

STATE OF MONTANA TERM CONTRACT

Department of Administration
 State Procurement Bureau
 165 Mitchell Building
 PO Box 200135
 Helena, MT 59620-0135
 Phone: (406) 444-2575 Fax: (406) 444-2529
 TTY Users-Dial 711
<http://sfsd.mt.gov/>

T.C. #: NASPO VALUEPOINT #3091_TOSHIBA
Title: COPIERS, PRINTERS, AND RELATED DEVICES
This is a non-exclusive contract.

CONTRACT TERM	FROM	OCTOBER 1, 2015	CONTRACT STATUS	NEW (xx)
	TO	JUNE 30, 2019		RENEW ()
VENDOR ADDRESS	TOSHIBA BUSINESS SOLUTIONS, INC 9740 IRVINE BLVD IRVINE, CA 92618		ORDER ADDRESS	
ATTN:	Christina Fisher		ATTN:	
PHONE:	949-462-6325		PHONE:	
FAX:	949-462-2557		FAX:	
E-MAIL:	Christina.fisher@tabs.toshiba.com		E-MAIL:	

REMARKS: This contract was established by the NASPO VALUEPOINT (formerly Western States Contracting Alliance/National Association of Procurement Officials, (WSCA/NASPO) Cooperative Purchasing Organization. VALUEPOINT competitively issues and awards cooperative contracts while leveraging the demand of multiple states to achieve the best possible prices. Pricing regarding this contract may be found at the following website:

<http://www.naspovaluepoint.org/#/current-contracts/search?term=COPIERS,%20PRINTERS>

NASPO VALUEPOINT#3091	RHONDA R. GRANDY, CONTRACTS OFFICER	DATE: 12/15/2015
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AUTHORIZED SIGNATURE

This document represents an overview of the NASPO VALUEPOINT (formerly Western States Contracting Alliance/National Association of Procurement Officials, (WSCA/NASPO) Cooperative Purchasing Organization. This document is not intended to replace or append the contract, rather to provide an overview and summary of the agreement.

1.0 BACKGROUND

The State of Montana is a member of NASPO VALUEPOINT, which establishes the means by which participating states may join together in cooperative multi-state contracting in order to achieve cost-effective and efficient acquisition of quality products and services. This contract is a result of cooperative procurement conducted by the State of Nevada on behalf of NASPO VALUEPOINT.

2.0 PURPOSE

The purpose of this contract is provide state agencies and all registered cooperative purchasing organizations with an expedited means of obtaining copiers, printers, and related devices.

3.0 NON-EXCLUSIVE CONTRACT

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a "non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

4.0 ORDERING PROCEDURE

In accordance with the terms of the contract, an agency purchase order must be issued to the contractor for all required products. The purchase order must reference the contract number WSCA MA-331 and identify all items desired, the purchase order date, the delivery date, shipping locations and prices. Invoices shall reference NASPO VALUEPOINT #3091_TOSHIBA.

5.0 CONTRACT TERM

This contract shall take effect on July 1, 2015 and terminate on June 30, 2016. (Mont. Code Ann. § 18-4-313.) This is the first year of the contract.

6.0 CONTRACT RENEWAL

This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in one-year intervals, or any interval that is advantageous to the State. Renewals of this contract shall be at the discretion of the State.

PARTICIPATING ADDENDUM
WSCA-NASPO COOPERATIVE PURCHASING ORGANIZATION
COPIERS, PRINTERS & RELATED DEVICES 14-19
Administered by the State of Nevada (hereinafter "Lead State")

MASTER AGREEMENT
Toshiba America Business Solutions, Inc
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(hereinafter "Contractor")

And
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Agencies within a 30 mile radius of the Capitol Complex must have prior approval from the Department of Administration, General Services Division, Print and Mail Services Bureau prior to using this contract. Agencies must contact the State Procurement Bureau prior to signing any lease agreement.

1. Scope: This addendum covers the Copiers, Printers & Related Devices 14-19 lead by the State of Nevada for use by state agencies and other entities located in the Participating State of Montana authorized by that state's statutes to utilize state/entity contracts with the prior approval of the state's chief procurement official.

Contractor has been awarded devices and services in the following categories:
Group A - Convenience Copiers

In the event of a conflict between the terms and conditions of this PA and any Exhibit or Attachment subject to this PA, the terms and conditions of the Exhibit or Attachment prevail.

2. Participation: Use of specific WSCA-NASPO cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use State of Montana contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. Participating State Modifications or Additions to Master Agreement

3.1 Access and Retention of Records: Contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance. (Section 18-1-118, MCA). Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of eight years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

3.2 Assignment, Transfer and Subcontracting: Excepting for leases entered into with non-state agencies, Contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Section 18-4-141, MCA)

3.3 Reduction of Funding: The State must by law terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in a subsequent fiscal period. (18-4-313(4), MCA.) If state or federal government funds are not

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appropriated or otherwise made available through the state budgeting process to support continued performance of this contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the State shall terminate this contract as required by law. The State shall provide Contractor with prior written notice if for any reason the State's funding and/or federal sources are not appropriated or are withdrawn, the date the State's termination shall take effect. The State shall not be liable to Contractor for any payment that would have been payable had the contract not been terminated under this provision. As stated above, the State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the State's termination takes effect. This is Contractor's sole remedy. The State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

3.4 Tax Exemption: The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

3.5 Venue: This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Section 18-1-401, MCA.)

The parties agree that Section 14.b of the Master Agreement is modified with the following:

a.) The parties agree that Section 14.b.2 of the Master Agreement is changed with the following:

1. Sentence three (3), is replaced with the following: "Otherwise, the Contractor shall have control over the defense and settlement of it."
2. In sentence four (4) after "However," the following is inserted: "regarding the settlement of such claim".
3. Sentences eight (8) shall be added to read as follows: "If such a claim is made or appears likely to be made, the Indemnified Party agrees to permit Contractor to enable Indemnified Party to continue to use the Product, or to modify it, or replace it with one that is at least functionally equivalent. If Contractor determines that none of these alternatives is reasonably available, Indemnified Party agrees to return the Product to Contractor on its written request

4. Leases:

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- a) Equipment leases are subject to the Toshiba Agreement for Lease of Equipment, as set forth as Exhibit A ("Lease Agreement") unless otherwise agreed to. To initiate a lease, Buyers may issue a Purchase Order ["PO"] incorporating the terms and conditions of the Lease Agreement and reference the type of lease (FMV, Operational, or Capital Lease) on the PO or may simply sign the Toshiba Lease Agreement. Each PO shall be deemed to constitute an order under the terms and conditions of the Lease Agreement. Notwithstanding anything to the contrary in this PA, in the event of a conflict between an executed Lease Agreement and the Master Agreement, the terms of the Lease Agreement will supersede and control. The Lease Agreement and each PO issued prior to the termination of this PA shall survive the termination of this PA and the Master Agreement.
- b.) End of term: At the end of term, Buyers shall have the option to: (i) renew the schedule (ii) purchase the Equipment or (iii) return the equipment. If Buyers desire to exercise a renewal or purchase of the equipment, it shall give Contractor written notice at least thirty (30) days before the expiration of such Schedule Term. Notwithstanding anything to the contrary, if Buyer fails to notify Contractor of its intent with respect to the exercise of a renewal or purchase option, the initial schedule term shall be automatically renewed on a month-to-month basis after the term until cancelled by either party with thirty (30) days prior written notice. At the end of term of any Capital lease, title to the applicable equipment shall transfer to Customer, the equipment will not be returned and the related PO will not be renewed.
- c.) Toshiba may assign, solely for financing purposes, their right title and interest in and to: the Products subject to Lease Agreements or POs; (i) all payments and other amounts due and to become due thereunder with respect to the Products; and (ii) all rights and remedies under this Participating Addendum and the applicable Lease Agreement with respect to the Products, such payments and other amounts due. Any such assignment however, does not excuse Toshiba from bearing any obligation, terms and conditions as outlined under either the WSCA/NASPO Master Agreement 3091 or this Participating Addendum.

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

Contractor	
Name	Christina Fisher, Director, Bis & Proposals, Enterprise Administration
Address	9740 Irvine Blvd., Irvine, CA 92618
Telephone	(949) 462-6325
Fax	(949)462-2557
E-mail	Christina.Fisher@tabs.toshiba.com

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Local Contact for Billing and Customer support

Name	Anna Vondruska
Address	9740 Irvine Blvd., Irvine, CA 92618
Telephone	949-462-6152
Fax	949-462-2557
E-mail	anna.vondruska@tabs.toshiba.com

Participating Entity

Name	Rhonda R. Grandy
Address	125 N Roberts, Mitchell Bldg., Room 165, Helena, MT 59620
Telephone	406-444-3320
Fax	406-444-2529
E-mail	rhgrandy@mt.gov

6. Subcontractors: All Toshiba dealers and resellers authorized in the State Montana, as shown on the dedicated Toshiba (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO Master Price Agreement. The Toshiba dealer's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement. An Authorized Service Provider shall be deemed "Contractor" under this PA for any PO issued directly to and accepted by such Authorized Service Provider and all references in the Lease Agreement to Toshiba shall be deemed to refer to such Authorized Service Provider.

7. Purchase Order Instructions: Orders can be made out to (a) Toshiba America Business Solutions, Inc. or (b) Authorized Service Providers as approved by Toshiba and the State. To the extent Buyer and Contractor agree on additional terms, the terms will be documented on the Buyer PO, or other transaction document such as a Statement of Work, signed by both parties.

All orders should contain the following (1) Mandatory Language "PO is subject to WSCA-NASPO Contract resulting from RFP # 3091 and this Purchase Order shall constitute a Lease under the Terms and Conditions of the Lease Agreement attached as Exhibit A to State of Montana Participating Addendum, (2) Your Name, Address, Contact, & Phone-Number (3) Purchase order amount (4) If Leased, type of Lease (FMV, Operational, or Capital lease) and monthly payment (5) Itemized list of accessories (6) Service Program selected and rates. Please channel your PO through one of our authorized resellers so they can arrange for proper ordering and installation of your unit.

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Unless otherwise agreed upon by both parties in writing, signing the delivery and acceptance certificate constitutes Acceptance of the Product(s) and allows Contractor to invoice for the Product(s). Contractor will provide timely billing and Customer will notify Contractor, in writing, of any billing concern. Contractor will be allowed a thirty (30) day cure period upon receipt of such notification to address any such billing issue. Invoices that require update due to information being received incorrectly or late from the Buyer, are not considered inaccurate.

For Toshiba Orders:

Address Purchase Orders to:	Purchases Remit Payment to:	Leases Remit Payment to:
Participating Entity	Participating Entity	Participating Entity

For Authorized Service Provider Orders, address to and remit payments as shown on the dedicated Toshiba (cooperative contract) website or, in the case of lease payments, to the address listed on the invoice.

8. Service Level Agreement is set forth in Exhibit B attached hereto and incorporated by reference.
9. Toshiba / WSCA Master Full Service Maintenance Agreement: Notwithstanding anything to the contrary in the Master Agreement, Buyers are subject to Toshiba / WSCA Master Full Service Maintenance Agreement ("Master FSM") attached and incorporated herein as Exhibit C.
10. Unless otherwise agreed, software is provided subject to the terms and conditions of the license applicable to such software.
11. Meter Collection Methods: Contractor has at its disposal multiple tools to address these requirements. Contractor can provide electronic remote meter reading and equipment monitoring services using on-premise or cloud based software solutions. Some of these technologies may include fleet management solutions. These solutions allow for automated meter/toner level reading and submission for billing, automatic placement of low toner alerts, and automatic placement of service calls in the event of a critical product issue. Additionally, some of these tools also allow for remote configuration and management of the fleet including periodic firmware updates. Contractor, working with the Customer will determine the most appropriate monitoring software based on the customer's environment and requirements. For cloud based monitoring services, Contractor ensures that any data transmitted between customer environment and the monitoring service is highly encrypted and secure.

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12. **Insurance:** Contractor will maintain the following insurance limits while performing any services under this Participating Addendum: (a) Workers' Compensation Insurance for Contractor employees, including coverage required under the State's and Federal Laws; (b) Employer's Liability Insurance with limits of a minimum of: (i) \$1,000,000 for each accident for bodily injury by accident, (ii) \$1,000,000 for bodily injury by disease, and (iii) \$1,000,000 for each employee for bodily injury by disease; (c) General Liability Insurance that includes the State as an additional insured with limits of: (i) \$1,000,000 per occurrence for bodily injury and property damage and (ii) \$2,000,000 annual aggregate. Buyer will bear All-Risk Property Insurance to insure physical loss or damage, at replacement value, of all Products no matter where stored or located by Buyer or other property of Contractor's in Buyer's care, custody and control or while in transit (If applicable).
13. **Audit Rights:** Upon the prior written request of the State and no more frequently than once a year during the term of this Agreement, Contractor will provide copies of the documentation that is reasonably necessary for the State to confirm its payment obligations under any invoice. Contractor will assist the State in connection with its efforts to verify the completeness and accuracy of the invoices. In no event, however, will Contractor be obligated to disclose any confidential information not directly pertaining to the invoice in question.
14. **Price Agreement Number:** All purchase orders issued by purchasing entities within the jurisdiction of this participating addendum shall include the Participating State contract number: WSCA #3091 Toshiba and the Lead State price agreement number: 3091.
15. **Individual Customer:** Each State agency and political subdivision, as a Participating Entity, that purchases products/services will be treated as if they were Individual Customers. Except to the extent modified by a Participating Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the Master Agreement, and they will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency and political subdivision will be responsible for their own charges, fees, and liabilities. Each agency and political subdivision will have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor will apply the charges to each Participating Entity individually.

This Participating Addendum and the Master Agreement number 3091 (administered by the State of Nevada) 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

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to the terms and conditions of this Addendum and the Master Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master 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 unless accepted by signature of both Buyer and Contractor as stated in Section 7 of this PA. The terms and conditions of this Addendum and the Master Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.



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

Participating State: Montana	Contractor: Toshiba America Business Solutions, Inc.
By: Cheryl Grey	By: 
Name: 	Name: Michael Torcaso
Title: <i>SBD Administrator</i>	Title: Vice President, Chief Financial Officer
Date: <i>12-11-15</i>	Date: 11/04/2015

If you have questions about this Participating Addendum or the participation process, please contact:
 WSCA-NASPO COOPERATIVE PURCHASING ORGANIZATION

Name	Paul Stembler, Cooperative Development Coordinator
Telephone	(651) 206-3858
E-mail	Paul.stembler@wsca-napo.org

EXHIBIT A
 Toshiba Master Terms and Conditions of Lease Agreement