

STATE OF VERMONT PARTICIPATING ADDENDUM # 48673
FOR NASPO VALUEPOINT PURCHASING PROGRAM: MAILING EQUIPMENT, SUPPLIES AND
MAINTENANCE (2022-2027)
Led by the State of ARIZONA
Master Agreement # CTR059383

Contractor: FP Mailing Solutions

Contractor's NASPO ValuePoint Webpage: <https://www.naspovaluepoint.org/portfolio/mailing-equipment-supplies-and-maintenance-2022-2027/fp-mailing-solutions/>

1. **Parties.** This Participating Addendum is a contract between the State of Vermont, through its Department of Buildings and General Services, Office of Purchasing & Contracting (hereinafter "State" or "Vermont"), and the Contractor identified above. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** This Participating Addendum authorizes the purchase of Mailing Equipment, Supplies and Maintenance (2022-2027) Contractor pursuant to the Master Agreement identified above, which is hereby incorporated by reference.
3. **Definitions.** Capitalized terms used, but not defined herein, have the meanings ascribed to such terms in the Master Agreement between the Lead State and the Contractor.
4. **Purchasing Entities.** This Participating Addendum may be used by (a) all departments, offices, institutions, and other agencies of the State of Vermont and counties (each a "State Purchaser") according to the process for ordering and other restrictions applicable to State Purchasers set forth herein; and (b) political subdivisions of the state (including, but not limited to, cities, towns, and school districts) and any institution of higher education chartered in Vermont and accredited or holding a certificate of approval from the State Board of Education as authorized under 29 V.S.A. § 902 (each an "Additional Purchaser"). Issues concerning interpretation and eligibility for participation are solely within the authority of the State of Vermont Chief Procurement Officer. The State of Vermont and its officers and employees shall have no responsibility or liability for Additional Purchasers. Each Additional Purchaser is to make its own determination whether this Participating Addendum and the Master Agreement are consistent with its procurement policies and regulations.
5. **Contract Term.** The period of Contractor's performance shall begin on September 1, 2024 and end upon expiration of the Master Agreement, unless terminated earlier in accordance with the terms of this Participating Addendum or the Master Agreement. An amendment to this Participating Addendum shall not be necessary in the event of the renewal or extension of the Master Agreement.
6. **Restricted/Disallowed Products and Services.** All products and services listed in the Master Agreement may be purchased under this Agreement, except for any restrictions or disallowed products and services set forth directly below in this section.
 - a. **State of Vermont Cybersecurity Standard Update.** Contractor confirms that all products and services provided to or for the use of the State under the Contract shall be in compliance with State of Vermont Cybersecurity Standard Update in effect at the time of this Amendment to the Contract. The State of Vermont Cybersecurity Standard Update prohibits the use of certain branded products in State information systems or any vendor system, and a copy is available at:
<https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>

7. ***No Lease Agreements with State Purchasers.*** Contractor is prohibited from leasing to State Purchasers under this Agreement. Any breach of this prohibition shall be grounds for termination of this Agreement by the State and the immediate cancellation of any applicable purchases. Additional Purchasers are not subject to this prohibition and may negotiate lease agreements directly with Contractor if and to the extent leasing is contemplated under the terms of the Master Agreement.
8. ***Software.***
- a. The Parties acknowledge and agree that while software subscription terms may be presented for review at the time of an order, as applicable to the order, any such software subscription terms or conditions not allowable under law or that materially conflict with the applicable terms and conditions established by this Participating Addendum and Master Agreement will not apply. Further, and without limiting the generality of the foregoing sentence, notwithstanding any language to the contrary, Contractor acknowledges and agrees that Purchasing Entities do not intend to be bound, and will not be bound, by any software subscription terms applicable to any order to the extent such terms: (a) require indemnification by the Purchasing Entity of the Contractor or a third party; (b) waive the Purchasing Entity's right to a jury trial; (c) establish jurisdiction in any venue other than the Superior Court of the State of Vermont, Civil Division, Washington Unit; (d) designate a governing law other than the laws of the State of Vermont; (e) constitute an implied or deemed waiver of the immunities, defenses, rights or actions arising out of Purchasing Entity's sovereign status or under the Eleventh Amendment to the United States Constitution; (f) establish new or different payment obligations of the Purchasing Entity than are established under the Agreement; (g) reduce or diminish the obligations regarding the security, confidentiality, and integrity of the Purchasing Entity's data as are established under the Agreement; (h) establish rights in the use of or access to Purchasing Entity's data for any reason other than performance of the product or service; (i) establish rights of ownership in the Purchasing Entity's data; or (j) limit the time within which an action may be brought.
 - b. The following only applies to State Users, All software Purchases require the prior approval of the Agency of Digital Services before any order may be placed. Users when making the request must include the contractor provided terms and conditions with a quote.
9. ***Contractor's Representations and Warranties.***
- a. General Representations and Warranties. The Contractor represents, warrants and covenants that:
 - i. The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Participating Addendum and the execution, delivery and performance of this Participating Addendum by the Contractor has been duly authorized by the Contractor.
 - ii. There is no pending litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would

reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Participating Addendum.

- iii. The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Participating Addendum.
 - iv. The Contractor (a) owns, or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the services as set forth in this Participating Addendum; (b) shall be responsible for and have full authority to license all proprietary and/or third party software modules, including algorithms and protocols, that Contractor incorporates into its product; and (c) none of the services or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.
 - v. The Contractor has adequate resources to fulfill its obligations under this Participating Addendum.
 - vi. Neither Contractor nor Contractor's subcontractors has past state or federal violations, convictions or suspensions relating to miscoding of employees in NCCI job codes for purposes of differentiating between independent contractors and employees.
- b. Contractor's Performance Warranties. Contractor represents and warrants to the State that:
- i. Each and all of the services shall be performed in a timely, diligent, professional and skillful manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment.
 - ii. Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of malicious software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Without limiting the generality of the foregoing, if the State believes that malicious code may be present in any software delivered hereunder, Contractor will, upon State's request, provide a new or clean install of the software. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.
 - iii. To the extent Contractor resells commercial hardware or software it purchased from a third party, Contractor will, to the extent it is legally able to do so, pass

through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth herein.

10. Remedies For Default.

In the event either party is in default under this Participating Addendum, the non- defaulting party may, at its option, pursue any or all of the remedies available to it under this Participating Addendum, including termination for cause, and at law or in equity.

11. Information Security Requirements.

In cases where the State is not permitted to manage/modify the automation equipment (server/computer/other) that controls testing or monitoring devices, the Contractor agrees to update and provide patches for the automation equipment and any installed operating systems or applications as needed. Upon request from the State, the Contractor will submit a report to the State of updates installed within 30 days of the installation as well as a Plan of Actions and Milestones (POA&M) to remediate any vulnerabilities ranging from Critical to Low. Upon request from the State, the contractor will provide an upgrade path or compensatory security controls for any operating systems and applications listed as beyond "end-of-life" or EOL, at least 90 days prior to the EOL and complete the EOL system's upgrade within 90 days of the approved plan.

12. Requirements for Ordering.

- a. Orders made under this Participating Addendum must include a Purchase Order for the Product and/or Services. Orders funded by federal funds may include additional terms as necessary to comply with federal requirements.
- b. State Purchasers must follow the ordering procedures of the State Contract Administrator to execute orders against this Participating Addendum, which shall include, as applicable, obtaining approval from the State CIO and/or Attorney General's Office prior to making purchases under this Participating Addendum.
- c. All orders placed under this Participating Addendum must include the Participating Addendum Number on the Purchase Order.

13. Payment Provisions and Invoicing.

- a. Product offerings and complete details of product pricing, including discounts, applicable to this Participating Addendum are set forth in the Price Schedule maintained on-line at Contractor's NASPO ValuePoint Webpage listed above.
- b. Purchasing Entities may solicit the Contractor for deeper discounts than the contract pricing as set forth in the Price Schedule (e.g., additional volume pricing, incremental discounts, firm fixed pricing or other incentives).
- c. If applicable, all equipment pricing is to include F.O.B. delivery to the ordering facility. No request for extra delivery cost will be honored.
- d. In the discretion of the Purchasing Entity, retainage may be specified in a Purchase Order, in an amount mutually agreeable to the parties.

- e. Payment terms are Net 30 days from the date the Purchasing Entity receives an error-free invoice with all necessary and complete supporting documentation. Invoices shall itemize all work performed during the invoice period, including, as applicable, the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment. As applicable, a copy of the notice(s) of acceptance shall accompany invoices submitted for payment.
 - f. Invoices shall be sent to the address identified on the Purchasing Entity's Purchase Order and shall specify the address to which payments will be sent. The State of Vermont Participating Addendum Number and Purchasing Entity's Purchase Order Number shall appear on each invoice for all purchases placed under this Participating Addendum.
 - g. Reimbursement of expenses is not authorized. All rates set forth in a Purchase Order shall be inclusive of any and all Contractor fees and expenses.
 - h. The State Purchasing Card may be used by State Purchasers for the payment of invoices. Use of the Purchasing Card requires all required documentation applicable to the purchase. The Purchasing Card is a payment mechanism, not a procurement approach and, therefore, does not relieve State Purchasers from adhering to all procurement laws, regulations, policies, procedures, and best practices.
14. **Reporting.** Contractor shall submit quarterly reports electronically in the same format as set forth under the Master Agreement, detailing the purchasing of all items under this Participating Addendum. Contractor's reporting shall state "no activity" for any month in which there is no activity during a quarterly reporting period.
- a. The reports shall be in the form of an Excel spreadsheet transmitted electronically to SOV.ThePathForward@vermont.gov.
 - b. Reports are due for each quarter as follows:
- | Reporting Period | Report Due |
|--------------------------|------------|
| January 1 to March 31 | April 30 |
| April 1 to June 30 | July 31 |
| July 1 to September 30 | October 31 |
| October 1 to December 31 | January 31 |
- c. Failure to meet these reporting requirements may result in suspension or termination of this Participating Addendum.
15. **Prior Approvals.** In accordance with current State law, bulletins, and interpretations, this Participating Addendum shall not be binding until it has been approved by the Vermont Attorney General's Office, the Secretary of Administration, and the State's Chief Information Officer.
16. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this Participating Addendum shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

17. **Termination.** This Participating Addendum may be terminated by the State at any time upon 30 days prior written notice to the Contractor. Upon termination or expiration of this Participating Addendum, each party will assist the other in orderly termination of the Participating Addendum and the transfer of all assets, tangible and intangible, as may facilitate the orderly, non-disrupted business continuation of each party. This provision shall not relieve the Contractor of the obligation to perform under any order executed prior to the effective date of termination or other expiration of this Participating Addendum.

18. **Primary Contacts.** The Parties will keep and maintain current at all times a primary point of contact for this Participating Addendum. The primary contacts for this this Participating Addendum are as follows:

a. **For the Contractor:**

Name: Rich Figura
Phone: 630.827.5753
Email: rfigura@fp-usa.com

b. **For the State:**

Name: State of Vermont, Stefanie Malmstein
Phone: 802.371.8987
Email: BGS.OPCVendorDocs@vermont.gov

19. **Additional Terms and Conditions.**

- a. "Attachment C: Standard State Provisions for Contracts and Grants" (revision version dated December 7, 2023) is hereby incorporated by reference as if fully set forth herein and shall apply this this Agreement and shall apply to each order placed under this Agreement as if fully set forth in the order. A copy of this document is available online at: <https://bgs.vermont.gov/purchasing-contracting/forms> .
- b. Notwithstanding any contrary language anywhere, in no event shall the terms of this contract or any document furnished by Contractor in connection with performance under this contract obligate the State to (1) defend or indemnify Contractor or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of Contractor or any third party. Any such terms shall have no effect in any event.
- c. If required by an order made by a State Purchaser under this Participating Addendum, the terms and conditions of the applicable State of Vermont Business Associate Agreement, revised May 2019 (available online at: <https://bgs.vermont.gov/purchasing-contracting/forms>) shall be incorporated by reference and apply to the order. This provision shall not apply to Additional Purchasers.
- d. **Regulation of Hydrofluorocarbons:** Party confirms that all products provided to or for the use of the State under this Agreement shall not contain hydrofluorocarbons, as prohibited under 10 V.S.A. § 586.
- e. Contractor is required at all times to comply with all applicable federal and state laws and regulations pertaining to information security and privacy.

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- f. **State and Federal Terms for Products and Services.** Contractor agrees that "STATE OF VERMONT- FEDERAL TERMS SUPPLEMENT (Non-Construction) Revision date: May 24, 2024)" which is attached to this Participating Addendum and applies to any products or services provided to the State, at any time, when using federal funds.
- g. **Byrd Anti-Lobbying Certification.** Applicable to contracts over \$100,000.00 - this clause must be included in all subcontracts over \$100,000.00.

Contractor has provided the certification required by the Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended, and will follow the requirements for certification of each lower tier (subcontract) to disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures will be forwarded from tier to tier up to the Contractor who in turn will forward the certification(s) to the federal awarding agency.

By signing below Contractor agrees to offer the products and services on the Master Agreement at prices equal to or lower than the prices listed on the Master Agreement.

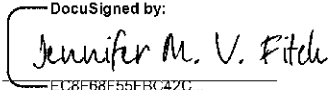
WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the State of Vermont:

FP Mailing Solutions:

Date: 10/8/2024

Date: 09/03/2024

Signature:  EC8F68F55FBC42C...

Signature: 

Name: Jennifer M.V. Fitch

Name: Erika Langmaier

Title: Commissioner - Buildings and General Services

Title: Sales Support Specialist