



EDDIE BAZA CALVO  
Governor

  
RAY TENORIO  
Lieutenant Governor

*Office of the Governor of Guam*

70  
31-12-1569 OK  
Office of the Speaker  
Judith T. Won Pat, Ed. D.  
Date 5/15/12  
Time 4:04 PM  
Received by OK

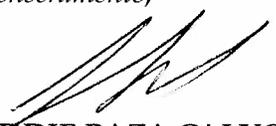
May 14, 2012

Honorable Judith T. Won Pat, Ed.D.  
Speaker  
*I Mina'trentai Unu Na Liheslaturan Guåhan*  
155 Hesler Street  
Hagåtña, Guam 96910

Dear Speaker Won Pat:

Transmitted herewith is Substitute Bill No. 430-31 (COR) entitled, "AN ACT TO ADD A NEW §5126 TO PART C OF ARTICLE 2, CHAPTER 5 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING JOINDER OR MUTUAL USE OF CONTRACTS BY GOVERNMENTAL ENTITIES BY THE WOMEN, INFANTS, AND CHILDREN PROGRAM OF THE DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES", which I signed into law on May 9, 2012 as **Public Law 31-212**.

*Senseramente,*

  
EDDIE BAZA CALVO

2012 MAY 16 AM 8:47  
*com*

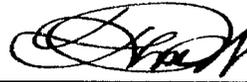
Attachment: copy of Bill

1570

**I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN**  
**2012 (SECOND) Regular Session**

**CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN**

This is to certify that **Substitute Bill No. 430-31 (COR)**, "AN ACT TO ADD A NEW § 5126 TO PART C OF ARTICLE 2, CHAPTER 5 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING JOINDER OR MUTUAL USE OF CONTRACTS BY GOVERNMENTAL ENTITIES BY THE WOMEN, INFANTS, AND CHILDREN PROGRAM OF THE DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES", was on the 27<sup>th</sup> day of April, 2012, duly and regularly passed.



\_\_\_\_\_  
**Judith T. Won Pat, Ed.D.**  
**Speaker**

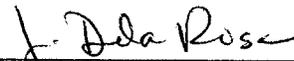
Attested:



\_\_\_\_\_  
**Tina Rose Muña Barnes**  
**Legislative Secretary**

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This Act was received by *I Maga'lahaen Guåhan* this 27<sup>th</sup> day of Apr., 2012, at 2:00 o'clock P.M.



\_\_\_\_\_  
**Assistant Staff Officer**  
**Maga'laha's Office**

APPROVED:

  
\_\_\_\_\_  
**EDWARD J.B. CALVO**  
*I Maga'lahaen Guåhan*

Date: \_\_\_\_\_

**MAY 09 2012**

Public Law No. 31-212

*I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN*  
2012 (SECOND) Regular Session

**Bill No. 430-31 (COR)**

As substituted by the Committee on Youth, Cultural Affairs,  
Procurement, General Governmental Operations,  
and Public Broadcasting.

Introduced by:

B. J.F. Cruz  
T. C. Ada  
V. Anthony Ada  
F. F. Blas, Jr.  
Chris M. Dueñas  
Judith P. Guthertz, DPA  
Sam Mabini, Ph.D.  
T. R. Muña Barnes  
Adolpho B. Palacios, Sr.  
v. c. pangelinan  
Dennis G. Rodriguez, Jr.  
R. J. Respicio  
M. Silva Taijeron  
Aline A. Yamashita, Ph.D.  
Judith T. Won Pat, Ed.D.

**AN ACT TO ADD A NEW § 5126 TO PART C OF  
ARTICLE 2, CHAPTER 5 OF TITLE 5, GUAM CODE  
ANNOTATED, RELATIVE TO AUTHORIZING  
JOINDER OR MUTUAL USE OF CONTRACTS BY  
GOVERNMENTAL ENTITIES BY THE WOMEN,  
INFANTS, AND CHILDREN PROGRAM OF THE  
DEPARTMENT OF PUBLIC HEALTH AND SOCIAL  
SERVICES.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** A new § 5126 is hereby *added* to Part C of Article 2, Chapter 5  
3 of Title 5, Guam Code Annotated, to read:

1           **“§ 5126. Joinder or Mutual Use of Contracts by the Women,**  
2           **Infants, and Children Program.**

3           The Women, Infants, and Children Program of the Department of  
4           Public Health and Social Services is authorized to join or use the contracts of  
5           other states or other government units within the United States, with the  
6           authorization of the contracting vendor. The other states or other  
7           government units are *not* liable for the obligations of the Guam  
8           governmental entity which joins or uses the contract. Before any joinder or  
9           mutual use may take place, the contracting officer must determine in writing  
10          that the other jurisdiction’s contract has gone through a competitive  
11          procurement process. For the purposes of this Section, the Women, Infants,  
12          and Children Program of the Department of Public Health and Social  
13          Services is exempt from § 5004 of this Chapter.”

# I MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN

2011 (SECOND) Regular Session

Date: 04/27/12

## VOTING SHEET

SBill No. 430-31 (COR)

Resolution No. \_\_\_\_\_

Question: \_\_\_\_\_  
 \_\_\_\_\_

<u>NAME</u>	<u>YEAS</u>	<u>NAYS</u>	<u>NOT VOTING/ ABSTAINED</u>	<u>OUT DURING ROLL CALL</u>	<u>ABSENT</u>
ADA, Thomas C.	✓				
ADA, V. Anthony	✓				
BLAS, Frank F., Jr.	✓				
CRUZ, Benjamin J. F.	✓				
DUENAS, Christopher M.	✓				
GUTHERTZ, Judith Paulette	✓				
MABINI, Sam	✓				
MUNA-BARNES, Tina Rose	✓				
PALACIOS, Adolpho Borja, Sr.	✓				
PANGELINAN, vicente (ben) cabrera					EA
RESPICIO, Rory J.	✓				
RODRIGUEZ, Dennis G., Jr.	✓				
SILVA TAIJERON, Mana	✓				
WON PAT, Judith T.	✓				
YAMASHITA, Aline A.	✓				

TOTAL

14      0      0      0      1

CERTIFIED TRUE AND CORRECT:

  
 \_\_\_\_\_  
 Clerk of the Legislature

\* 3 Passes = No vote  
 EA = Excused Absence

SENATOR BENJAMIN J.F. CRUZ, VICE SPEAKER  
Chairman, Committee on Youth, Cultural Affairs, Procurement,  
General Government Operations, and Public Broadcasting.  
Web Address: [www.senatorbjcruz.com](http://www.senatorbjcruz.com)



*I MINA' TRENTAI UNU NA LIHESLATURAN GUAHAN*  
The 31<sup>st</sup> Guam Legislature • [senator@senatorbjcruz.com](mailto:senator@senatorbjcruz.com)  
155 Hesler Place, Hagatna, Guam 96910  
Telephone: (671) 477-2520/1 • Fax: (671) 477-2522

April 20, 2012

The Honorable Judith T. Won Pat  
Speaker  
*I Mina' Trentai Unu Na Liheslatuaran Guahan*  
31<sup>st</sup> Guam Legislature  
155 Hesler Place  
Hagatna, Guam 96910

VIA: The Honorable Rory J Respicio  
Chairperson, Committee on Rules

2012 APR 23 PM 4:15

A handwritten signature in black ink, appearing to be "ERM".

RE: Committee Report on Bill No. 430-31 (COR) – As Substituted

Dear Speaker Won Pat:

Transmitted herewith is the Report of Committee on Youth, Cultural Affairs, Procurement General Government Operations and Public Broadcasting on Bill No, 430-31(COR)-- An act to add a new § 5126 to Chapter 5 of Title 5 of the Guam Code Annotated; relative to authorizing joinder or mutual use of contracts by government entities."Sponsored by – B.J.F, Cruz - and substituted by the Committee on Youth, Cultural Affairs, Procurement, General Government Operations and Public Broadcasting.

Committee votes are as follows:

  5          TO DO PASS  
             TO NOT PASS  
  2          TO REPORT OUT ONLY  
             TO ABSTAIN  
             TO PLACE IN INACTIVE FILE

Sincerely,

A handwritten signature in black ink, appearing to be "Benjamin J.F. Cruz".

BENJAMIN J.F. CRUZ  
Chairperson



## COMMITTEE REPORT

ON

### Substitute Bill No. 430-31 (COR)

**Substitute Bill No, 430-31(COR)--B.J.F. Cruz, "An act to add a new § 5126 to Chapter 5 of Title 5 of the Guam Code Annotated; relative to authorizing joinder or mutual use of contracts by the Women, Infants, and Children Program of the Department of Public Health and Social Services."**



April 20, 2012

**MEMORANDUM**

**TO: All Members**  
Committee on Youth, Cultural Affairs, Procurement, General  
Government Operations and Public Broadcasting

**FROM: Vice Speaker Benjamin J.F. Cruz**

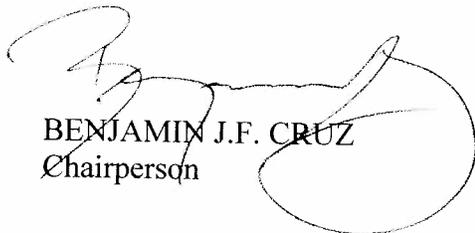
**SUBJECT: Committee Report on Bill No. 430-31(COR) As Substituted**

Transmitted herewith for your consideration is the Committee Report on Substitute Bill No, 430-31(COR)--B.J.F. Cruz, An act to add a new § 5126 to Chapter 5 of Title 5 of the Guam Code Annotated; relative to authorizing joinder or mutual use of contracts by the Women, Infants, and Children Program of the Department of Public Health and Social Services. ”  
This report includes the following:

- Committee Vote Sheet
- Committee Report Digest
- Bill No. 430-31(COR)
- Substitute Bill No.430-31 (COR)
- Public Hearing Sign-in Sheet
- COR Referral of Bill No. 430-31(COR)
- Fiscal Note Requirement
- Notices of Public Hearing
- Public Hearing Agenda

Please take the appropriate action on the attached voting sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

  
BENJAMIN J.F. CRUZ  
Chairperson



**COMMITTEE VOTING SHEET**

Substitute Bill No, 430-31(COR)--B.J.F. Cruz, An act to add a new § 5126 to Chapter 5 of Title 5 of the Guam Code Annotated; relative to authorizing joinder or mutual use of contracts by the Women, Infants, and Children Program of the Department of Public Health and Social Services.”

COMMITTEE MEMBERS	SIGNATURE	TO DO PASS	TO NOT PASS	TO REPORT ONLY	TO ABSTAIN	TO PLACE IN INACTIVE FILE
CRUZ, BENJAMIN J.F. Chairperson		4/20/12				
MUÑA BARNES, TINA ROSE Vice-Chairperson		4.20.12				
WON PAT, JUDITH T. Speaker and Ex-Officio Member		4/20/12				
ADA, THOMAS C. Member						
GUTHERTZ, JUDITH P. Member		4/20/12				
RESPICIO, RORY J. Member		4/20/12				
RODRIGUEZ, DENNIS G. JR. Member						
ADA, V. ANTHONY Member						
DUENAS, CHRISTOPHER Member				4/20/12		
MABINI, SAM Member						
YAMASHITA, ALINE Member				4/20/12		



## **Committee Report Digest**

### **I. OVERVIEW**

The Committee on Youth, Cultural Affairs, Procurement, General Government Operations and Public Broadcasting convened a public hearing on March 29, 2012 at 1:00 p.m. in the Public Hearing Room of *I Liheslatura*. Among the items on the agenda was the consideration was Bill No. 430-31(COR)--B.J.F. Cruz, An act to add a new § 5126 to Chapter 5 of Title 5 of the Guam Code Annotated; relative to authorizing joinder or mutual use of contracts by the Women, Infants, and Children Program of the Department of Public Health and Social Services.”

Bill No. 430-31 would allow the Government of Guam to join in existing contracts with other states and municipalities to make use bulk purchasing power to procure goods and services that are necessary to run government operations.

### **Public Notice Requirements**

All legal requirements for public notices were met, with requests for publication sent to all media and all senators on March 22<sup>nd</sup>, 2012 and March 27<sup>th</sup>, 2012 via email. Copies of the hearing notices are appended to the report.

### **Senators Present**

Vice Speaker Benjamin J.F. Cruz, Chairperson  
Senator Rory Respicio Committee Member  
Senator Thomas Ada, Committee Member  
Senator Chris Duenas, Committee Member  
Senator V. Anthony Ada Committee Member  
Senator Mana Silva Taijeron Committee Member

The public hearing was called to order at 9:00 a.m.

### **II. SUMMARY OF TESTIMONY AND DISCUSSION**

Vice Speaker Benjamin J.F Cruz called the public hearing to order at 1:00 p.m. and announced the afternoon’s agenda to include the Committee’s compliance with all public notice requirements.

*Attorney John Thomas Brown*



Attorney Brown provided oral testimony *in opposition* to the measure as proposed. Attorney Brown also provided *written testimony attached hereto*. He noted the Legislature has contemplated the “piggybacking” notion a number of times which he has always opposed. He argued that piggybacking was an abdication of procurement responsibility which does not implement competitive bidding. He also opined that the measure would allow the government to join foreign contracts preventing local ability to settle contract disputes. Piggybacking as a concept is so wrought with “infirmities” that it cannot be fixed.

*Vice Speaker Cruz* acknowledged that Attorney Brown was at a disadvantage in speaking first but hoped that he would help the Committee better understand the information before it. Vice Speaker Cruz noted that this measure was introduced at the direct request of the Department of Public Health’s Women and Infant Child Program. The Vice Speaker asked “how we can ignore this legislation” when a breast pump purchased through a cooperative contract costs \$9.00 while the same pump purchased at a local retailer costs \$300.00?

*Attorney Brown* responded that the existing process of “solicitations” should be enough to allow, the government in every case, to “solicit” a response from known providers.

*Vice Speaker Cruz* called the next panel to testify before the Committee.

#### ***Charlie Morris, DPHSS: WIC Program***

Mr. Morris provided both oral and written testimony *in support of the measure* on behalf of his Director. He began by specifically noting that the measure did not limit competition, because WIC as a federal program, must always subject itself to the requirements of fair and open competition even when purchased through an alliance. He noted that according to the Office of the Attorney General, the “absence” of language expressly allowing multiuse contracts within Guam law is akin to a prohibition. He further noted that achieving a lower price in the cost of Brest pumps will allow them to provide more pumps to mothers over time.

Mr. Morris also stressed that the formula rebate as required by federal law resulted in significant savings to the program and an increased service level to mothers. He noted that this measure was critical in maintaining the program.

*Vice Speaker Cruz* thanked Mr. Morris and the members of the WIC program for bringing this problem to his attention and urging the introduction of the measure. He read an editorial arguing that government employees who saved the government money should be applauded.



**Senator Respicio** asked, “How long Mr. Morris has been working to get this government to recognize that there were cheaper alternatives?”

**Mr. Morris** said that until the AG’s recent opinion, he has been living in blissful ignorance as this contract has always gone through before then.

**Senator Tom Ada** asked Mr. Morris if any conversations have occurred with private vendors in an attempt to determine the significant variance between local and alliance prices.

**Mr. Morris** said No

**Senator Tom Ada** asked what the “landed cost” would be of alliance products.

**Rose Castro DPHSS** responded that of the three cooperative purchasing options depicted by the chart, they would choose the options with “zero shipping costs.”

**Senator Ada** noted that while this measure may suit the WIC program, it may not “fit all” government entities.

**Senator V. Anthony Ada** noted that due to shipping costs, costs of business, and smaller volume local vendors were disadvantaged.

**Mr. Morris** responded by saying that we had to determine whom we should advantage more—businesses, or mothers who are not served because of a lack of funds.

**Senator Chris Duenas** asked if cooperative purchasing agreements would be better applied on a case-by-case basis and whether or not DPHSS had other examples which paint a more balanced picture of local business competitiveness

**Senator Chris Duenas** acknowledged the need to save money but feared that possible unintended consequences may prove harmful to the economy in the long-term.

**Vice Speaker Cruz** called the next panel before the committee.

**Chief Joey San Nicolas** of the Guam Fire Department provided written testimony attached hereto *In Support* of the measure.

**Stanley Torres** President of the Western Pacific Islands Fire Chief’s Association testified *in*



*support* of the measure.

*Senator Respicio* asked Chief San Nicolas if the Governor was in support of GFD's position on the measure.

*Chief San Nicolas* responded yes.

*Senator Tom Ada* asked if "Piggybacking" would allow for Guam to determine its own specifications or force Guam to deal with the specs of other jurisdictions.

In response *Chief San Nicolas* noted that their intent was to join the "Fire Rescue Group Purchasing Organization which acquires Trucks that will meet the needs of nearly all jurisdictions. When purchasing through normal processes, a fire truck costs \$350K while a truck purchased cooperatively will cost \$120,000 landed.

*Chief San Nicolas* noted that the measure will also allow GFD to join existing contracts held by other local agencies like GMH. GMH will be ending its linen services to GFD to cut costs. Under the proposed measure GFD could simply achieve the same rate. He also noted that any savings found through piggybacking would only serve to augment other services.

*Senator Tom Ada* understood the effectiveness in joining GMH procurement but expressed his concern that fire trucks bought by one state may not fit the needs of Guam.

*President Torres* noted that the National organization from which vehicles will be purchased works to insure the desired equipment meets the standard required by each jurisdiction including long-term maintenance programs.

*Senator Tom Ada* asked why GFD could not work with existing vendors to get the best price.

*Chief San Nicolas* noted that though the price quotes referred to above are based on prior experience, volume and the ability to reach across all states allowed the prices to dramatically favor the purchaser.

*Vice Speaker Cruz* asked the Federal Firemen present how their trucks were purchased and maintained.

*The Federal Fire Chief* noted that DoD purchases identical fire trucks in bulk and provides them to varying jurisdictions. As a citizen he noted that Fire Chief San Nicolas is constantly asked to



save money, now he has provided a way to do so but there is push back. He concluded that our obligation was to get the best bang for the taxpayer's buck.

*Vice Speaker Cruz* called the next panel to testify before the committee.

*Mr. J. Jones* provided written testimony, attached hereto, *in opposition* to the measure on behalf of the Guam Automobile Dealers Association.

*Ms. Jenifer Crisostomo* provided oral testimony *in opposition* to the measure as proposed. She noted that the measure may be overbroad. She noted that warranties, flexible payment terms, and loaner cars are all advantages not provided by off-island vendors. She further noted that the absence of GRTs paid to the government is a loss we cannot afford.

*Attorney Patrick Mason* began his testimony by outlining the difference between the "broad solicitation" recommended by Attorney Brown and the economies of scale achieved by mutual use contracts. He recommended that the measure amend 5 GCA section 5004 to avoid unnecessary confusion upon the passage of the measure.

*Vice Speaker Cruz* asked the panel if cooperative purchasing was already in place with pharmaceuticals at GMH.

*Attorney Mooney* acknowledged that both the GMH and EPA enabling statutes allow for cooperative purchasing.

*Vice Speaker Cruz* stated that even Gov Guam's insurance provider uses a cooperative purchasing agreement.

*Senator Chris Duenas* asked the GADA representatives to outline the number of persons its industry employs and the impact of collective purchasing on that industry as a whole.

*Mr. Jones* noted that his industry employs about 1,000 individuals who support various parts of the economy through their wages. He also noted that while the measure may work in some ways it may not work as a blanket practice.

*Senator Respicio* asked if any provision of law prevented joint use contracts.

*Attorney Mason* noted that Section 5004, Title 5 would need the exemption, as proposed, in order to be compliant with existing law.



*Mr. Jones* noted that no product sold by his industry is priced at 2x the cost.

Senator Respicio asked the Committee to consider an amendment that would require local vendors to be informed of all bids even when a cooperative purchasing agreement was in play.

*Senator V. Anthony Ada* asked for a price comparison of cooperative purchases as opposed to local vendors.

*Vice Speaker Cruz* asked if Attorney Mason if it would be appropriate for specific allowances for cooperative purchasing.

*Attorney Mason* noted that there would be a rational basis for a specific exemption where the Legislature deemed appropriate.

*Ms. Crisostomo* said that she agreed with limiting the scope of the measure as proposed.

*Chief San Nicolas* recommended a model similar to federal GSA processes whereby local vendors would be notified that "Fed GSA" would be considered and those local businesses who were within 10% of that price would receive the business described.

*Vice Speaker Cruz* thanked Chief San Nicolas for his suggestion, held the record open until April 9<sup>th</sup>, and adjourned the meeting.

### **III FINDINGS AND RECOMMENDATIONS**

Subsequent to the Committee's hearing, the Chairman was notified by representatives of the administration that the "Guam Procurement Advisory Council" (PAC) is committed to addressing a government wide policy for cooperative purchasing in the near term. Appended to this report is a letter from Vice Speaker Cruz to Governor Calvo thanking him for committing to convene the PAC and consider a broader policy in regards to a Cooperative Purchasing measure for the Government of Guam. As such, Section 1 of the measure was amended to:

- Limit the scope of the measure's authority to the Women, Infant, and Children program of the Department of Public Health and Social Services
- Limit the authority to contracts within the United States
- Exempt WIC, at the request of the Attorney General from the provisions of § 5004

SENATOR BENJAMIN J.F. CRUZ, VICE SPEAKER  
Chairman, Committee on Youth, Cultural Affairs, Procurement,  
General Government Operations, and Public Broadcasting.  
Web Address: [www.senatorbjcruz.com](http://www.senatorbjcruz.com)



*I Mina' Trentai Unu Na Liheslaturan Guahan*  
The 31<sup>st</sup> Guam Legislature • [senator@senatorbjcruz.com](mailto:senator@senatorbjcruz.com)  
155 Hesler Place, Hagatna, Guam 96910  
Telephone: (671) 477-2520/1 • Fax: (671) 477-2522

The Committee on Youth, Cultural Affairs, Procurement, General Government Operations and Public Broadcasting to which was referred Bill No, 430-31(COR)--B.J.F. Cruz, An act to add a new § 5126 to Chapter 5 of Title 5 of the Guam Code Annotated; relative to authorizing joinder or mutual use of contracts by government entities.” Received hereby submits these findings to *I Mina' Trentai Unu na Liheslaturan Guahan* and reports out Substitute Bill No. 430-31(COR) with a recommendation **TO REPORT OUT ONLY.**

**I MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN  
2012 (SECOND) Regular Session**

Bill No. 430-31(COV)

Introduced by:

B.J.F. Cruz

2012 FEB 22 PM 3:50

**AN ACT TO ADD A NEW § 5126 TO CHAPTER 5 OF  
TITLE 5 OF THE GUAM CODE ANNOTATED;  
RELATIVE TO AUTHORIZING JOINDER OR MUTUAL  
USE OF CONTRACTS BY GOVERNMENTAL  
ENTITIES.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** A new § 5126 of Title 5, Guam Code Annotated, is hereby  
3 added and enacted to read:

4 **“§ 5126. Joinder or Mutual Use of Contracts by**  
5 **Governmental Entities.**

6 The Chief Procurement Officer, the Director of Public Works  
7 and any purchasing agency are authorized to join or use the contracts  
8 of other states or other government units within or outside of Guam,  
9 with the authorization of the contracting vendor. The other states or  
10 other government units wherever located are not liable for the  
11 obligations of the Guam governmental entity which joins or uses the  
12 contract. Before any joinder or mutual use may take place, the  
13 contracting officer must determine in writing that the other  
14 jurisdiction's contract has gone through a competitive procurement  
15 process.”

**I MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN**  
**2012 (SECOND) Regular Session**

**Bill No. 430-31 (COR)**

As substituted by the Committee on Youth,  
Cultural Affairs , Procurement, General Governmental Operations,  
and Public Broadcasting

Introduced by:

B.J.F. Cruz

---

**AN ACT TO ADD A NEW § 5126 TO CHAPTER 5 OF  
TITLE 5 OF THE GUAM CODE ANNOTATED;  
RELATIVE TO AUTHORIZING JOINDER OR MUTUAL  
USE OF CONTRACTS BY GOVERNMENTAL  
ENTITIES BY THE WOMEN, INFANTS, AND  
CHILDREN PROGRAM OF THE DEPARTMENT OF  
PUBLIC HEALTH AND SOCIAL SERVICES.**

**BE IT ENACTED BY THE PEOPLE OF GUAM:**

**Section 1.** A new § 5126 of Title 5, Guam Code Annotated, is hereby  
added and enacted to read:

**“§ 5126. Joinder or Mutual Use of Contracts by  
~~Governmental Entities~~ the Women, Infants, and Children  
Program.**

~~The Chief Procurement Officer, the Director of Public Works  
and any purchasing agency are~~ The Women, Infants, and Children  
Program of the Department of Public Health and Social Services is  
authorized to join or use the contracts of other states or other  
government units within ~~or outside of Guam~~ the United States, with  
the authorization of the contracting vendor. The other states or other  
government units ~~wherever located~~ are not liable for the obligations of  
the Guam governmental entity which joins or uses the contract.

1        Before any joinder or mutual use may take place, the contracting  
2        officer must determine in writing that the other jurisdiction's contract  
3        has gone through a competitive procurement process. For the purposes  
4        of this Section, the Women, Infants, and Children Program of the  
5        Department of Public Health and Social Services is exempt from  
6        § 5004 of this Chapter.”

7







EDDIE BAZA CALVO  
GOVERNOR

RAY TENORIO  
LIEUTENANT GOVERNOR

GOVERNMENT OF GUAM

DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES  
DIPATTAMENTON SALUT PUPBLEKO YAN SETBISION SUSIAT



JAMES W. GILLAN  
DIRECTOR

LEO G. CASIL  
DEPUTY DIRECTOR

March 29, 2012

**DPHSS Testimony Supporting Bill 430-31 to Enable Guam to Participate in Multi-State Contracts – March 29, 2012**

Honorable Senators of the Guam Legislature:

I am testifying on behalf of my Director, to indicate our Department's strong support of Bill 430-31 to remedy procurement regulations which would allow "joinder and mutiple use" provisions and could save the Government of Guam potentially millions of dollars in the provision of WIC Program services to its low income women and children 0-5 years of age. Though 7 CFR 246.16a(c)(2) explicitly allows states to participate in multi-state bids and contracts, Guam law does not contain any present language which addresses such participation (i.e., creating a situation of disallowance by omission). It is our understanding that including a portion of the language within a previous Bill (336-30), introduced in March 2010, contained specific language for entering into joinder and mutual use contracts with other states. We understand that the new language in the current bill extracts language from 336-30 and would add a new Section 5126 of Title 5:

***§5126. Joinder or Mutual Use of Contracts by Government Entities.***

*The Chief Procurement Officer, the Director of Public Works and any purchasing agency are authorized to join or use the contracts of other states or other government units within or outside of Guam, with the authorization of the contracting vendor. The other states or other government units wherever located are not liable for the obligations of the Guam governmental entity which joins or uses the contract. Before any joinder or mutual use may take place, the contracting officer must determine in writing that the other jurisdiction's contract has gone through a competitive procurement process.*

**Purchase of Breast Pumps**

The Guam WIC Program is a staunch advocate for breastfeeding on Guam as I am sure all of you are as well. USDA has recently recognized our WIC program's significant improvement in breastfeeding rates by awarding us a one-time award of \$50,000 to enhance nutrition education (i.e., none of this award went toward salaries) our WIC Program. We were the only

agency in our 14-state region to receive an award for improved breastfeeding rates. We do not want to lose this momentum. Successful support of our breastfeeding mothers (especially working mothers) is heavily dependent on our ability to furnish high-quality breast pumps to WIC moms. The extent of our ability to do this is dependent on cost. Without the proposed amendment, we (the Government) all stand to lose 33-96% in cost savings (see attached comparison form) that would otherwise be realized in multi-state Breast Pump Procurement during the current fiscal year.

**Infant Formula Rebates**

Nationally the WIC Program accounts for over 50% of all infant formula purchases. For nearly two decades Infant Formula Rebates via multi-state contracts have enabled Guam to serve many more mothers and children that we would have otherwise been able to serve. The rebate contract is not really procurement per se, but rather a reverse procurement where the manufacturer pays back the WIC program for every can of contracted formula purchased by our participants with their vouchers. Because rebates come directly from the infant formula manufacturer, they actually provide a significant infusion of additional funds (via WIC food purchases) back into the Guam economy to support local businesses and generate additional tax revenues. The multi-state bid includes 23 WIC state agencies (including Guam) all across the United States and involves well over \$100 million dollars in additional food dollars for WIC participants overall. Guam receives over \$1.1 million in rebates which go toward the purchase of WIC foods for our participants. This constitutes over 15% of WIC's total food grant. As the attached WSCA Contract Rebate Pricing with Abbott Labs indicates, Guam WIC receives as much as a 93% discount per can on infant formula. In the days prior to the WSCA Contract when Guam performed its own solicitation in the early 1990's, Guam received only pennies per can. Without these rebate funds, it would mean that approximately 1,125 women, infants and children of Guam's approximately 7,500 participants would have to be removed from the program and placed on a waiting list. This would be an unthinkable disaster. Through the assistance of the Attorney General's Office, we have been able to avert the disaster for the present as the Governor signed the Intent-to-Contract with the WSCA Alliance on March 26, 2012 (just three days ago). To prevent this potential calamity from recurring and also provide a tremendous amount of cost savings to the Government in other areas of procurement such as the afore-mentioned purchase of breast pumps, we strongly urge the Legislature to support and pass this Bill.

Thank you for the opportunity to offer testimony.

Sincerely,



CHARLES H. MORRIS  
Guam WIC Director

**Eddie Baza Calvo**  
Governor



**GENERAL SERVICES AGENCY**

(Ahensian Setbision Hinirat)  
Department of Administration

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**Ray Tenorio**  
Lieutenant Governor

**Benita A. Manglona**  
Director

**Anthony C. Blaz**  
Deputy Director

March 27, 2012

Memorandum

The Honorable Benjamin JF Cruz  
Vice Speaker  
31<sup>st</sup> Guam Legislature  
Chairman, Committee on Youth, Cultural  
Affairs, Procurement, General Governmental  
Operations and Public Broadcasting  
155 Hesler Pace, Suite 107  
Hagatna, Guam 96910

Re: Comments on Bill 430-31

Dear Senator Cruz:

Thank you allowing us to comment on bill 430-31, "An act to authorizing joinder or mutual use of contracts by governmental entities". As we understand this bill, it would allow the Chief Procurement Officer, the Director of Public Works and any purchasing agency to enter into another on-going contract of other states or other government units within or outside of Guam with the authorization of the contracting vendor.

We are in support of this bill. We understand the intent of this bill is to get the most for the limited resources and to resolve the opinion of the Attorney General regarding the ability to enter into other non local government contracts,

Thank you for allowing us to comment on bill 430-31.

Sincerely,

*Pete F. San Nicolas* 3/27/12

PETE SAN NICOLAS  
Chief Procurement Officer (Acting)

Office of the Vice Speaker  
Benjamin JF Cruz

Rcd By *[Signature]* Date *3/27/12*

COMMITTED TO EXCELLENCE

**BREAST PUMPS**

**PRICE COMPARISON: WESTERN STATES CONTRACTING ALLIANCE (WSCA) VS. LOCAL VENDORS**

DESCRIPTION	VENDOR NAME AND PRICE PER ITEM & PERCENT COST SAVINGS UNDER WSCA							Average Percent Savings under WSCA Contract
	WSCA Contract - Medela, Inc. (No Shipping fee to U.S. Territories)	WSCA Contract - EvenFlo Co., Inc. (No Shipping fee to U.S. Territories)	WSCA Contract - Hygeia II Medical Group (150% Shipping fee to U.S. Territories)	Average WSCA Price	Local Vendor: M.D. Wholesale	Local Vendor: Med Pharm	Average Local Price	
Personal Electric Double Breast Pump	\$80.00 - \$86.00	\$81.99	\$67.00 - \$92.00	\$81.50	\$403.00	\$499.50	\$451.25	81.94%
Multi-User Electric Double Breast Pump	\$299.00	\$305.00	\$191.00	\$265.00	\$550.18	\$233.64	\$391.91	32.38%
Reconditioned Multi-User Electric Double Breast Pump	\$199.00	\$199.00	N/A	\$199.00	\$675.75	N/A	\$675.75	70.55%
Manual Breast Pump, Sterile (one-handed)	\$15.00	\$15.50	\$16.00	\$15.50	\$187.00	\$58.90	\$122.95	87.39%
Manual Breast Pump (two-handed)	\$7.95	N/A	\$9.00	\$8.48	\$365.80	\$53.11	\$209.46	95.95%
Pump Cleanings	1st 100 pumps - Free cleaning/ After 1st 100 - \$60.00/ pump	1st 100 pumps - Free cleaning/ After 1st 100 - \$90.00/ pump	1st 100 pumps - Free cleaning/ After 1st 100 - \$15.00/ pump		Cleaning Kit - \$44.97 each (24 pk)	Cleaning Kit - \$28.47 each		

Washington Contract Pricing  
Abbott Nutrition Contract No. 06406  
As of 9-01-2011

MILK-BASED INFANT FORMULA					
SIZE / FORM	PRODUCT NAME	WHOLESALE PRICE PER UNIT	ADJUSTED REBATE	NET COST PER UNIT	PERCENT DISCOUNT
13 oz. Liquid Concentrate	Similac Advance EarlyShield	4.1600	3.875	0.285	93.15%
12.4 oz. Powder - New	Similac Advance EarlyShield	13.1900	12.012	1.178	91.07%
12.9 oz. Powder	Similac Advance EarlyShield	12.2300	11.052	1.178	90.37%
32 oz. Ready To Feed	Similac Advance EarlyShield	5.5400	3.03	2.51	54.69%
8 oz. Plastic Bottle Ready To Feed	Similac Advance EarlyShield	9.1400	4.7785	4.3615	52.28%
12.9 oz. Powder	Similac Organic	14.2300	12.8589	1.3711	90.36%
13 oz. Liquid Concentrate	Similac Sensitive	4.3000	3.9866	0.3134	92.71%
12.9 oz. Powder	Similac Sensitive	13.1900	11.9195	1.2705	90.37%
12.6 oz. Powder - New	Similac Sensitive	13.5900	12.3195	1.2705	90.65%
32 oz. Ready To Feed	Similac Sensitive	5.7600	3.3645	2.3955	58.41%
8 oz. Plastic Bottle Ready To Feed	Similac Sensitive	9.1400	4.7785	4.3615	52.28%
12.9 oz. Powder	Similac Sensitive R.S.	13.1900	11.9195	1.2705	90.37%
12.3 oz. Powder- New	Similac Sensitive for Spit Up	13.5900	12.3195	1.2705	90.65%
32 oz. Ready To Feed	Similac Sensitive R.S./ Similac Sensitive for Spit Up	5.7600	2.75	2.51	56.42%
22 oz. or 1.37 lb Powder	Similac Go & Grow - Milk Based	19.2900	17.5072	1.7828	90.76%

Payless Supermarket  
Contract Infant Formula  
Retail Price as of 3-26-2012

MILK-BASED INFANT FORMULA			
RETAIL PRICE PER UNIT	REBATE	ADJUSTED RETAIL PRICE PER UNIT	
6.19	3.875	2.32	
19.85	12.012	7.84	
19.85	11.052	8.80	
9.89	3.03	6.86	
18.49	4.7785	13.71	
N/A	12.8589	N/A	
7.99	3.9866	4.00	
N/A	11.9195	N/A	
22.45	12.3195	10.13	
10.29	3.3645	6.93	
16.99	4.7785	12.21	
22.45	11.9195	10.53	
N/A	12.3195	N/A	
10.39	2.75	7.64	
30.79	17.5072	13.28	

Commissary  
Contract Infant Formula  
Retail Price as of 3-28-2012

MILK-BASED INFANT FORMULA			
RETAIL PRICE PER UNIT	REBATE	ADJUSTED RETAIL PRICE PER UNIT	
4.21	3.875	0.34	
13.33	12.012	1.32	
5.36	11.052	(11.05)	
	3.03	2.33	
	4.7785	(4.78)	
	12.8589	(12.86)	
	3.9866	(3.99)	
14.42	11.9195	2.50	
	12.3195	(12.32)	
5.59	3.3645	2.23	
	4.7785	(4.78)	
	11.9195	(11.92)	
	12.3195	(12.32)	
6.11	2.75	3.36	
19.40	17.5072	1.89	

SOY-BASED INFANT FORMULA

SIZE / FORM	PRODUCT NAME	WHOLESALE PRICE PER UNIT	ADJUSTED REBATE	NET COST PER UNIT	PERCENT DISCOUNT
13 oz. Liquid Concentrate	Isomil Advance w/iron/	4.3000	4.035	0.265	93.84%
12.4 oz. Powder- New	Similac Sensitive Isomil Soy	13.59	12.262	1.328	90.23%
32 oz. Ready to Feed	Isomil Advance w/iron/ Similac Sensitive Isomil Soy	5.76	3.3645	2.3955	58.41%
8 oz. Plastic Bottle Ready to Feed	Isomil Advance w/iron/ Similac Sensitive Isomil Soy	9.14	4.7785	4.3615	52.28%
22 oz. or 1.37 lb Powder	Similac Go & Grow - Soy Based	19.29	17.4266	1.8635	90.34%

SOY-BASED INFANT FORMULA

RETAIL PRICE PER UNIT	REBATE	ADJUSTED RETAIL PRICE PER UNIT	
6.59	4.035	2.56	
21.55	12.262	9.29	
N/A	3.3645	N/A	
N/A	4.7785	N/A	
N/A	17.4266	N/A	

SOY-BASED INFANT FORMULA

RETAIL PRICE PER UNIT	REBATE	ADJUSTED RETAIL PRICE PER UNIT	
4.57	4.035	0.54	
14.00	12.262	1.74	
5.82	3.3645	2.46	
	4.7785	(4.78)	
	17.4266	(17.43)	

Notes:  
(1) Primary Contract Infant Formula\* are shown in BOLD



**GUAM FIRE DEPARTMENT**  
**DIPATTAMENTON GUAFI GUAHAN**  
*Professionalism \* Respect \* Integrity \* Dedication \* Empathy*



**Eddie Baza Calvo**  
Governor

**Joey C. San Nicolas**  
Fire Chief

**Ray Tenorio**  
Lt. Governor

March 29, 2012

Senator Benjamin J.F. Cruz  
Committee on Procurement, Cultural Affairs,  
Public Broadcasting and Youth & General  
Government Operations  
I Mina'Trentai Unu Na Liheslaturan Guahan  
155 Hesler Place, Ste. 107  
Hagatna, Guam 96910

**Re: Bill 430 – 31 (COR)**

**AN ACT TO ADD A NEW §5126 TO CHAPTER 5, TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING JOINDER OR MUTUAL USE OF CONTRACTS BY GOVERNMENTAL ENTITIES.**

Hafa Adai Mr. Chairman and Members of the Committee,

Thank you for this opportunity to submit testimony for Bill 430-31 (COR). The fire service is faced with unique challenges in procurement that make it extremely difficult, time consuming, and expensive to purchase fire apparatus and equipment. The equipment necessary to provide adequate standards of fire protection is very specialized and technical in design, most costing upwards of \$250,000.

The fierce competition created here on Guam is a result of vendors trying to negotiate what they believe, with product bias, is the right fit for the Guam Fire Department. These negotiations can be tedious and because of the delays, detrimental to the community. In addition, the difficulty of working through a mandatory AG review of procurement in excess of \$500,000 means we have to go through additional steps on virtually all projects.

As a result of protests and/or issues within the current procurement laws, we are currently forced to undergo a third round of specification review for submission of a multi-step bid process for fire truck procurement.



Date: March 29, 2012

Re: Bill 430-31 Testimony

Vice Speaker Cruz,

Thank you for the opportunity to present testimony on behalf of the Guam Automobile Dealers Association (GADA) with regard to Bill 430-31.

Although we understand the intent of this bill is to save taxpayer money, the members of GADA feel that, in the long run, savings of this nature do not benefit the people of Guam. In recent months, there has been a push within our community to support the "Buy Local" initiative created by the University of Guam, Department of the Interior and the Guam Chamber of Commerce. This campaign seeks to educate our people about the importance of "buying local" and how only dollars spent in the local economy create jobs and opportunities for our fellow Guamanians. GADA feels that the spending habits that this bill seeks to allow are in direct opposition to this initiative as money spent with off-island vendors does nothing to fill government coffers with GRT funds or support the local businesses that create the jobs that keep our economy running.

In addition to the issues created by spending money outside of our economy, there are logistical and service issues caused when local vendors are bypassed. Often times, local representatives are not required by manufacturers to provide warranty service for products purchased in a way that circumvents the local dealer. In these situations, repair costs not covered by warranty can easily

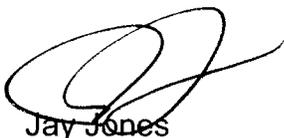
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exceed savings realized by purchasing off-island. Furthermore, down time of equipment caused by vendors who are ill-equipped to support products they did not sell can be very costly as well. As we have seen in the past, the ongoing repair and maintenance of vehicles can be the biggest obstacle to smoothly running government services and it is our fear that this bill could make that challenge even more difficult.

Furthermore, there are many lesser, yet still important benefits to local procurement. Benefits such as more flexible payment terms, free maintenance programs, and courtesy vehicles are offered by many local dealers. Benefits you simply will not find when dealing with vendors based thousands of miles away. Speaking of "thousands of miles away", another benefit of dealing with local vendors is that it negates the need for off-island travel which is an expensive as well as time consuming drain on finite government resources. The list could go on and on.

I will close by saying, local new car dealers have invested millions of dollars to build modern facilities, buy sophisticated equipment and hire and train local personnel in order to properly represent their manufacturers. The Guam Automobile Dealers Association sincerely hopes that our leaders will see to it that this investment in the local economy is protected.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Jones", written in a cursive style.

Jay Jones

President

Guam Automobile Dealers Association

---

JOHN THOS. BROWN  
ATTORNEY AT LAW \*

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Vice Speaker Benjamin J.F. Cruz, 31<sup>st</sup> Legislature  
Chair, Committee on Procurement etc.  
155 Hesler St.  
Hagåtña, Guam 96910

December 16, 2011

29 MAR 2012

VIA eMail pdf file

RE: Bill 430-31

Dear Vice Speaker Cruz,

With respect, I offer my comments on the referenced Bill, which you have introduced. I apologize about the summary nature of my comments. I was only advised of the bill and today's hearing on it this morning, by the Chamber of Commerce.

This piggyback idea has been floated two or three times in legislative bills over the past couple years. Each time I have adamantly opposed it, and there is nothing in this bill or intervening news or experience that obviates my opposition. Therefore, I am back once again to take a whack at this mole.

There are many issues that such a measure raises, and I may not have time to catalogue all of them, but here are some:

This bill should be called the "DO NOT BUY LOCAL ACT".

It runs directly counter to the "Policy in Favor of Local Procurement" (5 GCA § 5008.) Not only does this favor off-island suppliers of goods, services and construction, it favors procurement regimes from other jurisdictions including foreign states ("use the contracts of other states or other government units within or outside Guam").

It is highly unlikely that any local Guam contractor/vendor would ever have a shot at any such contract: first, they would not even be aware of its opportunity; second, most other jurisdictions offer similar local preference provisions, which would prefer bidders from that jurisdiction over Guam's.

\* Admitted to Practice: California, Guam and Commonwealth of Northern Mariana Islands, USA [Inactive in NSW, Australia]\*

† Micronesia Brokers, Inc. (Guam and CNMI)/Town House Department Stores, Inc. (Guam)/J&G Distributors/Aquarius Beach Towers, (Saipan, CNMI)/Livno Holdings PTY LTD (A.C.N. 003 585 331)/Townhouse, Inc. (Saipan, CNMI)/ IBSS (Guam and Saipan)

The bill does not require that the government first test the waters on Guam to see if local bidders can meet government needs.

There is nothing in the bill that would “neutralize” the contract price. By that I mean, it does not require that delivery and servicing the contract from a distance be considered part of the price. Even assuming a Guam bidder gets the opportunity to bid, his or her bid would necessarily already include the price of providing the goods and services locally but the Dallas bid would not, thus would have a lower price.

There is nothing in the bill that even requires the preparation of bid specifications or publication or other notice of the proposed acquisition. How do we know what it is that the government wants or if it got what it presumed to have wanted?

There is a faulty assumption being made in the bill: that GovGuam will save money by piggybacking. Not necessarily so.

First, the bill allows any contract anywhere to be piggybacked. How do we know which contract out there offers the best price? We don't, yet we allow open discretion to go wherever we want for any contract at all. We don't even know if a local price is available better. Price is not even a factor to consider.

Second, experience elsewhere has revealed how pricing and product specifications have been easily manipulated under these contracts. See the articles included with this commentary.

For instance, this excerpt from piece from the Milwaukee Magazine called “Dirty Work” (<http://www.competitivewaste.org/reports/CCWDirtyWork.PDF>):

“Last year, MMSD officials angered other area waste firms by handing a \$900,000 contract to Chemical Waste Management to handle its household hazardous waste program. It used a provision of the state law that allows other units of government to “piggyback” on the state contract. “The state... negotiates the lowest price possible,” says Chris Magruder, who also praises Chem-Waste's unbeatable level of insurance. “We're able to get the lowest prices already negotiated. It's very unlikely that we could negotiate anything cheaper.”

Jeffrey Vialone, whose Milwaukee-based firm EOG Environmental was interested in handling the household program but never got a chance to bid, says his firm could have created such a site inside Milwaukee County quickly. It now owns such a site - inside city limits. Vialone takes special exception to the idea that the Sewerage District saved money. “They're paying a premium to piggyback,” he says. “Some do it for the sake of simplicity and ease, but if they did bid it out, they could get a better competitive number.”

The National Office Products Alliance (NOPA) has publicly urged State and Local Governments to discontinue reliance on 'piggy-back', sole-source contracts and seek multiple alternative sources to ensure competition. NOPA President Chris Bates observed

(<http://webcache.googleusercontent.com/search?q=cache:jARXgswHnq0J:m.allbusiness.com/company-activities-management/contracts-bids/14379778-1.html+&cd=66&hl=en&ct=clnk>):

"NOPA fundamentally disagrees with the widespread use of 'piggy back' office supplies contracts, particularly when they stifle legitimate ongoing competition and are based on bid criteria that are unfairly tilted in favor of large companies at the expense of small businesses in our industry ... and instead give full consideration and weight to the concrete benefits its government customers and local communities will receive if it awards multiple future contracts that include competitive small businesses."

The bill disenfranchises local business from the procurement process. It immunizes the procuring authority from any liability for any wrongdoing in the procurement process: "The other states or other government units wherever located are not liable for the obligations of the Guam governmental entity which joins or uses the contract." How would a local business, then, ever bring a protest on the contract?

It takes away all right of the local government to obtain administrative relief from contract controversies if the contractor under the foreign-placed contract fails to perform. The procurement law currently allows such contract controversies to be resolved by the local agency with appeal to the Public Auditor. (5 GCA § 5426.) What jurisdiction does the local agency have over the foreign contractor? There will likely be choice of law and jurisdiction clauses in the foreign contract which the local agencies inherit when they piggyback. The local agency may even have to litigate contract disputes in the foreign place that awarded the contract.

This piggyback concept was part of a "reform" process driven by large US companies and understaffed local and state agencies during the last decade, as part of a self-proclaimed "decentralization" of procurement responsibility.

Call it for what it is: ***abdication of local procurement decision making authority – and responsibility.***

If GovGuam wants the competitive price benefit from foreign contracts, put all IFBs and RFPs on the web and make sure that notice of the availability of the notice is widely circulated and advertised in "other states or other government units wherever located". This will foster the competitive benefits of the procurement law while maintaining local control and benefits from the expenditure of our local tax dollars.

Senseramente and With Respect,

/s/

John Thos. Brown

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## **State official's profitable deal with Office Depot may cost governments and nonprofits nationally**

By MATT CLARK

Saturday, December 25, 2010

NAPLES — The oft-criticized and outgoing head of the state agency in charge of purchasing has handed a profitable deal to a Florida business at the potential cost of government agencies and nonprofit organizations across the country, an ongoing Daily News investigation found.

The Dec. 8 decision by Linda South, secretary of the Department of Management Services, allows Boca Raton-based office supplies retailer Office Depot to use a state contract to employ tactics that numerous government auditors have accused the company of using to overcharge agencies in the past.

South is expected to leave office next month. The state contract she amended for the deal took months to negotiate earlier this year in part to avoid what the amendment now encourages.

Office Depot now will be allowed to lure government agencies and nonprofits nationwide to the 16,000 products the state competitively bid at low prices without telling those agencies their contract purchasing website will be blended by default with potentially more than 44,000 so-called "non-contract" products priced as the company chooses.

The Daily News examined some of the non-contract products listed on the state contract's purchasing website provided to the city of Naples. The Daily News found Office Depot is selling some of the products at prices higher than it charges the general public, as it has done in the past.

A Brentwood, Tenn., company, National Intergovernmental Purchasing Alliance (NIPA), will market the contract nationwide to governments and nonprofits, which can share it through a process known as "piggybacking." The purchasing alliance will profit from the amendment, as will the state agency, which came under fire this year from legislators critical of South's leadership.

The state contract amendment contains a clause that officials say will allow government and nonprofit customers to have non-contract products removed from purchasing websites, and another clause requiring Office Depot to label all on-contract items on websites.

However, the amendment provides no penalties for Office Depot if it sells non-contract items in an unauthorized manner, something the company has been accused of in the past. This leaves government and nonprofit customers with few options for recourse, among them spending more taxpayer money in seeking a refund or replacing the contract.

Office Depot won't be required to provide a list of the non-contract products, and state purchasing officials haven't yet released a list of the on-contract products, making it impossible to independently verify which category each product falls under.

For nearly two years, the Daily News has been investigating the contracting practices of Office Depot, spurred by Fort Myers resident David Sherwin, a former government auditor and Office Depot employee. Sherwin launched a nationwide campaign to inform government agencies of the company's tactics after being fired from his job as an Office Depot account manager in April 2008.

"This lays the groundwork for a bait-and-switch," Sherwin said of the recent amendment to the state contract. "In the old days, a public official who did what South just did would be tarred and feathered in a public square."

Through a spokeswoman, South declined an interview for this story.

■ **[CLICK HERE FOR PROFILE: Fort Myers man blows up, blows the whistle on Office Depot](#)**

■ ■ ■

Before approaching South, Office Depot had been looking for a replacement to another of its national piggybacking contracts, one with 10,000 customers and \$600 million-a-year of business. It expires Jan. 1, 2011.

The company said it asked South for the amendment because its customers would want a "robust assortment" of more than 60,000 products.

"The offering of our retail website assortment as non-contract items in this instance is not outside of the ordinary and provides a tremendous benefit to agencies that piggyback off of the state of Florida contract," Office Depot spokesman Jason Shockley said of the amendment.

While it isn't unusual for a government agency to purchase non-contract items from Office Depot, it's also not unusual for auditors examining which products were bought to accuse the company of doing it in an unauthorized manner.

Since 2007, Office Depot has been accused of selling items without a competitively bid price in an unauthorized manner by the Florida Attorney General's Office, by auditors with the states of Georgia, Nebraska, California, and North Carolina, and by auditors with Fresno County, Calif., Los Angeles, Calif., Clearwater, Fla., and San Francisco, Calif.

The head of the National Association of State Procurement Officials (NASPO) said it is unusual for a government agency to allow non-contract items to be purchased, and called the Florida purchasing deal a good example of "price shopping."

"Sounds like from this amendment that they've really modified the intent of this contract to allow it to become a nationwide contract," association director Jack Gallt said. "Certainly, it's something NASPO would not support."

Department of Management Services spokeswoman Linda McDonald said South wasn't available for an interview for this story.

However, South wrote a letter and offered a meeting invitation to Neil Ringel, a senior vice president of the largest office supply retailer, Staples.

The state's revamped contract, awarded earlier this year, went to Office Depot, Staples and Gulf Coast Office Products, in part to increase competition and bring prices down. Officials with Staples and Gulf Coast products weren't available to the Daily News for comment on the amendment, but a Staples official told an industry trade publication the company was offered the amendment but declined.

"We feel that it is an invitation to dissatisfaction and accusations of inappropriate pricing, and we do not want to be in that situation," Staples Executive Vice President Jay Baitler told Office Products International.

Though Staples has sold "non-contract" products in the past, Baitler said the amendment was "distressing" to Staples officials as the revamped state contract was bid "because the state wanted absolute transparency."

In her letter to Ringel, South wrote that nothing in the contract prevented the businesses from selling "other items." Nonetheless, purchasing officials and the contract were clear that the website should contain "only items that are in the scope of the awarded contract."

South wrote that each agency utilizing the contract, including small nonprofits and government agencies, will be responsible for their own purchases, but her own large, state agency has been unable to prevent Office Depot from offering non-contract products, which state agencies aren't allowed to purchase.

Office Depot has been listing non-contract products on a website used by state agencies since the start of the contract Oct. 18, and hadn't removed them as of Dec. 17, McDonald confirmed. State agencies spend \$23 million a year through the contract.

■ **[CLICK HERE FOR SPECIAL REPORT: State staff's handling of Office Depot contract may have cost taxpayers millions](#)**

In July, a Daily News analysis found millions of dollars were spent on products Office Depot considered non-contract while the state was on its previous Office Depot contract. Many of the products were priced at or above Office Depot's public retail website prices, which were provided to the Daily News by an office supply industry

analyst, Rick Marlette.

"It's against everything that's been uncovered by your investigation, and others around the country," Marlette said of the state purchasing amendment. "It's like saying, 'we know drugs are bad for you, and oh, by the way, here's some drugs.' "

■ ■ ■

The opt-out provision of the amendment says government and nonprofit customers can exclude the non-contract items from the website they access "for their respective purchases."

Office Depot and state purchasing officials have said this means the items will be removed from the website if a customer learns of the option and requests the removal. Office Depot isn't required to tell them about the option, but the amendment is listed on the state purchasing office website and the NIPA website.

Another amendment clause requires Office Depot to label on-contract items, but fails to specify how products should display during website searches. Office Depot spokesman Jason Shockley said "all items will be commingled within the search response."

Imagine website keyword searches for something like "mechanical pencils" not returning the contract's most heavily discounted products until the sixth page of search results. A July 2008 audit of the California state government's former contract with Office Depot reported such an issue, which was corrected only after legislators intervened.

California state agencies spent \$14.2 million on the non-contract products despite some of that state's on-contract items being labeled as such on the contract's website, according to its audit. Half of the \$18.3 million spent through San Francisco's contract was for non-contract items, according to its audit.

Office Depot denied the auditors' allegations and never admitted wrongdoing in settling the non-contract item disputes.

Georgia kept a \$1.5 million security deposit, California was paid a \$2.5 million refund and last week San Francisco settled for \$4.3 million. Eventually the Florida Attorney General's Office will receive more than \$3 million after claims are settled for an issue unrelated to non-contract items, just one of numerous allegations the company has faced in recent years.

■ **[CLICK HERE FOR SPECIAL REPORT: State records: Agencies aiding children and seniors among those that overpaid Office Depot](#)**

South also hasn't been immune to allegations.

Senate President Mike Haridopolos called for her head in October over the politically charged construction of a lavish, \$48 million courthouse containing a kitchen for each judge of the 1st District Court of Appeal. Responding to Haridopolos, South pointed out

that legislators approved funding for the courthouse project, which her agency managed.

Another South critic, state Sen. J.D. Alexander, won approval this year for a budget change that removed funding for 18 top positions in South's agency and moved the organization from under the governor's office so it would answer to the Florida Cabinet.

Gov. Charlie Crist vetoed the measure, causing South to shuffle positions and lay off some staff, among them the state purchasing director.

South has submitted her resignation to Gov.-elect Rick Scott, as she said she planned to do. Scott becomes governor Jan. 4.

The offices of Haridoplos, Alexander and Scott didn't immediately respond to multiple requests for comment on South's contract amendment with Office Depot, Florida's fifth-largest business.

Should Office Depot violate any provisions of the contract, the state agency can cancel the contract with 180 days' notice to NIPA.

Those most affected by South's decision may be Florida local governments, which by law had access to the contract without the amendment before South approved it.

The state agency didn't attempt to notify affected agencies of the amendment until more than a week after it was approved, which the contract's administrator, Mark Hernandez, said occurred while he was on leave.

Robert Weissert, spokesman for taxpayer watchdog group Florida TaxWatch, wouldn't criticize the amendment but questioned if it will benefit taxpayers.

"Obviously, it's important that we have a range of products, but if a range of products is needed, then we have to negotiate for them," Weissert said. "We should be negotiating for the best price and keeping as much on contract as possible."



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March 30, 2012

Vice Speaker Benjamin J.F. Cruz, 31<sup>st</sup> Legislature  
Chair, Committee on Procurement etc.  
155 Hesler St.  
Hagåtña, Guam 96910

VIA eMail pdf file

RE: Additional testimony, comment on Bill 430-31

Dear Vice Speaker Cruz,

Thank you for your indulgence of my distraction during yesterday's testimony. I hope you share my relief that cancer is not indicated.

After hearing such testimony as I was able, let me again iterate that every complaint about dealing with off-island providers, from fire pump trucks to breast pumps, can be addressed by issuing an IFB or other appropriate method of source selection and doing what the regulations require in the first place, *solicit* bids:

**“Invitations for Bids or Notices of the Availability of Invitation for Bids shall be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing competition.” (2 GAR § 3109(f)(1).)**

This fulfills the principle of the Procurement Law “to *foster* effective broad-based competition”. (5 GCA § 5001(b)(6).) Simply make sure that those other providers are solicited and aware of the solicitation and given enough time<sup>1</sup> to submit a bid. If they don't you should not give them any special treatment that you don't show (and shouldn't show) other bidders, local or otherwise.

We do not need any new law to do this, nor any waiver or any further “exemption”. Just education. *Solicit* competition in the manner the law allows and directs by distributing IFBs to a sufficient number of bidders to secure effective broad-based competition. The agencies appeared unwilling to do that. Instead they preferred to pre-select the contractor and deal directly without regard to the transparency, accountability and fair treatment strictures of the procurement law.

---

<sup>1</sup> “Bidding time is the period of time between the date of *distribution* of the Invitation for Bids and the time and date set for receipt of bids. In each case **bidding time will be set to provide bidders a reasonable time to prepare** their bids. A *minimum* of 15 days shall be provided ....”

\* Admitted to Practice: California, Guam and Commonwealth of Northern Mariana Islands, USA [Inactive in NSW, Australia]\*

† Micronesia Brokers, Inc. (Guam and CNMI)/Town House Department Stores, Inc. (Guam)/J&G Distributors/Aquarius Beach Towers, (Saipan, CNMI)/Livno Holdings PTY LTD (A.C.N. 003 585 331)/Townhouse, Inc. (Saipan, CNMI)/ IBSS (Guam and Saipan)

Speaking to the case of the Health Department needs. Let's look at the breast pumps. What is their real need during any given period, on the basis of volume of units and aggregated price? You can get a lot of pumps at \$80/unit. But, you have to ship, receive and inventory and warehouse them, which a local supplier does for you, but not for free. Still for the difference in apparent prices, that might be well worth while. Just make sure the "cheap" sources indicated are notified of the solicitation and mailed a copy of the IFB. If they don't respond, then are they truly engaging in competition or holding out as a monopoly sole source? For purposes of fostering competition, we want the former.

While the individual SKUs for the pumps cannot be disaggregated if you are ordering a bunch of breast pumps (2 GAR § 3111(b)(5), if the price is under \$15,000, they don't even need an IFB; they can use one of the two small purchase methods of source selection, general small purchase method or blanket purchase agreement. They only need to follow those rules.

As regards the infant formula, I was very surprised. It shows the retail prices of two vendors, Payless and the Commissary. It compares that against the wholesale price under the Washington Alliance Abbot Contract. Curiously, it does not indicate that there is an exclusive local Abbot wholesaler. A J&G affiliate, Micronesian Brokers, Inc., is that exclusive wholesaler. (Abbot US would not tread on the territorial exclusivity of its exclusive local wholesaler.) I do not get involved in MBI's daily operations, but I am intrigued that the Health Department has not identified MBI as a source. The Washington Alliance certainly is.

I believe you have been given a great deal of misinformation about this infant formula product. First understand the distribution mechanism. Only wholesalers get a wholesale price from the Washington Alliance, which governs the Western States and Pacific Territories. Given this is a subsidized product, it has strict handling and accounting requirements. WIC wholesalers have to meet particular eligibility requirements not usually imposed on commercial, unsubsidized products.

Wholesalers sell to retail establishments who provide it to the ultimate consumer, but it is usually the wholesaler who does the merchandising (warehousing and shelving of the products) and to insure compliance with WIC program requirements. The rebates are carefully monitored to pass back to the wholesaler after all reporting and other requirements are met, and Abbot's allowed wholesale margins are calculated based on the rebate, not the gross price.

If GovGuam wants to purchase the product, they must do so in bulk through the Washington Alliance nominated Guam supplier (MBI), and establish a store front to make it available to eligible recipients. Only then do they get anything near the indicated prices, but they will not get the wholesale rate indicated; that is the rate approved WIC wholesalers get (and the indicated rates are not necessarily local wholesale prices, either).

Which speaks to the level of agency understanding of all the things that local vendors must do and be responsible for that online and stateside providers simply do not without additional costs being added to their published prices.

Which also speaks to the level of market research that is being done by the agencies testifying.

Going back to fire trucks, there is another matter that deserves comment. The point was made that there is an industry-wide purchasing platform, which sets standards for fire services around the entire country. That is significant, because it speaks to the issues raised about the difficulty of drafting specifications. Having such an industry-based standard makes that a no-brainer.

“It is the general policy of this territory to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.”  
(2 GAR § 4102(a)(3).)

Rather than making another exemption for fire trucks, GFD should obtain industry standard specifications that suit its needs and solicit pricing from Stateside and local dealers or other such sources (eBay, whatever), to get the lowest landed cost. When they’ve selected the truck through that process, they can put out a separate IFB to service and maintain the equipment to local bidders. We don’t have to change the laws. GFDs needs aren’t as “unique” as they claim. Yes, it is unique equipment, but, no, they don’t need their own code provision or exemption (and neither does GMH).

I’d like to comment on the point made about purchasing from the US Federal GSA Schedules. As Attorney Mason said, “used to be” everyone just bought supplies straight off the schedule. You should understand that the schedule, however, is a list of contractors willing to sell products at their given prices; it does not establish a single price for each product. Buying off the schedule means selecting a pre-approved Federal contractor. It does not assure lowest price nor responsive specification (scheduled products are industry standard products, not unique products); it depends on which contractor you use as to which price you get. What experience on Guam showed was that there were favorite contractors that were used exclusively by the government without reference to prices or other contractors.

The other point made was that local agencies cannot purchase from the schedule unless the price is at least 10% less than local bidders. That is almost right. The 10% margin requirement is a requirement of the quizzical 5 GCA § 5122. It is not, by the way, a local preference, but a provision that makes sure that other *contractor* prices on the Federal schedules are consulted because, as mentioned, the contractor prices do vary amongst products even on the Federal schedules

What changed the way they used to do things is that I brought a protest, and the outside GovGuam auditors had already been complaining that the straight purchase method was not allowed under local procurement law. The Public Auditor decided that, to accommodate local requirements with the quizzical § 5122, an IFB should be used to solicit bidders, and it could include a “deemed” bid based on the availability of products on the Federal schedules. (See OPA-PA-08-012; this subject is also canvassed in Article XIII of my Guam Procurement Process Primer.)

This process is consistent with what I’ve suggested should be done in other off-island providers.

Issue the IFB but invite the suppliers with prices that look attractive to take part in the solicitation, under our legal jurisdiction and rules of procurement, not some one else's.

What we might remember is that the availability of cheaper price for the same product somewhere else is what is known as an "arbitrage" situation. Almost all commercial activity is driven by arbitrage opportunity. If enough money can be made by going to the cheaper source, a local opportunist will at some point find a way to tap into that arbitrage opportunity and reduce the spread to reap some of the arbitrage.

We need to be mindful of *fostering* sufficient competition to take advantage of the off-island lower prices but *also* to encourage the availability of some of that spread locally by encouraging local business to offer it. That can only be done by allowing them to compete and on adequate enough margin to survive. And that local involvement in local government contracting increases our tax base, it captures our money on-island and increases its velocity and utility, and provides employment opportunities for our growing number of youth.

As I mentioned, I will be happy to further discuss this with you or any of the other Senators.

Senseramente and With Respect,

/s/

John Thos. Brown



GOVERNMENT OF GUAM

DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES  
DIPATTAMENTON SALUT PUPBLEKO YAN SETBISION SUSIAT



EDDIE BAZA CALVO  
GOVERNOR

RAY TENORIO  
LIEUTENANT GOVERNOR

JAMES W. GILLAN  
DIRECTOR

LEO G. CASIL  
DEPUTY DIRECTOR

FEB 20 2012

The Honorable Vice Speaker Benjamin J.F. Cruz, Chairperson  
Committee on Youth, Cultural Affairs, Procurement, General Government Operations and  
Public Broadcasting  
155 Hessler Street, Suite 107  
Hagatna, GU 96910

Dear Vice Speaker Cruz:

*Buenas yan Saluda!* We are requesting your assistance to rectify current procurement law by including a portion of the language within Bill 336-30, which you introduced in March 2010, which would allow us to enter into joinder and mutual use contracts with other states. Specifically we request to enact Section 7 from proposed Bill 336-30, which would add a new Section 5126 of Title 5:

***§5126. Joinder or Mutual Use of Contracts by Government Entities.***

*The Chief Procurement Officer, the Director of Public Works and any purchasing agency are authorized to join or use the contracts of other states or other government units within or outside of Guam, with the authorization of the contracting vendor. The other states or other government units wherever located are not liable for the obligations of the Guam governmental entity which joins or uses the contract. Before any joinder or mutual use may take place, the contracting officer must determine in writing that the other jurisdiction's contract has gone through a competitive procurement process.*

Assistant Attorney General, Laura Mooney, has informed us (see the attached AG's *Information and Guidance*) that our proposed *Master Pricing Agreements and Participating Addendum for Breast Pumps and Accessories with the Western States Contracting Alliance* (this document is also attached) amounts to a "piggy back" option which is not allowed under Guam law. Without the proposed amendment, the Government stands to lose 33-96% in cost savings (see attached comparison form) that would otherwise be realized in multi-state Breast Pump Procurement during the current fiscal year.

We therefore seek the assistance of you and your colleagues to enable us to serve more of our WIC breastfeeding moms, in addition to generating significant cost savings to the government.

123 CHALAN KARETA, MANGILAO, GUAM 96913-6304  
www.dphss.guam.gov • Ph.: 1.671.735.7102 • Fax: 1.671.734.5910

Office of the Vice Speaker  
Benjamin JF Cruz

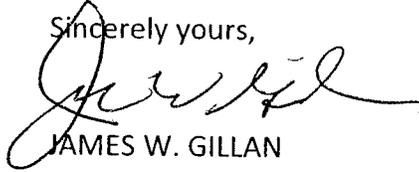
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**Procurement Law Amendment Request to Allow Guam WIC to Participate in Multi-State Contracts**

Page 2 of 2

If you have questions or require clarification, please feel free to contact our Guam WIC Director, Mr. Charles Morris (ph. 475-0287), or myself (ph. 735-7102). *Dangkolo Na Agradesimiento!*

Sincerely yours,

A handwritten signature in black ink, appearing to read "J. Gillan", written in a cursive style.

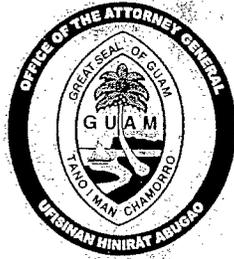
JAMES W. GILLAN

Director

Attachments

cc: Chairperson, Committee on Health and Human Services, Senior Citizens & Economic Development

Leonardo M. Rapadas  
Attorney General



Phillip J. Tydingco  
Chief Deputy Attorney General

## OFFICE OF THE ATTORNEY GENERAL

January 18, 2012

**INFORMATION AND GUIDANCE (CONFIDENTIAL)**

Ref: DPHSS 11-0764 &  
DPHSS 11-0765

**TO:** Director, Department of Public Health and Social Services  
Chief Procurement Officer, General Services Agency

**FROM:** Assistant Attorney General

**SUBJECT:** Master Pricing Agreements and Participating Addendum for Breast Pumps and Accessories with the Western States Contracting Alliance

- 1) Medela, Inc. (DPHSS 11-0764)
- 2) EVENFLOW Company (DPHSS 11-0765)

A sourcing multi-state agreement has been entered into by the State of Washington and three contractors for a multi-year term, initially January 18, 2011 through January 17, 2013, with a maximum of six additional years through January 17, 2013. The purpose of the agreement is to facilitate as needed purchases of manual, electric breast pumps, breast pump kits and related accessories in keeping with the USDA food and nutrition program for Women, Infants and Children program (WIC).

A fee of (0.5%) is built into all prices collected by the contractors, paid as Contract Administration Fee to the Western States Contracting Alliance (WSCA) a cooperative group contracting consortium for state government departments, institutions, institutions of higher education, agencies and political subdivisions for the States of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming. WSCA is a cooperative purchasing arm of National Association of State Procurement Officials (NASPO). The balance of the 50 states and the District of Columbia, US Territories and other public entities may also use WSCA contracts.

The State of Washington is the lead state for the WSCA/NASPO WIC Multi-State Contract for Breast Pumps and Related Accessories State of Washington Contract No. 01910 ("the Contract") The State of Washington is also the administrator of the Contract. The Contract itself is a master pricing agreement. The dispute resolution process, laws and regulations of Washington apply to the Contract. Washington is also the jurisdiction and venue set in the Contract.

**RECEIVED**  
Director's Office  
Division Of General Administration

JAN 26 2012

WSCA members and other entities that want to be part of the procurement submit estimated annual procurement amounts on Intent to Participate Forms that are part of the procurement process in a non obligatory manner, but which provide the larger pool of procurements to assist with the best value product pricing.

GSA and DPHSS submitted an Intent to Participate Form dated March 10, 2010 with an annual estimated volume in the amount of THIRTY FOUR THOUSAND; EIGHT HUNDRED AND SEVENTY FIVE DOLLAR (\$34,875.00) as part of the upfront process in the Washington procurement.

After a contract is awarded by the lead state, those WSA members and other entities that submitted Intent to Participate Forms who choose to participate as "Participants" and buy under the pricing and terms in place between the lead state and the contractors, then individually enter into Master Pricing Agreements and Participant Addendum with each awarded contractor they want to purchase from. The Master Pricing Agreement and Participant Addendum are subject to the terms and conditions of the lead state's contract.

GSA on behalf of DPHSS has submitted Master Pricing Agreements and Participant Addendum (1) with Medela, Inc. and (2) with EVENFLOW Company subject to the terms and conditions of the Contract. Both contractors offer Destination Pricing FOB USA Territories at no charge.

I unfortunately am unable to recommend the Master Pricing Agreements and Participant Addendum subject to the terms and conditions of the Contract for approval for the following reasons:

1) Guam procurement laws and regulations do not permit cooperative procurements of this nature. In the 30<sup>th</sup> Legislature there was a bill<sup>1</sup> that proposed similar language be added to the Guam procurement law, but to date no such law has been passed. Cooperative procurement is part of the updates to the ABA Model Procurement Code<sup>2</sup>.

2) The DPSS authorizing statute for the WIC program does not have any special provision permitting the cooperative procurement of program materials in this manner, such as is permitted for example by Guam Memorial Hospital for certain medication procurements.

3) Although there are USDA Food and Nutrition regulations that permit this type of cooperative procurement they do not mandate the cooperative procurement process be followed. Federal laws and regulation do not therefore preempt Guam's procurement laws and regulations with regard to these items.

4) This particular type of cooperative procurement is per NASPO Issue Brief (attached), a "piggy back option". A piggy back option is described as where one or more organizations represent their requirements and include an option for other organizations to "ride" or "bridge"

<sup>1</sup> SB 336-30 at § 7 Joinder or Mutual Use Contracts

<sup>2</sup> See ABA Model Code of Procurement 2000 and Infrastructure Procurement of 2007 at Article 10.

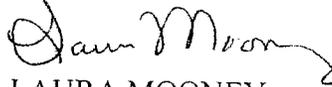
the contract as awarded. Guam laws and regulations do not permit this type of procurement. Local Guam vendors do not receive notice of the procurement, and other Guam laws and regulations are not adhered<sup>3</sup>. GSA and DPHSS are not permitted to ride on the Contract.

5) Since there is a signed upfront Intent to Participate Form that permits GSA and DPHSS to set forth requirements and to be eligible to participate in the awarded contract it is confusing; but the presence of that document in itself, which merely added "intent to procure" and "estimated annual dollar amount" is not such that it would make this procurement a non-piggy back procurement or in other words a "true cooperative" procurement where two or more governments combine their requirements and solicit bids or offers for goods or services<sup>4</sup>, which Guam arguable could enter into as long as it requirements, including Guam procurement laws and regulations are part of the procurement.

The WSCA Alliance member states have their own procurement laws and regulation that permit them to enter into joinder or mutual agreements and are able to accept the lead state's procurement laws and regulations, as long as the lead state's laws and regulation permit full and fair competition. Guam does not currently have similar procurement laws and regulation that permit this type of procurement. GSA DPHSS would therefore need to include and follow Guam procurement laws and regulations in the procurement as part of its requirements. They are not included in the Contract. Current Guam procurement laws and regulation do not permit piggy back cooperative procurements of this nature.

Please give me a call if you have any questions with regard to this matter. 475-3324 ext 147

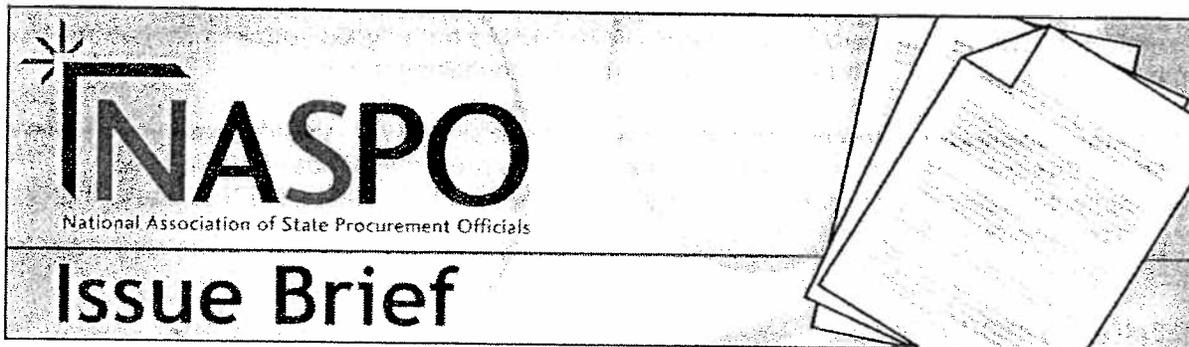
Very truly yours,



LAURA MOONEY  
Assistant Attorney General

<sup>3</sup> The attached 11 pages NAPSO Issue Brief reviews the advantages and disadvantages involved and why some states elect not have cooperative procurement laws.

<sup>4</sup> See page 3 of NAPSO Issue Brief



NASPO staff contact: Lee Ann Pope, NASPO/WSCA Program Manager  
[lpope@AMRms.com](mailto:lpope@AMRms.com) or 859-514-9159

## Strength in Numbers: An Introduction to Cooperative Procurements

### Introduction

The primary role of public procurement is to obtain quality goods and services to support effective and efficient government ensuring the prudent use of public funds. Public procurement professionals add value to every government program by:

- Providing efficient delivery of products and services;
- Obtaining best value through competition;
- Offering fair and equitable competitive contracting opportunities for suppliers; and
- Maintaining public confidence through ethical and transparent procurement practices.

As contracting workloads increase, purchase requirements become more complex and budgets and resources decline, government procurement officials strain to continue to meet these objectives and seek new and innovative tools to deliver effective and efficient support. More and more, government procurement professionals are turning to various forms of *cooperative contracts* to ease the strain.

Cooperative contracts are becoming increasingly popular at the federal, state, and local levels. A cursory review of the state contracting environment reveals dozens of cooperative contracts covering a wide array of goods and services available at the state and local level. Cooperative purchasing is popular because it can save significant time and money in contract production as well as lower contract prices through the power of aggregation.

As with any other practice, however, cooperative purchasing can be done well - or poorly - and is not without its challenges. It is vital for procurement and public officials to understand best practices and make informed decisions about cooperative purchasing, as they would any other procurement decision.

This issue brief is designed to provide public procurement officials, elected officials, government executives, government suppliers and citizens with an introduction to cooperative purchasing—particularly its definition, purpose, authority, value, and best practices. What are

the different types of cooperative purchasing? What makes for a “good” program? What are some challenges—legal, political, and administrative—to making it work?

As the chief organization representing state procurement since 1947, the National Association of States Procurement Officials (NASPO) is committed to presenting impartial, educational information on procurement issues. We hope this review will help states and their stakeholders use this procurement tool effectively.

## DEFINITIONS AND TYPOLOGY

### Definitions and Descriptions

*In simple terms, cooperative purchasing involves sharing procurement contracts between governments.* The Government Contract Reference Book<sup>1</sup> defines cooperative purchasing as two or more governments purchasing under the same contract. The ABA Model Procurement Code for State and Local Governments definition is more expansive<sup>2</sup>; “Cooperative Purchasing means procurement conducted by, or on behalf of, one or more Public Procurement Units, as defined in this Code.” Under this definition, one could construe state central procurement programs, many of which date back nearly 100 years, as the first form of cooperative purchasing. In addition to the common conception of two or more governments sharing procurement contracts, cooperative purchasing may also include shared procurement programs and resources, including advice and assistance.

Although this paper will focus primarily on the cooperative use of procurement contracts, governments may benefit from other less common forms of cooperative procurement, such as sharing procurement officers and specification writers, delivering joint training programs, providing advice or assistance on technical evaluation committees, or providing independent administrative hearings for procurement disputes.

### Typical Basic Steps in Creating a Cooperative Procurement

- i. The cooperative is formed when one or more parties identify a common requirement suitable for cooperative purchase and sign a written agreement to cooperate.
- ii. Lead party solicits proposals and awards contract(s).
- iii. Contract is available for use.
- iv. Participating entities sign an agreement (NASPO/WSCA calls it a “participating addendum”) in the specific contract(s). This is necessary to get user’s statutory requirements included as well as for lead entity to administer efficiently.

Public sector purchasing cooperatives may be comprised of similar or varied governments with common requirements:

- State procurement cooperative serving multiple local governments;
- Consortium of governments sharing similar requirements;
- State and local government participating in Federal contracts through the E-Government Act or 1122 Program;
- Similar specific government programs (law enforcement or hospitals); and
- Governments located within defined geographic areas.

<sup>1</sup> Ralph C. Nash Jr., Steven L. Schooner, Karen R. O’Brien. Published 1998 by George Washington University

<sup>2</sup> American Bar Association, 2000, pg. 79

- Higher Education groups have also formed cooperatives such as the Midwest Higher Education Compact (MHEC), Western Interstate Commission for Higher Education (WICHE), New England Board of Higher Education (NEBHE) and the Southern Regional Education Board (SREB). There is also a New England group and a southern group.

Cooperative procurement contracts are usually based on the common requirements of multiple governments. Most early cooperative purchasing efforts involved bulk commodities with standard specifications, such as cleaning supplies, gasoline and fuel, or services such as the pick-up and disposal of hazardous waste or used oil. Today, more complicated requirements, including information technology services, software and consulting are often targeted for cooperative purchasing contracts.<sup>3</sup> Other examples of cooperative contracts include office supplies and furniture, digital copiers and printers, carpeting, computer hardware, industrial lab supplies, infant formula, pharmaceuticals, electronic defibrillators, hazardous incident response equipment, wireless radios and cell phones, paper, and fleet vehicles.

#### Types of Cooperative Purchasing<sup>4</sup>

##### True Cooperatives

Two or more organizations combine their requirements and solicit bids or offers for goods or services.

##### Piggyback Options

One or more organizations represent their requirements and include an option for other organizations to “ride” or “bridge” the contract as awarded.

##### Third Party Aggregators

An organization brings together multiple organizations to represent their requirements and manage the resulting contract or contractor.

#### Cooperative Purchasing Models

Common approaches to cooperative purchasing contracts include:

1. *Definite Quantity and Delivery* - There is a direct economic relation between risk and price; lower risk means lower price. Definite quantity solicitations and contracts identify all cooperative members and respective requirements. Definite delivery contracts also specify the delivery locations and schedule.

Advantages - Generally produces the lowest possible price because of the guaranteed demand.

Disadvantages - Governments are often unable to predict and commit to specific requirements and delivery schedule or agree on common contract requirements. Fulfilling commitments to contractors may also be a challenge.

2. *Indefinite Quantity and Delivery* - Governments may achieve economies of scale and reduce administrative costs by participating in an indefinite quantity/indefinite delivery cooperative purchasing contract. The participating members are identified and requirements are estimated

<sup>3</sup> The Western States Contracting Alliance (WSCA), for example, has recently released a cooperative procurement for strategic sourcing consulting, with the state of Washington being the lead entity.

<sup>4</sup> National Institute of Government Purchasing (NIGP) webinar “Incorporating Cooperative Purchasing into Your Agency” conducted by Cathy Muse, CPPO, Director, Department of Purchasing and Supply Management, County of Fairfax, Virginia

in the solicitation with no specific purchase commitment. Pricing is often a factor of the confidence of bidders in the estimates.

Advantages - Development of the solicitation may be easier because governments do not need to obtain definite quantity commitments from participating members. Although not as favorable as definite quantity contracts, pricing is still based on the economies of scale of multiple cooperative members. These contracts may also be more flexible for members, allowing for variations in requirements or negotiation of differing terms and conditions.

Disadvantages - Uncertainty usually results in higher prices. If bidders are not confident in the estimated requirements or government participation or if the contract permits wide variation, bidders will not offer their best prices.

**3. Piggyback Contracts** - Contracts issued by individual governmental entities that allow other jurisdictions to use the contract (i.e., to “piggyback” on the contract terms and prices) they established. The contracting jurisdiction must include piggyback language in the contract and the vendor must agree. Piggyback contracts represent the most immediate cooperative purchasing resource, especially for smaller communities. However, they can be a benefit for larger communities by saving administrative costs and by creating pressure for lower prices. Some entities do not have statutory authority to piggyback.

Advantages - Relatively easy to administer; makes a wide variety of contracts available to a wider variety of jurisdictions; reduces administrative costs; and can result in cost savings, especially for smaller governmental entities.

Disadvantages - Since participation and usage cannot be predicted for the solicitation, cost savings may be minimal. When an entity joins after the fact, contract users don't get the benefits and leverage of the full volume. Contractors may offer minimal discounts and benefit from windfall profits when participation and usage exceed estimates. Local vendors may view piggyback contracts as unfair, when they did not have an opportunity to compete for a piggyback contract that was competed in another community.

#### The GSA Schedules

The US Government's General Services Administration (GSA) maintains a large list of multiple award purchasing schedules. Contractors are selected for GSA Multiple Award Schedules through an open and continuous qualification process instead of competitive bids or proposals. GSA users seek competition from multiple GSA contractors at the point of sale by obtaining quotations. GSA requires most favored customer pricing, which provides state and local governments with a price advantage based on federal purchasing economies of scale. There is a surcharge associated with GSA purchases. It is called the Industry Funding Fee (IFF).

Section 211 of the E-Government Act of 2002 opened GSA Schedule 70 Contracts (Information Technology and Telecommunications Hardware, Software and Professional Services) for state and local government use ([www.gsa.gov](http://www.gsa.gov)). Likewise, the 1122 Program permits use of GSA contracts for state and local government law enforcement and security purchases. Neither acceptance nor use is automatic, and separate contracting arrangements between the state and the vendor are often required. GSA contracts are based on price ceilings and contractors will often offer further discounts for larger aggregated buys. Not all states permit the use of

Schedule 70; however, many states use the GSA pricing as benchmarks in their own negotiations with vendors. Some states cannot use GSA contracts and some choose not to even though they may have statutory authority to do so.

#### **What is the financing model for cooperative procurements?**

Developing and administering a cooperative procurement usually involves an added increment of time, staff and other resources for the lead state or entity. The lead entity may charge the vendor or vendors some type of administrative fee collected on all sales made from the contract to cover these extraordinary expenses. This will be negotiated in the final contract. Similarly, participating states may also require a fee from vendors on sales in their state, negotiated in the participating addenda that states create to the master contract. Such fees vary widely, from 1/20 of one percent to three or more percent. Note that higher fees can negatively impact the final pricing, reducing the benefit of the cooperative purchase.

#### **Authority**

Not all states or jurisdictions allow participation in cooperative purchasing, either as a user or as a lead. Other states restrict or regulate the scope of cooperatives.

NASPO's 2009 Survey of the States indicates that:

- 40 states have the authority to do cooperative purchasing with local governments within the state.
- 44 states have the authority to do cooperative purchasing with other states
- 37 states have the authority to do cooperative purchasing with the federal government
- 6 states have the authority to do cooperative purchasing with other countries
- 14 states have the authority to do cooperative purchasing with not for profit associations
- 1 state does not have the authority
- 44 states currently participate in multi-state contracts.

Parts B and C of Article 10 of the 2000 ABA Model Procurement Code state:<sup>5</sup>

#### **Part B - Cooperative Purchasing**

##### ***§10-201 Cooperative Purchasing Authorized***

- (1) Any Public Procurement Unit may either participate in, sponsor, conduct, or administer a Cooperative Purchasing agreement for the procurement of any supplies, services, or construction with one or more Public Procurement Units in accordance with an agreement entered into between the participants. Such Cooperative Purchasing may include, but is not limited to, joint or multi-party contracts between Public Procurement Units and open-ended Public Procurement Unit contracts that are made available to other Public Procurement Units.
- (2) All Cooperative Purchasing conducted under this Article shall be through contracts awarded through full and open competition, including use of source selection methods substantially equivalent to those specified in Article 3 (Source Selection and Contract Formation) of this Code.

##### ***§ 10-202 Sale, Acquisition, or Use of Supplies by a Public Procurement Unit***

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<sup>5</sup> The 2000 ABA Model Procurement Code for State and Local Governments, American Bar Association

Any Public Procurement Unit may sell to, acquire from, or use any supplies belonging to another Public Procurement Unit independent of the requirements of Article 3 (Source Selections and Contract Formations) and Article 8 (Supply Management) of this Code.

*§ 10-203 Cooperative Use of Supplies or Services.*

Any Public Procurement Unit may enter into an agreement, independent of the requirements of Article 3 (Source Selection and Contract Formation) and Article 8 (Supply Management) of this Code, with any other Public Procurement Unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

*Commentary:*

*Jurisdictions are increasingly joining together through cooperative purchasing arrangements to acquire common goods from single vendors. One practical effect of the success of such arrangements is that the number of public entities seeking to participate in a particular Cooperative Purchasing arrangement increases after the vendor is awarded a contract by the awarding Public Procurement Unit. The vendor may calculate its price on the basis of a specific or reasonable "guess" of the number of transactions and the volume of goods to be sold. To ensure fairness to vendors and to protect the viability of cooperative purchasing arrangements, awarding jurisdictions should give vendors the option to accept or reject purchase orders from purchasing entities not identified during the competition. Conversely, to maximize economies of scale, jurisdictions are encouraged to identify as many participants in a particular cooperative purchase on the outset.*

**Part C - Contract Controversies**

*§ 10-301 Contract Controversies.*

- (1) Under a Cooperative Purchasing agreement, controversies arising between an administering Public Procurement Unit and its bidders, offerors, or contractors shall be resolved between the ordering Public Procurement Unit and the supplying bidders, offerors, or contractors in accordance with [Article 9 (Legal and Contractual Remedies)] [the [administering] [ordering] Public Procurement Unit's existing procedures].

Statute language allowing participation in cooperatives varies from state to state. Some states do not allow participation in any cooperatives. Following is a list of the statutes that individual states use for cooperative purchasing:

[http://www.peppm.org/services/Cooperative\\_Purchasing\\_State\\_Statutes\\_v03.pdf](http://www.peppm.org/services/Cooperative_Purchasing_State_Statutes_v03.pdf)

Value

**How state and local governments save time and money using cooperative contracts**

- Cooperative purchasing contracts produce lower prices. By standardizing products and services and aggregating requirements, governments benefit from the combined economies of scale of multiple organizations. Cooperative contracts are especially advantageous for small governments because they benefit from the market share leveraged by larger government consumers.
- Cooperative purchasing contracts provide higher quality products and services. By using specialized specification writers, procurement professionals and technical evaluation committee members, governments are able to produce better contracts for higher

quality products and services. Again, smaller governments benefit from the combined resources of other larger government agencies.

- The ability to use/share procurement professionals from another entity allows for reallocation of internal resources.
- With one procurement process and one contract serving multiple governments, cooperative contracts reduce administrative costs because the preliminary work has been done. Administrative efforts and costs are spread across multiple governments.
- Cooperative procurement contracts are convenient. Instead of seeking quotes, bids or proposals, customers simply select products and services from the cooperative contract catalog, saving considerable time and effort.
- When contracted by a lead state or local government, cooperative procurement contract customers can be assured that the contract has been done in accordance with state's regulations.
- Cooperative procurement contracts allow governments to better utilize procurement resources for other contracts and tasks.
- Cooperative procurement can help realize supplier diversity initiatives.
- Ultimately, citizens benefit from cooperative procurement through lower total cost of government, better application of resources and more efficient government operations.

#### *Challenges encountered in using or establishing a cooperative contract*

Although there are many examples of successful government cooperative purchasing programs, there are several pitfalls and challenges.

- **Legal Compliance** - All governments operate under some form of procurement code intended to achieve best value for citizens, protect against fraud and abuse, ensure fairness, equity and transparency and maintain public trust. Although most procurement laws are similar, there are often subtle and sometimes large differences in government procurement codes. Some governments require strict compliance with its own procurement laws when using cooperative contracts awarded by other governments. Communication and active participation in the procurement process by cooperative members will help the cooperative achieve universal compliance.
- **Buy Local Laws** - Many jurisdictions have laws that favor or give preference to local suppliers. These laws may interfere with the ability of a government to develop and award a cooperative contract or may prevent governments from using a cooperative contract. NASPO has published numerous resolutions opposing local preference laws on the basis that they interfere with free trade and open competition and increase the cost of government.
- **Open Competition** - Many government procurement programs maintain lists of suppliers who register to compete for contracting opportunities and are required to post public advertisements for invitations for bids or proposals. Notifying local suppliers of the cooperative contract solicitation and advertising the solicitation in local publications will ensure that local vendors have an opportunity to compete for the cooperative contract.
- **Small Business Participation** - Some small businesses may be able to handle business for one state or local government but may not be able to handle the combined requirements of multiple governments. Encouraging local delivery and service networks and utilization of small business subcontractors will provide opportunities for small businesses to continue to serve the cooperative members.

- **“Cherry Picking”** - With multiple cooperative contracts for similar products and services, governments have the ability to avoid conducting the competitive process themselves and/or choose the cooperative with its preferred suppliers or brand names. The intent, if not the letter of most procurement laws, is fair and open competition. Also, customers may compare different contracts for the same line item and choose the cheapest from each respective contractor. This can pose a challenge to contractors when customers buy only the ‘bargain’ items in large quantities.
- **Battle of the Forms/Terms** - Although most are similar, governments use unique procurement contract terms and conditions. A cooperative contract awarded by one jurisdiction may not conform to the terms and conditions of another. There are several methods to address contractual differences, including development of standard terms and conditions for cooperative members, inclusion of all government contract variations in the solicitation and negotiation of participation agreements between the government and supplier. Differences in state requirements can be addressed in the participating addendum; as long as you are up front in the solicitation that participants may have their own terms and conditions addressed in it.
- **Pricing** - Although most cooperative contracts generate considerable cost savings for governments, not all cooperative contracts achieve best value.
  - Contractors may offer a higher price because many of the cooperative members are small or located in remote areas.
  - If estimates are inaccurate, price may be based on much lower than actual usage. Pricing is much more likely to be unfavorable in piggyback contracts because usage is difficult to estimate beforehand.
  - Contractor may price the contract high because of high administrative costs associated with the cooperative, including collection of cooperative fees.
- **Time and Resources** - It takes more effort to award a contract that serves multiple governments than it does for a contract that serves one government. In theory, cooperative contract time and resource investments are more than recovered by using cooperative contracts awarded by other jurisdictions. Time and resource requirements can also be reduced by using “volunteers” from other governments to assist with the procurement, draft specifications or participate in the evaluation process. Communication is the key to success. Thoughtful communication leads to vision; further communication turns vision into action. It is this action or contract that leads to savings in time, resources and expense. Good communication assures the contract will be beneficial to all parties.
- **“Piggybacking”** - “Piggybacking” does not always produce best value:
  - In some cases, entities may “piggyback” off of an existing cooperative but do not notify the lead state or complete a participating addendum resulting in undocumented activity and volume.
  - The cooperative procurement intent is not always clear in the solicitation. A solicitation clause that states, “other agencies may use this contract” does not clearly state cooperative intent and is not sufficient for a regional or national cooperative.
  - Contractors may market “piggyback” contracts as regional or national cooperative contracts to state and local governments.
  - Since “piggyback” contracts are not based on aggregated volume, governments do not benefit from true economies of scale.
  - Some governments may use “piggyback” contracts merely for convenience or to avoid competitive bidding laws.
  - Entity may not have statutory authority to piggyback.

- Fees - Many cooperative purchasing programs assess usage and access fees for cooperative contracts. Fees range from one time or annual enrollment fees to transaction fees ranging from less than 1% to 2% of the value of every purchase. These fees may be collected directly by the cooperative or through the contractor. Higher fees result in lower contract price savings.

### **Best Practices**

Using best practices and government sanctioned business processes are important. It is what sets a good cooperative procurement apart from the others. It is the adherence to these policies and guidelines that makes these state-led contracts easy to use. These best practices are suggested to help avoid the pitfalls common with cooperative purchasing contracts. This is not an exhaustive list of procurement best practices.

### **Before Issuing Solicitation**

- Designate a lead government to conduct the procurement, with qualified procurement and technical staff and commitment to perform the cooperative procurement.
- Require that cooperative members sign an agreement that includes the policies and procedures under which the cooperative will work.
- Invite cooperative members, including technical specialists to participate in the development of specifications and contract terms and conditions.
- Provide for delivery, service, maintenance and other value-added services provided by designated local suppliers.
- Utilize the competitive negotiation (RFP) process and best value or life cycle cost analysis tools (as state law allows).
- Survey cooperative members and research history on buying patterns and estimated requirements.
- Circulate draft solicitations among cooperative members and prospective contractors for comments and suggestions.

### **Issuing the Solicitation**

- Use bid lists from all prospective cooperative purchasing members when requesting offers.
- Advertise the procurement in all participating states in accordance with their prevailing laws.
- Designate one point of contact, preferably via e-mail for vendor inquiries.

### **Evaluating and Negotiating Offers**

- Invite participating cooperative members to participate in technical evaluations.
- Negotiate terms and conditions that conform to legal requirements of each participating state or permit negotiation of more specific terms and conditions by each participating community.
- Carefully evaluate the proposed contractor's ability to service all cooperative members.
- Contracts are based on free and open competition, not single source. However, sometimes a single award is the option.

### **Contract Award and Administration**

- Notify all participating members of contract award and provide electronic copies of the entire contract.

- Provide written guidelines for contract administration.
- Permit each state to administer contractor's performance and handle routine administration. Disputes relating to the purchase order should be handled by the cooperative members. Disputes relating to the contract should be handled by the lead governmental entity.
- Establish a contractor performance reporting system for participating members.
- Require that contractor provide periodic contract sales reports.
- Invite participating members to comment on proposed contract extensions.
- Negotiate deeper discounts if actual purchases exceed estimates.
- Provide plenty of time for replacement contracts.

#### Using Cooperative Contracts

- Review the cooperative contract for conformance with state or local procurement laws and best practices.
- Analyze the product or service specifications, price, terms and conditions and other factors to ensure that the cooperative contract produces best value.
- Contact the cooperative lead government to verify contract application and eligibility.
- Compare contracts if there are multiple contracts available for the required product or service.
- When buying large quantities, verify whether the contract permits negotiation of additional price concessions.
- If a purchase agreement is required, confer with legal counsel to determine whether the agreement is acceptable.

#### Conclusion

Cooperative purchasing is a very effective tool that procurement managers can use to obtain effective, best-value solutions for the state and the taxpayer. Aggregated volume creates significant price breaks, sometimes in the double-digit figures. Partnering with a lead entity can reduce time, administrative overhead, and other costs, while leveraging the experience and expertise of those with specialized knowledge in a sector.

Cooperative purchasing is not without its challenges, however. They include the need for a careful legal framework outlining the terms of the cooperation, and attention to compliance issues. Local legal and political barriers may need to be overcome, including concerns from small and minority/disadvantaged businesses and in-state vendors or resellers. Key procurement values such as competitive bidding should be maintained. Administrative fees and rebates to lead or participating states and/or to the cooperative itself, need to be reasonable.

Knowing and paying attention to the best practices and challenges will result in a contract that is beneficial for all participants through cost savings and a reduction in time to procure items by aggregating knowledge, spend and technology. Not only are savings achieved by combining requirements into cooperative contracts, but further cost savings are realized through a reduction in administrative expenses. Cooperative contracts also serve as a forum for the exchange and sharing of resources and technical information.

With state and local government budgets being stretched to the limit, it is essential that government leaders look for innovative ways to utilize taxpayer dollars efficiently and effectively, and to do more with less. Cooperative purchasing is a very logical and practical way to do this. By establishing solid cooperative purchasing processes and procedures,

maintaining clear channels of communication , and working together closely, state and local governments can create a “win-win” situation for taxpayers and suppliers.





GOVERNMENT OF GUÁHAN

DEPARTMENT OF PUBLIC HEALTH AND SOCIAL  
DIPATTAMENTON SALUT PUPBLEKO YAN SETBISI

To whom it may concern,

After signature of approving official, please call WIC Program (Rose Castro, 475-0299 or Marie Luarca, 475-0290) for further routing.

EDDIE BAZA CALVO  
GOVERNOR

RAY TENORIO  
LIEUTENANT GOVERNOR

JUL 27 2011

Thank You

*QSA*  
**COPY**

RECEIVED

2011 JUL 28 PM 2:45

GOVT OF GUAM  
G.S.A.

MEMORANDUM

To: Governor of Guam

Via: Attorney General, Office of the Attorney General  
Director, Bureau of Budget and Management Research  
Chief Procurement Officer, General Services Agency

From: Director, Department of Public Health and Social Services

Subject: Participating Addendum - Western States Contracting Alliance Breast Pumps Contract (WSCAWIC)

**Hafa Adai!** Attached for your review and approval are Participating Addendum Western States Contracting Alliance (WSCA) Breast Pumps Contract, Master Price Agreements with Medela, Inc. and Evenflo Company, Inc.

The Guam WIC Program serves about 300 breast feeding women per month and provides breast pumps to these women as needed. By entering into these agreements as a participating State Agency, the Guam WIC program will be able to provide breast pumps to all breast feeding clients in a timely manner, receive reduced pricing, and achieve adequate stock of breast feeding products, accessories and supplies.

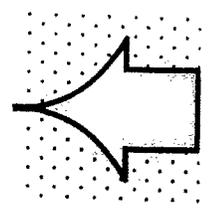
Furthermore, the cost of breastfeeding aids which directly support the initiation and continuation of breastfeeding is an allowable nutrition services and administration cost. WIC food funds may also be used for the purchase of breast pumps. These provisions are found in 7CFR246.14.

Should you have any questions or concerns, please direct them to Mr. Charles H. Morris, Public Health Nutrition Administrator at 475-0287, Mr. David S.N. Gumataotao, Program Coordinator IV at 475-0300 or myself at 735-7102.

Your favorable approval is greatly appreciated. **Dangkolo na Si' Yu'os Ma'ase.**  
**Thank You**

**RECEIVED**  
AUG 02 2011  
*10:09am JS*  
Bureau of Budget and  
Management Research

*[Signature]*  
JAMES W. GILLAN



Attachments



**PARTICIPATING ADDENDUM  
WESTERN STATES CONTRACTING ALLIANCE  
BREAST PUMPS (WSCA/WIC)**

Administered by the State of Washington (hereinafter "Lead State")

MASTER PRICE AGREEMENT

**MEDELA, Inc.**

Washington Contract Number: 01910

(hereinafter "Contractor")

And

*The Government of Guam, Department of Public Health and Social Services/Special  
Supplemental Food and Nutrition Program for Women Infants and Children (WIC)*

(hereinafter "Participating Entity")

Page 1 of 3

1. Scope: This addendum covers the WSCA Breast Pumps Contract lead by the State of Washington, for members of WSCA or NASPO, for use by Participating Entity's programs, including Women, Infants & Children Programs office.

2. Participation: Use of specific WSCA or NASPO cooperative contracts by other agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the 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 Entity Modifications or Additions to Master Price Agreement:

Item 8. of this agreement a contract number was not inserted. The following statement was inserted: "as assigned by Department of Administration and affixed on the signature page of this Agreement."

4. [Purposely left blank.]

5. Primary Contacts: The primary contact individuals for this participating addendum are as follows (or their named successors):

**Lead State Contract Administrator**

**Name:** Melissa Cox, Contracts Specialist

**Address:** Department of General Administration, Office of State Procurement  
210 11<sup>th</sup> Ave SW Rm 201

Olympia, WA 98504-1101

**Voice:** (360) 902.7439

**Fax:** (360) 586.2426

**E-mail:** [mcox@ga.wa.gov](mailto:mcox@ga.wa.gov)

**Contractor**

**Name:** Bonnie Voigt, Supervisor Government Contracts

**Address:** Medela, Inc., 1101 Corporate Drive, McHenry, Illinois 60050-7005

**Voice:** 815-578-2459

**Fax:** 815-759-2459

**E-mail:** [bonnie.voigt@medela.com](mailto:bonnie.voigt@medela.com)

**Participating Entity**

**Name:** Charles H. Morris, Public Health Nutrition Administrator

**PARTICIPATING ADDENDUM  
WESTERN STATES CONTRACTING ALLIANCE  
BREAST PUMPS (WSCA/WIC)**  
Administered by the State of Washington (hereinafter "Lead State")

MASTER PRICE AGREEMENT

**MEDELA, Inc.**

Washington Contract Number: 01910

(hereinafter "Contractor")

And

***The Government of Guam, Department of Public Health and Social Services/Special  
Supplemental Food and Nutrition Program for Women Infants and Children (WIC)***

(hereinafter "Participating Entity")

Page 2 of 3

**Address: Department of Public Health and Social Services/Guam WIC Program  
Building 15-6100 Mariner Avenue, Barrigada, Guam 96913-1601**

**Telephone: (671) 475-0287**

**Fax: (671) 477-7945**

**E-mail: charles.morris@dphss.guam.gov**

6. [Purposely left blank.]

7. Purchase Order Instructions:

All orders should contain the following (1) Mandatory Language "PO is subject to WSCA Contract #01910" (2) Your Name, Address, Contact, & Phone-Number (3) Purchase order amount, monthly payment (if appropriate), itemized list of items being purchased, & rates of the service being used

8. Price Agreement Number: All purchase orders issued by purchasing entities within the jurisdiction of this participating addendum shall include the Participating State contract number as assigned by Department of Administration and affixed on the signature page of this Agreement and the Lead State price agreement number: 01910.

This Participating Addendum and the Master Price Agreement number 01910 (administered by the State of Washington) 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, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

Purposely left blank.

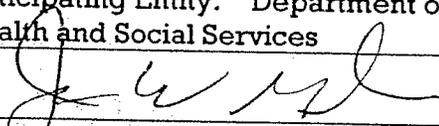
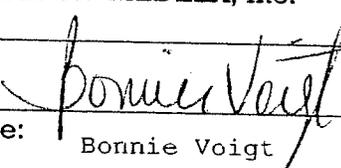
**PARTICIPATING ADDENDUM  
WESTERN STATES CONTRACTING ALLIANCE  
BREAST PUMPS (WSCA/WIC)**  
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And  
**The Government of Guam, Department of Public Health and Social Services/Special  
Supplemental Food and Nutrition Program for Women Infants and Children (WIC)**  
(hereinafter "Participating Entity")

Page 3 of 3

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

Participating Entity: Department of Public Health and Social Services	Contractor: MEDELA, Inc.
By: 	By: 
Name: JAMES W. GILLAN	Name: Bonnie Voigt
Title: Director	Title: Supervisor, Government Contracts
Date: 7-27-11	Date: July 15, 2011

**CERTIFIED FUNDS AVAILABLE:**  
(Agreement does not obligate funds)

  
**JANINE F. PAESTE**  
Administrative Services Officer  
Certifying Officer, DPH & SS  
Date: JUL 28 2011

**APPROVED:**  
SIGNATURE OF CHIEF PROCUREMENT  
OFFICER NOT REQUIRED.

**CLAUDIA S. AGFALLE**  
Chief Procurement Officer  
General Services Agency  
Date: \_\_\_\_\_

**APPROVED: CLEARED PER  
BBMR'S REVIEW**

  
**JOHN A. RIOS, Acting**  
Director, Bureau of Budget and  
Management Research  
Date: 8/3/11

**APPROVED AS TO LEGALITY  
AND FORM:**

**LEONARDO M. RAPADAS**  
Attorney General of Guam  
Office of the Attorney General  
Date: \_\_\_\_\_

**APPROVED:**

**EDDIE BAZA CALVO**  
Governor of Guam  
Date: \_\_\_\_\_

**RECEIVED**  
AUG 11 2011  
09:07 AM  
Office of the Attorney General of Guam  
Civil/Solicitor Division



**PARTICIPATING ADDENDUM  
WESTERN STATES CONTRACTING ALLIANCE  
BREAST PUMPS (WSCA/WIC)**

11-0765

Administered by the State of Washington (hereinafter "Lead State")

**MASTER PRICE AGREEMENT  
EVENFLO Company, Inc.**

Washington Contract Number: 01910  
(hereinafter "Contractor")

And

**The Government of Guam, Department of Public Health and Social Services/Special  
Supplemental Food and Nutrition Program for Women Infants and Children (WIC)**  
(hereinafter "Participating Entity")

Page 1 of 3

1. Scope: This addendum covers the WSCA Breast Pumps Contract lead by the State of Washington, for members of WSCA or NASPO, for use by Participating Entity's programs, including Women, Infants & Children Programs office.

2. Participation: Use of specific WSCA or NASPO cooperative contracts by other agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the 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.

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5. Primary Contacts: The primary contact individuals for this participating addendum are as follows (or their named successors):

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**Name:** Melissa Cox, Contracts Specialist  
**Address:** Department of General Administration, Office of State Procurement  
210 11<sup>th</sup> Ave SW Rm 201  
Olympia, WA 98504-1101  
**Voice:** (360) 902.7439  
**Fax:** (360) 586.2426  
**E-mail:** [mcox@ga.wa.gov](mailto:mcox@ga.wa.gov)

**Contractor**

**Name:** Susan Vogtsberger  
**Address:** Evenflo, Inc., 475 Half Day Road, Suite 200, Lincolnshire, IL 60069  
**Voice:** (847) 964-2628  
**Fax:** 847-793-0169  
**E-mail:** [Susan.Vogtsberger@ameda.com](mailto:Susan.Vogtsberger@ameda.com)

**PARTICIPATING ADDENDUM  
WESTERN STATES CONTRACTING ALLIANCE  
BREAST PUMPS (WSCA/WIC)**

**Administered by the State of Washington (hereinafter "Lead State")**

**MASTER PRICE AGREEMENT  
EVENFLO Company, Inc.**

Washington Contract Number: 01910  
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And

***The Government of Guam, Department of Public Health and Social Services/Special  
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Page 2 of 3

**Participating Entity**

**Name:** Charles H. Morris, Public Health Nutrition Administrator  
**Address:** Department of Public Health and Social Services/Guam WIC Program  
Building 15-6100 Mariner Avenue, Barrigada, Guam 96913-1601  
**Telephone:** (671) 475-0287  
**Fax:** (671) 477-7945  
**E-mail:** charles.morris@dphss.guam.gov

6. [Purposely left blank.]

7. Purchase Order Instructions:

All orders should contain the following (1) Mandatory Language "PO is subject to WSCA Contract #01910" (2) Your Name, Address, Contact, & Phone-Number (3) Purchase order amount, monthly payment (if appropriate), itemized list of items being purchased, & rates of the service being used

8. Price Agreement Number: All purchase orders issued by purchasing entities within the jurisdiction of this participating addendum shall include the Participating State contract number as assigned by Department of Administration and affixed on the signature page of this Agreement and the Lead State price agreement number: 01910.

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11-07351

**PARTICIPATING ADDENDUM  
WESTERN STATES CONTRACTING ALLIANCE  
BREAST PUMPS (WSCA/WIC)**

Administered by the State of Washington (hereinafter "Lead State")

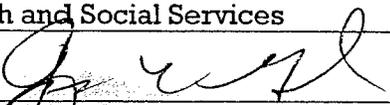
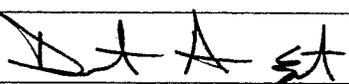
**MASTER PRICE AGREEMENT  
EVENFLO Company, Inc.**

Washington Contract Number: 01910  
(hereinafter "Contractor")

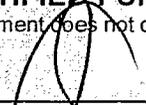
And

**The Government of Guam, Department of Public Health and Social Services/Special  
Supplemental Food and Nutrition Program for Women Infants and Children (WIC)**  
(hereinafter "Participating Entity")

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

Participating Entity: Department of Public Health and Social Services	Contractor: EVENFLO Company, Inc.
By: 	By: 
Name: JAMES W. GILLAN	Name: DUSTIN EPSTEIN
Title: Director	Title: VICE PRESIDENT
Date: 7-27-11	Date: 7/7/11

**CERTIFIED FUNDS AVAILABLE:**  
(Agreement does not obligate funds)

  
**JANINE F. PAESTE**  
Administrative Services Officer  
Certifying Officer, DPH & SS  
Date: Jul 26 2011

**APPROVED:**

*SIGNATURE OF CHIEF PROCUREMENT OFFICER NOT REQUIRED.*

**CLAUDIA S. ACFALLE**  
Chief Procurement Officer  
General Services Agency  
Date: \_\_\_\_\_

 **APPROVED:**

  
**JOHN A. RIOS, Acting**  
Director, Bureau of Budget and  
Management Research  
Date: \_\_\_\_\_

**APPROVED AS TO LEGALITY  
AND FORM:**

**LEONARDO M. RAPADAS**  
Attorney General of Guam  
Office of the Attorney General  
Date: \_\_\_\_\_

**APPROVED:**

**EDDIE BAZA CALVO**  
Governor of Guam  
Date: \_\_\_\_\_

**RECEIVED**  
AUG 11 2011  
09:07 AM  
Office of the Attorney General of Guam  
Civil/Solicitor Division



**General Administration**  
STATE OF WASHINGTON

**OFFICE OF STATE PROCUREMENT**

Rm. 201 General Administration Building, P.O. Box 41017 • Olympia, Washington 98504-1017 • (360) 902-7400  
<http://www.ga.wa.gov>

**Contract No. 01910 (WSCA Contract)**

**A Multi-State Contract for:  
Breast Pumps and Related Accessories**

<b>WSCA Pricing and Ordering Information</b>	
<b>Contract Number</b>	01910 (replaces 10305)
<b>Commodity Code</b>	6515
<b>Award Date</b>	December 15, 2010
<b>Effective Date</b>	January 18, 2011
<b>Contract Term</b>	Maximum Six (6) Years or January 17, 2017
<b>Current Term</b>	January 18, 2011 through January 17, 2013
<b>Term Worth</b>	\$ 15,000,000 (Initial two years)
<b>Scope and Purpose</b>	<p>The purpose of this Contract is to facilitate the as-needed purchase of Manual and Electric Breast Pumps, Double Pumping Kits, and related accessories for participating members of the Western States Contracting Alliance (WSCA). The balance of the 50 states, the District of Columbia, US Territories and other public entities may also use WSCA contracts.</p> <p>Specific to the State of Washington, all Washington Purchasing Cooperative members are eligible to use this Contract. See Section 1.4 <i>Participating Entities</i> for more specific information regarding eligibility requirements for Contract utilization. This Contract was bid under the statutory authority of <u>RCW 43.19</u> for the purchase of goods and services as stated herein.</p>

Contractors	<p>This Contract is awarded to three (3) vendors:</p> <p>Medela, Inc.  Evenflo, Inc. (Ameda)  Hygeia II Medical Group, Inc.</p>		
Contract Restrictions	<p>Washington State Purchasing Cooperative Members are restricted to using <u>Medela, Inc.</u> for breast pumps and related accessories under this Contract. Please contact the Contract Administrator for questions related to this restriction.</p>		
WSCA Participating Addendum	<p>Additional States and US Territories interested in utilizing this contract must sign a Participating Addendum prior to initiating a purchase. Participating Addendums may be signed with one or more vendors awarded contracts under IFB No. 01910. Please contact the <u>WSCA Development Team</u> for information regarding the process for executing a Participating Addendum. Model Participating Addendums are provided as an imbedded file below:</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div data-bbox="440 905 651 1037" style="border: 1px solid black; padding: 5px; text-align: center;">   W3-Breast Pumps  11-17 Medela Model F </div> <div data-bbox="732 905 943 1037" style="border: 1px solid black; padding: 5px; text-align: center;">   W3-Breast Pumps  11-17 Hygeia Model F </div> <div data-bbox="992 905 1203 1037" style="border: 1px solid black; padding: 5px; text-align: center;">   W3-Breast Pumps  11-17 Evenflo Model F </div> </div>		
Contract Administrator	<p><b>Primary:</b> Melissa Cox (360) 902-7439 <a href="mailto:melissa.cox@ga.wa.gov">melissa.cox@ga.wa.gov</a>  <b>Alternate:</b> GA Customer Service (360) 902-7400 <a href="mailto:csmail@ga.wa.gov">csmail@ga.wa.gov</a>  <b>WA State WIC Contact:</b> Gwen Marshall (360) 236-3654  <a href="mailto:gwendelyn.marshall@doh.wa.gov">gwendelyn.marshall@doh.wa.gov</a></p>		
Participation	MBE 0%	WBE 0%	Other 0%
Contract Updates	<ul style="list-style-type: none"> <li>• 1/12/2011 Updated Evenflo/Ameda participating addendum to reflect correct company name Evenflo Company, Inc.</li> <li>• 1/12/2011 Changed Ameda's order placement email address to <a href="mailto:wic@ameda.com">wic@ameda.com</a></li> </ul>		
<b>Contractor Information</b>			
<b>Medela, Inc.</b>			

Last update 1-12-2011

<b>Order Placement</b>	<b>Send to:</b> Medela, inc. Attn: Bonnie Voigt 1101 Corporate Drive McHenry, IL 60050-7005	<b>Contact:</b> Bonnie Voigt <b>Title:</b> Supervisor, Government Contracts <b>Phone:</b> (815) 578-2459 <b>Fax:</b> (815) 759-2459 <b>Email:</b> <a href="mailto:bonnie.voigt@medela.com">bonnie.voigt@medela.com</a>
<b>Website</b>	<a href="http://www.medela.com">www.medela.com</a>	
<b>Contract Pricing</b>	<u>Medela Pricing</u>	
<b>Shipping</b>	FOB Destination All orders delivered within 30 days of order placement Alaska- add 8% Hawaii- add 8% US Territories- no additional charge	
<b>Purchase Card Acceptance</b>	Visa, Master Card, American Express, Discover	
<b>Contract Administration</b>	Bonnie Voigt 1101 Corporate Drive McHenry, IL 60050-7005 (815) 578-2459 (815) 759-2459 <a href="mailto:bonnie.voigt@medela.com">bonnie.voigt@medela.com</a>	
<b>Payment Information</b>	<b>Send to:</b> Medela, Inc. 38789 Eagle Way Chicago, IL 60678-1387	Federal ID Number: 36-3098932 WEBS Supplier ID: W4274 WA UBI Number: 601-050-834
<b>Repairs</b>	<b>Send to:</b> Medela, Inc. 1101 Corporate Drive McHenry, IL 60050-7005	<b>Contact:</b> Customer Service <b>Phone:</b> 800-435-8316 <b>Fax:</b> 800-995-7867
<b>Pump Cleanings</b>	Contractor is required to provide a minimum of 100 free pump cleanings (due to insect infestation) annually to each participating state. Additional cleanings will be charged a fee of \$60 per pump.	
<b>Evenflo (Ameda)</b>		

<b>Order Placement</b>	<b>Send to:</b> Ameda Customer Service Attn: Elsira Depaz 475 Half Day Road, Suite 200 Lincolnshire, IL 60069	<b>Or via the following methods:</b> <b>Phone:</b> (877) 99-AMEDA <b>Fax:</b> (800) 989-3859 <b>Email:</b> <a href="mailto:wic@ameda.com">wic@ameda.com</a>
<b>WIC Sales and Customer Service Contact</b>	<b>WIC Customer Service Representative</b> Elsira Depaz Phone: (877)-992-6332 Fax: (847)-793-0169 <a href="mailto:Elsira.depaz@ameda.com">Elsira.depaz@ameda.com</a>	<b>WIC National Accounts Manager</b> Kevin Minchk Phone: (801)-390-0842 Fax: (888) 656-2539 <a href="mailto:Kevin.minchk@ameda.com">Kevin.minchk@ameda.com</a>
<b>Regional Sales Representatives</b>	<b>Contact Information for Ameda regional sales representative is imbedded in the file below:</b>   Ameda Regional Sales Reps 1-05-11.d	
<b>Contract Administration</b>	Susan Vogtsberger 475 Half Day Road, Suite 200 Lincolnshire, IL 60069 <a href="mailto:susan.vogtsberger@ameda.com">susan.vogtsberger@ameda.com</a> Phone: 847-964-2628 Fax: 847-793-0169	
<b>Website</b>	<a href="http://www.ameda.com">www.ameda.com</a>	
<b>Contract Pricing</b>	<a href="#">Ameda Pricelist</a>	
<b>Shipping</b>	FOB Destination All orders delivered within 30 days of order placement Alaska- no additional charge Hawaii- no additional charge US Territories- no additional charge	
<b>Purchase Card Acceptance</b>	Visa and Master Card	
<b>Payment Information</b>	National City Bank PO Box 73658 Cleveland, OH 44193	Federal ID Number: 31-1360477 WEBS Supplier ID: W3105 WA UBI Number: 602 594 461

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	<b>Billing Contact:</b> Teresa Miley 225 Byers Road Miamisburg, OH 45342  Phone: (937) 415-3164	
<b>Repairs</b>	Medical Specialty Distributor 1549 Hunter Road Hanover Park, IL 60133	Contact: Customer Service Phone: 800-947-1277
<b>Pump Cleanings</b>	Contractor is required to provide a minimum of 100 free pump cleanings (due to insect infestation) annually to each participating state. Additional cleanings shall be charged a fee of \$ 90.00 per pump.	
<b>Hygeia II Medical Group</b>		
<b>Order Placement</b>	<b>Send to:</b> Hygeia Customer Care 1370 Decision Street, Suite C Vista, CA 92081	<b>Or via the following methods:</b> <b>Phone:</b> (760) 597-8811 <b>Fax:</b> (760) 597-8848 <b>Email:</b> <a href="mailto:Sales@hygeiababy.com">Sales@hygeiababy.com</a>
<b>Regional Sales Representatives</b>	<b>Contact Information for Hygeia regional sales representative is imbedded in the file below:</b>  <div style="text-align: center;">   Hygeia Regional  Sales Representative </div>	
<b>Website</b>	<a href="http://www.hygeiababy.com">www.hygeiababy.com</a>	
<b>Contract Pricing</b>	<a href="#">Hygeia Pricelist</a>	
<b>Shipping</b>	FOB Destination All orders delivered within 30 days of order placement Alaska- 20% Hawaii- 20% US Territories- 150%	
<b>Purchase Card Acceptance</b>	Visa, Master Card, American Express, Discover	
<b>Contract</b>	Richard Weston	

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<b>Administration</b>	1370 Decision Street, Suite C Vista, CA 92081 Phone: (760) 597-8811 Fax: (760) 597-8848 <a href="mailto:richard.weston@hygeiainc.com">richard.weston@hygeiainc.com</a>	
<b>Payment Information</b>	<b>Send Payment To:</b> Hygeia II Medical Group, Inc. 1370 Decision Street, Suite C Vista, CA 92081	Federal ID Number: 26-0693691 WEBS Supplier ID: W24070 WA UBI Number: 603 063 749
<b>Repairs</b>	Hygeia Customer Service Hygeia II Medical Group, Inc. 1370 Decision Street, Suite C Vista, CA	Contact: Hygeia Customer Service Phone: (760) 597-8811 Fax: (760) 597-8848 Email: <a href="mailto:sales@hygeiababy.com">sales@hygeiababy.com</a>
<b>Pump Cleanings</b>	Contractor is required to provide a minimum of 100 free pump cleanings (due to insect infestation) annually to each participating state. Additional cleanings shall be charged a fee of \$15.00 per pump.	

## Medela Price List (Effective January 18, 2011)

Item Description	Model Name	Model Number	Pack Size (min. order quantity)	Each Price	Case Price
Personal-Use Electric Double Breast Pump	WIC Personal Double Pump (One-Phase) *See note at end of price sheet	57023W	3 per case	\$ 80.00 (sold by case only)	\$ 240.00
Personal-Use Electric Double Breast Pump	WIC Personal Double Pump Advanced (Two-Phase)	57018W	3 per case	\$ 86.00 (sold by case only)	\$ 258.00
Multi-User Electric Double Breast Pump	Lactina™ Select	016SC01	1 per case	\$ 299.00	\$ 299.00
Reconditioned Multi-User Electric Double Breast Pump	Reconditioned Lactina™ Select (includes a one year warranty)	016SCW01	1 per case	\$ 199.00	\$ 199.00
Multi-User Electric Double Breast Pump (two phase)	Symphony™ Breast Pump (Two-Phase)	0240108	1 per case	\$ 902.45	\$ 902.45
Manual Pump (two-handed)	WIC Manual with piston cylinder	6107293W	20 per case (sold by case only)	\$ 7.95	\$ 159.00
Manual Pump (one-handed)	WIC Harmony Manual One-Handed Pump	67161W2	20 per case (sold by case only)	\$ 15.00	\$ 300.00
Pump Cleanings	Contract Allows for 100 free cleanings annually to each participating state due to insect infestations		1 per pump (after first 100)	\$ 60.00	N/A
<b>Accessories</b>					
Kit for Lactina™ Multi-User Double Breast Pump	Lactina™ Double Pumping System	6107170W	20 per case (sold by case only)	\$ 15.00	\$ 300.00
Kit for Symphony Multi-User Double Breast Pump	Symphony™ Double Pumping System	67099W	20 per case (sold by case only)	\$ 22.00	\$ 440.00
Kit for Use with Symphony™ or Lactina™	Double Pumping System compatible with Symphony™ or Lactina™	67116W	20 per case (sold by case only)	\$ 22.00	\$ 440.00
Large Specialty Flanges	Personal Fit Breast Shield (30 to 31 mm)	87079	12 per case	-----	\$ 24.00

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<b>Extra Large Specialty Flanges</b>	Personal Fit Breast Shield (36 mm)	87094	12 per case	-----	\$ 36.24
<b>Soft/Flexible Specialty Flanges</b>	SoftFit Breast Shield	87078	12 per case	-----	\$ 28.56
<b>Battery Pack (Personal-Use)</b>	Battery Pack for Personal-Use Pump	67553	1 per case	\$ 9.00	N/A
<b>Vehicle Lighter Adapter Personal-Use (one phase)</b>	Vehicle Lighter Adapter for Personal-Use Pump (one phase)	67153	6 per case	-----	\$ 55.80
<b>Vehicle Lighter Adapter Personal-Use (two phase)</b>	Vehicle Lighter Adapter for Personal-Use Pump (two phase)	67174	6 per case	-----	\$ 55.80
<b>Vehicle Lighter Adapter (Multi-User)</b>	Vehicle Lighter Adapter for Multi-User Pump	67153	6 per case	-----	\$ 55.80
<b>Milk Collection Storage Bags</b>	Milk Collection Storage Bags	87034	12 boxes per case (50 bags/box)	-----	\$ 111.12
<b>Bra Pads- Washable</b>	Washable Bra Pads	89972	6 packages per case (4 pads/package)	\$ 3.09	\$ 18.54
<b>Nipple Shields- Contact</b>	24 mm	67203	6 per case	-----	\$ 23.40
	20 mm	67218	6 per case	-----	\$ 23.40
	16 mm	67251	6 per case	-----	\$ 23.40
<b>Nipple Shields- Regular</b>	24 mm	89902	6 per case	-----	\$ 23.40
	20 mm	89907	6 per case	-----	\$ 23.40
	16 mm	89905	6 per case	-----	\$ 23.40
<b>Sleep Bra</b>	Small	67701	1 per case	\$ 9.03	-----
	Medium	67702	1 per case	\$ 9.03	-----
	Large	67703	1 per case	\$ 9.03	-----
	X-Large	67704	1 per case	\$ 9.03	-----
<b>Micro Steam Bags</b>	Micro Steam Bags	87024	12 boxes per case (5 bags per box)	\$ 2.47	\$ 29.64
<b>Infant Scale</b>	(accurate within two grams)	0407020	1 each	\$ 1035.00	\$ 1035.00
<b>Vacuum Gauge</b>		1977005	1 each	\$ 28.49	\$ 28.49
<b>Storage Collection Bottle and Cap</b>	150 ml	6100050-100	100 per case	-----	\$ 64.60
<b>Insulated Carrying Tote for Milk Storage</b>		37002	10 per case	\$ 19.00	\$ 190.00
<b>Easy Expressions Halter</b>	Hands-Free Wearable Garment (XS,S,M,L,XL)	67900-67905	1 per case	\$ 13.00	-----

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Shipping					
Continental U.S.A	No charge				
Alaska	8%				
Hawaii	8%				
US Territories	No charge				

\*Please note that the WIC One Phase Personal-Use Pump (item # 57023W) will not be available until the 4<sup>th</sup> quarter of 2011. In the interim, Medela will ship the Two-Phase Personal-Pump (item # 57018W) at the One-Phase Pump price of \$ 80.00.

## Ameda Breastfeeding Products Price List (Effective January 18, 2011)

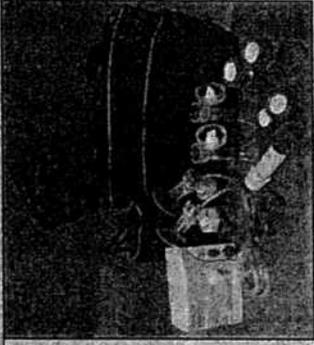
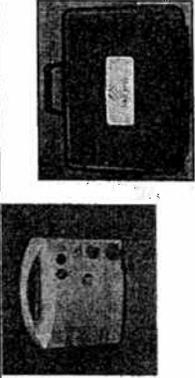
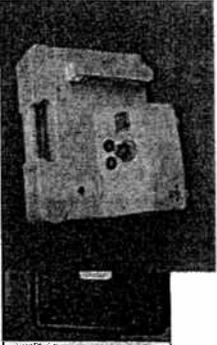
Model Number	Model Name	Item Description	Sales Unit Of Measure	Number of Units per Sales Unit Of Measure	Price
17084	Ameda Purely Yours®	Personal-Use Electric Double Breast Pump	Each	1	\$ 81.99
17005	Ameda Elite™	Multi-User Electric Double Breast Pump	Each	1	\$ 305.00
17003	Reconditioned Ameda Elite™	Reconditioned Multi-User Electric Double Breast Pump	Each	1	\$ 199.00
17803	Ameda Platinum™	Multi-User Electric Double Breast Pump	Each	1	\$ 1,375.00
17194	One-Hand Manual Pump w/ CustomFit™ Flanges	Manual Pump (One-Hand)	Each	1 ***Must order in increments of 20 Eaches***	\$ 12.25
17161	One-Hand, Sterile	Manual Pump, Sterile (one-hand)	Each	1	\$ 15.50
624831	Special Cleaning	<b>Pump Cleanings</b> Ameda offers pump cleanings due to insect infestations for multi-user pumps. * A total of 150 pump cleanings will be provided at no charge, after which point the price will be \$90.00 (for both in warranty and out of warranty pumps).	Each	1	*\$ 90.00
17186	Ameda HygieniKit®	<b>Kit for Elite™ Multi-User Double Breast Pump</b>	Each	1 ***Must order in increments of 20 Eaches***	\$ 16.50
17148P	CustomFit Breast Flanges	<b>Large Specialty Flanges</b> (Med/Lg) (30.5mm Breast Flange/28.5mm Insert)	Case	1 6 boxes/ case (Each box contains 2 sets)	\$ 23.95
17358	CustomFit Breast Flanges	<b>Extra Large Specialty Flanges</b> (Med/Lg) (36.0mm Breast Flange/32.5.5mm Insert)	Case	1 6 boxes/ case (Each box contains 2 sets)	\$ 23.95
N/A	N/A	<b>Battery Pack (Personal-Use)</b> * Not Applicable- Ameda technology utilizes an internal battery system	N/A	N/A	N/A
17079	Vehicle Lighter Adapter for Personal-Use Pump	<b>Vehicle Lighter Adapter (Personal-Use)</b>	Each	1	\$ 9.27
N/A	Not Available	<b>Vehicle Lighter Adapter (Multi-</b>	N/A	N/A	N/A

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		User)			
17242	Store and Pour™ Milk Collection Storage Bags	Milk Collection Storage Bags	Each	1 (20 bags & 2 Adapters/box)	\$ 6.75
17221	Reusable Contoured Breast Pads	Bra Pads- Washable	Each	1 (6 pads/ box)	\$ 7.85
N/A	Not Available	Nipple Shields- Contact	N/A	N/A	N/A
17216	Nipple Shield	24mm Nipple Shield	Each	1	\$ 3.55
17261	ComfortGel™ Extended Use Hydrogel Pads (Sterile)	Hydrogel Pads	Case	1 (12 pkg/case) 1 pair/pkg	\$93.15
17264	ComfortGel Extended Use Hydrogel Pads (Sterile)	Hydrogel Pads	Case	1 (50 pkg/case) 1 pair/pkg	\$350.00
17227	NoShow Premium™ Disposable Nursing Pads	Disposable Nursing Pads	Each	1 (30/box) 15 pairs	\$3.94
17228	NoShow Premium™ Disposable Nursing Pads	Disposable Nursing Pads	Each	1 (50/box) 25 pairs	\$5.49
17243	Store 'N Pour™ Refill Pack	Refill Pack Breast Milk Storage Bags	Each	1 (40 bags)	\$ 11.82
17244	Breast Milk Storage Bottles	Breast Milk Storage Bottles	Each	1 (4 bottles/box)	\$4.90
17170	Breast Pumping Accessory Kit	<b>Breast Feeding Accessory Kit</b> (Contains 20 Store 'N Pour™ Milk Collection Storage Bags with 2 Flange Adapters, 10 NoShow Premium™ Disposable Nursing Pads, 4 Breast Milk Storage Bottles, Breast Milk Storage Guidelines, Breastfeeding Reference Guide).	Each	1	\$ 11.59
17146	Breast Pump Valves	Breast Pump Valves	Each	(1 pair/pkg)	\$ 3.10
17147	Silicone Diaphragms	Silicone Diaphragms	Each	(1 pair/pkg)	\$ 3.10
17212	Dual Pack Flexishield™ Areola Stimulator	Flexishield Areola Stimulators	Each	(1pair/pkg)	\$ 9.20
	Shipping	<b>Continental U.S.A</b> Shipping F.O.B. Destination			No charge
	Shipping	<b>Alaska</b> Shipping F.O.B. Destination			No charge
	Shipping	<b>Hawaii</b> Shipping F.O.B. Destination			No charge
	Shipping	<b>US Territories</b> Shipping F.O.B. Destination			No charge

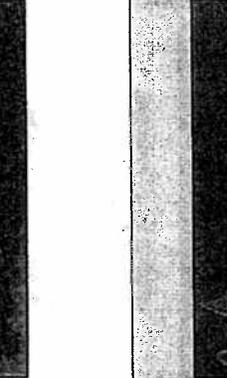
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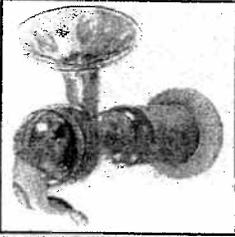
## Hygeia II Medical Group Price List (Effective 1-18-2011)

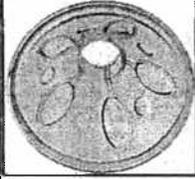
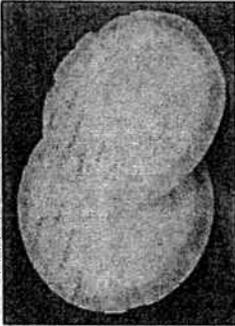
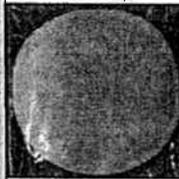
Item Description	Order/ Stock #	Model Name	Item Picture	Item Contents	Pack Size	Unit Price	Total Price
<b>Breastpumps</b>							
Personal-Use Electric Double Breastpump	10.0112	EnRiche™ Q WSCA		(1) EnRiche™ Q Breastpump, (1) Black Deluxe Tote Set, (1) EnJoye™/EnRiche™ Personal Accessory Set, (1) Power Supply	2	\$92.00	\$184.00
Personal-Use Electric Double Breastpump	10.0104	EPP EnRiche™-QR Remanufactured pump (EPP-Environmentally Preferred Product) *See attached EPP document for program details		(1) Remanufactured EnRiche™-QR Breastpump, (1) Black Deluxe Tote Set, (1) EnJoye™/EnRiche™ Personal Accessory Set, (1) Power Supply	1	\$67.00	\$67.00
Multi-User Electric Double Breastpump	10.0111	EnJoye™-EPS-WSCA w/Black Carry Case (Personal Accessory Set sold separately)		(1) EnJoye™-EPS Breastpump, (1) Power Supply, (1) Black Carry Case	1	\$191.00	\$191.00
Multi-User Electric Double Breastpump	10.0011	EnDeare™-Internal NiMH Rechargeable Battery w/Black Carry Case-WSCA (Personal		(1) EnDeare™ Electric Breastpump with Internal NiMH Rechargeable Battery, (1) Black Hard	1	\$434.85	\$434.85

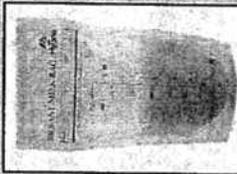
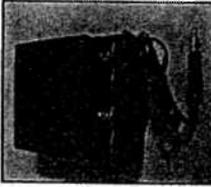
Item Description	Order/ Stock #	Model Name	Item Picture	Item Contents	Pack Size	Unit Price	Total Price
Personal-Use Electric Double Breastpump	10.0110	EnDeare™ WSCA w/Black Carry Case (Personal Accessory Set sold separately)		(1) EnDeare™ Electric Breastpump (without Internal NiMH Rechargeable Battery, sold separately), (1) Black Hard Sided Carry Case	1	\$279.00	\$279.00
Personal-Use Electric Double Breastpump	10.0130	EnJoye™ -LBI (w/Internal lithium Ion battery) - Black Deluxe Tote and Personal Accessory Set		(1) EnJoye™ -LBI Breastpump, (1) Power Supply, (1) Black Deluxe Tote Set with Changing Pad & Mother's Milk Storage Cooler Bag with Ice Pack, (1) Personal Accessory Set	2	\$179.00	\$358.00
Personal-Use Electric Double Breastpump	20.0029	Remanufactured EnJoye™-EPS Breastpump - Multi-User (Pump ONLY)		(1) Remanufactured EnJoye™-EPS Breastpump (Power Source not included)	1	\$101.85	\$101.85

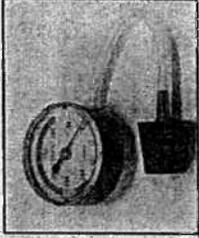
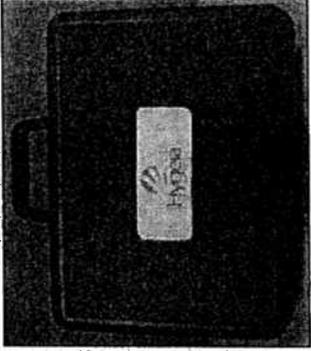
Accessories

<p><b>Kit for Multi-User Electric Double Breastpumps</b></p>	<p>10.0108</p>	<p>EnDeare™-Multi-User Personal Accessory Set-WSCA (works with many competitors breastpumps)</p>		<p>(2) Medium Flanges, (2) Large Flanges, (2) 40" Tubing, (4) 4 oz. Mother's Milk Storage Containers, (4) Duckbill Valves, (4) Rings, (2) Narrow-Mouth Container Adapters, (4) Ring Covers, (1) Piston with Shoulder</p>	<p>20</p>	<p>\$17.90</p>	<p>\$358.00</p>
<p><b>Kit for Multi-User Electric Double Breastpumps</b></p>	<p>10.0102</p>	<p>Enjoye™/EnRiche™ Personal Accessory Set WSCA</p>		<p>(2) Medium Flanges, (2) Large Flanges, (2) 40" Tubing, (4) 4 oz. Mother's Milk Storage Containers, (4) Duckbill Valves, (4) Rings, (2) Narrow-Mouth Container Adapters, (4) Ring Covers, (1) Bacteriostatic Pump Filter, (1) Piston</p>	<p>20</p>	<p>\$17.90</p>	<p>\$358.00</p>
<p><b>Item Description</b></p>	<p><b>Order/ Stock #</b></p>	<p><b>Model Name</b></p>	<p><b>Item Picture</b></p>	<p><b>Item Contents</b></p>	<p><b>Pack Size</b></p>	<p><b>Unit Price</b></p>	<p><b>Total Price</b></p>
<p><b>Manual Breastpump</b></p>	<p>10.0121</p>	<p>Hygeia™ Manual Breastpump WSCA</p>		<p>(1) Medium Flange, (1) Large Flange, (1) 4 oz. Mother's Milk Storage Container, (1) Ring, (2) Duckbill Valves, (1) Piston, (1) Ring Cover</p>	<p>20</p>	<p>\$9.00</p>	<p>\$180.00</p>

Manual Breastpump	10.0106	EnHande Manual Breastpump		(1) 150 ml Bottle, (1) Bottle Cover, (1) Nipple, (1) Cap, (1) Disk, (1) Handle, (1) Flange Assembly, (1) Bottle Holder/Flange Cover, (1) Comfort Massage Insert, (1) Valve	20	\$16.00	\$320.00
Medium Specialty Flanges (27 to 29 mm)	10.0116	Pumpin' Pal Medium		(2) Medium Pumpin' Pal Specialty Flanges	10	\$5.99	\$59.90
Large Specialty Flanges (30 to 31 mm)	10.0117	Pumpin' Pal Large		(2) Large Pumpin' Pal Specialty Flanges	10	\$5.99	\$59.90
Large Specialty Flanges (30 to 31 mm)	10.0125	Hygeia™ Extra Large Flange		(1) Extra Large Flange, (1) Duckbill Valve	20	\$2.00	\$40.00
Item Description	Order/ Stock #	Model Name	Item Picture	Item Contents	Pack Size	Unit Price	Total Price

Extra Large Specialty Flanges (36 mm)	10.0118	Pumpin' Pal Extra Large		(2) Extra Large Pumpin' Pal Specialty Flanges	10	\$5.99	\$59.90
Soft/Flexible Specialty Flanges	10.0119	Soft Flange		(1) Soft Flange	20	\$3.99	\$79.80
Bra Pads- Disposable	10.0128	Disposable Bra Pads- 30 count/box-Medium		(30) Medium (A/B Cup) Disposable Bra Pads	10	\$2.75	\$27.50
Bra Pads- Disposable	10.0131	Disposable Bra Pads- 30 count/box-Large		(30) Large (C/D Cup) Disposable Bra Pads	10	\$2.75	\$27.50
Bra Pads- Washable	10.0126	Bra Pads, Washable 4 Pack		(4) Washable Bra Pads	20	\$3.75	\$75.00
Expression Cup for manual and Passive Collection of Breastmilk	10.0021	Expression Cup		(1) Expression Cup, (1) 4 oz. Mother's Milk Storage Container, (1) Ring and (1) Ring Cover	1	\$8.50	\$8.50
	10.0132				20	\$8.50	\$170.00

Item Description	Order/ Stock #	Model Name	Item Picture	Item Contents	Pack Size	Unit Price	Total Price
Fingerfeeder and Supplementer	10.0097	Hazelbaker™ Fingerfeeder and Supplementer		(1) Bulb Assembly, (1) Valve-Disc, (1) Valve Membrane, (1) Tubing Clamp, (1) Hypoallergenic Tape, (1) Lanyard	10	\$24.00	\$240.00
Milk Storage Bags	10.0127	Breastmilk Collection/Storage Bags 25 count/box		(25) Breastmilk Bags	20	\$5.31	\$106.20
Battery Pack for all Hygeia™ Electric Breastpumps	10.0133	External Battery Pack		(1) External Battery Pack ( 8 AA Batteries, not included)	10	\$11.00	\$110.00
Vehicle Lighter Adapter for all Hygeia™ Electric Breastpumps	10.0134	Car Adapter		(1) Car Adapter	10	\$14.00	\$140.00

Item Description	Order/ Stock #	Model Name	Item Picture	Item Contents	Pack Size	Unit Price	Total Price
Infant Scale	10.0009	Hygeia™ Healthy Baby Weight Trending Scale		(1) Infant Scale (accurate within 5 grams)	1	\$50.00	\$50.00
Vacuum Gauge	20.0042	Professional Pressure Gauge		(1) Professional Pressure Gauge Kit	1	\$60.00	\$60.00
Hard Sided Carry Case	10.0101	EnDeare™ Hard Sided Carry Case-Black, Fits EnDeare™ Multi-User Breastpump		(1) Black Hard Sided Carry Case for EnDeare™ Breastpumps	1	\$94.05	\$94.05
Hard Sided Carry Case	10.0124	EnJoye™ Hard Sided Carry Case-Black, Fits EnJoye™/EnRiche™ Q Multi-User Breastpumps		(1) Black Hard Sided Carry Case for EnJoye™ and EnRiche™ Q Breastpumps	1	\$94.05	\$94.05
EnDeare™ Internal Battery Pack	40.0016	Battery Pack for EnDeare™ Multi-User Double Breastpump		(1) Internal Battery Pack for EnDeare™ Multi-User Breastpump (install required by Hygeia, not included)	1	\$99.00	\$99.00





## Appendix B

### THE MODEL CONTRACT

State of Washington  
Department of General Administration  
Office of State Procurement (OSP)



Contract # 01910  
For Purchases of Breast Pumps and Related Accessories  
Under the Authority of  
Chapter 43.19 RCW

## 1 OVERVIEW

### 1.1 CONTRACT SCOPE

The purpose of this Contract is to facilitate the as-needed purchase of Manual and Electric Breast Pumps, Double Pumping Kits, and related accessories for participating members of the Western States Contracting Alliance (WSCA). The balance of the 50 states, the District of Columbia, US Territories and other public entities may also use WSCA contracts.

Specific to the State of Washington, all Washington Purchasing Cooperative members are eligible to use this Contract. See Section 1.4 *Participating Entities* for more specific information regarding eligibility requirements for Contract utilization.

This Contract was bid under the statutory authority of RCW 43.19 for the purchase of goods and services as stated herein.

### 1.2 CONTRACT SCOPE AND MODIFICATIONS

The State reserves the right to modify this Contract by mutual agreement between the State and the Contractor, so long as such modification is substantially within the scope of the original Contract. The state reserves the right to add products as the market conditions and Purchasers' needs change. Such modifications will be evidenced by issuance of a written authorized amendment by the Contract Administrator.

### 1.3 RECITALS

The state of Washington, acting by and through the Department of General Administration (GA), Office of State Procurement (OSP) issued an Invitation for Bid (IFB) for the purpose of purchasing goods and services in accordance with its authority under Chapter 43.19 RCW.

The **Awarded Contractor** submitted a timely Response to OSP's SOLICITATION # 01910.

OSP evaluated all properly submitted Responses to the above-referenced SOLICITATION and has identified the **Awarded Contractor** as the apparently successful Contractor.

OSP has determined that entering into a Contract with **Awarded Contractor** will meet Purchaser's needs and will be in Purchaser's best interest.

NOW THEREFORE, OSP awards to the **Awarded Contractor** this Contract, the terms and conditions of which shall govern Contractor's furnishing to Purchasers the goods and services as described herein. This Contract is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

#### 1.4 PARTICIPATING ENTITIES

Potential Participating Entities include members of the Western States Contracting Alliance. The Western States Contracting Alliance (WSCA) is a cooperative group-contracting consortium for state government departments, institutions, institutions of higher education, agencies and political subdivisions (e.g., school districts, counties, cities, etc.) for the States of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming. WSCA is a cooperative purchasing arm of the National Association of State Procurement Officials (NASPO). The balance of the 50 states, the District of Columbia, US Territories and other public entities may also use WSCA contracts.

In addition to the State of Washington, the following entities have signified their intent to participate in this contract: Alaska; Arizona; California; Commonwealth of the Northern Mariana Islands; District of Columbia; Guam; Hawaii; Idaho; Inter-Tribal Council of Arizona; Kansas; Louisiana; Missouri; Nebraska; Nevada; New Jersey; New Mexico; Oregon; South Dakota; Utah; Vermont; Wisconsin; and Wyoming.

This Intent to Participate is not binding. Other states and public entities may use awards based on this solicitation at any time during the contract period.

All members of the Washington State Purchasing Cooperative (WSPC) including where applicable: State Agencies, Institutions of Higher Education, Political Subdivisions, and Non-Profit Corporations are eligible to use this Contract. Upon execution of a Participating Addendum with the State of Oregon, Department of Administrative Services, this Contract will also be available for use by Oregon's Department of Administrative Services Cooperative Purchasing Program (ORCPP).

While use of the Contract by Political Subdivisions and Non-Profit Corporations that are members of the WSPC is optional, the Office of State Procurement encourages them to use state contracts. Their use of the contracts may significantly increase the purchase volume. Their orders are subject to the same contract terms, conditions and pricing as state agencies. The Office of State Procurement accepts no responsibility for orders or payment by WSPC members.

A list of WSPC members is available at <http://www.ga.wa.gov/PCA/SPC.htm>.

A list of current authorized ORCPP members is available at:

<http://www.oregon.gov/DAS/PFSS/SPO/docs/orcpp-member-list.pdf> or

<http://www.oregon.gov/DAS/PFSS/SPO/docs/orcpp-member-list.xls>

## **Purchases by Nonprofit Corporations**

Legislation allows nonprofit corporations to participate in State Contracts for purchases administered by the Office of State Procurement (OSP). By mutual agreement with OSP, the contractor may sell goods or services at contract pricing awarded under this SOLICITATION and resulting contract to self certified nonprofit corporations. Such organizations purchasing under the State Contract shall do so only to the extent they retain eligibility and comply with other contract and statutory provisions. The contractor may make reasonable inquiry of credit worthiness prior to accepting orders or delivering goods or services on contract. The State accepts no responsibility for payments by nonprofit corporations. Their use of the contracts may significantly increase the purchase volume. Their orders are subject to the same contract terms, conditions and pricing as state agencies.

### **1.5 ESTIMATED USAGE**

Based on past and/or projected usage, it is estimated that purchases over the initial two (2) year term of the Contract will approximate \$ 15,000,000. This estimate is provided solely for the purpose of assisting Bidders in preparing their Response. Orders will be placed only on an as needed basis. **The State of Washington does not represent or guarantee any minimum purchase.**

### **1.6 CONTRACT TERM**

The initial term of this contract is two (2) years from date of award with the option to extend for additional term one (1) year terms or portions thereof. Extension for each additional term shall be offered at the sole discretion of the OSP and are subject to written notice to Contractor(s). The total contract term, including the initial term and all subsequent extensions, shall not exceed six (6) years, unless an emergency exists and/or special circumstances require a partial term extension. The state reserves the right to extend with all or some of the contractors, solely determined by the state.

### **1.7 BEST BUY PROGRAM (DIRECT PURCHASES)**

This section is for informational purposes only and is not a Contract term. Contracts based under the authority of RCW 43.19.1906 and 1911 notwithstanding, Washington law allows authorized Agencies to purchase off-contract "PROVIDED, That any agency may purchase material, supplies, services, and equipment for which the agency has notified the purchasing and material control director that it is more cost-effective for the agency to make the purchase directly from the vendor." Authority: See RCW 43.19.190 (2), second Proviso. The concept is identified in the Washington Purchasing Manual (WPM) as the Best Buy Program. The WPM is a policy giving direction to Purchasers and may be changed at anytime and with no notice. At a glance (abridged):

- Contractor provided the opportunity to meet the non-contract supplier's offer.

- Agency must consider all cost factors, such as, warranty, shipping, quality, trade-in, cancellation, delivery, installation, and prompt payment/volume discounts.
- Acceptance by the non-contract supplier of all other terms, conditions, and requirements of the state contract.
- Agencies must notify General Administration at the time of purchase when making a cost effective direct purchase. To meet the notification requirements of RCW 43.19.1905(g) use the on line Best Buy Calculator and Reporter.

## **2 CONTRACT ADMINISTRATION**

### **2.1 OSP CONTRACT ADMINISTRATOR**

The OSP shall appoint a single point of contact that will be the Contract Administrator for this Contract and will provide oversight of the activities conducted hereunder. The Contract Administrator will be the principal contact for Contractor concerning business activities under this Contract.

### **2.2 ADMINISTRATION OF CONTRACT**

OSP will maintain Contract information and pricing and make it available on the Department of General Administration web site. The Contract prices are the maximum price Contractor can charge. After coordination with OSP, the Contractor may also offer volume and voluntary discounts to Purchasers in any amount, period of time, and for any set of products or services of the Contractor's choosing.

A Contractor may propose a revision to its offerings to reflect changed products appropriate to the scope of the Contract, and may propose such new products with associated prices to the OSP Contract Administrator for approval. The Contract Administrator has sole discretion to approve additions of revised offerings and pricing. New or changed products proposed by Contractor must meet the requirements established in this solicitation document or subsequent revisions. If approved by OSP, the new products or services will be added to the Contract by written amendment.

For the initial 365 days of the Contract term, pricing for all products will be no greater than the prices quoted in the Bidder's Response. If, however, during any term of the Contract lower prices and rates become effective for like quantities of products under similar terms and conditions, through a reduction in Manufacturer's list prices, promotional discounts, or other circumstances, Purchasers must be given immediate benefit of such lower prices and rates.

### **2.3 CONTRACTOR SUPERVISION AND COORDINATION**

Contractor shall:

1. Competently and efficiently, supervise and coordinate the implementation and completion of all Contract requirements specified herein;
2. Identify the Contractor's Representative, who will be the principal point of contact for the OSP Contract Administrator concerning Contractor's performance under this Contract.
3. Immediately notify the Contract Administrator in writing of any change of the designated Contractor's Representative assigned to this Contract; and
4. Be bound by all written communications given to or received from the Contractor's Representative.

Violation of any provision of this paragraph may be considered a material breach establishing grounds for Contract termination.

#### **2.4 POST AWARD CONFERENCE**

The contractor may be required to attend a post award conference scheduled by the Procurement Coordinator to discuss contract performance requirements. The time and place of this conference will be scheduled following contract award.

#### **2.5 CONTRACT MANAGEMENT**

Upon award of this contract, the contractor shall:

1. Review the impact of the award and take the necessary steps to ensure that contractual obligations will be fulfilled.
2. Promote and market the use of this contract to all authorized contract Purchasers.
3. Ensure that those who endeavor to utilize this contract are authorized Purchasers under this Contract.
4. At no additional charge, assist Purchasers in the following manner to make the most cost effective, value based, purchases including, but not limited to:
  - a) Visiting the Purchaser site and providing Purchaser with materials/supplies/equipment recommendations.
  - b) Providing Purchasers with a detailed list of contract items including current contract pricing and part numbers.
5. The contractor shall designate a customer service representative who will be responsible for addressing Purchaser issues including, but not limited to:
  - a) Logging requests for service, ensuring repairs are completed in a timely manner, dispatching service technicians, and processing warranty claim documentation.
  - b) Providing Purchasers with regular and timely status updates in the event of an order or repair fulfillment delay.
6. Acting as the lead and liaison between the manufacturer and Purchaser in resolving warranty claims for contract items purchased.

## **2.6 UNITED NATIONS GLOBAL COMPACT STANDARDS**

The Contractor agrees to adhere to the Ten Principles of the United Nations Global Compact standards. These standards protect human rights and the environment, promote fair labor practices, and guard against corruption.

## **2.7 CHANGES**

Alterations to any of the terms, conditions, or requirements of this Contract shall only be effective upon written issuance of a mutually agreed Contract Amendment by the Contract Administrator. However, changes to point of contact information may be updated without the issuance of a mutually agreed Contract Amendment.

To accommodate Purchaser requirements and manufacturer discontinuations, Contractor may propose a revision to its offerings which reflects product changes appropriate to the scope of the Contract to the Contract Administrator for approval. Proposed pricing shall remain consistent with Bid pricing. Contract Administrator has the sole discretion in approval of revised offerings and pricing. New products proposed by Contractor must meet the requirements established in this Solicitation document or subsequent revisions. Upon OSP approval, product additions will be implemented by written amendment.

Purchasers may request pricing for products not included in the award. Contractor may submit a proposal for satisfaction of the request to the Contract Administrator for consideration. If the Contractor is unable to provide a reasonable solution, the Contractor will notify the Purchaser. If the Contract Administrator concludes the pricing offered is in the best interest of the state, considering the cost of alternatives, he/she will by written notification accept the offer of solution and record it in the file.

## **2.8 CONTRACT ADMINISTRATION FEE**

The Contract(s) will be subject to a WSCA Administration Fee. Contractor(s) will include this fee in its Bid pricing and not as a separate line item to Purchasers. The Contractor(s) will collect the fees and distribute the fees to WSCA.

The WSCA Administration Fee will be one half of one percent (0.5%) on all purchases made under authority of the Contract. Purchases are defined as total invoice price less sales tax. No taxes will be assessed against the WSCA Administration Fee.

The WSCA Administrative fee shall be paid within thirty (30) days after the end of the calendar quarter. Contractor shall indicate the Contract Number #01910 and include with the remittance, a quarterly sales report by WSCA contract participant. The administrative fee shall be paid to:

WSCA/NASPO  
NASPO PROGRAM MANAGER  
201 EAST MAIN STREET, SUITE 1450  
LEXINGTON, KY 40507

In addition to the WSCA Administration Fee as stated above, some Participating Entities may also require an administrative fee, and will be incorporated into the Participating Entity's Participating Addendum. Participating Entity Administrative Fees may be added to the price of each item.

## **2.9 STATEWIDE VENDOR PAYMENT REGISTRATION**

Contractors are required to be registered in the Statewide Vendor Payment system, prior to submitting a request for payment under this Contract. Purchasers who are Washington state agencies require registration to be completed prior to payment.

The Washington State Office of Financial Management (OFM) maintains a central contractor registration file for Washington State agencies to process contractor payments.

To obtain registration materials go to <http://www.ofm.wa.gov/accounting/vendors.asp> the form has two parts; Part 1 is the information required to meet the above registration condition. Part 2 allows the state to pay invoices electronically with direct deposit and is the state's most efficient method of payment and you are encouraged to sign up for this form of payment.

## **2.10 SALES & SUBCONTRACTOR REPORTS**

The Contractor shall provide a Sales and Subcontractor Report to the Office of State Procurement on a quarterly basis in the electronic format provided by the Office of State Procurement at: <https://fortress.wa.gov/ga/apps/CSR/Login.aspx>.

Reports must be submitted electronically within thirty (30) days after the end of the calendar quarter, i.e., no later than April 30th, July 31st, October 31st and January 31st.

## **2.10 OTHER REQUIRED REPORTS**

All reports required under this Contract must be delivered to the Contract Administrator. Contractor may be required to provide a detailed annual contract sales history report that may include but is not limited to products description, part number, per unit quantities sold, contract price in an electronic format that can be read by MS Excel. Other required reports will be designed and approved by the parties by mutual agreement.

## **2.11 WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS)**

Contractor shall be registered in the Contractor registration system, Washington's Electronic Business Solution (WEBS) [www.ga.wa.gov/webs](http://www.ga.wa.gov/webs), maintained by the Washington State Department of General Administration. Contractors already registered need not re-register. It is the sole responsibility of Contractor to properly register with WEBS and maintain an accurate Contractor profile in WEBS.

### **3 PRICING**

#### **3.1 PRICE PROTECTION**

Contractor agrees all the Prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by Contractor to any other governmental entity purchasing the same quantity under similar terms. If during the term of this Contract, the Contractor shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, Contractor shall be obligated to provide the same to Purchaser for subsequent purchases and OSP shall be notified of changes in Contract pricing.

During any term of the Contract, if lower prices and rates become effective for like quantities of products under similar terms and conditions, through reduction in Manufacturer's or Contractor's list prices, promotional discounts, or other circumstances, Purchasers must be given immediate benefit of such lower prices and rates, and the state shall be notified of changes in Contract pricing.

The Contract prices are the maximum price Contractor can charge. The Contractor may also offer volume and promotional discounts to Purchasers.

#### **3.2 NO ADDITIONAL CHARGES**

Unless otherwise specified in the Solicitation, no additional charges by the Contractor will be allowed including, but not limited to: handling charges such as packing, wrapping, bags, containers, reels; or the processing fees associated with the use of credit cards. Notwithstanding the foregoing, in the event that market conditions, laws, regulations or other unforeseen factors dictate, at the Contract Administrators sole discretion, additional charges may be allowed.

#### **3.3 PRICE ADJUSTMENTS**

Unless modified by mutual agreement, Contractor requests for adjustments in pricing will be considered at the sole discretion of OSP. Pricing shall remain firm and fixed for the initial two (2) year term of the Contract. Thereafter, price adjustments will only be on a pass through basis and shall not produce a higher profit margin for the Contractor than that established by the original Contract pricing. Contractor shall not make extensions contingent on price adjustments.

Price increases will not be considered without supporting documentation sufficient to justify the requested increase. Documentation must be based on published indices such as the Producer Price Index or other acceptable indices, and/or the result of increases at the manufacturer's level, other supportable pricing increases, and incurred after Contract commencement date. Contractor shall provide a detailed breakdown of their costs upon request. A minimum of 120 calendar days advance written notice of price increase is required.

The granting of any price adjustment will be at the sole discretion of OSP. The Contractor shall be notified in writing by the Contract Administrator of any price adjustment granted by OSP, and such price adjustment shall be set forth in a written amendment to the Contract. Price adjustments granted by OSP shall remain unchanged for at least 365 calendar days thereafter, and no request for adjustments in price will be considered during that time period.

#### **4 CONTRACTOR QUALIFICATIONS AND REQUIREMENTS**

##### **4.1 ESTABLISHED BUSINESS**

Prior to commencing performance, or prior to that time if required by the OSP, law or regulation, Contractor must be an established business firm with all required licenses, fees, bonding, facilities, equipment and trained personnel necessary to meet all requirements and perform the work as specified in the Solicitation. Contractor shall maintain compliance with these requirements throughout the life of this contract.

The OSP reserves the right to require receipt of proof of compliance with said requirements within ten (10) calendar days from the date of request, and to terminate this Contract as a material breach for noncompliance with any requirement of this paragraph.

##### **4.2 CONTRACTOR CERTIFICATIONS**

Contractor must provide evidence as directed in the original solicitation, of its status as an authorized product reseller of all items listed in Bidder's Response to Solicitation 01910. If this reseller status is discontinued, this Contract may be terminated as set forth elsewhere herein. Contractor shall maintain its reseller status for the initial term and any renewals of the resulting Contract.

##### **4.3 DEALER AUTHORIZATION**

Throughout the contract life, the Contractor shall maintain authorization from the manufacturer consistent with the requirements outlined in the original Solicitation.

##### **4.4 STAFF QUALIFICATIONS**

If at Contract award or any time thereafter, any specifically named individual(s) identified in the Response to work on this engagement are not available, OSP has the right to approve or reject any change in Contractor's personnel. Specific restrictions apply to contracting with current or former state employees pursuant to Chapter 42.52 RCW.

##### **4.5 USE OF SUBCONTRACTORS**

In accordance with solicitation requirements, Contractor agrees to take complete responsibility for all actions of such Subcontractors as related to work performed within the scope of this Contract.

Prior to performance, Contractor shall identify all subcontractors who will perform services in fulfillment of contract requirements, including their name, the nature of services to be performed, address, telephone, facsimile, email, federal tax identification number (TIN), MWBE status, and anticipated dollar value of each subcontract:

OSP reserves the right to approve or reject any and all Subcontractors that are identified or used by the Contractor for performance under this Contract.

Specific restrictions apply to contracting with current or former state employees pursuant to Chapter 42.52 RCW.

#### **4.6 SUBCONTRACTS AND ASSIGNMENT**

Contractor shall not Subcontract, assign, or otherwise transfer its obligations under this Contract without the prior written consent of the Contract Administrator. Contractor shall provide a minimum of thirty (30) calendar days advance notification of intent to Subcontract, assign, or otherwise transfer its obligations under this Contract. Violation of this condition may be considered a material breach establishing grounds for Contract termination. The Contractor shall be responsible to ensure that all requirements of the Contract shall flow down to any and all Subcontractors. In no event shall the existence of a Subcontract operate to release or reduce the liability of Contractor to the state for any breach in the performance of the Contractor's duties.

#### **4.7 CONTRACTOR AUTHORITY AND INFRINGEMENT**

Contractor is authorized to sell under this Contract, only those materials, supplies, services and/or equipment as stated herein and allowed for by the provisions of this Contract. Contractor shall not represent to any Purchasers that they have the contract authority to sell any other materials, supplies, services and/or equipment. Further, Contractor may not intentionally infringe on other established State Contracts.

#### **4.8 MATERIALS AND WORKMANSHIP**

The Contractor shall be required to furnish all materials, supplies, equipment and/or services necessary to perform Contractual requirements. Materials, supplies and workmanship used in the construction of equipment for this Contract shall conform to all applicable federal, state, and local codes, regulations and requirements for such equipment, specifications contained herein, and the normal uses for which intended. Materials, supplies and equipment shall be manufactured in accordance with the best commercial practices and standards for this type of materials, supplies, and equipment.

#### **4.9 MERCURY CONTENT AND PREFERENCE**

Contractor shall provide mercury-free products when available. Should mercury-free products not exist, contractors shall provide products with the lowest mercury content available. Contractor shall disclose products that contain added mercury

and provide an explanation that includes the amount or concentration of mercury, and justification as to why added mercury is necessary for the function or performance of the product.

The Contractor is to provide any existing technical data pertaining to the addition of mercury or a mercury compound intentionally added to the product. If the product does not contain mercury or a mercury compound, Contractor shall submit a written statement to that effect. Contractor shall maintain compliance with these requirements throughout the life of this contract.

The OSP reserves the right to require receipt of proof of compliance with said requirements within ten (10) calendar days from the date of request, and to terminate this Contract as a material breach for noncompliance with any requirement of this paragraph.

## **5 DELIVERY REQUIREMENTS**

### **5.1 ORDER FULFILLMENT REQUIREMENTS**

Authorized Purchasers may place orders against this Contract either in person, electronically, facsimile or by phone. Once an order is issued, the following shall apply:

1. For purposes of price verification and auditing, upon receipt of a purchase order the contractor shall send the Purchaser an order confirmation that includes Contract pricing.
2. Upon the request of the Purchaser, the Contractor shall supply Purchaser with manufacturer's list pricing or other documentation needed to verify Contract pricing compliance.
3. Product damaged prior to acceptance will either be replaced or repaired in an expedited manner at contractor's expense. Alternatively, at the Purchaser's option, any possible damage to the product can be noted on the receiving report and the cost deducted from final payment.

The Contractor is responsible to verify delivery conditions/requirements with the Purchaser prior to the delivery.

### **5.2 STANDARD OF QUALITY/CONSISTENCY OVER TERM OF CONTRACT**

If, in the sole judgment of the OSP or the Purchaser, any item is determined not to be an equal, the Purchaser may take any or all of the following actions:

1. The product may be returned at Contractor's expense
2. The purchase/field order may be terminated without any liability to the State of Washington or Purchaser

### 5.3 SHIPPING AND RISK OF LOSS

Contractor shall ship all Products purchased pursuant to this Contract, freight prepaid, FOB Purchaser's destination. The method of shipment shall be consistent with the nature of the Products and hazards of transportation. Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of the Products ordered hereunder that occurs prior to Delivery Date, except loss or damage attributable to Purchaser's fault or negligence; and such loss, damage, or destruction shall not release Contractor from any obligation hereunder. After Delivery Date, the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Contractor's fault or negligence.

### 5.4 DELIVERY

Delivery must be made during Purchaser's normal work hours and within time frames either:

1. required in the Solicitation; or
2. If requested in the Solicitation, proposed by Contractor in its Bid or Proposal and subsequently accepted by the OSP; or
3. as otherwise mutually agreed in writing between the Purchaser and Contractor at the time of order placement.

Failure to comply with agreed upon delivery schedule may subject Contractor to damages, including but not limited to Contractor's return of goods at no charge to Purchaser, if Purchaser determines Contractor's failure to deliver as agreed causes the need for cancellation.

The Purchaser may refuse shipment when delivered after normal working hours. The Contractor shall verify specific working hours of individual Purchasers and instruct carrier(s) to deliver accordingly. The acceptance by the Purchaser of late performance, with or without objection or reservation by the Purchaser, shall not waive the right to claim damage for such breach, nor preclude the OSP or Purchaser from pursuing any other remedy provided herein, including termination, nor shall such acceptance of late performance constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Contractor.

All deliveries are to be made to the applicable delivery location as indicated in the Order Document. When applicable, the Contractor shall take all necessary actions to safeguard items during inclement weather. In no case shall the Contractor initiate performance prior to receipt of written or verbal authorization from authorized Purchasers. Expenses incurred otherwise shall be borne solely by the Contractor.

## **5.5 SITE SECURITY**

While on Purchaser's premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations.

## **5.6 INSPECTION AND REJECTION**

The Purchaser's inspection of all materials, supplies and equipment upon delivery is for the purpose of forming a judgment as to whether such delivered items are what was ordered, were properly delivered and ready for Acceptance. Such inspection shall not be construed as final acceptance, or as acceptance of the materials, supplies or equipment, if the materials, supplies or equipment does not conform to contractual requirements. If there are any apparent defects in the materials, supplies, or equipment at the time of delivery, the Purchaser will promptly notify the Contractor. Without limiting any other rights, the Purchaser may require the Contractor to: (1) repair or replace, at Contractor's expense, any or all of the damaged goods; (2) refund the price of any or all of the damaged goods; or (3) accept the return of any or all of the damaged goods.

The state reserves the right to independently test, at supplier's expense, any product of questionable freshness, quality, or origin delivered against this Contract.

## **5.7 TREATMENT OF ASSETS**

1. Title to all property furnished by the OSP and/or Purchaser shall remain in the OSP and/or Purchaser, as appropriate. Title to all property furnished by the Contractor, the cost for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Purchaser upon delivery of such property by the Contractor and Acceptance by the Purchaser. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in the Purchaser upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by the Purchaser in whole or in part, whichever first occurs.
2. Any property of the OSP and/or Purchaser furnished to the Contractor shall, unless otherwise provided herein or approved by the OSP and/or Purchaser, be used only for the performance of this Contract.
3. The Contractor shall be responsible for damages as a result of any loss or damage to property of the OSP and/or Purchaser which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain, administer and protect that property in a reasonable manner and to the extent practicable in all instances.

4. If any OSP and/or Purchaser property is lost, destroyed, or damaged, the Contractor shall immediately notify the OSP and/or Purchaser and shall take all reasonable steps to protect the property from further damage.
5. The Contractor shall surrender to the OSP and/or Purchaser all property of the OSP and/or Purchaser prior to settlement upon completion, termination, or cancellation of this contract.
6. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

#### **5.8 LABELING**

Individual shipping cartons shall be labeled with the name of the ordering agency, order number, contractor, item number, and where applicable, date of manufacture, batch number, storage requirements, conditions, and recommended shelf life. Contractors are encouraged to offer product packaging with recycled content.

### **6 PAYMENT**

#### **6.1 ADVANCE PAYMENT PROHIBITED**

No advance payment shall be made for the Products and Services furnished by Contractor pursuant to this Contract.

#### **6.2 IDENTIFICATION**

All invoices, packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Contract shall be identified by the Contract number and the applicable Purchaser's order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.

#### **6.3 PAYMENT, INVOICING AND DISCOUNTS**

Payment is the sole responsibility of, and will be made by, the Purchaser.

Contractor shall provide a properly completed invoice to Purchaser. All invoices are to be delivered to the address indicated in the purchase order.

Each invoice shall be identified by the associated Contract Number; the Contractor's Statewide Vendor registration number assigned by Washington State Office of Financial Management (OFM), the applicable Purchaser's order number, and shall be in U.S. dollars. Invoices shall be prominently annotated by the Contractor with all applicable prompt payment and/or volume discount(s) and shipping charges unless otherwise specified in the Solicitation. Hard copy credit memos are to be issued when the state has been overcharged.

Invoices for payment will accurately reflect all discounts due the Purchaser. Invoices will not be processed for payment, nor will the period of prompt payment discount commence, until receipt of a properly completed invoice denominated in

U.S. dollars and until all invoiced items are received and satisfactory performance of Contractor has been accepted by the Purchaser. If an adjustment in payment is necessary due to damage or dispute, any prompt payment discount period shall commence on the date final approval for payment is authorized.

Under Chapter 39.76 RCW, if Purchaser fails to make timely payment(s), Contractor may invoice for 1% per month on the amount overdue or a minimum of \$1.00. Payment will not be considered late if a check or warrant is mailed within the time specified. If no terms are specified, net 30 days will automatically apply. Payment(s) made in accordance with Contract terms shall fully compensate the Contractor for all risk, loss, damages or expense of whatever nature and acceptance of payment shall constitute a waiver of all claims submitted by Contractor. If the Contractor fails to make timely payment(s) or issuance of credit memos, the Purchaser may impose a 1% per month on the amount overdue.

Payment for materials, supplies and/or equipment received and for services rendered shall be made by Purchaser and be redeemable in U.S. dollars. Unless otherwise specified, the Purchaser's sole responsibility shall be to issue this payment. Any bank or transaction fees or similar costs associated with currency exchange procedures or the use of purchasing/credit cards shall be fully assumed by the Contractor.

#### **6.4 TAXES, FEES AND LICENSES**

##### **Taxes:**

Where required by statute or regulation, the Contractor shall pay for and maintain in current status all taxes that are necessary for Contract performance. Unless otherwise indicated, the Purchaser agrees to pay State of Washington taxes on all applicable materials, supplies, services and/or equipment purchased. No charge by the Contractor shall be made for federal excise taxes and the Purchaser agrees to furnish Contractor with an exemption certificate where appropriate.

##### **Collection of Retail Sales and Use Taxes:**

In general, Contractors engaged in retail sales activities within the State of Washington are required to collect and remit sales tax to Department of Revenue (DOR). In general, out-of-state Contractors must collect and remit "use tax" to Department of Revenue if the activity carried on by the seller in the State of Washington is significantly associated with Contractor's ability to establish or maintain a market for its products in Washington State. Examples of such activity include where the Contractor either directly or by an agent or other representative:

1. Maintains an in-state office, distribution house, sales house, warehouse, service enterprise, or any other in-state place of business;
2. Maintains an in-state inventory or stock of goods for sale;
3. Regularly solicits orders from Purchasers located within the State of Washington via sales representatives entering the State of Washington;

4. Sends other staff into the State of Washington (e.g. product safety engineers, etc.) to interact with Purchasers in an attempt to establish or maintain market(s); or
5. Other factors identified in WAC 458-20.

**Department of Revenue Registration for Out-of-State Contractors:**

Out-of-state Contractors meeting any of the above criteria must register and establish an account with the Department of Revenue. Refer to WAC 458-20-193, and call the Department of Revenue at 800-647-7706 for additional information. When out-of-state Contractors are not required to collect and remit "use tax," Purchasers located in the State of Washington are responsible for paying this tax, if applicable, directly to the Department of Revenue.

**Fees/Licenses:**

After award of Contract, and prior to commencing performance under the Contract, the Contractor shall pay for and maintain in a current status any licenses, fees, assessments, permit charges, etc., which are necessary for Contract performance. It is the Contractor's sole responsibility to maintain licenses and to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments, or charges and to immediately comply with said changes or regulations during the entire term of this Contract.

**Customs/Brokerage Fees:**

Contractor shall take all necessary actions, including, but not limited to, paying all customs, duties, brokerage, and/or import fees, to ensure that materials, supplies, and/or equipment purchased under the Contract are expedited through customs. Failure to do so may subject Contractor to liquidated damages as identified herein and/or to other remedies available by law or Contract. Neither the OSP nor the Purchaser will incur additional costs related to Contractor's payment of such fees.

**Taxes on Invoice:**

Contractor shall calculate and enter the appropriate Washington State and local sales tax on all invoices. Tax is to be computed on new items after deduction of any trade-in in accordance with WAC 458-20-247.

**6.5 MINORITY AND WOMEN'S BUSINESS ENTERPRISE (MWBE) PARTICIPATION**

If minority or woman owned business participation was identified in Bidder's Response to SOLICITATION # 01910, Contractor shall provide Purchaser an *Affidavit of Amounts Paid* with each invoice for payment and within thirty (30) days of Purchasers request. The *Affidavit of Amounts Paid* shall either state that Contractor still maintains its MWBE certification, or state that its Subcontractor(s) still maintain(s) its/their MWBE certification(s) and specify the amounts paid to each certified MWBE Subcontractor under this Contract. Contractor shall maintain records supporting the *Affidavit of Amounts Paid* in accordance with this Contract's **Retention of Records** section.

## **6.6 OVERPAYMENTS TO CONTRACTOR**

Contractor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Contractor fails to make timely refund, Purchaser may charge Contractor one percent (1%) per month on the amount due, until paid in full.

## **6.7 AUDITS**

The state reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing may be considered complete cause for contract termination.

# **7 QUALITY ASSURANCE**

## **7.1 RIGHT OF INSPECTION**

Contractor shall provide right of access to its facilities to OSP, or any of OSP's officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

## **7.2 CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS**

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Response or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

## **7.3 PRODUCT WARRANTY**

The factory and/or manufacturer's warranty, which shall cover 100% parts and labor for the entire unit. This warranty must be honored by all authorized factory and/or manufacturer's dealerships.

Contractor shall be liable for all costs associated with warranty repair(s), including, but not limited to, materials, parts, labor, and transport of equipment that are disabled due to the failure of the equipment during the warranty period.

Warranty period shall be for a minimum of one (1) year after equipment is issued to the End User, or as specified in the solicitation document.

Participating WIC agencies are required to keep a record of such issuance on file for reference.

The Contractor must be capable of and will be liable for providing repair parts and supply support for a period of ten (10) years after the delivery date of the equipment.

In the event of conflict between Contract terms and conditions and Contractor's submitted warranty, the Contract terms and conditions shall prevail; except, to afford the State maximum benefits, the OSP may avail itself of the Contractor's warranty if deemed more beneficial to the State.

#### **7.4 WARRANTIES**

Contractor warrants that all materials, supplies, services and/or equipment provided under this Contract shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the requirements and specifications herein. Acceptance of any materials, supplies, service and/or equipment, and inspection incidental thereto, by the Purchaser shall not alter or affect the obligations of the Contractor or the rights of the Purchaser.

#### **7.5 COST OF REMEDY**

Cost of Remedying Defects: All defects, indirect and consequential costs of correcting, removing or replacing any or all of the defective materials or equipment will be charged against the Contractor.

#### **7.6 TRAINING**

Upon request by a Participating Entity, Contractor shall provide a minimum of 1 hour training for local agency WIC staff on assembly, use and cleaning of equipment and handling and storage of pumped milk. Locations and times will be designated by each WSCA/WIC office. Regional training may be permitted if the Participating Entity agrees. Any costs for training shall be paid by the Contractor. Training materials shall be provided by the Contractor. Such assistance shall be available within 60 calendar days after delivery of product upon request. Contractor shall provide appropriate training documentation or operating documentation covering all functionalities and required operator maintenance issues. A training video may replace the in-person training for locations that are outside of the continental US. Participating Entities may also request specific training as an as needed basis at no cost to the Participating Entity.

## **8 INFORMATION AND COMMUNICATIONS**

### **8.1 ADVERTISING**

Contractor shall not publish or use any information concerning this Contract in any format or media for advertising or publicity without prior written consent from the Contract Administrator.

### **8.2 BREAST MILK SUBSTITUTES**

WIC is federally mandated to promote and support breastfeeding. Research indicates that the addition of breast milk substitutes (infant formula) to the diet of breastfeeding infants harms breastfeeding and shortens its duration.

Contractor agrees that they are not a subsidiary or wholly-owned by a company that manufactures infant formula. If any change in this status occurs, Contractor will be required to notify the Contract Administrator within 60 days of this change. All Participating Entities will be notified of this change and may, at their own discretion, choose to terminate their Participating Addendum with 30 days written notice to the Contractor.

### **8.3 RETENTION OF RECORDS**

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and the provision of materials, supplies, services and/or equipment described herein, including, but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review, or audit by the OSP, personnel duly authorized by the OSP, the Washington State Auditor's Office, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until final resolution of all litigation, claims, or audit findings involving the records.

### **8.4 PROPRIETARY OR CONFIDENTIAL INFORMATION**

To the extent consistent with Chapter 42.56 RCW, the Public Disclosure Act, the OSP shall maintain the confidentiality of Contractor's information marked confidential or proprietary. If a request is made to view Contractor's proprietary information, the OSP will notify Contractor of the request and of the date that the records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, the OSP will release the requested information on the date specified.

The State's sole responsibility shall be limited to maintaining the above data in a secure area and to notify Contractor of any request(s) for disclosure for so long as the OSP retains Contractor's information in the OSP records. Failure to so label such materials or failure to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such materials are exempt from disclosure.

#### **8.5 NON-ENDORSEMENT AND PUBLICITY**

Neither the OSP nor the Purchasers are endorsing the Contractor's Products or Services, nor suggesting that they are the best or only solution to their needs. Contractor agrees to make no reference to the OSP, any Purchaser or the state of Washington in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without the prior review and express written consent of the OSP.

Material that is delivered under this Contract, but that does not originate there from ("Preexisting Material"), shall be transferred to Purchaser with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Contractor has a right to grant such a license. Contractor shall exert all reasonable effort to advise Purchaser at the time of delivery of Preexisting Material furnished under this Contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. Purchaser shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract. Purchaser shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.

#### **8.6 PROTECTION OF CONFIDENTIAL AND PERSONAL INFORMATION**

Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either Chapter 42.17 RCW or other state or federal statutes ("Confidential Information"). Confidential information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or information identifiable to an individual that relates to any of these types of information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential

Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchaser. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

"Personal information" including, but not limited to, "Protected Health Information" (PHI) under Health Insurance Portability And Accountability Act (HIPAA), individuals' names, addresses, phone numbers, birth dates, and social security numbers collected, used, or acquired in connection with this Contract shall be protected against unauthorized use, disclosure, modification or loss.

HIPAA establishes national minimum standards for the use and disclosure of certain health information. The Contractor must comply with all HIPAA requirements and rules when determined applicable by the Purchaser. If Purchaser determines that (1) Purchaser is a "covered entity" under HIPAA, and that (2) Contractor will perform "business associate" services and activities covered under HIPAA, then at Purchaser's request, Contractor agrees to execute Purchaser's business associate Contract in compliance with HIPAA.

Contractor shall ensure its directors, officers, employees, Subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the Agency or as otherwise required by law.

Any breach of this provision may result in termination of the Contract and demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the State of Washington and the Purchaser for any damages related to both: (1) the Contractor's unauthorized use of personal information and (2) the unauthorized use of personal information by unauthorized persons as a result of Contractor's failure to sufficiently protect against unauthorized use, disclosure, modification, or loss.

Contractor shall maintain a log documenting the following: the Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Contractor's records shall be subject to inspection, review or audit in accordance with Retention of Records.

Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

Immediately upon expiration or termination of this Contract, Contractor shall, at Purchaser's option: (i) certify to Purchaser that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Contractor to protect Purchaser's Confidential Information.

## **9 GENERAL PROVISIONS**

### **9.1 GOVERNING LAW/VENUE**

This Contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

### **9.2 SEVERABILITY**

Severability: If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, and to this end the provisions of this Contract are declared to be severable.

### **9.3 SURVIVORSHIP**

All transactions executed for Products and Services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Overpayments to Contractor; Ownership/Rights in Data; Contractor's Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Retention of Records; Patent and Copyright Indemnification; Contractor's Proprietary Information; Disputes; and Limitation of Liability shall survive the termination of this Contract.

#### **9.4 INDEPENDENT STATUS OF CONTRACTOR**

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under Chapter 41.06 RCW, or Title 51 RCW.

#### **9.5 GIFTS AND GRATUITIES**

Contractor shall comply with all state laws regarding gifts and gratuities, including but not limited to: RCW 43.19.1937, RCW 43.19.1939, RCW 42.52.150, RCW 42.52.160, and RCW 42.52.170 under which it is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with state business or contract activities.

Under RCW 43.19.1937 and the Ethics in Public Service Law, Chapter 42.52 RCW state officers and employees are prohibited from receiving, accepting, taking or seeking gifts (except as permitted by RCW 42.52.150) if the officer or employee participates in contractual matters relating to the purchase of goods or services.

#### **9.6 IMMUNITY AND HOLD HARMLESS**

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries, death or damage to property arising out of or resulting from the performance of the contract. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the contract. Contractor shall be required to indemnify, defend, and hold harmless the State only to the extent claim is caused in whole or in part by negligent acts or omissions of Contractor.

Contractor waives its immunity under Title 51 to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

#### **9.7 PERSONAL LIABILITY**

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the State of Washington when executing their official duties in good faith, be in any way personally liable or responsible for any

agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this agreement.

## **9.8 INSURANCE**

### **General Requirements:**

Contractor shall, at their own expense, obtain and keep in force insurance as follows until completion of the Contract. Upon request, Contractor shall furnish evidence in the form of a certificate of insurance satisfactory to the State of Washington that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, will result in Contract cancellation.

Contractor shall include all Subcontractors as insureds under all required insurance policies, or shall furnish separate Certificates of Insurance and endorsements for each Subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

All insurance provided in compliance with this Contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.

### **Specific Requirements:**

**Employers Liability (Stop Gap):** The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable and will maintain Employers Liability insurance with a limit of no less than \$1,000,000.00. The State of Washington will not be held responsible in any way for claims filed by the Contractor or their employees for services performed under the terms of this Contract.

**Commercial General Liability Insurance:** The Contractor shall at all times during the term of this Contract, carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of services provided under this Contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or servants.

The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising out of the Contractor's premises/operations, independent Contractors, products/completed operations, personal injury and advertising injury, and contractual liability (including the tort liability of another assumed in a business Contract), and contain separation of insured's (cross liability) conditions.

Contractor waives all rights against the State of Washington for the recovery of damages to the extent they are covered by general liability or umbrella insurance.

The limits of liability insurance shall not be less than as follows:

General Aggregate Limits (other than products-completed operations)	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury Aggregate	\$1,000,000
Each Occurrence (applies to all of the above)	\$1,000,000
Fire Damage Limit (per occurrence)	\$ 50,000
Medical Expense Limit (any one person)	\$5,000

**Business Auto Policy (BAP):**

In the event that services delivered pursuant to this Contract involve the use of vehicles, or the transportation of clients, automobile liability insurance shall be required. The coverage provided shall protect against claims for bodily injury, including illness, disease, and death; and property damage caused by an occurrence arising out of or in consequence of the performance of this service by the Contractor, Subcontractor, or anyone employed by either.

Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a combined single limit not less than \$1,000,000 per occurrence. The business auto liability shall include Hired and Non-Owned coverage.

Contractor waives all rights against the State of Washington for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

**Additional Insurance Provisions:**

All above insurance policies shall include, but not be limited to, the following provisions:

**Additional Insured:**

The State of Washington and all authorized Purchasers shall be named as an additional insured on all general liability, umbrella, excess, and property insurance policies. All policies shall be primary over any other valid and collectable insurance.

**Notice of Policy(s) Cancellation/Non-renewal:**

For insurers subject to Chapter 48.18 RCW (Admitted and regulated by the Washington State Insurance Commissioner) a written notice shall be given to the director of purchasing or designee forty-five (45) calendar days prior to cancellation or any material change to the policy(s) as it relates to this Contract. Written notice shall include the affected Contract reference number.

**Surplus Lines:**

For insurers subject to Chapter 48.15 RCW (Surplus Lines) a written notice shall be given to the director of purchasing or designee twenty (20) calendar days prior to

cancellation or any material change to the policy(s) as it relates to this Contract. Written notice shall include the affected Contract reference number.

**Cancellation for Non-payment to Premium:**

If cancellation on any policy is due to non-payment of premium, a written notice shall be given the director of purchasing or designee ten (10) calendar days prior to cancellation. Written notice shall include the affected Contract reference number.

**Identification:**

Policy(s) and Certificates of Insurance shall include the affected Contract reference number.

**Insurance Carrier Rating:**

The insurance required above shall be issued by an insurance company authorized to do business within the State of Washington. Insurance is to be placed with a carrier that has a rating of A- Class VII or better in the most recently published edition of Best's Reports. Any exception must be reviewed and approved by the Risk Manager for the State of Washington, by submitting a copy of the Contract and evidence of insurance before Contract commencement. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and Chapter 284-15 WAC.

**Excess Coverage:**

The limits of all insurance required to be provided by the Contractor shall be no less than the minimum amounts specified. However, coverage in the amounts of these minimum limits shall not be construed to relieve the Contractor from liability in excess of such limits.

**Limit Adjustments:**

The state reserves the right to increase or decrease limits as appropriate.

**9.9 INDUSTRIAL INSURANCE COVERAGE**

The Contractor shall comply with the provisions of Title 51 RCW Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the OSP may terminate this Contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from the Contractor.

**9.10 NONDISCRIMINATION**

During the performance of this Contract, the Contractor shall comply with all applicable federal and state nondiscrimination laws, regulations and policies, including, but not limited to, Title VII of the Civil Rights Act, 42 U.S.C. section 12101 et. seq.; the Americans with Disabilities Act (ADA); and, Chapter 49.60 RCW, Discrimination – Human Rights Commission.

### **9.11 OSHA AND WISHA REQUIREMENTS**

Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Administration (OSHA) and, if manufactured or stored in the State of Washington, the Washington Industrial Safety and Health Act (WISHA) and the standards and regulations issued there under, and certifies that all items furnished and purchased will conform to and comply with said laws, standards and regulations. Contractor further agrees to indemnify and hold harmless OSP and Purchaser from all damages assessed against Purchaser as a result of Contractor's failure to comply with those laws, standards and regulations, and for the failure of the items furnished under the Contract to so comply.

### **9.12 ANTITRUST**

The state maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the Purchaser. Therefore, the Contractor hereby assigns to the State of Washington any and all of the Contractor's claims for such price fixing or overcharges which arise under federal or state antitrust laws, relating to the materials, supplies, services and/or equipment purchased under this Contract.

### **9.13 WAIVER**

Failure or delay of the OSP or Purchaser to insist upon the strict performance of any term or condition of the Contract or to exercise any right or remedy provided in the Contract or by law; or the OSP's or Purchaser's acceptance of or payment for materials, supplies, services and/or equipment, shall not release the Contractor from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of the OSP or Purchaser to insist upon the strict performance of the entire agreement by the Contractor. In the event of any claim for breach of Contract against the Contractor, no provision of this Contract shall be construed, expressly or by implication, as a waiver by the OSP or Purchaser of any existing or future right and/or remedy available by law.

## **10 DISPUTES AND REMEDIES**

### **10.1 PROBLEM RESOLUTION AND DISPUTES**

Problems arising out of the performance of this Contract shall be resolved in a timely manner at the lowest possible level with authority to resolve such problem. If a problem persists and cannot be resolved, it may be escalated within each organization.

In the event a bona fide dispute concerning a question of fact arises between OSP or the Purchaser and Contractor and it cannot be resolved between the parties through the normal escalation processes, either party may initiate the dispute resolution procedure provided herein.

The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to

review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.

If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three (3) Business Days.

The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.

Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

Both parties agree to be bound by the determination of the Dispute Resolution Panel.

Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible.

OSP, the Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

If the subject of the dispute is the amount due and payable by Purchaser for materials, supplies, services and/or equipment being provided by Contractor, Contractor shall continue providing materials, supplies, services and/or equipment pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

## **10.2 ADMINISTRATIVE SUSPENSION**

When it in the best interest of the state, the OSP may at any time, and without cause, suspend the Contract or any portion thereof for a period of not more than thirty (30) calendar days per event by written notice from the Contract Administrator to the Contractor's Representative. Contractor shall resume performance on the next business day following the 30<sup>th</sup> day of suspension unless an earlier resumption date is specified in the notice of suspension. If no resumption date was specified in the notice of suspension, the Contractor can be demanded and required to resume performance within the 30 day suspension period by the Contract Administrator providing the Contractor's Representative with written notice of such demand.

### **10.3 FORCE MAJEURE**

The term "force majeure" means an occurrence that causes a delay that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.

Exceptions: Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this Contract if, and to the extent that, such party's performance of this Contract is prevented by reason of force majeure.

Notification: If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the Rights Reserved below, the time of completion shall be extended by Contract amendment for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract.

Rights Reserved: The OSP reserves the right to authorize an amendment to this Contract, terminate the Contract, and/or purchase materials, supplies, equipment and/or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the State.

### **10.4 ALTERNATIVE DISPUTE RESOLUTION FEES AND COSTS**

In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

### **10.5 NON-EXCLUSIVE REMEDIES**

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

### **10.6 LIMITATION OF LIABILITY**

The parties agree that neither Contractor, OSP nor Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled Termination for Default and Retention of

Records are not consequential, incidental, indirect, or special damages as that term is used in this section.

Neither the Contractor, the OSP nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of the Contractor, the OSP or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than the OSP or the Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Contractor, the OSP or the Purchaser, or their respective Subcontractors.

If delays are caused by a Subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.

Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

#### **10.7 FEDERAL FUNDING**

In the event that a federally funded acquisition results from this procurement, the contractor may be required to provide additional information (free of charge) at the request of the OSP or purchaser: Further, the contractor may be subject to those federal requirements specific to the commodity.

#### **10.8 FEDERAL RESTRICTIONS ON LOBBYING**

Contractor certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no Federal appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

#### **10.9 FEDERAL DEBARMENT AND SUSPENSION**

The contractor certifies, that neither it nor its "principals" (as defined in 49 CFR. 29.105 (p)) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

## **11 CONTRACT TERMINATION**

### **11.1 MATERIAL BREACH**

A Contractor may be Terminated for Cause by the OSP, at the sole discretion of the Contract Administrator, for failing to perform a contractual requirement or for a material breach of any term or condition. Material breach of a term or condition of the Contract may include but is not limited to:

1. Contractor failure to perform services or deliver materials, supplies, or equipment by the date required or by an alternate date as mutually agreed in a written amendment to the Contract;
2. Contractor failure to carry out any warranty or fails to perform or comply with any mandatory provision of the contract;
3. Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;
4. Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors that endangers the Contractor's proper performance hereunder;
5. Appointment of any receiver, trustee, or similar official for Contractor or any of the Contractor's property and such appointment endangers the Contractor's proper performance hereunder;
6. A determination that the Contractor is in violation of federal, state, or local laws or regulations and that such determination renders the Contractor unable to perform any aspect of the Contract.

### **11.2 OPPORTUNITY TO CURE**

In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, the OSP may issue a written cure notice. The Contractor may have a period of time in which to cure. The OSP is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as determined solely within the discretion of the OSP. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages, or otherwise affects any other remedies available against Contractor under the Contract or by law.

If the breach remains after Contractor has been provided the opportunity to cure, the OSP may do any one or more of the following:

1. Exercise any remedy provided by law;
2. Terminate this Contract and any related Contracts or portions thereof;
3. Procure replacements and impose damages as set forth elsewhere in this Contract;
4. Impose actual or liquidated damages;

5. Suspend or bar Contractor from receiving future Solicitations or other opportunities;
6. Require Contractor to reimburse the state for any loss or additional expense incurred as a result of default or failure to satisfactorily perform the terms of the Contract.

### **11.3 TERMINATION FOR CAUSE**

In the event the Contract Administrator, in its sole discretion, determines that the Contractor has failed to comply with the conditions of this Contract in a timely manner or is in material breach, the Contract Administrator has the right to suspend or terminate this Contract, in part or in whole. The Contract Administrator shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days or as otherwise specified by the Contract Administrator, or if such corrective action is deemed by the Contract Administrator to be insufficient, the Contract may be terminated. The Contract Administrator reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the Contractor or a decision by the Contract Administrator to terminate the Contract.

In the event of termination, the OSP shall have the right to procure for all Purchasers any replacement materials, supplies, services and/or equipment that are the subject of this Contract on the open market. In addition, the Contractor shall be liable for damages as authorized by law including, but not limited to, any price difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

If it is determined that: (1) the Contractor was not in material breach; or (2) failure to perform was outside of Contractor's or its Subcontractor's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience". The rights and remedies of the OSP and/or the Purchaser provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

### **11.4 TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this Contract, OSP, at the sole discretion of the Contract Administrator, may terminate this Contract, in whole or in part by giving thirty (30) calendar days written notice beginning on the second day after mailing to the Contractor. If this Contract is so terminated, Purchasers shall be liable only for payment required under this Contract for properly authorized services rendered, or materials, supplies and/or equipment delivered to and Accepted by the Purchaser prior to the effective date of Contract termination. Neither the OSP nor the Purchaser shall have any other obligation whatsoever to the Contractor

for such termination. This Termination for Convenience clause may be invoked by the OSP when it is in the best interest of the State of Washington.

#### **11.5 TERMINATION FOR WITHDRAWAL OF AUTHORITY**

In the event that the OSP and/or Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, the OSP may terminate this Contract, in whole or in part, by seven (7) calendar days written notice to Contractor.

#### **11.6 TERMINATION FOR CONFLICT OF INTEREST**

OSP may terminate this Contract by written notice to Contractor if it is determined, after due notice and examination, that any party to this Contract has violated Chapter 42.52RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, the OSP and /or Purchaser shall be entitled to pursue the same remedies against Contractor as it could pursue in the event that the Contractor breaches this Contract.

#### **11.7 TERMINATION BY MUTUAL AGREEMENT**

The OSP and the Contractor may terminate this Contract in whole or in part, at any time, by mutual agreement.

#### **11.8 TERMINATION PROCEDURE**

In addition to the procedures set forth below, if the OSP terminates this Contract, Contractor shall follow any procedures the Contract Administrator specifies in the termination notice.

Upon termination of this Contract and in addition to any other rights provided in this Contract, Contract Administrator may require the Contractor to deliver to the Purchaser any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Purchaser shall pay to the Contractor the agreed upon price, if separately stated, for completed work and service(s) Accepted by the Purchaser, and the amount agreed upon by the Contractor and the Purchaser for (i) completed materials, supplies, services rendered and/or equipment for which no separate price is stated, (ii) partially completed materials, supplies, services rendered and/or equipment, (iii) other materials, supplies, services rendered and/or equipment which are Accepted by the Purchaser, and (iv) the protection and preservation of property, unless the termination is for cause, in which case the OSP and the Purchaser shall determine the extent of the liability of the Purchaser. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Purchaser may withhold from any amounts due the Contractor such sum as the Contract Administrator and

Purchaser determine to be necessary to protect the Purchaser against potential loss or liability.

The rights and remedies of the OSP and/or the Purchaser provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a termination notice, and except as otherwise expressly directed in writing by the Contract Administrator, the Contractor shall:

1. Stop all work, order fulfillment, shipments, and deliveries under the Contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, supplies, equipment and/or facilities in relation to the Contract except as is necessary to complete or fulfill such portion of the Contract that is not terminated;
3. Complete or fulfill such portion of the Contract that is not terminated in compliance with all contractual requirements;
4. Assign to the Purchaser, in the manner, at the times, and to the extent directed by the Contract Administrator on behalf of the Purchaser, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Purchaser has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contract Administrator and/or the Purchaser to the extent Contract Administrator and/or the Purchaser may require, which approval or ratification shall be final for all the purposes of this clause;
6. Transfer title to the Purchaser and deliver in the manner, at the times, and to the extent directed by the Contract Administrator on behalf of the Purchaser any property which, if the contract had been completed, would have been required to be furnished to the Purchaser;
7. Take such action as may be necessary, or as the Contract Administrator and/or the Purchaser may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the OSP and/or the Purchaser has or may acquire an interest.

## **12 CONTRACT EXECUTION**

### **12.1 PARTIES**

This Contract ("Contract") is entered into by and between the State of Washington, acting by and through OSP, an agency of Washington state

government located at 210 11<sup>th</sup> Ave SW Olympia, WA 98504, and the Awarded Contractor, a corporation/sole proprietor or other business form licensed to conduct business in the state of Washington, for the purpose of providing Manual and Electric Breast Pumps, Double Pump Kits, and related accessories.

## 12.2 ENTIRE AGREEMENT

This Contract document and all subsequently issued amendments comprise the entire agreement between the OSP and the Contractor. No other statements or representations, written or oral, shall be deemed a part of the Contract.

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Contractor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

## 12.3 ORDER OF PRECEDENCE, INCORPORATED DOCUMENTS, CONFLICT AND CONFORMITY

### Incorporated Documents

Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein:

1. The OSP's Solicitation document 01910 with all attachments and exhibits, and all amendments thereto;
2. Contractor's response to the Solicitation 01910 dated [date];
3. The terms and conditions contained on Purchaser's Order Documents, if used;
4. Award Letter; and
5. All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to Purchaser and used to affect the sale of the Product to the Purchaser.

### Order of Precedence

In the event of a conflict in such terms, or between the terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable Federal and State of Washington statutes and regulations
2. Mutually agreed written amendments to this Contract

3. Award Letter describing the extent of the award or open administrative matters
4. This Contract
5. The OSP's Solicitation document (IFB) with all attachments and exhibits, and all amendments thereto
6. Western States Contracting Alliance (WSCA) Standard Terms and Conditions
7. Contractor's response to the Solicitation
8. Any other provision, term, or materials incorporated into the Contract by reference.

Conflict: To the extent possible, the terms of this Contract shall be read consistently.

Conformity: If any provision of this Contract violates any Federal or State of Washington statute or rule of law, it is considered modified to conform to that statute or rule of law.

#### 12.4 LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service mail, or by electronic mail, to the parties at the addresses, fax numbers, or e-mail addresses provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Equipment or Services provided pursuant to this Contract is served upon Contractor or OSP, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and OSP further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

#### LEGAL NOTICE CONTACT INFORMATION:

<u>To Contractor at:</u>	<u>To the State of Washington at:</u>
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<p><i>Evenflo Company, Inc.</i></p> <p><b>Attn: General Counsel</b></p> <p><i>225 Byers Road,, Miamisburg, OH 45342</i></p>	<p><b>State of Washington Department of General Administration Office of State Procurement</b></p> <p><b>Attn: Melissa Cox – Legal Notice</b></p> <p><b>210 11<sup>th</sup> Ave SW, Room 201 - GA Bldg Olympia, WA 98504-1017</b>  <b>Phone: 360-902-7400/Fax: 360-586-2426 melissa.cox@ga.wa.gov</b></p>
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**12.5 LIENS, CLAIMS AND ENCUMBRANCES**

All materials, equipment, supplies and/or services shall be free of all liens, claims, or encumbrances of any kind, and if the OSP or the Purchaser requests, a formal release of same shall be delivered to the respective requestor.

**12.6 AUTHORITY TO BIND**

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

**12.7 COUNTERPARTS**

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

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**CONTRACT SIGNATURES**

*In Witness Whereof*, the parties hereto, having read this Contract in its entirety, including all appendices and attachments, do agree in each and every particular and have thus set their hands hereunto.

This Contract is effective this 18<sup>th</sup> day of December, 2010.  
Date completed by OSP only

**Approved – Contractor**

Business Name

Evenflo Company, Inc.  
Ameda Breastfeeding Products  
475 Half Day Road, Suite 200  
Lincolnshire, IL 60069

**Approved - State**

State of Washington, Department of General Administration, Office of State Procurement

Dustin Epstein  
Signature

Dustin Epstein      10/29/2010  
Print or Type Name      Date

VP & General Manager, Ameda Breastfeeding Products  
Title

Melissa R Cox  
Signature

Melissa R Cox      12-18-10  
Print or Type Name      Date

Contracts Specialist  
Title

Additional OSP Approval (if necessary): [Signature]

## APPENDIX C STANDARD DEFINITIONS

This section contains definitions of terms commonly used in Solicitations conducted by the State of Washington, Office of State Procurement. Additional definitions may also be found in Chapter 43.19 RCW and WAC 236-48-003, and all terms contained herein will be read consistently with those definitions.

- Acceptance** The materials, supplies, services, and/or equipment have passed appropriate Inspection. In the event that there is a formal Acceptance Testing period required in the Solicitation document then acceptance is formalized in writing. If there is no Acceptance Testing, acceptance may occur when the Products are delivered and inspected.
- Acceptance Testing** The process for ascertaining that the materials, supplies, services, and/or equipment meets the standards set forth in the Solicitation, prior to Acceptance by the Purchaser.
- Agency** Includes State of Washington institutions, the offices of the elective state officers, the Supreme Court, the court of appeals, the administrative and other departments of state government, and the offices of all appointive officers of the state. In addition, colleges, community colleges, and universities who choose to participate in State Contract(s) are included. "Agency" does not include the legislature.
- All or Nothing** The result of a competitive Solicitation that requires that a Contract be executed with a single Bidder for delivery of goods and/or services. In the event that suppliers are unable to deliver the entirety of the goods and/or services required, no Contract is executed. No partial fulfillment opportunities are available as a result of the Solicitation  
A method of award resulting from a competitive Solicitation by which the OSP will award the resulting Contract to a single Bidder.
- Also, a designation the Bidder may use in its Bid or Response to indicate its offer is contingent upon full award and it will not accept a partial award.

U.S. Department of Treasury's Regional Disbursing Office as close as possible to the actual date that disbursement of funds is made. Advances made by the State agency to local agencies shall also conform to these same standards.

(j) *Local agency financial management.* The State agency shall ensure that all local agencies develop and implement a financial management system consistent with requirements prescribed by FNS and the State agency pursuant to the requirements of this section.

[50 FR 6121, Feb. 13, 1985; 50 FR 8098, Feb. 28, 1985, as amended at 65 FR 83286, Dec. 29, 2000]

#### § 246.14 Program costs.

(a) *General.* (1) The two kinds of allowable costs under the Program are "food costs" and "nutrition services and administration costs." In general, costs necessary to the fulfillment of Program objectives are to be considered allowable costs. The two types of nutrition services and administration costs are:

(i) *Direct costs.* Those direct costs that are allowable under 7 CFR part 3016.

(ii) *Indirect costs.* Those indirect costs that are allowable under 7 CFR part 3016. When computing indirect costs, food costs may not be used in the base to which the indirect cost rate is applied. In accordance with the provisions of 7 CFR part 3016, a claim for indirect costs shall be supported by an approved allocation plan for the determination of allowable indirect costs.

(2) Program funds may not be used to pay for retroactive benefits. Except as provided in paragraph (e) of this section and §§ 246.16(g) and 246.16(h) of this part, funds allocated by FNS for food purchases may not be used to pay nutrition services and administration costs. However, nutrition services and administration funds may be used to pay for food costs.

(b) *What costs may I charge to the food grant?* (1) The State agency may use food funds for costs of:

(i) Acquiring supplemental foods provided to State or local agencies or participants, whichever receives the supplemental food first;

(ii) Warehousing supplemental foods; and

(iii) Purchasing and renting breast pumps.

(2) For costs to be allowable, the State agency must ensure that food costs do not exceed the customary sales price charged by the vendor, home food delivery contractor, or supplier in a direct distribution food delivery system. In addition, food costs may not exceed the price limitations applicable to the vendor.

(c) *Specified allowable nutrition services and administration costs.* Allowable nutrition services and administration (NSA) costs include the following:

(1) The cost of nutrition education and breastfeeding promotion and support which meets the requirements of § 246.11. During each fiscal year, each State agency shall expend, for nutrition education activities and breastfeeding promotion and support activities, an aggregate amount that is not less than the sum of one-sixth of the amount expended by the State agency for costs of NSA and an amount equal to its proportionate share of the national minimum expenditure for breastfeeding promotion and support activities. The amount to be spent on nutrition education shall be computed by taking one-sixth of the total fiscal year NSA expenditures. The amount to be spent by a State agency on breastfeeding promotion and support activities shall be an amount that is equal to at least its proportionate share of the national minimum breastfeeding promotion expenditure as specified in paragraph (c)(1) of this section. The national minimum expenditure for breastfeeding promotion and support activities shall be equal to \$21 multiplied by the number of pregnant and breastfeeding women in the Program, based on the average of the last three months for which the Department has final data. On October 1, 1996 and each October 1 thereafter, the \$21 will be adjusted annually using the same inflation percentage used to determine the national administrative grant per person. If the State agency's total reported nutrition education and breastfeeding promotion and support expenditures are less than the required amount of expenditures, FNS will issue a claim for the difference. The State



agency may request prior written permission from FNS to spend less than the required portions of its NSA grant for either nutrition education or for breastfeeding promotion and support activities. FNS will grant such permission if the State agency has sufficiently documented that other resources, including in-kind resources, will be used to conduct these activities at a level commensurate with the requirements of this paragraph (c)(1). However, food costs used to purchase or rent breast pumps may not be used for this purpose. Nutrition education costs are limited to activities which are distinct and separate efforts to help participants understand the importance of nutrition to health. The cost of dietary assessments for the purpose of certification, the cost of prescribing and issuing supplemental foods, the cost of screening for drug and other harmful substance use and making referrals to drug and other harmful substance abuse services, and the cost of other health-related screening shall not be applied to the expenditure requirement for nutrition education and breastfeeding promotion and support activities. The Department shall advise State agencies regarding methods for minimizing documentation of the nutrition education and breastfeeding promotion and support expenditure requirement. Costs to be applied to the one-sixth minimum amount required to be spent on nutrition education and the target share of funds required to be spent on breastfeeding promotion and support include, but need not be limited to—

(i) Salary and other costs for time spent on nutrition education and breastfeeding promotion and support consultations whether with an individual or group;

(ii) The cost of procuring and producing nutrition education and breastfeeding promotion and support materials including handouts, flip charts, filmstrips, projectors, food models or other teaching aids, and the cost of mailing nutrition education or breastfeeding promotion and support materials to participants;

(iii) The cost of training nutrition or breastfeeding promotion and support educators, including costs related to

conducting training sessions and purchasing and producing training materials;

(iv) The cost of conducting evaluations of nutrition education or breastfeeding promotion and support activities, including evaluations conducted by contractors;

(v) Salary and other costs incurred in developing the nutrition education and breastfeeding promotion and support portion of the State Plan and local agency nutrition education and breastfeeding promotion and support plans; and

(vi) The cost of monitoring nutrition education and breastfeeding promotion and support activities.

(2) The cost of Program certification, nutrition assessment and procedures and equipment used to determine nutritional risk, including the following:

(i) Laboratory fees incurred for up to two hematological tests for anemia per individual per certification period. The first test shall be to determine anemia status. The second test may be performed only in follow up to a finding of anemia when deemed necessary for health monitoring as determined by the WIC State agency;

(ii) Expendable medical supplies;

(iii) Medical equipment used for taking anthropometric measurements, such as scales, measuring boards, and skin fold calipers; and for blood analysis to detect anemia, such as spectrophotometers, hematofluorometers and centrifuges; and

(iv) Salary and other costs for time spent on nutrition assessment and certification.

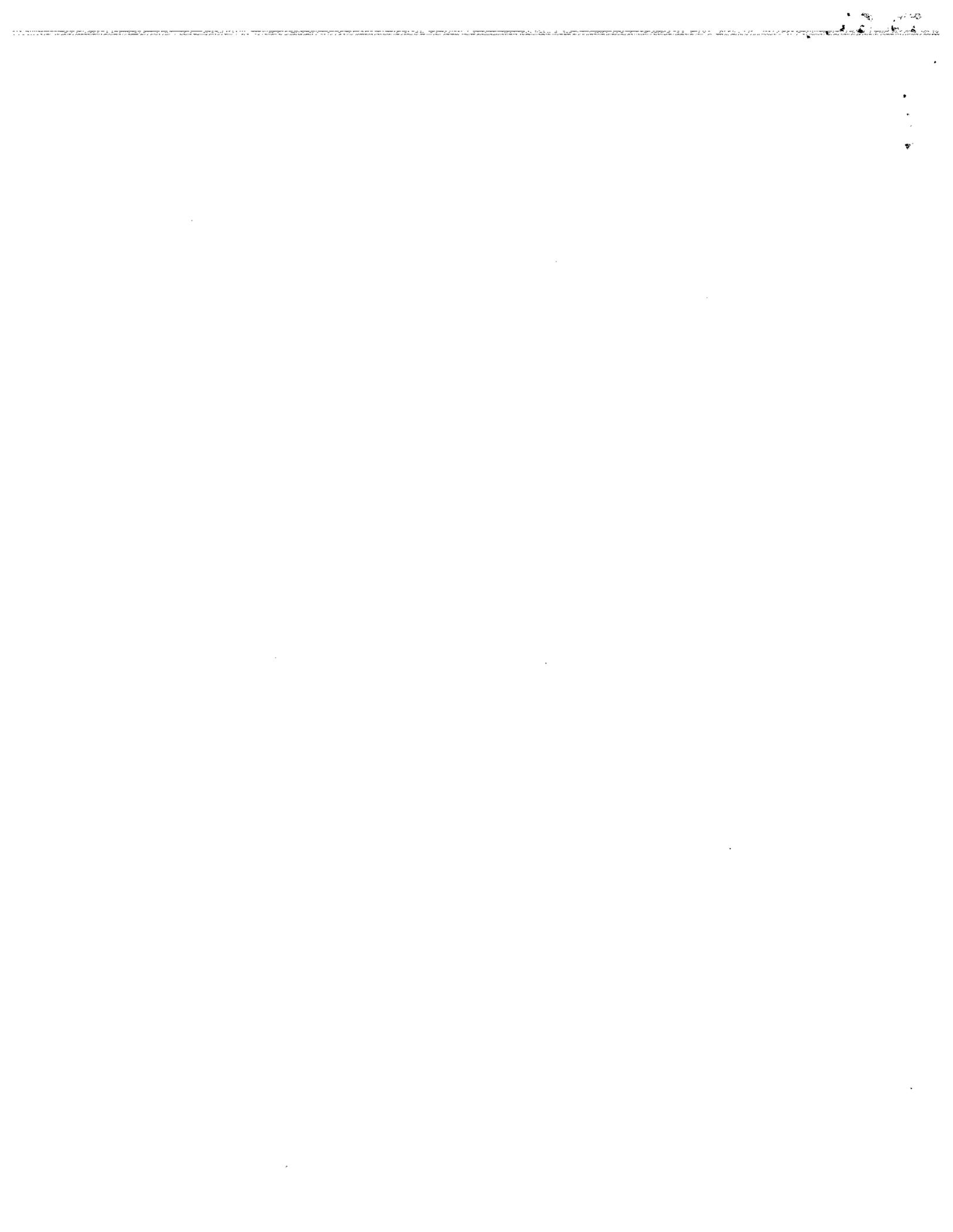
(3) The cost of outreach services.

(4) The cost of administering the food delivery system, including the cost of transporting food.

(5) The cost of translators for materials and interpreters.

(6) The cost of fair hearings, including the cost of an independent medical assessment of the appellant, if necessary.

(7) The cost of transporting participants to clinics when prior approval for using Program funds to provide transportation has been granted by the State agency and documentation that such service is considered essential to



§246.15

7 CFR Ch. II (1-1-11 Edition)

assure Program access has been filed at the State agency. Direct reimbursement to participants for transportation cost is not an allowable cost.

(8) The cost of monitoring and reviewing Program operations.

(9) The cost, exclusive of laboratory tests, of screening for drug and other harmful substance use and making referrals for counseling and treatment services.

(10) The cost of breastfeeding aids which directly support the initiation and continuation of breastfeeding.

(d) *Costs allowable with approval.* The costs of capital expenditures exceeding the dollar threshold established in Agency policy and guidance are allowable only with the approval of FNS prior to the capital investment. These expenditures include the costs of facilities, equipment (including medical equipment), automated data processing (ADP) projects, other capital assets, and any repairs that materially increase the value or useful life of such assets.

(e) *Use of funds recovered from vendors, participants, or local agencies.* (1) The State agency may keep funds collected through the recovery of claims assessed against vendors, participants, or local agencies. Recovered funds include those withheld from a vendor as a result of reviews of food instruments prior to payment. Recovered funds may be used for either food or NSA costs.

(2) These recovered funds may be used in the fiscal year:

(i) In which the initial obligation was made;

(ii) In which the claim arose;

(iii) In which the funds are collected;

or

(iv) after the funds are collected.

(3) The State agency may not credit any recoveries until:

(i) In the case of a vendor claim, the vendor has had the opportunity to correct or justify the error or apparent overcharge in accordance with §246.12(k)(3);

(ii) In the case of a participant, any administrative hearing requested in accordance with §246.9 has been completed; or

(iii) In the case of a local agency claim, any administrative review re-

quested in accordance with the local agency agreement has been completed.

(4) The State agency must report vendor, participant, and local agency recoveries to FNS through the normal reporting process;

(5) The State agency must keep documentation supporting the amount and use of these vendor, participant, and local agency recoveries.

[50 FR 6121, Feb. 13, 1987, as amended at 52 FR 21237, June 4, 1987; 53 FR 25314, July 6, 1988; 54 FR 18091, Apr. 27, 1989; 58 FR 11507, Feb. 26, 1993; 59 FR 11503, Mar. 11, 1994; 63 FR 63974, Nov. 18, 1998; 64 FR 67999, Dec. 6, 1999; 64 FR 70178, Dec. 16, 1999; 65 FR 83286, Dec. 29, 2000; 71 FR 56731, Sept. 27, 2006; 73 FR 11312, Mar. 3, 2008]

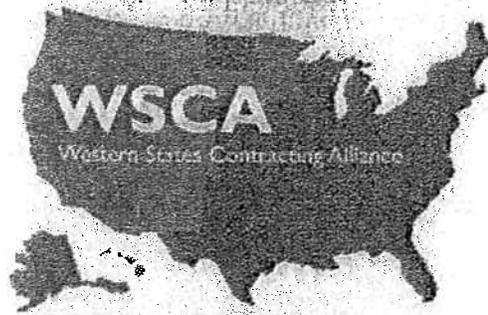
**§246.15 Program income other than grants.**

(a) *Interest earned on advances.* Interest earned on advances of Program funds at the State and local levels shall be treated in accordance with the provisions of 31 CFR part 205, which implement the requirements of the Cash Management Improvement Act of 1990. However, State agencies will not incur an interest liability to the Federal government on rebate funds for infant formula or other foods, *provided* that all interest earned on such funds is used for program purposes.

(b) *Other Program income.* The State agency may use current program income (applied in accordance with the addition method described in §3016.25(g)(2) of this title) for costs incurred in the current fiscal year and, with the approval of FNS, for costs incurred in previous years or subsequent fiscal years. Provided that the costs supported by the income further the broad objectives of the Program, they need not be a kind that would be permissible as charges to Federal funds. Money received by the State agency as a result of civil money penalties or fines assessed against a vendor and any interest charged in the collection of these penalties and fines shall be considered as program income.

[50 FR 6121, Feb. 13, 1985, as amended at 63 FR 63974, Nov. 18, 1998; 64 FR 13324, Mar. 18, 1999; 71 FR 56731, Sept. 27, 2006]





**INTENT TO PARTICIPATE**  
**Cooperative Contract(s) for Breast Pumps, Accessories & Supplies**

**I. PURPOSE:**  
The purpose of this Agreement is to provide the members of the Western States Contracting Alliance (WSCA) and other interested NASPO entities, and political subdivisions with the opportunity to participate in multi-state cooperative contract(s) for **Breast Pumps, Accessories & Supplies**.

**II. SCOPE OF THE CONTRACT(S)**  
The State of Washington is authorized by agreement of the participants to act as the procurement officer in developing multi-state cooperative contract(s) for **Breast Pumps, Accessories & Supplies**. The resulting contracts will be permissive contracts.

Administrative Fee  
A WSCA administrative fee of one-half of one percent (.5%) will be assessed centrally for purchases under the contract. Individual states may optionally add their administrative fee (if any) when the state executes its Participating Addendum.

**III. TERM OF THE CONTRACT**  
The initial contract will be established for up to five (5) years from date of award, with renewal contract extension options.

**IV. SOLICITATION AND CONTRACT DEVELOPMENT/ADDITIONAL INFORMATION**  
Solicitation and contract development shall be accomplished in compliance with the WSCA and NASPO Agreement of Understanding, incorporated herein by reference.

Solicitation Publication Period  
Bidders/offerors will be given at least 30 days after publication to submit proposals.

Solicitation Type and Evaluation Criteria  
This RFP will be issued and evaluated in concert with the procurement laws and rules of the State of Washington by a sourcing team composed of procurement and subject matter experts from several states.

Award(s): The solicitation will permit multiple awards.

Additional Requested Information  
State Specific Terms and Conditions: If the participating state wishes to include any State specific terms and conditions with the release of this RFP, please attach those with this Intent to Participate.

*Please indicate the following information, if available.*

Annual Estimated Volume: Please indicate your estimated annual volume of potential spend. \$ 34,875.00

SIGNATURE

State of GUAM

CLAUDIA S. ACFALLE, CHIEF PROCUREMENT OFFICER

Printed Name and Title

Signature

Date

Please scan and email the signed "Intent to Participate" to:  
Douglas Richins  
WSCA Cooperative Development Director  
[DRichins@AMRms.com](mailto:DRichins@AMRms.com)

**From:** Pete San Nicolas [pete.sannicolas@gsa.guam.gov]  
**Sent:** Wednesday, May 26, 2010 6:01 PM  
**To:** Rose Castro; Douglas Richins; pstemblem@amms.com  
**Cc:** Claudia Acfalle; Paul Stembler; Cox, Melissa (GA); Charlie Morris; Steve Weiss; David Gumataotao; Julito Martinez; Kate Offerdahl-WNCDT; Lee Ann Pope; Suong Vong; Lissa Ong; Janine F. Paeste; J. Peter Roberto  
**Subject:** Re: Renewal WSCA Contract for Breast Pumps for the WIC Program (Reference - Contract No 10305)  
**Attachments:** WSCA BREAST PUMP CONTRACT FOR GUAM.pdf

Paul Stembler or Douglas Richins,

Please see attached "Intent to Participate" Form from Guam, Approved by the Chief Procurement Officer, Ms. Claudia S. Acfalle. Per Ms. Acfalle, this form and e-mail shall be the Approval and Permission to proceed to allow Guam to use the WSCA Breast Pump Contract.

Please advise if there is anything else that we need to do.

Thank You!  
 Pete San Nicolas, GSA, Guam  
 (671)475-1711  
 (671)475-1727 Fax

On Wed, May 26, 2010 at 10:53 AM, Pete San Nicolas <pete.sannicolas@gsa.guam.gov> wrote:  
 Thanks Rose,

We will fill out the "Intent to Participate" form for Guam, and once it is Signed by the Chief Procurement Officer; Ms. Claudia S. Acfalle, we will scan and E-Mail the Signed copy to Douglas Richins, WSCA Cooperative Development Director.

Thks! Pete SN

On Wed, May 26, 2010 at 10:35 AM, Rose Castro <rose.castro@dphss.guam.gov> wrote:  
 Good Morning Pete,

I received your voice message in regards to your attempt to call Paul Stembler this morning. Because of the time difference, his office may have been closed. I am sure he will return your call.

Guam WIC's estimated annual volumn of potential spend is \$34,875.00.

Rose C.

On Thu, May 20, 2010 at 10:41 AM, Rose Castro <rose.castro@dphss.guam.gov> wrote:  
 Pete,

Were you or Claudia able to contact Paul Stembler or Douglas Richins regarding the upcoming IFB for the WSCA Breast Pump Contact. They had requested that the procurement director contact them. Because WIC serves breastfeeding moms we would hate to miss this opportunity for Guam WIC to become a participating State agency. We have tried calling you but no answer or you are away from

you desk.

Rose C.

On Mon, May 17, 2010 at 9:58 AM, Rose Castro <[rose.castro@dphss.guam.gov](mailto:rose.castro@dphss.guam.gov)> wrote:  
Claudia / Pete,

Following up on whether you were able to contact Paul or Douglas regarding the upcoming IFB for the WSCA Breast Pump Contract (see message below).

Rose C.

On Fri, Apr 30, 2010 at 3:38 PM, Rose Castro <[rose.castro@dphss.guam.gov](mailto:rose.castro@dphss.guam.gov)> wrote:  
Claudia/Pete,

The Western States Contracting Alliance (WSCA) is formulating a new Breast Pump Contract and Guam WIC is interested in becoming a participating State agency. Washington State is the lead State agency for the WIC Breast Pump Bid and is requesting that Guam's purchasing director get in touch with them, Paul Stempler or Douglas Richins (see message below).

March 10, 2009 Guam WIC routed the "Intent to Contract Participating Addendum to the Western States Contracting Alliance Breast Pumps (WSCA/WIC) Contract" for your review and approval. Unfortunately the Attorney General's Office did not approve this contract for the reason that Guam was not contemplated in the original arrangement and was considered to be "piggybacking" which Guam law does not allow. Now that WSCA is formulating a new Breast Pump Contract, Guam has the opportunity to be a part of the original arrangement with other State agencies, we would hate to miss this opportunity.

Your response is greatly appreciated.

Thank You,  
Rose C.

On Thu, Apr 29, 2010 at 1:46 AM, Paul Stembler <[pstembler@amrms.com](mailto:pstembler@amrms.com)> wrote:

Charlie, a technical question - does the "included in the original contract" mean being listed in the solicitation or does it mean actively participating in creating and issuing the RFP? We have states each of those requirements.

We will work with you to meet your requirements, contract

Normal process would be to distribute an Intent to Participate with an initial draft of a solicitation to all NASPO members. This document would give you something to work through your process. The sourcing team has probably not set up a calendar yet, but now that we know of your interest, sure they will make time to accommodate your needs.

Also, would you have your Guam's purchasing director get in touch with either Doug ([drichins@amrms.com](mailto:drichins@amrms.com)) or I and we will work on other details in the background.

Thank you for your interest in WSCA, NASPO, and cooperative contracting.

Paul Stembler  
 WSCA/NASPO Cooperative Development Coordinator  
 (612) 284-7123  
 (952) 392-4580 Fax  
[pstembler@amrms.com](mailto:pstembler@amrms.com)

For more information on the WSCA/NASPO Cooperative Development programs, please visit <http://www.aboutwsca.org/> or <http://www.naspo.org/>. Management and support of these programs is provided through the association's headquarters office at AMR Management Services (<http://www.amrms.com/>).

The information contained in this communication, and in any accompanying documents, may constitute confidential or proprietary information belonging to AMR Management Services or its clients. If you are not the intended recipient of this message, then you may not disclose, print, copy, or disseminate this information, nor take any action in reliance on this information. If you have received this communication in error, please reply and notify the sender (only) and then delete the message. Unauthorized interception of e-mail communications is a violation of federal criminal law.

---

**From:** Cox, Melissa (GA)  
**Sent:** Wed 4/28/2010 10:17  
**To:** Charlie Morris  
**Cc:** Steve Weiss; David Gumataotao; Rose Castro; Julito Martinez; Paul Stembler; Douglas Richins  
**Subject:** RE: Renewal WSCA Contract for Breast Pumps for the WIC Program (Reference - Contract No. 10305)

Charlie,

I am going to cc Paul Stembler with WSCA on this email so that he can guide you through the process. We won't be releasing the solicitation until sometime in August, so there is plenty of time to take care of it!

I will add your name to my list of contacts for bid review once we get to that stage in the process. Thank you for your interest in this contracting opportunity. I look forward to working with you in the future!

Regards,  
 Melissa

**Melissa Cox**  
 Contracts Specialist  
 State of Washington  
 General Administration  
 Office of State Procurement  
 Phone (360) 902-7439  
 Fax (360) 586-2426  
 Email [melissa.cox@ga.wa.gov](mailto:melissa.cox@ga.wa.gov)

---

**From:** Charlie Morris [<mailto:charles.morris@dphss.guam.gov>]  
**Sent:** Tuesday, April 27, 2010 5:07 PM  
**To:** Cox, Melissa (GA)  
**Cc:** Steve Weiss; 'David Gumataotao'; 'Rose Castro'; Julito Martinez  
**Subject:** FW: Renewal WSCA Contract for Breast Pumps for the WIC Program (Reference - Contract No. 10305)

Hafa Adai Ms. Cox,

I just spoke with Roz this morning and she advised that you were now the WSCA lead person for the WIC Breast Pump Bid. As referenced below, we are very interested in participating in this bid if it is still possible. Please let us know what you would need from us on our end.

Thank you,

Charlie

---

**From:** Charlie Morris [mailto:[charles.morris@dphss.guam.gov](mailto:charles.morris@dphss.guam.gov)]  
**Sent:** Monday, April 26, 2010 11:41 AM  
**To:** 'rknox@ga.wa.gov'  
**Cc:** 'David Gumataotao'; 'rose.castro@dphss.guam.gov'  
**Subject:** Renewal WSCA Contract for Breast Pumps for the WIC Program (Reference - Contract No. 10305)

Hafa Adai Ms. Knox:

A year ago Guam attempted to join the referenced Breast Pump contract with WSCA. Our AG's Office informed us, that though there would be significant cost savings and that the laws of some states allow for the legal term known as "piggybacking" on existing contracts, this was not allowed in Guam. We would have only be allowed to participate if we had been included in the original contract. In regard to this, our Western Region USDA/FNS representative, Lissa Ong, informed us last week that WSCA was in the process of formulating a new contract and if there is still time, Guam would be interested in participating.

Please let us know if this is still possible and if so, what sort of paperwork/documentation do you need for us to complete in order to participate. Anything which involves binding the Government of Guam (e.g., an Intent to Contract), would need the signature of our Governor. We appreciate your thoughtful consideration of our request.

Thank you,

Charlie

**CHARLES H. MORRIS, MPH, RD, LDN**  
 Administrator, Bureau of Nutrition Services  
 Department of Public Health and Social Services  
 15-6100 Mariner Avenue  
 Barrigada, GU 96913-1601

**Phone:** (671) 475-0287  
**Fax:** (671) 477-7945  
**Mobile:** (671) 488-4510  
**Email:** [charles.morris@dphss.guam.gov](mailto:charles.morris@dphss.guam.gov)

--  
 Rose M. Castro  
 Management Analyst II  
 Guam WIC Program

Work: 671-475-0299  
Fax: 671-477-7945

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Re: Renewal WSCA Contract for Breast Pumps for the WIC Program

Pumps for the WIC Program (Reference - Contract No. 10305)\_Response from Douglas Richins -incl  
From: Douglas Richins [DRichins@amrms.com]  
Sent: Thursday, May 27, 2010 2:08 AM  
To: Pete San Nicolas; Rose Castro; pstemblem@amms.com  
Cc: Claudia Acfalle; Paul Stembler; Cox, Melissa (GA); Charlie Morris; Steve Weiss; David Gumataotao; Julito Martinez; Kathryn Offerdahl; Lee Ann Pope; Suong Vong; Lissa Ong; Janine F. Paeste; J. Peter Roberto; Melissa Cox, Washington  
Subject: RE: Renewal WSCA Contract for Breast Pumps for the WIC Program (Reference - Contract No. 10305)

Thank you very much. We will include Guam as a participating entity when the RFP for Breast Pumps is released by the State of Washington. The new contract will no doubt provide excellent value for the taxpayers of Guam.

Regards,

Douglas Richins  
Cooperative Development Director  
Western States Contracting Alliance (WSCA) drichins@amrms.com  
<mailto:drichins@amrms.com>  
(801) 643-6600

Re: Renewal WSCA Contract for Breast Pumps for the WIC Program

From: Pete San Nicolas [mailto:pete.sannicolas@gsa.guam.gov]  
Sent: wed 5/26/2010 2:00 AM  
To: Rose Castro; Douglas Richins; pstemblem@amms.com  
Cc: Claudia Acfalle; Paul Stembler; Cox, Melissa (GA); Charlie Morris; Steve Weiss; David Gumataotao; Julito Martinez; Kathryn Offerdahl; Lee Ann Pope; Suong Vong; Lissa Ong; Janine F. Paeste; J. Peter Roberto  
Subject: Re: Renewal WSCA Contract for Breast Pumps for the WIC Program (Reference - Contract No. 10305)

Paul Stembler or Douglas Richins,

Please see attached "Intent to Participate" Form from Guam, Approved by the Chief Procurement Officer, Ms. Claudia S. Acfalle. Per Ms. Acfalle, this form and e-mail shall be the Approval and Permission to proceed to allow Guam to use the WSCA Breast Pump Contract.

Please advise if there is anything else that we need to do.

Thank You!  
Pete San Nicolas, GSA, Guam  
(671)475-1711  
(671)475-1727 Fax

On wed, May 26, 2010 at 10:53 AM, Pete San Nicolas <pete.sannicolas@gsa.guam.gov> wrote:

Thanks Rose,

We will fill out the "Intent to Participate" form for Guam, and once it is signed by the Chief Procurement Officer; Ms. Claudia S. Acfalle, we will scan and E-Mail the signed copy to Douglas Richins, WSCA Cooperative Development Director.

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May 17, 2010 at

Page 2

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11

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This document would give you something to work through your process. The  
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Also, would you have your Guam's purchasing  
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work on other details in the background.

THANK YOU

Thank you for your interest in WSCA, NASPO,

and  
cooperative contracting.

Paul Stembler  
WSCA/NASPO Cooperative Development

Coordinator

(612) 284-7123  
(952) 1392-4580 Fax  
pstembler@amrms.com

Cooperative Development programs, please visit <http://www.aboutwsca.org/> or  
<http://www.naspo.org/>. Management and support of these programs is provided  
through the association's headquarters office at AMR Management Services  
(<http://www.amrms.com/>).

For more information on the WSCA/NASPO

communication,  
and in any accompanying documents, may constitute confidential or proprietary  
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t Pumps for the WIC Program (Reference - Contract No. 10305)\_Response from Douglas Richins -incl  
not the intended recipient of this message, then you may not disclose, print,  
copy, or disseminate this information, nor take any action in reliance on this  
information. If you have received this communication in error, please reply  
and notify the sender (only) and then delete the message. Unauthorized  
interception of e-mail communications is a violation of federal criminal law.

WSCA/NASH

(612) 20

(802) 83

Stembla

From: Cox, Melissa (GA)  
Sent: Wed 4/28/2010 10:17  
To: Charlie Morris  
Cc: Steve Weiss; David Gumataotao; Rose

Castro;  
Julito Martinez; Paul Stembla; Douglas Richins  
Subject: RE: Renewal WSCA Contract for

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Charlie,

I am going to cc Paul Stembla with WSCA on  
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I will add your name to my list of contacts  
for bid review, once we get to that stage in the process. Thank you for your  
interest in this contracting opportunity. I look forward to working with you  
in the future!

Regards,  
Melissa

Melissa Cox  
Contracts Specialist  
State of Washington  
General Administration  
Office of State Procurement  
Phone (360) 902-7439  
Fax (360) 586-2426  
Email melissa.cox@ga.wa.gov

Pumps for the WIC Program (Reference - Contract No 10305)\_Response from Douglas Richins -incl

[mailto:charles.morris@dphss.guam.gov]

From: Charlie Morris  
Sent: Tuesday, April 27, 2010 5:07 PM  
To: Cox, Melissa (GA)  
Cc: Steve Weiss; 'David Gumataotao'; 'Rose  
Subject: FW: Renewal WSCA Contract for  
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Castro'; Julito Martinez

Breast

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Thank you,

Charlie  
From: Charlie Morris

[mailto:charles.morris@dphss.guam.gov]

Sent: Monday, April 26, 2010 11:41 AM  
To: 'rknox@ga.wa.gov'  
Cc: 'David Gumataotao';

'rose.castro@dphss.guam.gov'

Subject: Renewal WSCA Contract for Breast

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Page 5  
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From: Charlie Morris

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and  
Please let us know if this is still possible  
if so, what sort of paperwork/documentation do you need for us to complete in  
order to participate. Anything which involves binding the Government of Guam  
(e.g., an Intent to Contract), would need the signature of our Governor. We  
appreciate your thoughtful consideration of our request.

Thank you,

Charlie

CHARLES H. MORRIS, MPH, RD, LDN  
Administrator, Bureau of Nutrition Services

Services

Department of Public Health and Social

15-6100 Mariner Avenue  
Barrigada, GU 96913-1601

Phone: (671) 475-0287  
Fax: (671) 477-7945  
Mobile: (671) 488-4510  
Email: charles.morris@dphss.guam.gov

Roselms Castro  
Management Analyst II  
Guam WIC Program  
Work: 671-475-0299  
Fax: 671-477-7945

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Page 6

Pumps for the WIC Program (Reference - Contract No 10305)\_Response from Douglas Richins -incl message.

Rose M. Castro  
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by reply e-mail and destroy all copies of the original message.

W WSCA Breast Pump Contract\_Response from Douglas Richins\_Intent to Participate document submit

From: Douglas Richins [DRichins@amrms.com]  
Sent: Thursday, September 23, 2010 12:40 AM  
To: Rose Castro  
Cc: David Gumataotao; Charles Morris; Stephen E. Weiss; Cox, Melissa (GA);  
Lim, Gloria; Suong Vong; GeNam Chew; pete.sannicolas@gsa.guam.gov;  
Claudia Acfalle; Paul Stembler; Gwen Marshall, Washington State WIC  
Program  
Subject: RE: New WSCA Breast Pump Contract

Dear Ms. Castro.

Thanks for the email. Yes we have your previously submitted Intent to Participate document. There is no need to submit another.

Thanks very much. We are appreciate of your participation in this important cooperative procurement.

Douglas Richins  
Cooperative Development Director  
Western States Contracting Alliance (WSCA) drichins@amrms.com  
<mailto:drichins@amrms.com>  
(801) 643-6600

---

From: Rose Castro [mailto:rose.castro@dphss.guam.gov]  
Sent: Tue 9/21/2010 5:26 PM  
To: Douglas Richins  
Cc: David Gumataotao; Charles Morris; Stephen E. Weiss; Cox, Melissa (GA);  
Lim, Gloria; Suong Vong; GeNam Chew; pete.sannicolas@gsa.guam.gov; Claudia  
Acfalle; Paul Stembler  
Subject: Re: New WSCA Breast Pump Contract

Hi Douglas,

Guam submitted it's Intent to Participate in May 2010 (see attached), do we need to submit the Intent again?

Rose C.

On Sat, Sep 18, 2010 at 3:21 AM, Douglas Richins <DRichins@amrms.com> wrote:

Rose,

We are excited to share with you the confidential draft of the WSCA IFB for Breast Pumps and Accessories. The contract(s) resulting from this new solicitation will replace the highly successful and widely used contract current held by Medela, Inc. This new IFB is the product of the cooperative effort by a multi-state sourcing team led by Melissa Cox in the State of Washington. This sourcing team is comprised of procurement professionals and subject matter experts from Washington, Arizona, California and Oregon. Please share this draft IFB with your WIC director.

Should you have comments to improve the IFB, or if you have unique State specific Terms and Conditions that you need to have included in the solicitation, please email them to Melissa Cox at melissa.cox@ga.wa.gov

New WSCA Breast Pump Contract\_Response from Douglas Richins\_Intent to Participate document submit  
<mailto:melissa.cox@ga.wa.gov> by September 28, 2010. Our goal is for the  
State of Washington to release the IFB soon thereafter.

Of course, we desire to identify as many states/territories as possible  
who are interested in participating in the resulting contracts. Accordingly,  
we invite you to complete and email the attached "Intent to Participate"  
document to DRichins@AMRms.com <mailto:DRichins@AMRms.com> also by September  
28, 2010. If you are currently participating in the WSCA Breast Pump contract  
with Medela you need not complete the volume of purchases section of the  
"Intent to Participate" document, as we already have that information. If  
your state/territory is new to this cooperative effort and have information  
about the volume of anticipated purchases by your state/territory; that  
information would be very useful.

Thanks to the Sourcing Team for their superb efforts to provide all of  
us with excellent contracts for Breast Pumps and Accessories.

Douglas Richins  
Cooperative Development Director  
Western States Contracting Alliance (WSCA)  
drichins@amrms.com <mailto:drichins@amrms.com>  
(801) 643-6600

---

From: Rose Castro [mailto:rosecastro@phss.guam.gov]  
Sent: Mon 8/16/2010 10:12 PM  
To: Douglas Richins; Paul Stembler  
Cc: David Gumataotao; Charles Morris; Stephen E. Weiss; Cox, Melissa  
(GA); Lim, Gloria; Suong Vong; Genam Chew; Pete Sannicolas@gsa.guam.gov;  
Claudia Acfalle  
Subject: New WSCA Breast Pump Contracts

Hi Douglas and Paul,

Respectfully requesting for an update on the new WSCA Breast Pump  
Contract. On your last update, June 18, 2010, the plan was to release the RFP  
to the suppliers in mid-October with submittals due mid-November and to award  
the new contract by December 2010.

Thank you,  
Rose M. Castro  
Management Analyst II  
Guam WIC Program  
Work: 671-475-0299  
Fax: 671-477-7945

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**From:** Paul Stembler [pstembler@amrms.com]  
**Sent:** Friday, July 01, 2011 11:18 PM  
**To:** Rose Castro; Cox, Melissa (GA)  
**Cc:** Douglas Richins; David Gumataotao; Charlie Morris; Stephen Weiss; gwendelyn.marshall@doh.wa.gov; Kate Offerdahl-WNCDT; Lee Ann Pope  
**Subject:** RE: WSCA Breast Pump Contract No. 01910

Rose, I get to deal with the participation and participation eligibility questions for WSCA and NASPO. It is one of those tasks that we can take off the shoulders of the lead state contract administrators because it really is focused back on the individual state's laws and not on the laws of the lead state.

As you know, we treat Guam and all the organized territories as "states" and members of NASPO.

The participation process is really split into two pieces. 1 - the Intent to Participate process, which is something ONLY a state can do, and 2 - the Participating Addenda process, which can be done by states or eligible entities within a state.

An Intent to Participate is just that, a non-binding indication that a state is considering participation. We ask for them at least twice during the process of developing, refining and issuing the solicitation. It is really intended to document the process of specifically listing a "state" in the solicitation. Many state statutes require participation in the issuing of a solicitation or being specifically named in a solicitation, and the Intent to Participate documents that. We always include broad language that the solicitation is being issued in the "name of the lead state, WSCA and the NASPO Cooperative", but to meet statutory requirements the Intent to Participate triggers being specifically named.

The Intent to Participate is executed before the solicitation is issued and before any awards have been made. So, it is not based on any real offerings.

The Participating Addendum is a bi-lateral agreement between the state (or participating entity within a state) and the contractor. It is based on the Master Price Agreement, but DOES NOT amend or change the Master Price Agreement. It is intended to allow the state (or participating entity) to tune the basic agreement in the Master Price Agreement to comply with its unique statutes or rules. Basic fact, Guam is not going to spend a penny under the laws

of the State of Washington (in this case), only under the statutes and rules of Guam. It addresses how a state spends money, and those kinds of things. The Master Price Agreement covers the vast majority of the requirements, all states have pretty much those same requirements, it is really the unique or specific requirements that you need to have to spend money that need to be included.

Every state (or participating entity), including in many cases the lead state, signs a Participating Addenda with each of the contractors they wish to use on a specific WSCA or NASPO cooperative contract. We encourage you to sign with all of the contractors and then re-compete your business within your state, which sometimes may, acceptably, produce better pricing opportunities for you. We try to focus the process on giving the individual state the most flexibility and as many options as possible.

Long road to an answer. You need to execute Participating Addenda with each of the contractors you wish to use on any WSCA or NASPO cooperative contract.

Hope this helps, if I can do anything else, please let me know.

Thank you for your interest in WSCA, NASPO, and cooperative contracting.

Paul Stembler  
 WSCA/NASPO Cooperative Development Coordinator  
 (612) 284-7123  
 (952) 392-4580 Fax  
[pstembler@amrms.com](mailto:pstembler@amrms.com)

*For more information on the WSCA/NASPO Cooperative Development programs, please visit [www.aboutwsca.org](http://www.aboutwsca.org) or [www.naspo.org](http://www.naspo.org). Management and support of these programs is provided through the association's headquarters office at AMR Management Services ([www.amrms.com](http://www.amrms.com)).*

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**From:** Rose Castro [<mailto:rose.castro@dphss.quam.gov>]  
**Sent:** Thu 6/30/2011 18:04  
**To:** 'Cox, Melissa (GA)'  
**Cc:** Douglas Richins; Paul Stembler; 'David Gumataotao'; 'Charlie Morris'; 'Stephen Weiss'; [gwendelyn.marshall@doh.wa.gov](mailto:gwendelyn.marshall@doh.wa.gov)  
**Subject:** RE: WSCA Breast Pump Contract No. 01910

Hi Melissa,

Guam submitted the intent to participate (attached) in May 2010, how is this different? Please advise.

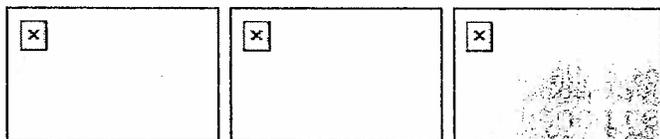
Rose C.

---

**From:** Cox, Melissa (GA) [<mailto:melissa.cox@ga.wa.gov>]  
**Sent:** Friday, July 01, 2011 12:53 AM  
**To:** Rose Castro  
**Cc:** David Gumataotao; Charlie Morris; Stephen Weiss  
**Subject:** RE: WSCA Breast Pump Contract No. 01910

Rose,  
In order to utilize the WSCA contract for breast pumps, Guam will need to execute a participating addendum with each vendor they will be placing orders with. I have attached the 3 PA's for your review. Once you have signed, go ahead and forward to the people you have previously made contact with and they will execute the agreements and send you a copy. Please keep in mind that Hygeia has a 150% shipping fee to US Territories. Medela and Ameda do not assess a shipping fee to US Territories. Let me know if you have any questions on the process.

Thanks,  
Melissa




---

**From:** Rose Castro [<mailto:rose.castro@dphss.guam.gov>]  
**Sent:** Wednesday, June 29, 2011 11:52 PM  
**To:** Cox, Melissa (GA)  
**Cc:** 'David Gumataotao'; 'Charlie Morris'; 'Stephen Weiss'  
**Subject:** WSCA Breast Pump Contract No. 01910

Hi Melissa,

The Guam WIC Program is interested in purchasing breast pumps and accessories under the WSCA Breast Pump Contract No. 01910. I have sent an email message to the three vendors requesting to establish a vendor record with the Department of Administration. I would like to inquire if there are any other documents that are required of us before we process any purchase orders referencing this contract.

Your response is greatly appreciated.

Thank You,  
Rose Castro  
Management Analyst II  
Guam WIC Program  
Phone: (671) 475-0299  
Fax: (671) 477-7945  
Email: [rose.castro@dphss.guam.gov](mailto:rose.castro@dphss.guam.gov)





General Administration  
STATE OF WASHINGTON

OFFICE OF STATE PROCUREMENT

Rm. 201 General Administration Building, P.O. Box 41017 • Olympia, Washington 98504-1017 • (360) 902-7400  
<http://www.ga.wa.gov>

Contract No. 01910 (WSCA Contract)

A Multi-State Contract for:  
Breast Pumps and Related Accessories

WSCA Pricing and Ordering Information	
Contract Number	01910 (replaces 10305)
Commodity Code	6515
Award Date	December 15, 2010
Effective Date	January 18, 2011
Contract Term	Maximum Six (6) Years or January 17, 2017
Current Term	January 18, 2011 through January 17, 2013
Term Worth	\$ 15,000,000 (Initial two years)
Scope and Purpose	<p>The purpose of this Contract is to facilitate the as-needed purchase of Manual and Electric Breast Pumps, Double Pumping Kits, and related accessories for participating members of the Western States Contracting Alliance (WSCA). The balance of the 50 states, the District of Columbia, US Territories and other public entities may also use WSCA contracts.</p> <p>Specific to the State of Washington, all Washington Purchasing Cooperative members are eligible to use this Contract. See Section 1.4 <i>Participating Entities</i> for more specific information regarding eligibility requirements for Contract utilization. This Contract was bid under the statutory authority of <u>RCW 43.19</u> for the purchase of goods and services as stated herein.</p>

<b>Contractors</b>	<p>This Contract is awarded to three (3) vendors:</p> <p>Medela, Inc.  Evenflo, Inc. (Ameda)  Hygeia II Medical Group, Inc.</p>		
<b>Contract Restrictions</b>	<p><b>Washington State Purchasing Cooperative Members are restricted to using <u>Medela, Inc.</u> for breast pumps and related accessories under this Contract. Please contact the Contract Administrator for questions related to this restriction.</b></p>		
<b>WSCA Participating Addendum</b>	<p>Additional States and US Territories interested in utilizing this contract must sign a Participating Addendum prior to initiating a purchase. Participating Addendums may be signed with one or more vendors awarded contracts under IFB No. 01910. Please contact the <u>WSCA Development Team</u> for information regarding the process for executing a Participating Addendum. Model Participating Addendums are provided as an imbedded file below:</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div data-bbox="446 892 657 1029" style="border: 1px solid black; padding: 5px; text-align: center;">   W3-Breast Pumps  11-17 Medela Model F </div> <div data-bbox="755 892 966 1029" style="border: 1px solid black; padding: 5px; text-align: center;">   W3-Breast Pumps  11-17 Hygeia Model F </div> <div data-bbox="1031 892 1242 1029" style="border: 1px solid black; padding: 5px; text-align: center;">   W3-Breast Pumps  11-17 Evenflo Model F </div> </div>		
<b>Contract Administrator</b>	<p><b>Primary:</b> Melissa Cox (360) 902-7439 <a href="mailto:melissa.cox@ga.wa.gov">melissa.cox@ga.wa.gov</a>  <b>Alternate:</b> GA Customer Service (360) 902-7400 <a href="mailto:csmail@ga.wa.gov">csmail@ga.wa.gov</a>  <b>WA State WIC Contact:</b> Gwen Marshall (360) 236-3654  <a href="mailto:gwendelyn.marshall@doh.wa.gov">gwendelyn.marshall@doh.wa.gov</a></p>		
<b>Participation</b>	MBE 0%	WBE 0%	Other 0%
<b>Contract Updates</b>	<ul style="list-style-type: none"> <li>• 1/12/2011 Updated Evenflo/Ameda participating addendum to reflect correct company name Evenflo Company, Inc.</li> <li>• 1/12/2011 Changed Ameda's order placement email address to <a href="mailto:wic@ameda.com">wic@ameda.com</a></li> </ul>		
<b>Contractor Information</b>			
<b>Medela, Inc.</b>			

<b>Order Placement</b>	<b>Send to:</b> Medela, inc. Attn: Bonnie Voigt 1101 Corporate Drive McHenry, IL 60050-7005	<b>Contact:</b> Bonnie Voigt <b>Title:</b> Supervisor, Government Contracts <b>Phone:</b> (815) 578-2459 <b>Fax:</b> (815) 759-2459 <b>Email:</b> <a href="mailto:bonnie.voigt@medela.com">bonnie.voigt@medela.com</a>
<b>Website</b>	<a href="http://www.medela.com">www.medela.com</a>	
<b>Contract Pricing</b>	<a href="#">Medela Pricing</a>	
<b>Shipping</b>	FOB Destination All orders delivered within 30 days of order placement Alaska- add 8% Hawaii- add 8% US Territories- no additional charge	
<b>Purchase Card Acceptance</b>	Visa, Master Card, American Express, Discover	
<b>Contract Administration</b>	Bonnie Voigt 1101 Corporate Drive McHenry, IL 60050-7005 (815) 578-2459 (815) 759-2459 <a href="mailto:bonnie.voigt@medela.com">bonnie.voigt@medela.com</a>	
<b>Payment Information</b>	<b>Send to:</b> Medela, Inc. 38789 Eagle Way Chicago, IL 60678-1387	Federal ID Number: 36-3098932 WEBS Supplier ID: W4274 WA UBI Number: 601-050-834
<b>Repairs</b>	<b>Send to:</b> Medela, Inc. 1101 Corporate Drive McHenry, IL 60050-7005	<b>Contact:</b> Customer Service <b>Phone:</b> 800-435-8316 <b>Fax:</b> 800-995-7867
<b>Pump Cleanings</b>	Contractor is required to provide a minimum of 100 free pump cleanings (due to insect infestation) annually to each participating state. Additional cleanings will be charged a fee of \$60 per pump.	
<b>Evenflo (Ameda)</b>		

<b>Order Placement</b>	<b>Send to:</b> Ameda Customer Service Attn: Elsira Depaz 475 Half Day Road, Suite 200 Lincolnshire, IL 60069	<b>Or via the following methods:</b> <b>Phone:</b> (877) 99-AMEDA <b>Fax:</b> (800) 989-3859 <b>Email:</b> <a href="mailto:wic@ameda.com">wic@ameda.com</a>
<b>WIC Sales and Customer Service Contact</b>	<b>WIC Customer Service Representative</b> Elsira Depaz Phone: (877)-992-6332 Fax: (847)-793-0169 <a href="mailto:Elsira.depaz@ameda.com">Elsira.depaz@ameda.com</a>	<b>WIC National Accounts Manager</b> Kevin Minchk Phone: (801)-390-0842 Fax: (888) 656-2539 <a href="mailto:Kevin.minchk@ameda.com">Kevin.minchk@ameda.com</a>
<b>Regional Sales Representatives</b>	<b>Contact Information for Ameda regional sales representative is imbedded in the file below:</b>   Ameda Regional Sales Reps 1-05-11.d	
<b>Contract Administration</b>	Susan Vogtsberger 475 Half Day Road, Suite 200 Lincolnshire, IL 60069 <a href="mailto:susan.vogtsberger@ameda.com">susan.vogtsberger@ameda.com</a> Phone: 847-964-2628 Fax: 847-793-0169	
<b>Website</b>	<a href="http://www.ameda.com">www.ameda.com</a>	
<b>Contract Pricing</b>	<a href="#">Ameda Pricelist</a>	
<b>Shipping</b>	FOB Destination All orders delivered within 30 days of order placement Alaska- no additional charge Hawaii- no additional charge US Territories- no additional charge	
<b>Purchase Card Acceptance</b>	Visa and Master Card	
<b>Payment Information</b>	National City Bank PO Box 73658 Cleveland, OH 44193	Federal ID Number: 31-1360477 WEBS Supplier ID: W3105 WA UBI Number: 602 594 461

	<b>Billing Contact:</b> Teresa Miley 225 Byers Road Miamisburg, OH 45342  Phone: (937) 415-3164	
<b>Repairs</b>	Medical Specialty Distributor 1549 Hunter Road Hanover Park, IL 60133	Contact: Customer Service Phone: 800-947-1277
<b>Pump Cleanings</b>	Contractor is required to provide a minimum of 100 free pump cleanings (due to insect infestation) annually to each participating state. Additional cleanings shall be charged a fee of \$ 90.00 per pump.	
<b>Hygeia II Medical Group</b>		
<b>Order Placement</b>	<b>Send to:</b> Hygeia Customer Care 1370 Decision Street, Suite C Vista, CA 92081	<b>Or via the following methods:</b> <b>Phone:</b> (760) 597-8811 <b>Fax:</b> (760) 597-8848 <b>Email:</b> <a href="mailto:Sales@hygeiababy.com">Sales@hygeiababy.com</a>
<b>Regional Sales Representatives</b>	<b>Contact Information for Hygeia regional sales representative is imbedded in the file below:</b>  <div style="text-align: center;">   Hygeia Regional  Sales Representative </div>	
<b>Website</b>	<a href="http://www.hygeiababy.com">www.hygeiababy.com</a>	
<b>Contract Pricing</b>	<a href="#">Hygeia Pricelist</a>	
<b>Shipping</b>	FOB Destination All orders delivered within 30 days of order placement Alaska- 20% Hawaii- 20% US Territories- 150%	
<b>Purchase Card Acceptance</b>	Visa, Master Card, American Express, Discover	
<b>Contract</b>	Richard Weston 1370 Decision Street, Suite C	

Last update 1-12-2011

<b>Administration</b>	Vista, CA 92081 Phone: (760) 597-8811 Fax: (760) 597-8848 <a href="mailto:richard.weston@hygeiainc.com">richard.weston@hygeiainc.com</a>	
<b>Payment Information</b>	<b>Send Payment To:</b> Hygeia II Medical Group, Inc. 1370 Decision Street, Suite C Vista, CA 92081	Federal ID Number: 26-0693691 WEBS Supplier ID: W24070 WA UBI Number: 603 063 749
<b>Repairs</b>	Hygeia Customer Service Hygeia II Medical Group, Inc. 1370 Decision Street, Suite C Vista, CA	Contact: Hygeia Customer Service Phone: (760) 597-8811 Fax: (760) 597-8848 Email: <a href="mailto:sales@hygeiababy.com">sales@hygeiababy.com</a>
<b>Pump Cleanings</b>	Contractor is required to provide a minimum of 100 free pump cleanings (due to insect infestation) annually to each participating state. Additional cleanings shall be charged a fee of \$15.00 per pump.	

## Medela Price List (Effective January 18, 2011)

Item Description	Model Name	Model Number	Pack Size (min. order quantity)	Each Price	Case Price
Personal-Use Electric Double Breast Pump	WIC Personal Double Pump (One-Phase) *See note at end of price sheet	57023W	3 per case	\$ 80.00 (sold by case only)	\$ 240.00
Personal-Use Electric Double Breast Pump	WIC Personal Double Pump Advanced (Two-Phase)	57018W	3 per case	\$ 86.00 (sold by case only)	\$ 258.00
Multi-User Electric Double Breast Pump	Lactina™ Select	016SC01	1 per case	\$ 299.00	\$ 299.00
Reconditioned Multi-User Electric Double Breast Pump	Reconditioned Lactina™ Select (includes a one year warranty)	016SCW01	1 per case	\$ 199.00	\$ 199.00
Multi-User Electric Double Breast Pump (two phase)	Symphony™ Breast Pump (Two-Phase)	0240108	1 per case	\$ 902.45	\$ 902.45
Manual Pump (two-handed)	WIC Manual with piston cylinder	6107293 W	20 per case (sold by case only)	\$ 7.95	\$ 159.00
Manual Pump (one-handed)	WIC Harmony Manual One-Handed Pump	67161W2	20 per case (sold by case only)	\$ 15.00	\$ 300.00
Pump Cleanings	Contract Allows for 100 free cleanings annually to each participating state due to insect infestations		1 per pump (after first 100)	\$ 60.00	N/A
<b>Accessories</b>					
Kit for Lactina™ Multi-User Double Breast Pump	Lactina™ Double Pumping System	6107170 W	20 per case (sold by case only)	\$ 15.00	\$ 300.00
Kit for Symphony Multi-User Double Breast Pump	Symphony™ Double Pumping System	67099W	20 per case (sold by case only)	\$ 22.00	\$ 440.00
Kit for Use with Symphony™ or Lactina™	Double Pumping System compatible with Symphony™ or	67116W	20 per case (sold by case only)	\$ 22.00	\$ 440.00

Last update 1-12-2011

	Lactina™				
<b>Large Specialty Flanges</b>	Personal Fit Breast Shield (30 to 31 mm)	87079	12 per case	-----	\$ 24.00
<b>Extra Large Specialty Flanges</b>	Personal Fit Breast Shield (36 mm)	87094	12 per case	-----	\$ 36.24
<b>Soft/Flexible Specialty Flanges</b>	SoftFit Breast Shield	87078	12 per case	-----	\$ 28.56
<b>Battery Pack (Personal-Use)</b>	Battery Pack for Personal-Use Pump	67553	1 per case	\$ 9.00	N/A
<b>Vehicle Lighter Adapter Personal-Use (one phase)</b>	Vehicle Lighter Adapter for Personal-Use Pump (one phase)	67153	6 per case	-----	\$ 55.80
<b>Vehicle Lighter Adapter Personal-Use (two phase)</b>	Vehicle Lighter Adapter for Personal-Use Pump (two phase)	67174	6 per case	-----	\$ 55.80
<b>Vehicle Lighter Adapter (Multi-User)</b>	Vehicle Lighter Adapter for Multi-User Pump	67153	6 per case	-----	\$ 55.80
<b>Milk Collection Storage Bags</b>	Milk Collection Storage Bags	87034	12 boxes per case (50 bags/box)	-----	\$ 111.12
<b>Bra Pads- Washable</b>	Washable Bra Pads	89972	6 packages per case (4 pads/package)	\$ 3.09	\$ 18.54
<b>Nipple Shields-Contact</b>	24 mm	67203	6 per case	-----	\$ 23.40
	20 mm	67218	6 per case	-----	\$ 23.40
	16 mm	67251	6 per case	-----	\$ 23.40
<b>Nipple Shields-Regular</b>	24 mm	89902	6 per case	-----	\$ 23.40
	20 mm	89907	6 per case	-----	\$ 23.40
	16 mm	89905	6 per case	-----	\$ 23.40
<b>Sleep Bra</b>	Small	67701	1 per case	\$ 9.03	-----
	Medium	67702	1 per case	\$ 9.03	-----
	Large	67703	1 per case	\$ 9.03	-----
	X-Large	67704	1 per case	\$ 9.03	-----
<b>Micro Steam Bags</b>	Micro Steam Bags	87024	12 boxes per case (5 bags per box)	\$ 2.47	\$ 29.64
<b>Infant Scale</b>	(accurate within two grams)	0407020	1 each	\$ 1035.00	\$ 1035.00
<b>Vacuum Gauge</b>		1977005	1 each	\$ 28.49	\$ 28.49

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Storage Collection Bottle and Cap	150 ml	6100050-100	100 per case	-----	\$ 64.60
Insulated Carrying Tote for Milk Storage		37002	10 per case	\$ 19.00	\$ 190.00
Easy Expressions Halter	Hands-Free Wearable Garment (XS,S,M,L,XL)	67900-67905	1 per case	\$ 13.00	-----
<b>Shipping</b>					
Continental U.S.A	No charge				
Alaska	8%				
Hawaii	8%				
US Territories	No charge				

\*Please note that the WIC One Phase Personal-Use Pump (item # 57023W) will not be available until the 4<sup>th</sup> quarter of 2011. In the interim, Medela will ship the Two-Phase Personal-Pump (item # 57018W) at the One-Phase Pump price of \$ 80.00.

## Ameda Breastfeeding Products Price List (Effective January 18, 2011)

Model Number	Model Name	Item Description	Sales Unit Of Measure	Number of Units per Sales Unit Of Measure	Price
17084	Ameda Purely Yours®	<b>Personal-Use Electric Double Breast Pump</b>	Each	1	\$ 81.99
17005	Ameda Elite™	<b>Multi-User Electric Double Breast Pump</b>	Each	1	\$ 305.00
17003	Reconditioned Ameda Elite™	<b>Reconditioned Multi-User Electric Double Breast Pump</b>	Each	1	\$ 199.00
17803	Ameda Platinum™	<b>Multi-User Electric Double Breast Pump</b>	Each	1	\$ 1,375.00
17194	One-Hand Manual Pump w/ CustomFit™ Flanges	<b>Manual Pump (One-Hand)</b>	Each	1 ***Must order in increments of 20 Eaches***	\$ 12.25
17161	One-Hand, Sterile	<b>Manual Pump, Sterile (one-hand)</b>	Each	1	\$ 15.50
624831	Special Cleaning	<b>Pump Cleanings</b> Ameda offers pump cleanings due to insect infestations for multi-user pumps. * A total of 150 pump cleanings will be provided at no charge, after which point the price will be \$90.00 (for both in warranty and out of warranty pumps).	Each	1	*\$ 90.00
17186	Ameda HygieniKit®	<b>Kit for Elite™ Multi-User Double Breast Pump</b>	Each	1 ***Must order in increments of 20 Eaches***	\$ 16.50
17148P	CustomFit Breast Flanges	<b>Large Specialty Flanges</b> (Med/Lg) (30.5mm Breast Flange/28.5mm Insert)	Case	1 6 boxes/ case (Each box contains 2 sets)	\$ 23.95
17358	CustomFit Breast Flanges	<b>Extra Large Specialty Flanges</b> (Med/Lg) (36.0mm Breast Flange/32.5.5mm Insert)	Case	1 6 boxes/ case (Each box contains 2 sets)	\$ 23.95
N/A	N/A	<b>Battery Pack (Personal-Use)</b> * Not Applicable- Ameda technology utilizes an internal battery system	N/A	N/A	N/A
17079	Vehicle Lighter Adapter	<b>Vehicle Lighter Adapter</b>	Each	1	\$ 9.27

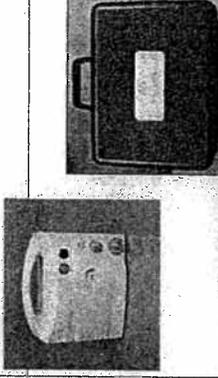
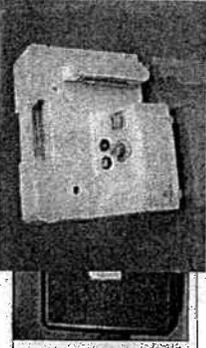
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	for Personal-Use Pump	<b>(Personal-Use)</b>			
N/A	Not Available	<b>Vehicle Lighter Adapter (Multi-User)</b>	N/A	N/A	N/A
17242	Store and Pour™ Milk Collection Storage Bags	<b>Milk Collection Storage Bags</b>	Each	1 (20 bags & 2 Adapters/box)	\$ 6.75
17221	Reusable Contoured Breast Pads	<b>Bra Pads- Washable</b>	Each	1 (6 pads/ box)	\$ 7.85
N/A	Not Available	<b>Nipple Shields- Contact</b>	N/A	N/A	N/A
17216	Nipple Shield	<b>24mm Nipple Shield</b>	Each	1	\$ 3.55
17261	ComfortGel™ Extended Use Hydrogel Pads (Sterile)	<b>Hydrogel Pads</b>	Case	1 (12 pkg/case) 1 pair/pkg	\$93.15
17264	ComfortGel Extended Use Hydrogel Pads (Sterile)	<b>Hydrogel Pads</b>	Case	1 (50 pkg/case) 1 pair/pkg	\$350.00
17227	NoShow Premium™ Disposable Nursing Pads	<b>Disposable Nursing Pads</b>	Each	1 (30/box) 15 pairs	\$3.94
17228	NoShow Premium™ Disposable Nursing Pads	<b>Disposable Nursing Pads</b>	Each	1 (50/box) 25 pairs	\$5.49
17243	Store 'N Pour™ Refill Pack	<b>Refill Pack Breast Milk Storage Bags</b>	Each	1 (40 bags)	\$ 11.82
17244	Breast Milk Storage Bottles	<b>Breast Milk Storage Bottles</b>	Each	1 (4 bottles/box)	\$4.90
17170	Breast Pumping Accessory Kit	<b>Breast Feeding Accessory Kit</b> (Contains 20 Store 'N Pour™ Milk Collection Storage Bags with 2 Flange Adapters, 10 NoShow Premium™ Disposable Nursing Pads, 4 Breast Milk Storage Bottles, Breast Milk Storage Guidelines, Breastfeeding Reference Guide).	Each	1	\$ 11.59
17146	Breast Pump Valves	<b>Breast Pump Valves</b>	Each	(1 pair/pkg)	\$ 3.10
17147	Silicone Diaphragms	<b>Silicone Diaphragms</b>	Each	(1 pair/pkg)	\$ 3.10
17212	Dual Pack Flexishield™ Areola Stimulator	<b>Flexishield Areola Stimulators</b>	Each	(1pair/pkg)	\$ 9.20
	Shipping	<b>Continental U.S.A</b> Shipping F.O.B. Destination			No charge
	Shipping	<b>Alaska</b> Shipping F.O.B. Destination			No charge
	Shipping	<b>Hawaii</b> Shipping F.O.B. Destination			No charge
	Shipping	<b>US Territories</b> Shipping F.O.B. Destination			No charge

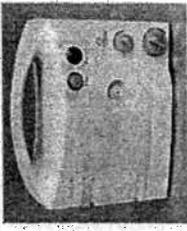
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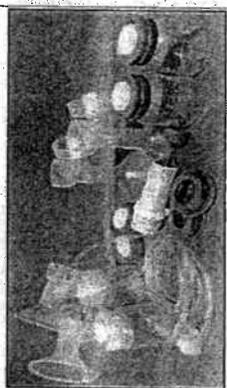
# Hygeia II Medical Group Price List (Effective 1-18-2011)

Item Description	Order/ Stock #	Model Name	Item Picture	Item Contents	Pack Size	Unit Price	Total Price
<b>Breastpumps</b>							
Personal-Use Electric Double Breastpump	10.0112	EnRiche™ Q WSCA		(1) EnRiche™ Q Breastpump, (1) Black Deluxe Tote Set, (1) EnJoye™/EnRiche™ Personal Accessory Set, (1) Power Supply	2	\$92.00	\$184.00
Personal-Use Electric Double Breastpump	10.0104	EPP EnRiche™-QR Remanufactured pump (EPP-Environmentally Preferred Product) *See attached EPP document for program details		(1) Remanufactured EnRiche™-QR Breastpump, (1) Black Deluxe Tote Set, (1) EnJoye™/EnRiche™ Personal Accessory Set, (1) Power Supply	1	\$67.00	\$67.00
Multi-User Electric Double Breastpump	10.0111	EnJoye™-EPS-WSCA w/Black Carry Case (Personal Accessory Set sold separately)		(1) EnJoye™-EPS Breastpump, (1) Power Supply, (1) Black Carry Case	1	\$191.00	\$191.00
Multi-User Electric Double Breastpump	10.0011	EnDeare™-Internal NiMH Rechargeable		(1) EnDeare™ Electric Breastpump with	1	\$434.85	\$434.85

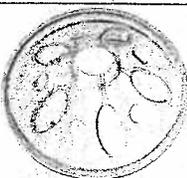
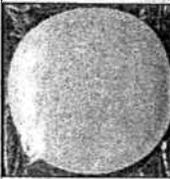
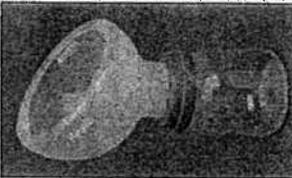
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Item Description	Order/ Stock #	Model Name	Item Picture	Item Contents	Pack Size	Unit Price	Total Price
Personal- Use Electric Double Breastpump	10.0110	EnDeare™ WSCA w/Black Carry Case (Personal Accessory Set sold separately)		(1) EnDeare™ Electric Breastpump (without Internal NiMH Rechargeable Battery, sold separately), (1) Black Hard Sided Carry Case	1	\$279.00	\$279.00
Personal- Use Electric Double Breastpump	10.0130	EnJoye™-LBI (w/internal lithium ion battery) - Black Deluxe Tote and Personal Accessory Set		(1) EnJoye™-LBI Breastpump, (1) Power Supply, (1) Black Deluxe Tote Set with Changing Pad & Mother's Milk Storage Cooler Bag with Ice Pack, (1) Personal Accessory Set	2	\$179.00	\$358.00
Personal- Use Electric Double Breastpump	20.0029	Remanufactured EnJoye™-EPS Breastpump - Multi-User (Pump ONLY)		(1) Remanufactured EnJoye™-EPS Breastpump (Power Source not included)	1	\$101.85	\$101.85
Accessories							

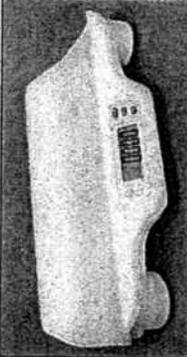
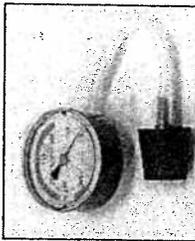
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<p><b>Kit for Multi-User Electric Double Breastpumps</b></p>	<p>10.0108</p>	<p>EnDeare™-Multi-User Personal Accessory Set-WSCA (works with many competitors breastpumps)</p>		<p>(2) Medium Flanges, (2) Large Flanges, (2) 40" Tubing, (4) 4 oz. Mother's Milk Storage Containers, (4) Duckbill Valves, (4) Rings, (2) Narrow-Mouth Container Adapters, (4) Ring Covers, (1) Piston with Shoulder</p>	<p>20</p>	<p>\$17.90</p>	<p>\$358.00</p>
<p><b>Kit for Multi-User Electric Double Breastpumps</b></p>	<p>10.0102</p>	<p>Enjoye™/EnRiche™ Personal Accessory Set WSCA</p>		<p>(2) Medium Flanges, (2) Large Flanges, (2) 40" Tubing, (4) 4 oz. Mother's Milk Storage Containers, (4) Duckbill Valves, (4) Rings, (2) Narrow-Mouth Container Adapters, (4) Ring Covers, (1) Bacteriostatic Pump Filter, (1) Piston</p>	<p>20</p>	<p>\$17.90</p>	<p>\$358.00</p>
<p><b>Manual Breastpump</b></p>	<p>10.0121</p>	<p>Hygeia™ Manual Breastpump WSCA</p>		<p>(1) Medium Flange, (1) Large Flange, (1) 4 oz. Mother's Milk Storage Container, (1) Ring, (2) Duckbill Valves, (1) Piston, (1) Ring Cover</p>	<p>20</p>	<p>\$9.00</p>	<p>\$180.00</p>
<p><b>Item Description</b></p>	<p><b>Order/Stock #</b></p>	<p><b>Model Name</b></p>	<p><b>Item Picture</b></p>	<p><b>Item Contents</b></p>	<p><b>Pack Size</b></p>	<p><b>Unit Price</b></p>	<p><b>Total Price</b></p>

Manual Breastpump	10.0106	EnHande Manual Breastpump		(1) 150 ml Bottle, (1) Bottle Cover, (1) Nipple, (1) Cap, (1) Disk, (1) Handle, (1) Flange Assembly, (1) Bottle Holder/Flange Cover, (1) Comfort Massage Insert, (1) Valve	20	\$16.00	\$320.00
Medium Specialty Flanges (27 to 29 mm)	10.0116	Pumpin' Pal Medium		(2) Medium Pumpin' Pal Specialty Flanges	10	\$5.99	\$59.90
Large Specialty Flanges (30 to 31 mm)	10.0117	Pumpin' Pal Large		(2) Large Pumpin' Pal Specialty Flanges	10	\$5.99	\$59.90
Large Specialty Flanges (30 to 31 mm)	10.0125	Hygeia™ Extra Large Flange		(1) Extra Large Flange, (1) Duckbill Valve	20	\$2.00	\$40.00
Item Description	Order/ Stock #	Model Name	Item Picture	Item Contents	Pack Size	Unit Price	Total Price

Extra Large Specialty Flanges (36 mm)	10.0118	Pumpin' Pal Extra Large		(2) Extra Large Pumpin' Pal Specialty Flanges	10	\$5.99	\$59.90
Soft/Flexible Specialty Flanges	10.0119	Soft Flange		(1) Soft Flange	20	\$3.99	\$79.80
Bra Pads- Disposable	10.0128	Disposable Bra Pads-30 count/box-Medium		(30) Medium (A/B Cup) Disposable Bra Pads	10	\$2.75	\$27.50
Bra Pads- Disposable	10.0131	Disposable Bra Pads-30 count/box-Large		(30) Large (C/D Cup) Disposable Bra Pads	10	\$2.75	\$27.50
Bra Pads- Washable	10.0126	Bra Pads, Washable 4 Pack		(4) Washable Bra Pads	20	\$3.75	\$75.00
Expression Cup for manual and Passive Collection of Breastmilk	10.0021	Expression Cup		(1) Expression Cup, (1) 4 oz. Mother's Milk Storage Container, (1) Ring and (1) Ring Cover	1	\$8.50	\$8.50
	10.0132				20	\$8.50	\$170.00

Item Description	Order/ Stock #	Model Name	Item Picture	Item Contents	Pack Size	Unit Price	Total Price
Fingerfeeder and Supplementer	10.0097	Hazelbaker™ Fingerfeeder and Supplementer		(1) Bulb Assembly, (1) Valve-Disc, (1) Valve Membrane, (1) Tubing Clamp, (1) Hypoallergenic Tape, (1) Lanyard	10	\$24.00	\$240.00
Milk Storage Bags	10.0127	Breastmilk Collection/Storage Bags 25 count/box		(25) Breastmilk Bags	20	\$5.31	\$106.20
Battery Pack for all Hygeia™ Electric Breastpumps	10.0133	External Battery Pack		(1) External Battery Pack ( 8 AA Batteries, not included)	10	\$11.00	\$110.00
Vehicle Lighter Adapter for all Hygeia™ Electric Breastpumps	10.0134	Car Adapter		(1) Car Adapter	10	\$14.00	\$140.00

Item Description	Order/ Stock #	Model Name	Item Picture	Item Contents	Pack Size	Unit Price	Total Price
Infant Scale	10.0009	Hygeia™ Healthy Baby Weight Trending Scale		(1) Infant Scale (accurate within 5 grams)	1	\$50.00	\$50.00
Vacuum Gauge	20.0042	Professional Pressure Gauge		(1) Professional Pressure Gauge Kit	1	\$60.00	\$60.00
Hard Sided Carry Case	10.0101	EnDeare™ Hard Sided Carry Case- Black, Fits EnDeare™ Multi-User Breastpump		(1) Black Hard Sided Carry Case for EnDeare™ Breastpumps	1	\$94.05	\$94.05
Hard Sided Carry Case	10.0124	EnJoye™ Hard Sided Carry Case- Black, Fits EnJoye™/EnRiche™ Q Multi-User Breastpumps		(1) Black Hard Sided Carry Case for EnJoye™ and EnRiche™ Q Breastpumps	1	\$94.05	\$94.05
EnDeare™ Internal Battery Pack	40.0016	Battery Pack for EnDeare™ Multi-User Double Breastpump		(1) Internal Battery Pack for EnDeare™ Multi-User Breastpump (install required by Hygeia, not included)	1	\$99.00	\$99.00

Last update 1-12-2011



## NASPO >> WSCA FREQUENTLY ASKED QUESTIONS

### WHO IS ON 1ST - WHO'S CONTRACT IS IT ANYWAY?

WSCA uses a "Lead State" model in issuing cooperative solicitations. One WSCA state leads the procurement, issues the solicitation and awards the contracts based on that state's statutory requirements and processes. The Lead State owns and manages the contract(s). You can find the name of the lead state contact by selecting a contract from the list [here](#). Other WSCA states have chosen to participate and have followed each state's individual statutory processes to provide public notice and permit participation. If you have questions, contact Paul Stembler (contact information below).

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### WHO CAN USE WSCA CONTRACTS?

All governmental entities within WSCA states are eligible to use WSCA contracts, if the governmental entity has the legal authority to use their home states' contracts. If you are not sure, check with either your home state chief procurement official (contact information can be found [here](#)) or contact Paul Stembler (contact information below).

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### WHAT IF I AM NOT FROM A WSCA STATE?

Non-WSCA states are generally able to use WSCA contracts if they have followed their own statutory processes. You should check with the Lead State contact listed on the contract page or contact Paul Stembler (contact information below) if you have questions.

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### WHAT IF MY HOME STATE HAS CHOSEN NOT TO PARTICIPATE, BUT WE WANT TO USE A WSCA CONTRACT?

That question is not as easy to answer. Each state and governmental entity has different statutory, legal and procedural requirements. WSCA contracts are solicited to allow the broadest possible participation, but the real answer depends on your individual legal and procedural requirements. You should check with the Lead State contact listed on the contract page or contact Paul Stembler (contact information below) if you have questions.

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**I HAVE QUESTIONS ABOUT THE WSCA ORGANIZATION OR OTHER THINGS RELATED TO WSCA CONTRACTS. WHO DO I CONTACT?**

**Paul Stembler**, WSCA/NASPO Cooperative Development Coordinator

Voice: (612) 284-4316

Email: [pstembler@amrms.com](mailto:pstembler@amrms.com) (email is probably the best way to contact Paul)

or

**Lee Ann Pope**, WSCA Program Manager

AMR Management Services

Voice: 859-514-9159

Fax: 859-514-9188

Email: [lpope@amrms.com](mailto:lpope@amrms.com)

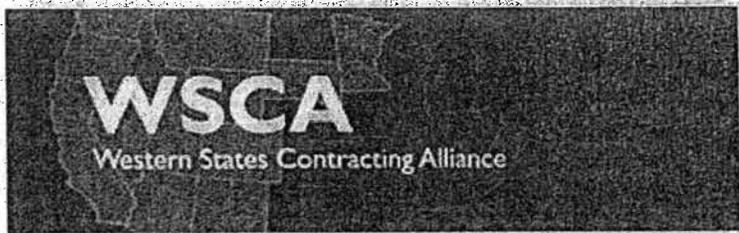
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# EVERYONE BENEFITS FROM THE USE OF CUMULATIVE VOLUME-DISCOUNTED CONTRACTS!

Join the Alliance



**NASPO >>  
 ABOUT  
 COOPERATIVE  
 PURCHASING**

IMPORTANT NASPO/WSCA COOPERATIVE FACTS

DEFINITIONS

HOW DO WE PARTICIPATE?

UNDERSTANDING THE 4-WAY RELATIONSHIP

CURRENT CONTRACTS

CURRENT OPPORTUNITIES



Click [here](#) to go to the WSCA Homepage.

**IMPORTANT NASPO/WSCA COOPERATIVE FACTS**

- o NASPO/WSCA Cooperative Contracts use a "lead state" model to carefully ensure open, competitive cooperative contracts. The lead state owns and manages the contract.
- o NASPO/WSCA Cooperative Contracts have been awarded by a competitive solicitation process, usually an RFP, to all contracted vendors in compliance with the lead state's statutory requirements.
- o [NASPO/WSCA Cooperative Contracts Fact Sheet](#)

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**DEFINITIONS**

- o **"LEAD STATE"** means the State conducting a cooperative solicitation and centrally administering any price agreement and award.
- o **"PARTICIPATING STATE"** means a member of NASPO or WSCA that has indicated its

- intent to participate by signing an Intent to Contract, or who subsequently signs a Participating Addendum where required.
- **"PARTICIPATING ADDENDUM"** means a bilateral agreement executed by the contractor and a Participating State (or a political subdivision with the consent of its State Procurement Official) that clarifies the operation of the price agreement for the State concerned (e.g. ordering procedures specific to that State) and may add other state-specific language or other requirements.
  - **"PURCHASING ENTITY"** means a Participating State or other legal entity (such as a political subdivision properly authorized by a Participating State) that enters into a contract for the purchase of goods described in the cooperative solicitation.
  - **"OFFER"** or **"BID"** or **"PROPOSAL"** generally refers to the offer submitted in response to a solicitation, whether denominated as an invitation to bid, invitation for bid, request for proposal, or otherwise. **"BIDDER"** or **"OFFEROR"** similarly refers to the person, company, or other entity submitting the bid or proposal that constitutes an offer capable of acceptance, regardless of the solicitation method used.
  - **"PERMISSIVE PRICE AGREEMENT"** means that Purchasing Entities' placement of orders through the price agreement is discretionary. Purchasing Entities may satisfy their requirements through the price agreement without using statutory or regulatory procedures (e.g. invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the price agreement so long as applicable procurement states and rules are followed.
  - **"INTENT TO PARTICIPATE"** means the form executed by a State Procurement Official that describes the cooperative procurement and signifies the State's willingness to enter into the cooperative procurement.

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## HOW DO WE PARTICIPATE?

The NASPO/WSCA Cooperatives are cooperatives of state chief procurement officials working together to use cooperative contracts as a way to be effective and efficient in procuring commodities and services (though limited in scope).

**If your state is listed on the contract web page linked below as participating**, you should contact your state's central procurement office to determine how to use the contract. In many cases, the "cooperative" contract is simply assigned a state contract number and treated just like any other state contract. You might, in fact, not even easily recognize it as a multi-state cooperative contract.

**If your state is NOT listed on the contract web page linked below**, you should contact the NASPO/WSCA Cooperative Development Team ([wncoopdt@amrms.com](mailto:wncoopdt@amrms.com)) for assistance. They will work with you, your state's chief procurement official and the lead state contract administrator to

determine if you may purchase off a particular cooperative contract.

You should understand that your own state's statutes will determine participation, regardless of the situation in any other state.

Using a NASPO cooperative contract requires the acknowledgement of your state's chief procurement official, regardless of whether or not the state has any "control" over your purchasing authority.

## UNDERSTANDING THE 4-WAY RELATIONSHIP

NASPO Cooperative contracts create a four-way relationship between the lead state, a participating entity, an end user, and a contractor. Understanding this relationship is essential to a successful cooperative contract purchase.

1. The **LEAD STATE'S ROLE** is to develop, solicit, evaluate, award, and manage a specific cooperative contract. This is done under a set of procedures and with a set of terms and conditions established by NASPO, but must also be completely valid and proper under the lead state's procurement requirements.
2. The **PARTICIPATING ENTITY** in most cases will be a "state central procurement operation." In other cases, a state in the cooperative's region will not participate but may grant permission for another entity in that state to participate in the cooperative contract. In other cases, a state chief procurement official may choose to participate so that local units of government may have access to a cooperative contract, but might restrict or limit the participation of its own state agencies.
3. The **END USER** is any entity authorized by state statute or agreement to use its state's contracts or authorized to participate independently by its state procurement official. The end user must follow all of its state's internal requirements and procedures for using these cooperative contracts. The **LEAD STATE** and NASPO have completed an open and competitive solicitation and award. However, the **END USER** must follow all of its state's internal requirements and procedures for using these cooperative contracts. Note also that all existing expenditure limits still apply in cooperative purchasing--for example, if your ordinances say that any expenditure over \$10,000 must go before the Board, then ANY order over \$10,000 off of a NASPO cooperative contract **MUST** go before the Board.
4. The **CONTRACTOR** is any business or person who wishes to bid on a cooperative contract. Neither NASPO nor WSCA maintain a vendor registration program. Vendors wishing to bid on a cooperative solicitation must contact the lead and/or administering state. All NASPO and WSCA cooperative contracts are awarded on a competitive basis. Contractors may **NOT** be added after the deadline specified in the solicitation document for receipt of responses. Vendors may [click here](#) to explore existing NASPO/WSCA cooperative opportunities.

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**Deborah Rivera**

**From:** Claudia Acfalle [claudia.acfalle@gsa.guam.gov]  
**Sent:** Thursday, August 11, 2011 3:11 PM  
**To:** Deborah Rivera  
**Subject:** Re: WSCA or NASPO

Hi Debbie:

We are a part of the Western States Contracting Alliance but not the National Association of State Procurement Officials.

Claudia

On Thu, Aug 11, 2011 at 2:23 PM, Deborah Rivera <[drivera@guamattorneygeneral.com](mailto:drivera@guamattorneygeneral.com)> wrote:  
Claudia -- do you know if GovGuam is a member of the Western States Contracting Alliance or the National Association of State Procurement Officials?

**Deborah Rivera**  
Assistant Attorney General  
OFFICE OF THE ATTORNEY GENERAL  
Civil Division  
287 West O'Brien Drive  
Hagatna, Guam 96910  
Telephone: (671) 475-3324 extension 141  
Facsimile: (671) 472-2493  
E-mail: [drivera@guamattorneygeneral.com](mailto:drivera@guamattorneygeneral.com)  
URL: [www.guamattorneygeneral.com](http://www.guamattorneygeneral.com)

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**BREAST PUMPS**

**PRICE COMPARISON: WESTERN STATES CONTRACTING ALLIANCE (WSCA) VS. LOCAL VENDORS**

DESCRIPTION	VENDOR NAME AND PRICE PER ITEM & PERCENT COST SAVINGS UNDER WSCA						Average Percent Savings under WSCA Contract	
	WSCA Contract - Medela, Inc. (No Shipping fee to U.S. Territories)	WSCA Contract - EvenFlo Co., Inc. (No Shipping fee to U.S. Territories)	WSCA Contract - Hygeia II Medical Group (150% Shipping fee to U.S. Territories)	Average WSCA Price	Local Vendor: M.D. Wholesale	Local Vendor: Med Pharm		Average Local Price
Personal Electric Double Breast Pump	\$80.00 - \$86.00	\$81.99	\$67.00 - \$92.00	\$81.50	\$403.00	\$499.50	\$451.25	81.94%
Multi-User Electric Double Breast Pump	\$299.00	\$305.00	\$191.00	\$265.00	\$550.18	\$233.64	\$391.91	32.38%
Reconditioned Multi-User Electric Double Breast Pump	\$199.00	\$199.00	N/A	\$199.00	\$675.75	N/A	\$675.75	70.55%
Manual Breast Pump, Sterile (one-handed)	\$15.00	\$15.50	\$16.00	\$15.50	\$187.00	\$31.00	\$109.00	85.78%
Manual Breast Pump (two-handed)	\$7.95	N/A	\$9.00	\$8.48	\$365.80	\$27.95	\$196.88	95.69%
Pump Cleanings	1st 100 pumps - Free cleaning/ After 1st 100 - \$60.00/ pump	1st 100 pumps - Free cleaning/ After 1st 100 - \$90.00/ pump	1st 100 pumps - Free cleaning/ After 1st 100 - \$15.00/ pump		Cleaning Kit - \$44.97 each (24 pk)	Cleaning Kit - \$28.47 each		



Leonardo M. Rapadas  
Attorney General



Phillip J. Tydingco  
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL ~~GENERAL~~ Office of the Vice Speaker

Benjamin JF Cruz

April 11, 2012

Rcd. By Jr Date 4-12-12

The Honorable Benjamin JF Cruz  
Vice Speaker  
31<sup>st</sup> Guam Legislature  
Chairman, Committee on Youth, Cultural Affairs,  
Procurement, General Government Operations  
and Public Broadcasting  
155 Hessler Place, Suite 107  
Hagatna, Guam 96910

Comments on Bill 430-31

Dear Vice Speaker Cruz,

Deputy Attorney General Pat Mason has already taken the opportunity to appear before your committee in support of Bill No. 430-31. I submit here additional testimony in support of this important legislation for your consideration. Bill 430, if passed into law, would enable the government of Guam to join with other States and Territories in the procurement of important supplies and services. Cooperative purchasing in one form or another, wherein State and local governments join together to purchase goods and services, is utilized by 49 of the 50 states of the United States at this time.<sup>1</sup> In a 2009 survey of States, the National Association of State Procurement Officials found that:

- 40 states have the authority to do cooperative purchasing with local governments within the state.
- 44 states have authority to do cooperative purchasing with other states.
- 37 states have authority to do cooperative purchasing with the federal government.
- 6 states have authority to do cooperative purchasing with other countries.
- 14 states have the authority to do cooperative purchasing with not for profit associations.
- 1 state does not have the authority.
- 44 states currently participate in multi-state contracts.

Cooperative purchasing has become a powerful tool for state and local governments because it saves time, money and resources. Cooperative purchasing makes for good government because:

<sup>1</sup> National Association of State Procurement Officials (NASPO) 2009 Survey of the States as reported in NASPO Issue Brief, Strength in Numbers: An Introduction to Cooperative Procurements.

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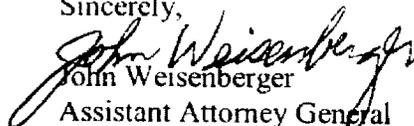
- Cooperative purchasing produces **lower pricing** by standardizing products and services and aggregating requirements. This can be especially advantageous to small governments that benefit from market share leveraged by large government consumers.
- Cooperative purchasing contracts provide **higher quality products and services** by using specialized specification writers, procurement professionals and technical evaluation committee members. This results in better contracts for higher quality products.
- Cooperative purchasing allows the participating government to **reallocate internal procurement** resources to focus on acquisition of other supplies and services or other tasks.
- Cooperative procurement results in **reduced administrative efforts and costs**, as these are spread across multiple governments.
- Cooperative procurement accomplished by a lead state or local government assures that the contract has been done in accordance with state procurement regulations.

Ultimately, all of our citizens will benefit from cooperative purchasing by the government of Guam through lower costs of government, better application of our government resources and more efficient operations in our government. In the current environment of government, to include local governments, State and Territorial governments and the Federal government, where budget deficits are severe and governments must conserve the resources received from the citizens, the interests of all citizens must be considered in setting the procurement policy for our government. It may be shortsighted to only consider the input and concerns of corporate and business taxpayers, who tend to speak out on such matters, when all taxpayers have an interest in good government but may not be heard when the time comes for receiving input on proposed legislation.

It may be appropriate to consider a compromise in addressing and giving voice to all of the varied and legitimate interests, some being vocal and some being silent, on this proposed legislation. I may suggest that a rational approach may be to allow for cooperative procurement in those instances where sixty percent (60%) or more of the cost of an item is being funded by the federal government. In this manner, local tax revenues are spent locally, but federal tax revenues may be permitted to be spent in cooperative arrangements that are likely to be spent in the 50 States.

I am attaching for your information, the article referenced above, as I found it very helpful in understanding the various concepts possible when considering cooperative purchasing arrangements for government. Please do not hesitate to contact my office if you have need for further information on this topic.

Sincerely,

  
John Weisenberger  
Assistant Attorney General

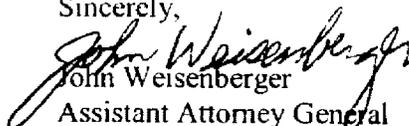
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## **Strength in Numbers: An Introduction to Cooperative Procurements**

### **INTRODUCTION**

The primary role of public procurement is to obtain quality goods and services to support effective and efficient government ensuring the prudent use of public funds. Public procurement professionals add value to every government program by:

- Providing efficient delivery of products and services;
- Obtaining best value through competition;
- Offering fair and equitable competitive contracting opportunities for suppliers; and
- Maintaining public confidence through ethical and transparent procurement practices.

As contracting workloads increase, purchase requirements become more complex and budgets and resources decline, government procurement officials strain to continue to meet these objectives and seek new and innovative tools to deliver effective and efficient support. More and more, government procurement professionals are turning to various forms of cooperative contracts to ease the strain.

Cooperative contracts are becoming increasingly popular at the federal, state, and local levels. A cursory review of the state contracting environment reveals dozens of cooperative contracts covering a wide array of goods and services available at the state and local level. Cooperative purchasing is popular because it can save significant time and money in contract production as well as lower contract prices through the power of aggregation.

As with any other practice, however, cooperative purchasing can be done well—or poorly—and is not without its challenges. It is vital for procurement and public officials to understand best practices and make informed decisions about cooperative purchasing, as they would any other procurement decision.

This issue brief is designed to provide public procurement officials, elected officials, government executives, government suppliers and citizens with an introduction to cooperative purchasing—particularly its definition, purpose, authority, value, and best practices. What are the different types of cooperative purchasing? What makes for a "good" program? What are some challenges—legal, political, and administrative—to making it work?

As the chief organization representing state procurement since 1947, the National Association of States Procurement Officials (NASPO) is committed to presenting impartial, educational information on procurement issues. We hope this review will help states and their stakeholders use this procurement tool effectively.

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## DEFINITIONS & TYPOLOGY

### Definitions and Descriptions

*In simple terms, cooperative purchasing involves sharing procurement contracts between governments.*

The Government Contract Reference Book<sup>1</sup> defines cooperative purchasing as two or more governments purchasing under the same contract. The ABA Model Procurement Code for State and Local Governments definition is more expansive<sup>2</sup>; "Cooperative Purchasing means procurement conducted by, or on behalf of, one or more Public Procurement Units, as defined in this Code." Under this definition, one could construe state central procurement programs, many of which date back nearly 100 years, as the first form of cooperative purchasing. In addition to the common conception of two or more governments sharing procurement contracts, cooperative purchasing may also include shared procurement programs and resources, including advice and assistance.

Although this paper will focus primarily on the cooperative use of procurement contracts, governments may benefit from other less common forms of cooperative procurement, such as sharing procurement officers and specification writers, delivering joint training programs, providing advice or assistance on technical evaluation committees, or providing independent administrative hearings for procurement disputes.

#### Typical Basic Steps in Creating a Cooperative Procurement

- i. The cooperative is formed when one or more parties identify a common requirement suitable for cooperative purchase and sign a written agreement to cooperate.
- ii. Lead party solicits proposals and awards contract(s).
- iii. Contract is available for use.
- iv. Participating entities sign an agreement (NASPO/WSCA calls it a "participating addendum") in the specific contract(s). This is necessary to get user's statutory requirements included as well as for lead entity to administer efficiently.

Public sector purchasing cooperatives may be comprised of similar or varied governments with common requirements:

- State procurement cooperative serving multiple local governments;
- Consortium of governments sharing similar requirements;
- State and local government participating in Federal contracts through the E-Government Act or 1122 Program;
- Similar specific government programs (law enforcement or hospitals); and
- Governments located within defined geographic areas.
- Higher Education groups have also formed cooperatives such as the Midwest Higher Education Compact (MHEC), Western Interstate Commission for Higher Education (WICHE), New England Board of Higher Education (NEBHE) and the Southern Regional Education Board (SREB). There is also a New England group and a southern group.

Cooperative procurement contracts are usually based on the common requirements of multiple governments. Most early cooperative purchasing efforts involved bulk commodities with standard specifications, such as cleaning supplies, gasoline and fuel, or services such as the pick-up and disposal of hazardous waste or used oil. Today, more complicated requirements, including information technology services, software and consulting are often targeted for cooperative purchasing contracts.<sup>3</sup> Other examples of cooperative contracts include office supplies and furniture, digital copiers and printers, carpeting,

<sup>1</sup> Ralph C. Nash Jr., Steven L. Schooner, Karen R. O'Brien. Published 1998 by George Washington University.

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computer hardware, industrial lab supplies, infant formula, pharmaceuticals, electronic defibrillators, hazardous incident response equipment, wireless radios and cell phones, paper, and fleet vehicles.

### **Types of Cooperative Purchasing<sup>4</sup>**

#### True Cooperatives

Two or more organizations combine their requirements and solicit bids or offers for goods or services.

#### Piggyback Options

One or more organizations represent their requirements and include an option for other organizations to "ride" or "bridge" the contract as awarded.

#### Third Party Aggregators

An organization brings together multiple organizations to represent their requirements and manage the resulting contract or contractor.

### **Cooperative Purchasing Models**

Common approaches to cooperative purchasing contracts include:

*1. Definite Quantity and Delivery* - There is a direct economic relation between risk and price; lower risk means lower price. Definite quantity solicitations and contracts identify all cooperative members and respective requirements. Definite delivery contracts also specify the delivery locations and schedule.

Advantages - Generally produces the lowest possible price because of the guaranteed demand.

Disadvantages - Governments are often unable to predict and commit to specific requirements and delivery schedule or agree on common contract requirements. Fulfilling commitments to contractors may also be a challenge.

*2. Indefinite Quantity and Delivery* - Governments may achieve economies of scale and reduce administrative costs by participating in an indefinite quantity/indefinite delivery cooperative purchasing contract. The participating members are identified and requirements are estimated in the solicitation with no specific purchase commitment. Pricing is often a factor of the confidence of bidders in the estimates.

Advantages - Development of the solicitation may be easier because governments do not need to obtain definite quantity commitments from participating members. Although not as favorable as definite quantity contracts, pricing is still based on the economies of scale of multiple cooperative members. These contracts may also be more flexible for members, allowing for variations in requirements or negotiation of differing terms and conditions.

Disadvantages - Uncertainty usually results in higher prices. If bidders are not confident in the estimated requirements or government participation or if the contract permits wide variation, bidders will not offer their best prices.

*3. Piggyback Contracts* - Contracts issued by individual governmental entities that allow other jurisdictions to use the contract (i.e., to "piggyback" on the contract terms and prices) they established. The contracting jurisdiction must include piggyback language in the contract and the vendor must agree. Piggyback contracts represent the most immediate cooperative purchasing resource, especially for smaller communities. However, they can be a benefit for larger communities by saving administrative costs and by creating pressure for lower prices. Some entities do not have statutory authority to piggyback.

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<sup>4</sup> National Institute of Government Purchasing (NIGP) webinar "Incorporating Cooperative Purchasing into Your Agency" conducted by Cathy Muse, CPPO, Director, Department of Purchasing and Supply Management, County of Fairfax, Virginia

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**Advantages** - Relatively easy to administer; makes a wide variety of contracts available to a wider variety of jurisdictions; reduces administrative costs; and can result in cost savings, especially for smaller governmental entities.

**Disadvantage** - Since participation and usage cannot be predicted for the solicitation, cost savings may be minimal. When an entity joins after the fact, contract users don't get the benefits and leverage of the full volume. Contractors may offer minimal discounts and benefit from windfall profits when participation and usage exceed estimates. Local vendors may view piggyback contracts as unfair, when they did not have an opportunity to compete for a piggyback contract that was competed in another community.

### **The GSA Schedules**

The US Government's General Services Administration (GSA) maintains a large list of multiple award purchasing schedules. Contractors are selected for GSA Multiple Award Schedules through an open and continuous qualification process instead of competitive bids or proposals. GSA users seek competition from multiple GSA contractors at the point of sale by obtaining quotations. GSA requires most favored customer pricing, which provides state and local governments with a price advantage based on federal purchasing economies of scale. There is a surcharge associated with GSA purchases. It is called the Industry Funding Fee (IFF).

Section 211 of the E-Government Act of 2002 opened GSA Schedule 70 Contracts (Information Technology and Telecommunications Hardware, Software and Professional Services) for state and local government use ([www.gsa.gov](http://www.gsa.gov)). Likewise, the 1122 Program permits use of GSA contracts for state and local government law enforcement and security purchases. Neither acceptance nor use is automatic, and separate contracting arrangements between the state and the vendor are often required. GSA contracts are based on price ceilings and contractors will often offer further discounts for larger aggregated buys. Not all states permit the use of Schedule 70; however, many states use the GSA pricing as benchmarks in their own negotiations with vendors. Some states cannot use GSA contracts and some choose not to even though they may have statutory authority to do so.

### **What is the financing model for cooperative procurements?**

Developing and administering a cooperative procurement usually involves an added increment of time, staff and other resources for the lead state or entity. The lead entity may charge the vendor or vendors some type of administrative fee collected on all sales made from the contract to cover these extraordinary expenses. This will be negotiated in the final contract. Similarly, participating states may also require a fee from vendors on sales in their state, negotiated in the participating addenda that states create to the master contract. Such fees vary widely, from 1/20 of one percent to three or more percent. Note that higher fees can negatively impact the final pricing, reducing the benefit of the cooperative purchase.

### **Authority**

Not all states or jurisdictions allow participation in cooperative purchasing, either as a user or as a lead. Other states restrict or regulate the scope of cooperatives.

NASPO's 2003 Survey of the States indicates that:

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- 12 states have the authority to do cooperative purchasing with not for profit associations
- 2 states do not have the authority
- 27 states can enter into state contracts based on GSA pricing.
- 42 states currently participate in multi-state contracts.

Parts B and C of Article 10 of the 2000 ABA Model Procurement Code state:<sup>5</sup>

**Part B - Cooperative Purchasing**

*§10-201 Cooperative Purchasing Authorized*

- (1) Any Public Procurement Unit may either participate in, sponsor, conduct, or administer a Cooperative Purchasing agreement for the procurement of any supplies, services, or construction with one or more Public Procurement Units in accordance with an agreement entered into between the participants. Such Cooperative Purchasing may include, but is not limited to, joint or multi-party contracts between Public Procurement Units and open-ended Public Procurement Unit contracts that are made available to other Public Procurement Units.
- (2) All Cooperative Purchasing conducted under this Article shall be through contracts awarded through full and open competition, including use of source selection methods substantially equivalent to those specified in Article 3 (Source Selection and Contract Formation) of this Code.

*§ 10-202 Sale, Acquisition, or Use of Supplies by a Public Procurement Unit*

Any Public Procurement Unit may sell to, acquire from, or use any supplies belonging to another Public Procurement Unit independent of the requirements of Article 3 (Source Selections and Contract Formations) and Article 8 (Supply Management) of this Code.

*§ 10-203 Cooperative Use of Supplies or Services.*

Any Public Procurement Unit may enter into an agreement, independent of the requirements of Article 3 (Source Selection and Contract Formation) and Article 8 (Supply Management) of this Code, with any other Public Procurement Unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

*Commentary:*

*Jurisdictions are increasingly joining together through cooperative purchasing arrangements to acquire common goods from single vendors. One practical effect of the success of such arrangements is that the number of public entities seeking to participate in a particular Cooperative Purchasing arrangement increases after the vendor is awarded a contract by the awarding Public Procurement Unit. The vendor may calculate its price on the basis of a specific or reasonable "guess" of the number of transactions and the volume of goods to be sold. To ensure fairness to vendors and to protect the viability of cooperative purchasing arrangements, awarding jurisdictions should give vendors the option to accept or reject purchase orders from purchasing entities not identified during the competition. Conversely, to maximize economies of scale, jurisdictions are encouraged to identify as many participants in a particular cooperative purchase on the outset.*

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<sup>5</sup> The 2000 ABA Model Procurement Code for State and Local Governments, American Bar Association

- 3 states have the authority to do cooperative purchasing with other countries
- 12 states have the authority to do cooperative purchasing with not for profit associations
- 2 states do not have the authority
- 27 states can enter into state contracts based on GSA pricing.
- 42 states currently participate in multi-state contracts.

Parts B and C of Article 10 of the 2000 ABA Model Procurement Code state:<sup>2</sup>

**Part B - Cooperative Purchasing**

*§10-201 Cooperative Purchasing Authorized*

- (1) Any Public Procurement Unit may either participate in, sponsor, conduct, or administer a Cooperative Purchasing agreement for the procurement of any supplies, services, or construction with one or more Public Procurement Units in accordance with an agreement entered into between the participants. Such Cooperative Purchasing may include, but is not limited to, joint or multi-party contracts between Public Procurement Units and open-ended Public Procurement Unit contracts that are made available to other Public Procurement Units.
- (2) All Cooperative Purchasing conducted under this Article shall be through contracts awarded through full and open competition, including use of source selection methods substantially equivalent to those specified in Article 3 (Source Selection and Contract Formation) of this Code.

*§ 10-202 Sale, Acquisition, or Use of Supplies by a Public Procurement Unit*

Any Public Procurement Unit may sell to, acquire from, or use any supplies belonging to another Public Procurement Unit independent of the requirements of Article 3 (Source Selections and Contract Formations) and Article 8 (Supply Management) of this Code.

*§ 10-203 Cooperative Use of Supplies or Services.*

Any Public Procurement Unit may enter into an agreement, independent of the requirements of Article 3 (Source Selection and Contract Formation) and Article 8 (Supply Management) of this Code, with any other Public Procurement Unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

*Commentary:*

*Jurisdictions are increasingly joining together through cooperative purchasing arrangements to acquire common goods from single vendors. One practical effect of the success of such arrangements is that the number of public entities seeking to participate in a particular Cooperative Purchasing arrangement increases after the vendor is awarded a contract by the awarding Public Procurement Unit. The vendor may calculate its price on the basis of a specific or reasonable "guess" of the number of transactions and the volume of goods to be sold. To ensure fairness to vendors and to protect the viability of cooperative purchasing arrangements, awarding jurisdictions should give vendors the option to accept or reject purchase orders from purchasing entities not identified during the competition. Conversely, to maximize economies of scale, jurisdictions are encouraged to identify as many participants in a particular cooperative purchase on the outset.*

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<sup>2</sup> The 2000 ABA Model Procurement Code for State and Local Governments. American Bar Association

## **Part C - Contract Controversies**

### *§ 10-301 Contract Controversies.*

- (1) Under a Cooperative Purchasing agreement, controversies arising between an administering Public Procurement Unit and its bidders, offerors, or contractors shall be resolved between the ordering Public Procurement Unit and the supplying bidders, offerors, or contractors in accordance with [Article 9 (Legal and Contractual Remedies)] [the [administering] [ordering] Public Procurement Unit's existing procedures].

Statute language allowing participation in cooperatives varies from state to state. Some states do not allow participation in any cooperatives. Following is a list of the statutes that individual states use for cooperative purchasing:

1. **Arizona**  
<http://www.azleg.gov/ArizonaRevisedStatutes.asp?Title=41>  
(Title 41, Article 10 Intergovernmental Procurement, 41-2631 through 41-2635)
2. **Idaho**  
<http://www3.state.id.us/idstat/TOC/67FTOC.html>  
(67-2326, 67-2807, 67-5724A (GSA), 67-2308)
3. **Kansas**  
<http://www.kslegislature.org/legsrv-legisportal/index.do>  
(Search for 75-3739)
4. **Minnesota** - in appendix
5. **South Dakota**  
<http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute=5-23-1.1>  
<http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute=5-23-44>
6. **Wisconsin**  
<http://vendornet.state.wi.us/vendornet/procman/prod30.asp>  
<http://www.legis.state.wi.us/rsb/Statutes.htm>
7. **Washington**  
<http://www.ga.wa.gov/PCA/regulat.htm>  
<http://www.ga.wa.gov/PCA/SPC.htm>

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**New York** utilizes its piggybacking statute to participate in Cooperative Purchasing. NY State Finance Law S163.10 (e) & (f):

- e. The commissioner may authorize purchases required by state agencies or other authorized purchasers by letting a contract pursuant to a written agreement, or by approving the use of a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states.

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<http://www.kslegislature.org/legsrv-legisportal/index.do>  
(Search for 75-3739)
4. **Minnesota** - in appendix
5. **South Dakota**  
<http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute=5-23-1.1>  
<http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute=5-23-44>
6. **Wisconsin**  
<http://vendornet.state.wi.us/vendornet/procman/prod30.asp>  
<http://www.legis.state.wi.us/rsb/Statutes.html>
7. **Washington**  
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- f. The commissioner is authorized to let centralized contracts, in accordance with the procedures of this section, for joint purchasing by New York state and any department, agency or instrumentality of the United States government and/or any state including the political subdivisions thereof; provided however that any entity incurring a liability under such contract shall be responsible for discharging said liability.

### **Value**

How state and local governments save time and money using cooperative contracts

- Cooperative purchasing contracts produce lower prices. By standardizing products and services and aggregating requirements, governments benefit from the combined economies of scale of multiple organizations. Cooperative contracts are especially advantageous for small governments because they benefit from the market share leveraged by larger government consumers.
- Cooperative purchasing contracts provide higher quality products and services. By using specialized specification writers, procurement professionals and technical evaluation committee members, governments are able to produce better contracts for higher quality products and services. Again, smaller governments benefit from the combined resources of other larger government agencies.
- The ability to use/share procurement professionals from another entity allows for reallocation of internal resources.
- With one procurement process and one contract serving multiple governments, cooperative contracts reduce administrative costs because the preliminary work has been done. Administrative efforts and costs are spread across multiple governments.
- Cooperative procurement contracts are convenient. Instead of seeking quotes, bids or proposals, customers simply select products and services from the cooperative contract catalog, saving considerable time and effort.
- When contracted by a lead state or local government, cooperative procurement contract customers can be assured that the contract has been done in accordance with state's regulations.
- Cooperative procurement contracts allow governments to better utilize procurement resources for other contracts and tasks.
- Cooperative procurement can help realize supplier diversity initiatives.
- Ultimately, citizens benefit from cooperative procurement through lower total cost of government, better application of resources and more efficient government operations.

### **Challenges encountered in using or establishing a cooperative contract**

Although there are many examples of successful government cooperative purchasing programs, there are several pitfalls and challenges.

- *Legal Compliance* - All governments operate under some form of procurement code intended to achieve best value for citizens, protect against fraud and abuse, ensure fairness, equity and transparency and maintain public trust. Although most procurement laws are similar, there are often subtle and sometimes large differences in government procurement codes. Some governments require strict compliance with its own procurement laws when using cooperative contracts awarded by other governments. Communication and active participation in the procurement process by cooperative members will help the cooperative achieve universal compliance.
- *Buy Local Laws* - Many jurisdictions have laws that favor or give preference to local suppliers. These laws may interfere with the ability of a government to develop and award a cooperative contract or may prevent governments from using a cooperative contract. NASPO has published numerous resolutions opposing local preference laws on the basis that they interfere with free trade and open competition and increase the cost of government.

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- *Open Competition* - Many government procurement programs maintain lists of suppliers who register to compete for contracting opportunities and are required to post public advertisements for invitations for bids or proposals. Notifying local suppliers of the cooperative contract solicitation and advertising the solicitation in local publications will ensure that local vendors have an opportunity to compete for the cooperative contract.
- *Small Business Participation* - Some small businesses may be able to handle business for one state or local government but may not be able to handle the combined requirements of multiple governments. Encouraging local delivery and service networks and utilization of small business subcontractors will provide opportunities for small businesses to continue to serve the cooperative members.
- *"Cherry Picking"* - With multiple cooperative contracts for similar products and services, governments have the ability to avoid conducting the competitive process themselves and/or choose the cooperative with its preferred suppliers or brand names. The intent, if not the letter of most procurement laws, is fair and open competition. Also, customers may compare different contracts for the same line item and choose the cheapest from each respective contractor. This can pose a challenge to contractors when customers buy only the 'bargain' items in large quantities.
- *Battle of the Forms/Terms* - Although most are similar, governments use unique procurement contract terms and conditions. A cooperative contract awarded by one jurisdiction may not conform to the terms and conditions of another. There are several methods to address contractual differences, including development of standard terms and conditions for cooperative members, inclusion of all government contract variations in the solicitation and negotiation of participation agreements between the government and supplier. Differences in state requirements can be addressed in the participating addendum; as long as you are up front in the solicitation that participants may have their own terms and conditions addressed in it.
- *Pricing* - Although most cooperative contracts generate considerable cost savings for governments, not all cooperative contracts achieve best value.
  - Contractors may offer a higher price because many of the cooperative members are small or located in remote areas.
  - If estimates are inaccurate, price may be based on much lower than actual usage. Pricing is much more likely to be unfavorable in piggyback contracts because usage is difficult to estimate beforehand.
  - Contractor may price the contract high because of high administrative costs associated with the cooperative, including collection of cooperative fees.
- *Time and Resources* - It takes more effort to award a contract that serves multiple governments than it does for a contract that serves one government. In theory, cooperative contract time and resource investments are more than recovered by using cooperative contracts awarded by other jurisdictions. Time and resource requirements can also be reduced by using "volunteers" from other governments to assist with the procurement, draft specifications or participate in the evaluation process. Communication is the key to success. Thoughtful communication leads to vision; further communication turns vision into action. It is this action or contract that leads to savings in time, resources and expense. Good communication assures the contract will be beneficial to all parties.
- *"Piggybacking"* - "Piggybacking" does not always produce best value:
  - In some cases, entities may "piggyback" off of an existing cooperative but do not notify the lead state or complete a participating addendum resulting in undocumented activity and volume.
  - The cooperative procurement intent is not always clear in the solicitation. A solicitation clause that states, "other agencies may use this contract" does not clearly state cooperative intent and is not sufficient for a regional or national cooperative.

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- o Contractors may market "piggyback" contracts as regional or national cooperative contracts to state and local governments.
- o Since "piggyback" contracts are not based on aggregated volume, governments do not benefit from true economies of scale.
- o Some governments may use "piggyback" contracts merely for convenience or to avoid competitive bidding laws.
- o Entity may not have statutory authority to piggyback.
- *Fees* - Many cooperative purchasing programs assess usage and access fees for cooperative contracts. Fees range from one time or annual enrollment fees to transaction fees ranging from less than 1% to 2% of the value of every purchase. These fees may be collected directly by the cooperative or through the contractor. Higher fees result in lower contract price savings.

### **Best Practices**

Using best practices and government sanctioned business processes are important. It is what sets a good cooperative procurement apart from the others. It is the adherence to these policies and guidelines that makes these state-led contracts easy to use. These best practices are suggested to help avoid the pitfalls common with cooperative purchasing contracts. This is not an exhaustive list of procurement best practices.

### **Before Issuing Solicitation**

- Designate a lead government to conduct the procurement, with qualified procurement and technical staff and commitment to perform the cooperative procurement.
- Require that cooperative members sign an agreement that includes the policies and procedures under which the cooperative will work.
- Invite cooperative members, including technical specialists to participate in the development of specifications and contract terms and conditions.
- Provide for delivery, service, maintenance and other value-added services provided by designated local suppliers.
- Utilize the competitive negotiation (RFP) process and best value or life cycle cost analysis tools (as state law allows).
- Survey cooperative members and research history on buying patterns and estimated requirements.
- Circulate draft solicitations among cooperative members and prospective contractors for comments and suggestions.

### **Issuing the Solicitation**

- Use bid lists from all prospective cooperative purchasing members when requesting offers.
- Advertise the procurement in all participating states in accordance with their prevailing laws.
- Designate one point of contact, preferably via e-mail for vendor inquiries.

### **Evaluating and Negotiating Offers**

- Invite participating cooperative members to participate in technical evaluations.
- Negotiate terms and conditions that conform to legal requirements of each participating state or permit negotiation of more specific terms and conditions by each participating community.
- Carefully evaluate the proposed contractor's ability to service all cooperative members.
- Contracts are based on free and open competition, not single source. However, sometimes a single award is the option.

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### **Contract Award and Administration**

- Notify all participating members of contract award and provide electronic copies of the entire contract.
- Provide written guidelines for contract administration.
- Permit each state to administer contractor's performance and handle routine administration. Disputes relating to the purchase order should be handled by the cooperative members. Disputes relating to the contract should be handled by the lead governmental entity.
- Establish a contractor performance reporting system for participating members.
- Require that contractor provide periodic contract sales reports.
- Invite participating members to comment on proposed contract extensions.
- Negotiate deeper discounts if actual purchases exceed estimates.
- Provide plenty of time for replacement contracts.

### **Using Cooperative Contracts**

- Review the cooperative contract for conformance with state or local procurement laws and best practices.
- Analyze the product or service specifications, price, terms and conditions and other factors to ensure that the cooperative contract produces best value.
- Contact the cooperative lead government to verify contract application and eligibility.
- Compare contracts if there are multiple contracts available for the required product or service.
- When buying large quantities, verify whether the contract permits negotiation of additional price concessions.
- If a purchase agreement is required, confer with legal counsel to determine whether the agreement is acceptable.

### **Characteristics of 'Good' Cooperatives**

Some commodities and services have certain characteristics that make them more suitable for cooperative purchasing than others. Commodities that are purchased in large volume and/or are routinely purchased help ensure the success of a cooperative contract. Wide geographic availability and adequate distribution channels are important for the contract to appeal to more states/governmental entities and a larger group of users. The use of local vendors to provide support makes a cooperative contract more convenient and much easier to participate in politically.

Acceptance by multiple using parties and common use between state agencies contributes to wider usage and thus deeper discounts. The usage processes required to utilize the contracts should not be too cumbersome. Policies should be streamlined and easy to follow. One should certainly avoid those areas that are politically challenging or are subjected to local preference laws.

Vendors that provide a website that allows for easy location of cooperative contract terms, product information and pricing help to encourage use by public entities. The easier it is for entities to find what they are looking for and place the order, the more likely they will be to use the contract.

### **Examples:**

#### **TXMAS (Texas Multiple Award Schedule) Characteristics:**

- Multiple vendors
- Certified preferred customer pricing
- Multiple items

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*Contractual Requirements:*

- Basic Federal Requirements Prevail
- Operative TX Terms and Conditions
- Essential Contract Administration Documentation
- Recognizes Specific TX Statutory Requirements

*Specific Terms and Conditions:*

- Quarterly Report Format
- HUB Participation/Good Faith Effort
- Federal Employers Identification Number and DUNS Number
- Mandatory Contractor Training (2 to 4 hours)
- "Hot Link" Web Site (URL)/Catalog

**LaMAS (Louisiana Multiple Award Schedule)**

- Agreements are state contracts that use Federal Government General Service Administration (GSA) pricing as a benchmark
- LA public entities cannot buy directly from GSA schedules
- Use is not mandatory
- Office of Purchasing
- Determines if the commodity should be open for consideration when there are no existing competitive contracts
  - o compare products and prices on GSA schedules of like commodities
  - o competitive specifications cannot be developed
  - o competitive bid would likely produce better prices or value

*What is required to establish an LaMAS contract?*

- Letters from three separate agencies requesting the contract, or one letter from a large agency - Letters may be from political subdivisions
- OSP's research may determine it is in the best interest of the State to pursue a contract, then the letter requirement is waived

**WASHINGTON - RCW 39.34.030**

Joint powers - Agreements for joint or cooperative action, requisites, effect on responsibilities of component agencies.

**KANSAS**

*In Kansas, the statutory language related to Cooperative Purchasing is concise and deceptively simple:*

The director of purchases may participate in, sponsor, conduct, or administer a cooperative purchasing agreement or consortium for purchases of supplies, materials, equipment, and contractual services with federal agencies or agencies of other states or local units of government. Cooperative purchasing agreements entered into under this subsection shall not be subject to K.S.A. 75-3739 through 75-3740a, and amendments thereto.

**Conclusion**

Cooperative purchasing is a very effective tool that procurement managers can use to obtain effective, best-value solutions for the state and the taxpayer. Aggregated volume creates significant price breaks, sometimes in the double-digit figures. Partnering with a lead entity can reduce time, administrative overhead, and other costs, while leveraging the experience and expertise of those with specialized knowledge in a sector.

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Cooperative purchasing is not without its challenges, however. They include the need for a careful legal framework outlining the terms of the cooperation, and attention to compliance issues. Local legal and political barriers may need to be overcome, including concerns from small and minority/disadvantaged businesses and in-state vendors or resellers. Key procurement values such as competitive bidding should be maintained. Administrative fees and rebates to lead or participating states and/or to the cooperative itself, need to be reasonable.

Knowing and paying attention to the best practices and challenges will result in a contract that is beneficial for all participants through cost savings and a reduction in time to procure items by aggregating knowledge, spend and technology. Not only are savings achieved by combining requirements into cooperative contracts, but further cost savings are realized through a reduction in administrative expenses. Cooperative contracts also serve as a forum for the exchange and sharing of resources and technical information.

With state and local government budgets being stretched to the limit, it is essential that government leaders look for innovative ways to utilize taxpayer dollars efficiently and effectively, and to do more with less. Cooperative purchasing is a very logical and practical way to do this. By establishing solid cooperative purchasing processes and procedures, maintaining clear channels of communication, and working together closely, state and local governments can create a "win-win" situation for taxpayers and suppliers.

#### **Appendix**

- a) AZ checklist
- b) Minnesota Statutes

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## **Appendix**

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- b) Minnesota Statutes

## GUAM REGIONAL TRANSIT AUTHORITY

Eddie Baza Calvo, Governor  
Ray Tenorio Lt. Governor  
Felix R. Dungca, Interim Executive Manager

P.O. Box 2896  
Hagatna, GU 96932

Phone: (671) 475-4686 or 4616  
Fax: (671) 475-4600

April 10, 2012

**Honorable Benjamin J. F. Cruz**  
Vice-Speaker, 31<sup>st</sup> Guam Legislature  
*Mina'trentai Unu Na Liheslaturan Guahan*  
Chairperson, Committee on Youth, Cultural Affairs, Procurement,  
Government Operations and Public Broadcasting  
155Hesler Place  
Hagatna, Guam 96910

Office of the Vice Speaker

Benjamin J. Cruz

Re: Testimony on Bill No. 430-31 (COR) Date 4-9-12

Re: Testimony on Bill No. 430-31 (COR)

Buenas Yan Hafa Adai,

On behalf of the Board of Directors, Guam Regional Transit Authority (GRTA), I submit the following written testimony on the above bill, which supports a best practice for GRTA procurement process for new transit buses.

**Background History-** Through a Memorandum of Agreement (MOA) entered into between GRTA and Department of Public Works (DPW) on April 2010, this agency has retained the services of Parsons Brinkerhoff (PB) to provide technical assistance relative to our plans to procure transit buses built to our specifications. Funding for this project is through a federal grant.

To date and as recent as this past February, PB has completed the detailed bus technical specifications for GRTA review and approval. The review process concluded as of April 06<sup>th</sup>, 2012.

Phase Two of the MOA is the actual procurement process and will require the services and review of the Attorney General, General Services Administration, and/or DPW together with GRTA.

It should be noted that early on in this process, as far back as 2010, the issue of "piggybacking" was discussed numerous times as a best practice among transit properties. GRTA sought advice from the Federal Transit Administration (FTA), our local GSA, the Attorney General's office, and from PB.

It is our general understanding that while piggybacking is both recognized and encouraged at the federal and state level among transit authorities to reduce overall procurement costs, the practice is not sanctioned here on Guam, and if so, would require certain established procedures by a GovGuam entity to engagement.

## GUAM REGIONAL TRANSIT AUTHORITY

Eddie Baza Calvo, Governor  
Ray. Tenorio Lt. Governor  
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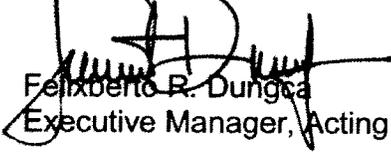
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Bill No. 430-31 (COR) could not have come at a more timely period with respect to our procurement efforts as we believe that it has the potential to benefit us in lower overall procurement costs to GRTA and the public, now and in the future.

WE THEREFORE SUPPORT THE INTENT OF BILL NO. 430-31 (COR).

Senseramente,



Felixberto R. Dungca  
Executive Manager, Acting

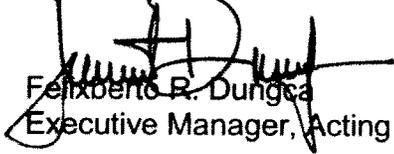
Cc: GRTA files  
Board of Directors

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**United States  
Department of  
Agriculture**

Food and  
Nutrition  
Service

Western Region

90 Seventh Street  
Suite #10-100  
San Francisco, CA  
94103

WSN-1: SA-16-4 GU

April 6, 2012

Charles H. Morris, MPH, RD, LDN, PHNS WIC Director  
Nutrition Health Services/Guam WIC Program  
Guam Dept. of Public Health & Social Services  
P.O.Box 2816  
Hagatna, GU 96932

Dear Mr. Morris:

We are very concerned to learn of the recent issues surrounding Guam's ability to participate in the upcoming Western States Contracting Alliance (WSCA) WIC infant formula rebate contract. As you are aware, the Guam WIC Program has already been participating in the WSCA contract since the latter's inception in 1992, along with 21 other currently participating WIC State agencies. During this twenty year period, the Guam WIC Program has saved millions of dollars in critical WIC food funds through infant formula rebates, enabling thousands of additional low income Guam participants to receive WIC benefits.

We now understand that the legality of Guam WIC's participation in WSCA has been called into question based on the reading of Guam procurement law, and that legislation has been introduced in the Guam Legislature to specifically allow for cooperative procurements among government entities, such as that currently in place with the WSCA infant formula contract.

We would like to take this opportunity to express our urgent support for passage of Bill No. 430-31 in the Guam Legislature. The alternative could be catastrophic for hundreds of low-income mothers and their infants currently served by the WIC Program, beginning October 1 of this year when the current rebate contract expires. The reason for this is simple. Of the \$7,584,785 available for Guam WIC Program participants to purchase WIC foods at local Guam retail vendors during the previous fiscal year, \$1,108,006 came from infant formula rebates under the WSCA contract.

Recent participation data shows 1,793 total infants participating in the Guam WIC Program each month. The standard 12.4 ounce can of powdered infant formula issued by the WIC Program normally costs \$13.19 per unit, but with the \$12.01 rebate under the current contract costs the WIC Program only \$1.17 per unit. To lose the additional source of WIC food funds subsidized by the formula rebates, as illustrated above, would instantly drive up the cost of formula for WIC infants, likely resulting in over a thousand children being dropped from the WIC rolls in Fiscal Year 2013, with a waiting list instituted.

Aside from the food funding and participation crisis triggered in the above scenario, operating without a rebate contract would also place the Guam WIC Program in violation of Sections 246.16a (a) and (b) of the WIC Program regulations, which



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Aside from the food funding and participation crisis triggered in the above scenario, operating without a rebate contract would also place the Guam WIC Program in violation of Sections 246.16a (a) and (b) of the WIC Program regulations, which

require a State agency to continuously operate a cost containment system for infant formula. State agencies out of compliance with this provision may not draw down or obligate any program or grant funds until compliance is achieved. Enforcement of this provision would essentially shut down the Guam WIC Program during the period in question.

While the logical alternative to Guam's participation in WSCA would be procurement of a separate infant formula rebate contract, we do not see this as a realistic alternative at this time. For example, the current WSCA contract procurement process was expedited beginning in October 2011, in order to be in contract prior to October 2012. To begin development of an Invitation for Bid (IFB) for formula rebates at this late date, followed by submission to USDA for review in addition to Guam internal procurement processes, would almost certainly result in missing the October 1 deadline for a new contract. In addition, it is quite possible that Guam might receive no bids from the national formula companies who normally provide the rebates, or at best a much lower rebate than is currently awarded through the cooperative procurement of 21 State agencies.

Regarding the question of possibly hurting local Guam businesses, it is clear that WIC-approved infant formula can only be supplied by a few large mainland vendors, including the current supplier. To the contrary, the WSCA infant formula contract has greatly benefited local Guam food retailers between sales of WIC foods and the additional business they bring in to the stores.

We cannot stress enough just how seriously we view this situation, as we have never had a WIC State agency lose its formula rebate contract since the practice was implemented years ago. We hope this scenario can be avoided by speedy passage of the current Bill in the Guam legislature and that the Guam WIC Program is assured of continued participation in the WSCA contracting process.

If you have any questions, please contact me at (415) 437-8805.

Sincerely,



for

RICH PROULX  
Regional Director  
Supplemental Nutrition Programs  
Western Region

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**Eddie B. Calvo**  
Governor

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Lieutenant Governor

# OFFICE OF VETERANS AFFAIRS

## Guam Veterans Cemetery

172 South Marine Corps Drive  
Asan, Guam 96910  
Telephone: (671) 475-8389/90/92/94  
Facsimile: (671) 475-8396



**John S. Unpingco**  
Governor's Special Assistant

**TESTIMONY**  
**on**  
**BILL 430-31**  
**by**  
**JOHN S. UNPINGCO**

AT FIRST BLUSH THIS WOULD SEEM TO BE A GOOD IDEA. BUT, ON FURTHER REFLECTION WE WOULD BE DOING A GREAT DISSERVICE TO THE PEOPLE OF GUAM. HERE'S HOW WE MAY BE SHORT-CHANGING OUR PEOPLE.

STATE JURISDICTIONS DIFFER AS TO THEIR PROCUREMENT PROCESS. WHAT MAY BE REGARDED AS COMPETITIVE IN OTHER JURISDICTIONS MAY NOT MEET THE COMPETITIVE REQUIREMENTS HERE. ALSO, THERE IS THE DANGER OF COMPLACENCY HERE. BECAUSE ONE JURISDICTION'S COMPETITIVE PROCUREMENT PROCESS HAS BEEN MET, WE NEED NOT DO ANOTHER HERE. NEXT, THERE IS THE DANGER THAT WE ARE NOT ACQUIRING THE SAME GOOD OR SERVICE. THIS MAY BE BLATANT OR QUITE SUBTLE. FOR THE SUBTLE ONES, WE ARE OBLIGATED TO LOOK AT THE SPECIFICATIONS IN DETAIL. FINALLY, WE WOULD BE IGNORING OUR LOCAL PROCUREMENT POLICIES SUCH AS POLICY IN FAVOR OF LOCAL PROCUREMENT, POLICY IN FAVOR OF NATIVE OR HOME GROWN IN GUAM, HORTICULTURAL PRODUCTS AND POLICY IN FAVOR OF PLANNED PROCUREMENT.

FOR THESE REASONS, WE URGE THE LEGISLATURE TO CALMLY REFLECT ON WHAT THIS STATUTE PROVIDES. IT IS FAR TOO SIMPLISTIC A SOLUTION AND I AM SURE THE LEGISLATURE CAN COME UP WITH A BETTER, MORE WELL THOUGHT OUT VERSION OF THIS BILL.



**Eddie B. Calvo**  
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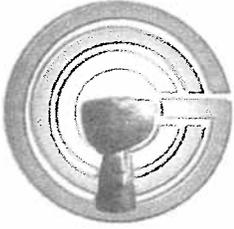
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**GUAM CHAMBER OF COMMERCE**  
**PARTNERS IN PROGRESS**

*March 29, 2012*

THE HONORABLE BENJAMIN J.F. CRUZ  
Vice Speaker  
31<sup>st</sup> Guam Legislature  
Committee on Youth, Cultural Affairs, Procurement,  
General Government Operations and Public Broadcasting  
155 Hesler Place  
Hagåtña, Guam 96910

**RE: BILL NO. 430-31 (COR):** "An act to add a new § 5126 to Chapter 5 of Title 5 of the Guam Code Annotated; relative to authorizing joinder or mutual use of contracts by government entities."

Dear Vice Speaker Cruz,

On behalf of our Board of Directors and Membership, I wish to thank you for the opportunity to submit comments on Bill No. 430-31 (COR), which seeks to authorize joinder or mutual use of contracts by government entities. This legislation, while likely well-intentioned, has serious potential to negatively affect Guam's businesses by opening the door for business to move outside this jurisdiction. By offering the option to "piggy back" on other contracts, opportunities for Guam's businesses will be reduced.

We strongly feel that this bill represents a backward step in maintaining a competitive process for Government of Guam procurement that benefits businesses on Guam.

More importantly, the Guam Chamber of Commerce must emphasize that this bill goes contrary to the Buy Local movement spearheaded by the Chamber, GEDA, University of Guam and local stakeholders, which encourages any and all entities on Guam to Buy Local and keep revenue on-island. Should this bill pass, the trickle-down effect of any revenue remaining on island will be lost, including tax revenue to our local government.

We ask that you and the Committee consider our comments and consider the implications of this legislation to our local businesses and our community. Thank you.

Sincerely,

DAVID P. LEDDY  
President



# COMMITTEE ON RULES

*I Mina'trentai Unu na Libeslaturan Guåhan* • The 31<sup>st</sup> Guam Legislature  
155 Hesler Place, Hagåtña, Guam 96910 • [www.guamlegislature.com](http://www.guamlegislature.com)  
E-mail: [roryforguam@gmail.com](mailto:roryforguam@gmail.com) • Tel: (671)472-7679 • Fax: (671)472-3547

Senator  
Rory J. Respicio  
CHAIRPERSON  
MAJORITY LEADER

March 12, 2012

## Memorandum

Senator  
Judith P. Guthertz  
VICE CHAIRPERSON  
ASST. MAJORITY LEADER

To: Pat C. Santos  
Clerk of the Legislature

### MAJORITY MEMBERS:

From: Senator Rory J. Respicio

Speaker  
Judith T. Won Pat

Subject: Fiscal Notes

Vice Speaker  
Benjamin J. F. Cruz

*Hafa Adai!*

Senator  
Tina Rose Muña Barnes  
LEGISLATIVE SECRETARY  
MAJORITY WHIP

Attached please find the fiscal notes for the bill numbers listed below. Please note that the fiscal notes, or waivers, are issued on the bills as introduced.

Senator  
Dennis G. Rodriguez, Jr.  
ASST. MAJORITY WHIP

Bill No.:	421-31 (LS)	429-31 (COR)
	422-31 (LS)	430-31 (COR)
	428-31 (LS)	

Senator  
Thomas C. Ada

Senator  
Adolpho B. Palacios, Sr.

Please forward the same to MIS for posting on our website. Please contact our office should you have any questions regarding this matter.

Senator  
vicente c. pangelinan

### MINORITY MEMBERS:

*Si Yu'os ma'åse'!*

Senator  
Aline A. Yamashita  
ASST. MINORITY LEADER

Senator  
Christopher M. Duenas

2012 MAR 13 10 43 AM  
R

**BUREAU OF BUDGET & MANAGEMENT RESEARCH**

OFFICE OF THE GOVERNOR

Post Office Box 2950, Hagåtña Guam 96932

**EDDIE BAZA CALVO**  
GOVERNOR**RAY TENORIO**  
LIEUTENANT GOVERNOR**JOHN A. RIOS**  
DIRECTOR**STEPHEN J. GUERRERO**  
DEPUTY DIRECTOR

MAR 09 2012

Senator Rory J. Respicio  
Chairperson, Committee on Rules  
I Mina'trentai Unu na Liheslaturan Guåhan  
The 31<sup>st</sup> Guam Legislature  
155 Hesler Place  
Hagåtña, Guam 96932

*Hafa Adai* Senator Respicio:

Transmitted herewith is the Fiscal Note on the following Bill Nos.: 421-31(LS), 422-31(LS), 428-31(LS), and 430-31 (COR).

If you have any question(s), please do not hesitate to call the office at 475-9412/9106.

A handwritten signature in black ink, appearing to read "J. A. Rios".

JOHN A. RIOS  
Director

Enclosures

cc: Senator Vicente (ben) Pangelinan

**Bureau of Budget & Management Research**  
**Fiscal Note of Bill No. 430-31 (COR)**

An act to add a new § 5126 to Chapter 5 of Title 5 of the Guam Code Annotated; relative to authorizing joinder or mutual use of contracts by government entities.

Department/Agency Appropriation Information	
Dept./Agency Affected: Department of Administration	Dept./Agency Head: Benita A. Manglona
Department's General Fund (GF) appropriation(s) to date:	29,055,631
Department's Other Fund (Specify) appropriation(s) to date:	6,952,628
<b>Total Department/Agency Appropriation(s) to date:</b>	<b>\$36,008,259</b>

Fund Source Information of Proposed Appropriation			
	General Fund:	(Specify Special Fund):	Total:
FY 2011 Unreserved Fund Balance <sup>1</sup>		\$0	\$0
FY 2012 Adopted Revenues	\$0	\$0	\$0
FY 2012 Appro. (P.L. 31-75 & 31-77)	\$0	\$0	\$0
Sub-total:	\$0	\$0	\$0
Less appropriation in Bill	\$0	\$0	\$0
<b>Total:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Estimated Fiscal Impact of Bill						
	One Full Fiscal Year	For Remainder of FY 2012 (if applicable)	FY 2013	FY 2014	FY 2015	FY 2016
General Fund	\$0	\$0	\$0	\$0	\$0	\$0
(Specify Special Fund)	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total</b> 1/	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

- Does the bill contain "revenue generating" provisions? / / Yes /X/ No  
 If Yes, see attachment N/A
- Is amount appropriated adequate to fund the intent of the appropriation? /X/ N/A / / Yes / / No  
 If no, what is the additional amount required? \$ \_\_\_\_\_ /X/ N/A
- Does the Bill establish a new program/agency? / / Yes /X/ No  
 If yes, will the program duplicate existing programs/agencies? /X/ N/A / / Yes / / No  
 Is there a federal mandate to establish the program/agency? / / Yes / / No
- Will the enactment of this Bill require new physical facilities? / / Yes /X/ No
- Was Fiscal Note coordinated with the affected dept/agency? If no, indicate reason: / / Yes /X/ No  
 / / Requested agency comments not received by due date /X/ Other: Time Constraint

*9/31/12*

Analyst (s): Joe Certeza Date: 02/29/2012 Director: [Signature] Date: MAR 09 2012  
 John A. Rios, Director

**Footnotes:**  
 1/ The Bill has a potential fiscal impact for additional funding requirements, specifically, man-hours spent on research and validation of contracts. However, in its present form, such impact cannot be determined at this time.



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Senator  
Dennis G. Rodriguez, Jr.  
ASST. MAJORITY WHIP

Senator  
Thomas C. Ada

Senator  
Adolpho B. Palacios, Sr.

Senator  
vicente c. pangelinan

**MINORITY MEMBERS:**

Senator  
Aline A. Yamashita  
ASST. MINORITY LEADER

Senator  
Christopher M. Duenas

February 24, 2012

**MEMORANDUM**

**To:** Pat Santos  
Clerk of the Legislature

Attorney Therese M. Terlaje  
Legislative Legal Counsel

**From:** Senator Rory J. Respicio 

**Subject:** Referral of Bill Nos. 430-31(COR) & 431-31 (COR)

As the Chairperson of the Committee on Rules, I am forwarding my referral of Bill Nos. 430-31 (COR) and 431-31 (COR).

Please ensure that the subject bills are referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Unu na Liheslaturan Guåhan*.

Should you have any questions, please feel free to contact our office at 472-7679.

*Si Yu'os Ma'åse!*

(2) Attachment

*I Mina Trentai Unu Na Liheslaturan Guahan*

**Bill Log Sheet**

BILL NOS.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	120 DAY DEADLINE	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	STATUS
430-31 (COR)	B. J.F. Cruz	AN ACT TO ADD A NEW § 5126 TO CHAPTER 5 OF TITLE 5 OF THE GUAM CODE ANNOTATED; RELATIVE TO AUTHORIZING JOINDER OR MUTUAL USE OF CONTRACTS BY GOVERNMENTAL ENTITIES.	02/22/12 3:50p.m.	2/24/2012		Committee on Youth, Cultural Affairs, Procurement, General Government Operations and Public Broadcasting			



Chris Carillo <chris.carillo@senatorbjcruz.com>

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## 1st Notice of Public Hearing - March 29, 2012

4 messages

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Chris Carillo <chris.carillo@senatorbjcruz.com>

Thu, Mar 22, 2012 at 1:55 PM

To: speaker@judiwonpat.com, tom@senatorada.org, senatortonyada@guamlegislature.org, senator@tinamunabarnes.com, frank.blasjr@gmail.com, duenasenator@gmail.com, judiguthertz@gmail.com, senatorsam@senatormabini.com, senbenp@guam.net, cor@guamlegislature.org, senatordrodriguez@gmail.com, senatormana@gmail.com, Aline4families@gmail.com, phnotice@guamlegislature.org, ABPalacios@gmail.com, joshua.tenorio@senatorbjcruz.com, carlos.pangelinan@senatorbjcruz.com, mike.lidia@senatorbjcruz.com, sarah.nededog@senatorbjcruz.com, senator@senatorbjcruz.com, Chris Carillo <chris.carillo@senatorbjcruz.com>  
Cc: mindy@kuam.com, sabrina@kuam.com, jason@kuam.com, bmkelman@guampdn.com, dcrisostomo@guampdn.com, rgibson@k57.com, therese.hart.writer@gmail.com, thebigshow@k57.com, travis.coffman@gmail.com, janela@mvguam.com, hottips@kuam.com, news@spbguam.com, news@guampdn.com, news@k57.com, parroyo@k57.com, kevin@spbguam.com, clynt@spbguam.com, Krystal Paco <krystal@kuam.com>

Hafa Adai All,

Please see the attached Notice of Public Hearing on March 29, 2012.

March 22, 2012

### MEMORANDUM

TO: All Members/All Senators

FROM: Chairman, Committee on Youth, Cultural Affairs, Procurement, General Government Operations and Public Broadcasting

RE: 5 Day Notice of Public Hearing – March 29, 2012

Hafa Adai! Please be advised that the Committee on Youth, Cultural Affairs, Procurement, General Government Operations, and Public Broadcasting will conduct a Public Hearing on Thursday, March 29, 2012, beginning at 1:00 P.M. in I Liheslaturan's Public Hearing Room on the following items:

- Bill No. 430-31 (COR) - B.J.F. Cruz- "An act to add a new § 5126 to Chapter 5 of Title 5 of the Guam Code Annotated; relative to authorizing joinder or mutual use of contracts by government entities."

**Listserv: [phnotice@guamlegislature.org](mailto:phnotice@guamlegislature.org)**

**As of Feb. 27, 2012**

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## PUBLIC HEARING AGENDA

March 29, 2012

Public Hearing notices were disseminated on 3/22/2012 and 3/27/2012

The only bill on the agenda is;

Bill No. 430-31 (COR) - B.J.F. Cruz- "An act to add a new § 5126 to Chapter 5 of Title 5 of the Guam Code Annotated; relative to authorizing joinder or mutual use of contracts by government entities."

*I MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN*  
2012 (SECOND) Regular Session

2012 JUN 20 PM 3:50

Bill No. 430-31 (COV)

Introduced by:

B.J.F. Cruz 

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**AN ACT TO ADD A NEW § 5126 TO CHAPTER 5 OF  
TITLE 5 OF THE GUAM CODE ANNOTATED;  
RELATIVE TO AUTHORIZING JOINDER OR MUTUAL  
USE OF CONTRACTS BY GOVERNMENTAL  
ENTITIES.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** A new § 5126 of Title 5, Guam Code Annotated, is hereby  
3 added and enacted to read:

4 **“§ 5126. Joinder or Mutual Use of Contracts by**  
5 **Governmental Entities.**

6 The Chief Procurement Officer, the Director of Public Works  
7 and any purchasing agency are authorized to join or use the contracts  
8 of other states or other government units within or outside of Guam,  
9 with the authorization of the contracting vendor. The other states or  
10 other government units wherever located are not liable for the  
11 obligations of the Guam governmental entity which joins or uses the  
12 contract. Before any joinder or mutual use may take place, the  
13 contracting officer must determine in writing that the other  
14 jurisdiction's contract has gone through a competitive procurement  
15 process.”