



**PARTICIPATING ADDENDUM
NASPO VALUEPOINT**

PUBLIC SAFETY VEHICLE ACCESS & LED LIGHT BARS, SIRENS, WARNING & ACCESSORIES

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

MASTER AGREEMENT

Master Agreement No: 165264

Whelen Engineering Company Inc.
(hereinafter "Contractor")

and

State of Washington
(hereinafter "Participating State")

WASHINGTON MASTER CONTRACT No.: 03719

This Participating Addendum for the above referenced Master Agreement ("Participating Addendum") is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and Whelen Engineering Company Inc., a Connecticut corporation ("Contractor") and is dated and effective as of February 20, 2020.

RECITALS

- A. Pursuant to Legislative authorization codified in RCW 39.26.060, Enterprise Services, on behalf of the State of Washington, is authorized to participate in cooperative purchasing agreements to develop master agreements to procure goods and/or services and to make such competitively solicited and awarded contracts available to Washington state agencies and designated eligible purchasers consistent with terms and conditions set forth by Enterprise Services.
- B. Enterprise Services timely provided public notice of the competitive solicitation process conducted by the above-referenced lead state through Washington's Electronic Business Solutions (WEBS) system.
- C. The above-referenced Lead State, as part of its competitive solicitation process, evaluated all responses to its procurement and identified Contractor as an apparent successful bidder and awarded a Master Agreement to Contractor.
- D. Enterprise Services has determined that participating in this Master Agreement is in the best interest of the State of Washington.
- E. The purpose of this Participating Addendum is to enable eligible purchasers, as defined herein, to utilize the Master Agreement as conditioned by this Participating Addendum.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

1. **SCOPE:** This Participating Addendum covers the competitive procurement for Public Safety Vehicle Access & LED Light Bars, Sirens, Warning & Accessories led by the State of Minnesota for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts with the prior approval of the State's chief procurement official.
2. **PARTICIPATION:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state 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. Pursuant to this Participating Addendum, the Master Agreement may be utilized by the following ("Purchasing Entities" or "Purchasers"):
 - (a) WASHINGTON STATE AGENCIES. All Washington state agencies, departments, offices, divisions, boards, and commissions.
 - (b) WASHINGTON STATE INSTITUTIONS OF HIGHER EDUCATION (COLLEGES). Any the following specific institutions of higher education in Washington:
 - State universities – i.e., University of Washington & Washington State University;
 - Regional universities – i.e., Central Washington University, Eastern Washington University, & Western Washington University
 - Evergreen State College;
 - Community colleges; and
 - Technical colleges.
 - (c) MCUA PARTIES. The Master Agreement also may be utilized by any of the following types of entities that have executed a Master Contract Usage Agreement (MCUA) with Enterprise Services:
 - Political subdivisions (e.g., counties, cities, school districts, public utility districts, ports) in the State of Washington;
 - Federal governmental agencies or entities;
 - Public-benefit nonprofit corporations (i.e., § 501(c)(3) nonprofit corporations that receive federal, state, or local funding); and
 - Federally-recognized Indian Tribes located in the State of Washington.

By placing an order under this Participating Addendum, each Purchasing Entity agrees to be bound by the terms and conditions of this Participating Addendum, including the Master Agreement. Each Purchasing Entity shall be responsible for its compliance with such terms and conditions.

3. PARTICIPATING STATE MODIFICATIONS OR ADDITIONS TO MASTER AGREEMENT:

- 3.1. **WASHINGTON'S ELECTRONIC BUSINESS SOLUTIONS (WEBS) SYSTEM:** Within seven (7) days of execution of this Participating Addendum, Contractor shall register in the Washington State Department of Enterprise Services' Electronic Business Solutions (WEBS) System at [WEBS](#).

Contractor shall ensure that all of its information therein is current and accurate and that, throughout the term of the Master Agreement, Contractor shall maintain an accurate profile in WEBS.

3.2. **WASHINGTON’S STATEWIDE PAYEE DESK:** To be paid for contract sales, Contractors must register with Washington’s Statewide Payee Desk. Washington state agencies cannot make payments to a contractor until it is registered. Registration materials are available here: [Receiving Payment from the State](#).

3.3. **CONTRACT SALES REPORTING:** Contractor shall report total contract sales quarterly to Enterprise Services, as set forth below.

- (a) **REPORTING.** Contractor shall report quarterly Contract sales in Enterprise Services’ [Contract Sales Reporting System](#). Enterprise Services will provide Contractor with a login password and a vendor number.
- (b) **DATA.** Each sales report must identify every authorized Purchasing Entity by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The “Miscellaneous” option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Purchasing Entities specified herein during the term of this Participating Addendum. Refer sales reporting questions to the Primary Contact set forth below. If there are no contract sales during the reporting period, Contractor must report zero sales.
- (c) **DUE DATES FOR CONTRACT SALES REPORTING.** Quarterly Contract Sales Reports must be submitted electronically by the following deadlines for all sales invoiced during the applicable calendar quarter:

For Calendar Quarter Ending	Contract Sales Report Due
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

3.4. **VENDOR MANAGEMENT FEE:** Contractor shall pay to Enterprise Services a vendor management fee (“VMF”) of 1.5 percent on the purchase price for all contract sales (the purchase price is the total invoice price less applicable sales tax) authorized by this Participating Addendum.

- (a) The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:

$$\text{Amount owed to Enterprise Services} = \text{Total contract sales invoiced (not including sales tax)} \times .0150.$$
- (b) The VMF must be rolled into Contractor’s current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.
- (c) Enterprise Services will invoice Contractor quarterly based on contract sales reported by Contractor. Contractor shall not remit payment until it receives an invoice from Enterprise Services. Contractor’s VMF payment to Enterprise Services must reference

the following:

- This Washington Master Contract No.: **03719**
 - The NASPO Master Agreement No.: **165264**
 - The year and quarter for which the VMF is being remitted, and
 - Contractor's name as set forth in this Contract, if not already included on the face of the check.
- (d) Contractor's failure accurately and timely to report total net sales, to submit usage reports, or remit payment of the VMF to Enterprise Services, may be cause for suspension or termination of this Participating Addendum or the exercise of any other remedies as provided by law.
- (e) Enterprise Services reserves the right, upon thirty (30) days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases.
- (f) For purposes of the VMF, the parties agree that the initial management fee is included in the pricing. Therefore, any increase or reduction of the management fee must be reflected in contract pricing commensurate with the adjustment.

3.5. CONTRACTOR REPRESENTATIONS AND WARRANTIES: Contractor makes each of the following representations and warranties as of the effective date of this Participating Addendum and at the time any order is placed pursuant to the Master Contract. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.

- (a) **WAGE VIOLATIONS.** Contractor represents and warrants that, during the term of this Master Contract and the three (3) year period immediately preceding the award of the Master Contract, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW chapters 49.46, 49.48, or 49.52.
- (b) **PAY EQUALITY.** Contractor represents and warrants that, among its workers, similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. Contractor may allow differentials in compensation for its workers based in good faith on any of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential. A bona fide regional difference in compensation level must be consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30)

days, Enterprise Services may suspend or terminate this Participating Addendum and Master Contract and any Purchaser hereunder similarly may suspend or terminate its use of the Master Contract and/or any agreement entered into pursuant to this Participating Addendum.

- (c) EXECUTIVE ORDER 18-03 – WORKERS’ RIGHTS (MANDATORY INDIVIDUAL ARBITRATION). Contractor represents and warrants, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Master Contract, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

3.6. **COMPLIANCE WITH LAW; TAXES, LICENSES, & REGISTRATION:** Contractor shall comply with all applicable law. Prior to making any sales hereunder, if Contractor is not already registered, Contractor shall register to conduct business in the State of Washington and promptly acquire and maintain all necessary licenses and registrations and pay all applicable taxes and fees. In addition, for all sales to Purchasers in the State of Washington, if Contractor does not currently do so, Contractor shall calculate, collect, and remit, as appropriate, the applicable state and local sales tax on all invoices.

4. **LEASE AGREEMENTS:** This Participating Addendum does not authorize Contractor to lease or rent equipment to any Purchaser.

5. **PRIMARY CONTACTS:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor	Participating State
Whelen Engineering Company, Inc. 51 Winthrop Road Chester, CT 06412	State of Washington Department of Enterprise Services Contracts & Procurement Division P.O. Box 41411 Olympia, WA 98504-1411
Attn: Craig Szymanski Tel: 860-718-2304 Email: cszymanski@whelen.com	Attn: Austin Diaz-Munoz Tel: (360) 407-7971 Email: Austin.Diaz-Munoz@des.wa.gov

6. **CONTRACTOR’S AUTHORIZED DISTRIBUTORS:** Contractor shall provide the products/services through its Authorized Distributors. For purposes of this Master Agreement and Participating Addendum, Contractor’s Authorized Distributors for the State of Washington are those firms listed in the Pricing & Ordering document on the Master Contract portal page. Contractor shall ensure that each of its Authorized Distributors perform in accordance with the terms and conditions set forth in the Master Agreement and this Participating Addendum.

7. **ORDERS:** Unless the parties to the Order agree in writing that another contract or agreement applies to such order, any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions of) the Master Agreement as conditioned by this

Participating Addendum.

8. DISCOUNT FOR WA PURCHASERS: 40.5%

9. GENERAL:

- (a) **INTEGRATED AGREEMENT; MODIFICATION.** This Participating Addendum and Master Agreement, together with its exhibits, set forth the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. This Participating Addendum may not be modified except in writing signed by the Parties.
- (b) **AUTHORITY.** Each party to this Participating Addendum, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Participating Addendum and that its execution, delivery, and performance of this Participating Addendum has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- (c) **ELECTRONIC SIGNATURES.** A signed copy of this Participating Addendum or any other ancillary agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Participating Addendum or such other ancillary agreement for all purposes.
- (d) **COUNTERPARTS.** This Participating Addendum may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Participating Addendum at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Participating Addendum.

EXECUTED as of the date and year first above written.

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

By: 

Corinna Cooper

Its: Enterprise Procurement Manager

**WHELEN ENGINEERING COMPANY INC.,
A CONNECTICUT CORPORATION**

By: 

Craig Szymanski

Its: Director of Sales Administration

mn DEPARTMENT OF
ADMINISTRATION
STATE PROCUREMENT

September 4, 2019

Mr. Craig Szymanski
Whelen Engineering CO Inc.
51 Winthrop Road,
Chester, CT 06412

Dear Mr. Szymanski:

The following documents are enclosed for you to complete and return:

- Notification of Contract Award 0000000000000000165264 (165264) for Public Safety Vehicle Accessories and LED Emergency Light Bars, Siren Warning Accessories.
- Exhibit A, showing the terms and specific items awarded.

Please print and have signed (not stamped) and return by
E-mail, to my attention at
dustin.burns@state.mn.us by September 10, 2019.

Instructions for properly completing the Contract documents are enclosed. Documents that are not properly executed will be returned to you. Failure to submit executed forms in the time required may result in cancellation of the award. Upon receipt of the properly executed forms, and after signatures are obtained from the appropriate State authorities, a copy of the completed Contract documents will be sent to your company.

If you have any questions, please contact me.

Sincerely,


Dustin Burns
Acquisition Management Specialist / Buyer
Enclosure

Department of Administration | Office of State Procurement
112 Administration Building, 50 Sherburne Avenue, Saint Paul, MN 55155
651-296-2600 | mn.gov/admin/mmd

Persons with a hearing or speech disability may contact us by dialing 711 or 1.800.627.3529

INSTRUCTIONS

Return the signed sets of documents to the OSP office.

Required Signatures:

- The documents must be signed by an **officer** of your company, e.g., president, vice president, assistant vice president, corporate secretary, assistant corporate secretary, treasurer, or assistant treasurer.
- If your company is a corporation, the signature of one corporate officer is binding. If your company is a partnership, the signature of one partner is binding.

If someone other than the corporate officers listed above signs the document (e.g., manager, sales manager, executive assistant, etc.), evidence of his or her authority to do so must accompany the document. The evidence can be either:

- A corporate power of attorney, or
- A **certified copy** of a board resolution authorizing the alternate signature with a letter attached and signed by a corporate officer stating the resolution is in force and effective.

Notification of Contract Award

To: Mr. Craig Szymanski
Whelen Engineering CO Inc.
51 Winthrop Road,
Chester, CT 06412

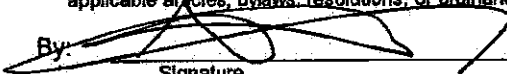
Contract Number: 0000000000000000165264
Release Number: L-336(5)
Contract Period: September 10, 2019, or date of
contract execution, whichever
is later
Through August 31, 2021
Extension Option: Up to 36 Months

You are hereby notified that your response to our solicitation, which opened April 24, 2019, is accepted. This Contract Award includes all or part of the following products or services, as further specified in Exhibit A: Public Safety Vehicle Accessories and LED Emergency Light Bars, Siren Warning Accessories.

The following documents, in order of precedence, are incorporated herein by reference and constitute the entire Contract between you and the State: (1) this Notification of Contract Award, together with Exhibit A and any attachments or subsequent purchase orders, amendments or similar documents; (2) the State's solicitation; and (3) your response. In the event of a conflict in language among any of these documents, the terms and conditions set forth and/or referenced in this Notification and any later executed documents shall prevail over conflicting terms and conditions contained in the earlier documents, in their original form or as amended.


1. WHELEN ENGINEERING CO INC.

The Contractor certifies that the appropriate person(s) have executed this Contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: 
Signature
Ashish Jain
Printed Name
Title: CFO
Date: 9/5/2019
By: _____
Signature
Printed Name
Title:
Date:

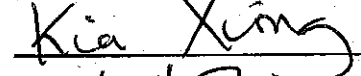
2. OFFICE OF STATE PROCUREMENT

In accordance with Minn. Stat. § 16C.03, subd. 3.

By: 
Title: Acquisition Management Specialist / Buyer
Date: 9-6-19

3. COMMISSIONER OF ADMINISTRATION

Or delegated representative

By: 
Date: 9/09/2019

Price Contract Exhibit A

This Contract incorporates the terms, conditions, and specifications of the solicitation and response at the prices and products listed below.

Terms: Net 30

Delivery: Unless otherwise mutually agreed, in-stock items must be delivered within ten (10) business days after receipt of order and non-stock items must be delivered within twenty five (25) business days after receipt of order. Delivery requirements for custom made items will be negotiated at time of order placement

<u>Manufacturer Name</u>	<u>Manufacturer Price List</u>	<u>Off of Price List</u>
Whelen Engineering Co.	PL19.1DOTL 6/28/19,	42%
	PL19.1WL 6/28/19,	
	and PL19.1PAWL 6/28/19	

The following terms have been negotiated as follows:

1. These terms and conditions clarify or add to the terms and conditions set forth in the State's RFP. To the extent the following terms and conditions conflict with the terms and conditions set forth in the State's RFP these terms and conditions shall take precedence over the terms and conditions set forth in the RFP.

- 1.1 **DELETED** Clause 29. Price Decreases of the Special Terms and Conditions of the RFP and **REPLACED** with the following:

29. PRICE DECREASES. Contract Vendor(s) may, at their sole discretion, offer better pricing, a greater discount, to any customer for any reason. Invoices for goods ordered or shipped or services performed during the decrease, or promotion, must immediately reflect such pricing.

- 1.2 **DELETED** Clause 43 b: Ownership of the State of MN General Terms and Conditions of the RFP and **REPLACED** with the following:

43 b. OWNERSHIP b. Rights, Title and Interest. All rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the said documents (collectively, "Intellectual Property Rights") directly or relating to the Products sold under this Agreement shall be the sole and exclusive property of Contract Vendor and the State shall not acquire any ownership interest in any of Contract Vendor's Intellectual Property Rights under this Agreement; provided, however, that solely in the event that the Contract Vendor conceives or originates, either individually or jointly with others, any Products which solely arises out of the performance of the Contract and are not offered to the general market (each "Contract Specific Products"), unless expressly agreed otherwise in a separate agreement, the Intellectual Property Rights relating to such Contract Specific Products will be the property of the State and are, by the Contract, assigned to the State along with ownership of any and all copyrights in the copyrightable material. The Contract Vendor also agrees, upon written request of the State and at the State's expense, to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such Intellectual Property Rights relating to the Contract Specific Products. Where applicable, works of authorship created by the Contract Vendor for the State in performance of the Contract shall be considered "works for hire" as defined in the U.S. Copyright Act.

- 1.3 DELETED Clause 60. Hazardous Substance of the Special Terms and Conditions of the RFP and REPLACED with the following:**

60. HAZARDOUS SUBSTANCES. To the extent that the goods to be supplied to the State by the responder contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, should a customer request a Material Safety Data Sheet, the Contract Vendor will provide one, at no cost, if one is available for the product sold.

- 1.4 DELETED Clause 75. Samples of the Special Terms and Conditions of the RFP and REPLACED with the following:**

75. SAMPLES. Unless otherwise agreed to in writing, samples are to be furnished at no charge. Except for those destroyed or mutilated in testing, samples will be returned to the responder if requested by responder. If samples are returned in an unusable condition, the end user will be responsible for the cost of the product at the pricing in effect at the time the item(s) are returned.

- 1.5 DELETED Clause 5. Delivery Requirements of the Special Terms and Conditions of the RFP and REPLACED with the following:**

5. DELIVERY REQUIREMENTS. Unless otherwise mutually agreed to, in-stock items must be delivered within ten (10) business days after receipt of order and non-stock items must be delivered within twenty five (25) business days after receipt of order. A business day is defined as Monday through Friday from 8:00 AM - 5:00 PM CT. Delivery requirements for custom made items will be negotiated at time of order placement. Orders must be shipped according to the directions of the Customer.

No delivery can be made on State holidays, Saturday or Sunday or after 4:00 p.m. on weekdays without prior approval by the Customer to which the equipment is being delivered. The Contract Vendor must confirm delivery locations and requirements with the Customer. Prior to delivery, the Contract Vendor is responsible for confirming with the Customer that the delivery location will accommodate unloading the equipment.

- 1.6 DELETED Clause 8. Specifications of the Special Terms and Conditions of the RFP and REPLACED with the following:**

B. SPECIFICATIONS. All warning lights must meet applicable standards for the country the warning lights will be used in. Standards include, but are not limited to, SAE J1113-21 and -41, J575, J578, J595, J845, and subsequent revisions, or appropriate national or international standards (such as CISPR 12 and 25) if SAE standard has been superseded. Standard specifications for ballistic-resistant vehicle door panels can be found in Attachment G.