the procurement and administer the awarded Master Agreement (s) with the assistance of the Cooperative Organization.
2. Participate, by providing members of a Sourcing Team or responding to requests from the Lead Agency and the Sourcing Team, in the development of documents and other related requirements such as: the development of bid lists; the solicitation of bids or proposals; bid evaluation and analysis; and contract award determination.
3. Publish the notice of the solicitation posting by the Lead Agency consistent with each Agency's requirements.
4. Prepare all necessary copies and distribute them to contract users within their Agency.
5. Submit orders independently and directly to the contractor who will ship and bill each ordering Member in accordance with contractual requirements.

6. Handle contract administration and expediting required for the orders they place, and communicate any unresolved problems to the Lead Agency.
7. Modify the Participating Addendum prior to executing to satisfy any concerns or terms and conditions unique to the Participating Agency.

## **X. Commodity or Service Selection**

Commodities or services for cooperative contracting shall be approved by the Cooperative Organization, based on the following criteria:

1. Products or services that when purchased in volume will result in reduced costs or improved administrative efficiency.
2. Products or services that have a sustained recurring requirement.
3. Products or services with a supplier base to provide potentially adequate competition.
4. Products or services where cooperative contracting has been determined practicable, acceptable and economically feasible by participants in the cooperative effort.

## **XI. Contracts**

1. Master Agreements shall clearly delineate requirements for contract use, supplier reporting requirements, payment of any applicable administrative fees, and terms for cancellation and withdrawal.
2. Each Master Agreement shall provide that the policies and governing authority of the Lead Agency shall apply to the procurement and resulting Master Agreement, and the policies and governing authority of the Participating Agencies shall apply to the construction and effect of any Participating Addendum or order against the Master Agreement. Venue and governing law for any litigation between the supplier and Lead Agency concerning the construction and effect of the Master Agreement shall be in the State of Oklahoma.
3. Each Agency's administrative hearing process shall be followed by the supplier if issues arise in a particular Agency.
4. Unless otherwise agreed by the Cooperative Organization, Master Agreements shall not include any binding arbitration provisions.
5. Purchasing entities for each Agency shall issue their own purchase documents against the Master Agreement and Participating Addendum, and conduct their own expediting or required follow-up.



**XII. Parties to this MOA**

Signatory Agencies identified by affixed signatures agree to follow the procedures as set forth herein.

_____	_____	_____
Agency President	Agency	Date

_____	_____
Chairman OHEPC	Date