



Contract # MA2869

STATE OF UTAH COOPERATIVE CONTRACT

1. CONTRACTING PARTIES: This contract is between the Division of Purchasing and the following Contractor:

Midwest Commercial Interiors
 _____ Name
987 South West Temple
 _____ Address
Salt Lake City UT 84101
 _____ City State Zip
City State Zip

LEGAL STATUS OF CONTRACTOR

- Sole Proprietor
- Non-Profit Corporation
- For-Profit Corporation
- Partnership
- Government Agency

Contact Person Steve Peterson Phone # 801-359-7681 Email stevep@mweiutah.com
 Vendor # 01434J Commodity Code # 42558, 47045, 42506, 42507

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is to provide: value seating products and related services.
3. PROCUREMENT: This contract is entered into as a result of the procurement process on Bid# MI18032.
4. CONTRACT PERIOD: Effective Date: 5/11/2018 Termination Date: 5/10/2023 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any): None.
5. Payment: Prompt Payment Discount (if any): N/A.
6. Administrative Fee, as described in the Solicitation and Attachment A: 0.50%.
7. ATTACHMENT A: State of Utah Standard Terms and Conditions for Goods Services, or IT
 ATTACHMENT B: Value Seating Scope of Work
 ATTACHMENT C: Midwest Commercial Interiors Qualifications and Warranty
 ATTACHMENT D: Pricing Information (Discount Matrix and Price Lists linked and/or incorporated by reference)
Any conflicts between Attachment A and the other Attachments will be resolved in favor of Attachment A.
8. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
 - a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
 - b. Utah State Procurement Code, Procurement Rules, and Contractor's response to Bid # MI18032.
9. Each signatory below represents that he or she has the requisite authority to enter into this contract.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR


 Contractor's signature Date 5-30-18
Sean P. Wright, President

 Type or Print Name and Title

STATE

 Director, Division of Purchasing Date

<u>Angela Carlisle</u>	<u>801-538-3524</u>	_____	<u>acarlisle@utah.gov</u>
Division of Purchasing Contact Person	Telephone Number	Fax Number	Email

ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR GOODS AND SERVICES

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
 - a) "**Confidential Information**" means information that is deemed as confidential under applicable state and federal laws, including personal information. The Eligible User reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
 - b) "**Contract**" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" shall include any purchase orders that result from this Contract.
 - c) "**Contract Signature Page(s)**" means the State of Utah cover page(s) that the Division and Contractor signed.
 - d) "**Contractor**" means the individual or entity delivering the Procurement Item identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
 - e) "**Custom Deliverable**" means the Work Product that Contractor is required to deliver to DTS under this Contract.
 - f) "**Division**" means the Division of Purchasing and General Services.
 - g) "**Eligible User(s)**" means those authorized to use State Cooperative Contracts and includes the State of Utah's government departments, institutions, agencies, political subdivisions (e.g., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.
 - h) "**End User Agreement**" means any agreement that Eligible Users are required to sign in order to participate in this Contract, including an end user agreement, customer agreement, memorandum of understanding, statement of work, lease agreement, service level agreement, or any other named separate agreement.
 - i) "**Procurement Item**" means a supply, a service, Custom Deliverable, construction, or technology that Contractor is required to deliver to the Eligible User under this Contract.
 - j) "**Response**" means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the Solicitation.
 - k) "**Solicitation**" means an invitation for bids, request for proposals, notice of a sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
 - l) "**State of Utah**" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - m) "**Subcontractors**" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction, including a trade contractor or specialty contractor.
 - n) "**Work Product**" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by DTS. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any DTS intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by Eligible Users to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.
5. **PERMITS:** If necessary Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of this Contract.
6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, to sole sources that are included within a Request for Proposal, and when Contractor employs any personnel in Utah.
 - a. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 - b. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work

eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.

c. Contractor's failure to comply with this section will be considered a material breach of this Contract.

7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the Division or the State of Utah, unless disclosure has been made to the Division.
8. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the Division or the State of Utah.
9. **CONTRACTOR RESPONSIBILITY:** Contractor is solely responsible for fulfilling the contract, with responsibility for all Procurement Items delivered and/or performed as stated in this Contract. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor's responsibilities under this Contract into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the Eligible Users under this Contract. Moreover, Contractor is responsible for its Subcontractors compliance under this Contract.
10. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, the Eligible Users and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract caused by any intentional act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of an Eligible User. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
11. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
12. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement by the Division and Contractor, which amendment will be attached to this Contract. Automatic renewals will not apply to this Contract, even if identified elsewhere in this Contract.
13. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, or declared ineligible by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
14. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the Division, upon thirty (30) days written termination notice being given to the Contractor. The Division and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.

On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved and conforming Procurement Items ordered prior to date of termination. In no event shall the Eligible Users be liable to the Contractor for compensation for any Procurement Item neither requested nor accepted by an Eligible User. In no event shall the Division's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the Eligible Users for any damages or claims arising under this Contract.

15. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, a purchase order that results from this Contract may be terminated in whole or in part at the sole discretion of an Eligible User, if an Eligible User reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects an Eligible User's ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered under this section, an Eligible User will reimburse Contractor for the Procurement Item(s) properly ordered and/or properly performed until the effective date of said notice. An Eligible User will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

16. **SALES TAX EXEMPTION:** The Procurement Item(s) under this Contract will be paid for from an Eligible User's funds and used in the exercise of an Eligible Users essential functions. Upon request, an Eligible User will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request an Eligible User's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.
17. **WARRANTY OF PROCUREMENT ITEM(S):** Contractor warrants, represents and conveys full ownership and clear title, free of all liens and encumbrances, to the Procurement Item(s) delivered to an Eligible User under this Contract. Contractor warrants for a period of one (1) year that: (i) the Procurement Item(s) perform according to all specific claims that Contractor made in its Response; (ii) the Procurement Item(s) are suitable for the ordinary purposes for which such Procurement Item(s) are used; (iii) the Procurement Item(s) are suitable for any special purposes identified in the Contractor's Response; (iv) the Procurement Item(s) are designed and manufactured in a commercially reasonable manner; (v) the Procurement Item(s) are manufactured and in all other respects create no harm to persons or property; and (vi) the Procurement Item(s) are free of defects. Unless otherwise specified, all Procurement Item(s) provided shall be new and unused of the latest

model or design.

Remedies available to an Eligible User under this section include, but are not limited to, the following: Contractor will repair or replace Procurement Item(s) at no charge to the Eligible User within ten (10) days of any written notification informing Contractor of the Procurement Items not performing as required under this Contract. If the repaired and/or replaced Procurement Item(s) prove to be inadequate, or fail its essential purpose, Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies an Eligible User may otherwise have under this Contract.

18. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:
 - a. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
 - b. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate per occurrence.
 - c. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
 - d. Other insurance policies required in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the State before the Contract may commence.

The State reserves the right to require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

19. **RESERVED.**

20. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the Division, Contractor also agrees that the Contractor's Response will be a public document, and copies may be given to the public as permitted under GRAMA. The Division, the Eligible Users, and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.

21. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to an Eligible User, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract.

22. **ACCEPTANCE AND REJECTION:** An Eligible User shall have thirty (30) days after delivery of the Procurement Item(s) to perform an inspection of the Procurement Item(s) to determine whether the Procurement Item(s) conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Procurement Item(s) by the Eligible User.

If Contractor delivers nonconforming Procurement Item(s), an Eligible User may, at its option and at Contractor's expense: (i) return the Procurement Item(s) for a full refund; (ii) require Contractor to promptly correct or replace the nonconforming Procurement Item(s); or (iii) obtain replacement Procurement Item(s) from another source, subject to Contractor being responsible for any cover costs. Contractor shall not redeliver corrected or rejected Procurement Item(s) without: first, disclosing the former rejection or requirement for correction; and second, obtaining written consent of the Eligible User to redeliver the corrected Procurement Item(s). Repair, replacement, and other correction and redelivery shall be subject to the terms of this Contract.

23. **INVOICING:** Contractor will submit invoices within thirty (30) days after the delivery date of the Procurement Item(s) to the Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a discount at the time of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.

24. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by an Eligible User, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the Eligible User within ten (10) business days of receipt of final payment, shall release the Eligible User from all claims and all liability to the Contractor. An Eligible User's payment for the Procurement Item(s)

and/or Services shall not be deemed an acceptance of the Procurement Item(s) and is without prejudice to any and all claims that the Eligible User may have against Contractor. Contractor shall not charge Eligible Users electronic payment fees of any kind.

25. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the Division, the Eligible Users, and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the Division, the Eligible User, or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.
26. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The Division, the Eligible User, and Contractor each recognizes that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All Procurement Item(s), documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the Eligible User.
27. **OWNERSHIP IN CUSTOM DELIVERABLES:** In the event that Contractor provides Custom Deliverables to DTS, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for DTS and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to DTS, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to DTS any and all copyrights in and to the Custom Deliverables, subject to the following:
 1. Contractor has received payment for the Custom Deliverables,
 2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and
 3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of DTS (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.
 4. Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by DTS.Contractor agrees to grant to DTS a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for DTS and the State of Utah to use the Custom Deliverables. DTS reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for DTS's and the State of Utah's internal purposes, such Custom Deliverables. For the Goods delivered that consist of Contractor's scripts and code and are not considered Custom Deliverables or Work Product, for any reason whatsoever, Contractor grants DTS a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for DTS's and the State of Utah's internal business operation under this Contract. DTS and the State of Utah may not participate in the transfer or sale of, create derivative works from, or in any way exploit Contractor's Intellectual Property Rights, in whole or in part.
28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the Division.
29. **REMEDIES:** Any of the following events will constitute cause for an Eligible User to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. An Eligible User may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, an Eligible User may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the Division; or (v) demand a full refund of any payment that the Eligible User has made to Contractor under this Contract for Procurement Item(s) that do not conform to this Contract.
30. **FORCE MAJEURE:** Neither an Eligible User nor Contractor will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. An Eligible User may terminate a purchase order resulting from this Contract after determining such delay will prevent Contractor's successful performance of this Contract.
31. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify an Eligible User of any potential or actual misuse or misappropriation of Confidential Information.

Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the Eligible User, including anyone for whom the Eligible User is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.

Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the Eligible User or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.

- 32. **LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
- 33. **ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Procurement Items based upon the same terms, conditions, and prices of this Contract.
- 34. **INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Procurement Items from this Contract will be treated as individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
- 35. **REPORTS AND FEES:**
 - a. **Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the Division in the form of a Check or EFT payment. The fee will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, 3150 State Office Building, Capitol Hill, PO Box 141061, Salt Lake City, UT 84114. The quarterly administrative fee will be the amount listed in the Solicitation and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.
 - b. **Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the quantities and dollar volume of purchases by each agency and political subdivision. The quarterly report will be provided in secure electronic format and/or submitted electronically to the Utah reports email address: salesreports@utah.gov.
 - c. **Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

Period End	Reports Due
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31
 - d. **Fee Payment:** After the Division receives the quarterly utilization report, it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
 - e. **Timely Reports and Fees:** If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.
- 36. **ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.
- 37. **END USER AGREEMENTS:** If Eligible Users are required by Contractor to sign an End User Agreement before participating in this Contract, then a copy of the End User Agreement must be attached to this Contract as an attachment. The term of the End User Agreement shall not exceed the term of this Contract, and the End User Agreement will automatically terminate upon the completion of termination of this Contract. An End User Agreement must reference this Contract, and may not be amended or changed unless approved in writing by the Division. Eligible Users will not be responsible or obligated for any early termination fees if the End User Agreement terminates as a result of completion or termination of this Contract.
- 38. **PUBLICITY:** Contractor shall submit to the Division for written approval all advertising and publicity matters relating to this Contract. It is within the Division's sole discretion whether to provide approval, which approval must be in writing.
- 39. **WORK ON STATE OF UTAH OR ELIGIBLE USER PREMISES:** Contractor shall ensure that personnel working on the premises of an Eligible User shall: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized areas; (iii) follow all instructions; and (iv) be subject to a background check, prior to entering the premises. The Eligible User may remove any individual for a violation hereunder.
- 40. **CONTRACT INFORMATION:** During the duration of this Contract the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies within the State of Utah.
- 41. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.

42. **SUSPENSION OF WORK:** Should circumstances arise which would cause an Eligible User to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the Eligible User.
43. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
44. **CHANGES IN SCOPE:** Any changes in the scope of the services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.
45. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
46. **TRAVEL COSTS:** If travel expenses are permitted by the Solicitation All travel costs associated with the delivery of Services under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to the vendor for correction.
47. **PERFORMANCE EVALUATION:** The Division may conduct a performance evaluation of Contractor, including Contractor's Subcontractors. Results of any evaluation may be made available to Contractor upon request.
48. **STANDARD OF CARE:** The services performed by Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the services that are the subject of this Contract. Contractor shall be liable to the Eligible User for claims, liabilities, additional burdens, penalties, damages, or third party claims (e.g., another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.
49. **REVIEWS:** The Division reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.
50. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The Division or an Eligible User, after consultation with Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the Division or an Eligible User appoints such an expert or panel, the Division or the Eligible User and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
51. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of an Eligible User, the Division, or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.
52. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice Eligible Users' right to enforce this Contract with respect to any default of this Contract or defect in the Procurement Item(s) that has not been cured, or of any of the following clauses, including: Governing Law and Venue, Laws and Regulations, Records Administration, Remedies, Dispute Resolution, Indemnity, Newly Manufactured, Indemnification Relating to Intellectual Property, Warranty of Procurement Item(s), Insurance.
53. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
54. **ERRORS AND OMISSIONS:** Contractor shall not take advantage of any errors and/or omissions in this Contract. The Contractor must promptly notify the Division of any errors and/or omissions that are discovered.
55. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

Revised 28 February 2018

ATTACHMENT B

VALUE SEATING PRODUCTS SCOPE OF WORK

1. PRODUCT CATEGORY

Seating and Accessories

This seating category is intended to compliment the current statewide contract's seating offering with value based, affordable, quality seating options. The category includes both high back and standard executive chairs, conference room chairs, task/work chairs that may have multiple seat pan sizes and are either mesh back or fabric with arms or without, and guest/side chairs that have both four point and star bases. This category also includes optional reception/lounge seating, dispatch chairs, stackable/foldable chairs, collaborative, and stationary and height adjustable stools. Value Seating products shall not exceed \$400 net price per chair.

2. SERVICES CATEGORIES

Installation Service

Installation Services include all labor required to assemble, deliver, set-up, install, and otherwise finish an office installation or remodel project. Any installation service charges will be negotiated on a project-by-project basis. Any installation service charges shall be quoted and included as a line item on the purchase order.

Customer Service

Including but not limited to sales service, customer service, product information services, and warranty services.

3. LENGTH OF CONTRACT

The contract will be for a period of five (5) years with no renewal options for additional years. The State reserves the right to review the contract on a regular basis regarding performance and cost and may negotiate price during the term of the contract.

4. PRICE GUARANTEE PERIOD

All pricing must be guaranteed for one (1) year. Following the guarantee period, any request for price adjustment must be for an equal guarantee period, and must be submitted at least ninety (90) calendar days prior to the effective date. Requests for price adjustment must include sufficient documentation supporting the request and demonstrating a reasonableness of the adjustment when comparing the current price list to the proposed price list. Documentation shall include, but not be limited to, the manufacturers national price increase announcement letter, a complete and detailed description of what products are increasing and by what percentage, a complete and detailed description of what raw materials and/or other costs have increased and provide proof of increase, index data and other information to support and justify the increase. The State contract manager shall conduct a thorough investigation of the data provided and substantiate whether the increase is valid and justified.

Any adjustment or amendment to the contract will not be effective unless approved by the Division of Purchasing. The State will be given the immediate benefit of any decrease in the market, or allowable discount.

5. PRICE ESCALATION AND REDUCTIONS

Products: Pricing shall remain firm for the first year of the contract. The contracted supplier may update the pricing on their PUBLISHED COMMERCIAL PRICE LIST one (1) time every twelve (12) months after the first year of the original contract term. The contract manager will review a documented request for a PUBLISHED COMMERCIAL PRICE LIST adjustment only after the Price Guarantee Period. The requested increase must be based upon a documented cost increase to the contracted supplier that is directly correlated to the price of the products on the OEM's PUBLISHED COMMERCIAL PRICE LIST that are covered under the contract. The price adjustment must not produce a higher profit margin than the original contract, and must be accompanied by sufficient documentation and nationwide notice of price adjustment to the PUBLISHED COMMERCIAL PRICE LIST.

The contract manager shall determine whether the requested PUBLISHED COMMERCIAL PRICE LIST price increase or an alternate option is in the best interest of the State. The PUBLISHED COMMERCIAL PRICE LIST price increase request must be made at least ninety (90) calendar days prior to the effective date, and shall not go into effect until a contract amendment has been fully executed. Any approved PUBLISHED COMMERCIAL PRICE LIST price adjustments will carry a price guarantee period of twelve (12) months and be effective on the date of the contract amendment or the designated effective date.

No retroactive price adjustments will be allowed for PUBLISHED COMMERCIAL PRICE LIST price adjustments.

Installation Services: Contracted suppliers shall provide installation services when requested and according to the defined services provided in this Scope of Work.

Price Reductions: In the event of a price decrease in any product at any time during the contract in an OEM's PUBLISHED COMMERCIAL PRICE LIST, the contract manager shall be notified immediately. All PUBLISHED COMMERCIAL PRICE LIST price reductions shall be effective upon the notification provided to the contract manager.

Note: The Discount Matrix and PUBLISHED COMMERCIAL PRICE LIST have been attached to this contract as *Attachment D: Pricing Information* and are incorporated by reference.

6. STANDARD CONTRACT TERMS AND CONDITIONS, EXCEPTIONS, AND NEGOTIATIONS

The contract will include, but not be limited to the *Attachment A: State of Utah Standard Terms and Conditions – Goods and Services*.

Note: If the Standard Terms and Conditions are not included, then the Standard Terms and Conditions– Goods and Services are attached by reference. The Standard Terms and Conditions – Goods and Services can be found at <http://purchasing.utah.gov/purchasingforms.html>.

7. PROTECTED INFORMATION

The Government Records Access and Management Act (GRAMA), UCA § 63G-2-305, provides in part that:

the following records are protected if properly classified by a government entity:

(1) trade secrets as defined in Section 13-24-2, the Utah Uniform Trade Secrets Act, if the person submitting the trade secret has provided the governmental entity with the information specified in UCA § 63G-2-309 (Business Confidentiality Claims);

(2) commercial information or non-individual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in UCA § 63G-2-309;

** * * * **

(6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties,

Note: Pricing may not be classified as confidential or protected and will be considered public information after award of the contract.

8. FREIGHT TERMS

The Contracted Supplier(s) must ship all products F.O.B. destination, freight prepaid. Shipping costs must be included in the product price.

The Contracted Suppliers are responsible for filing and expediting all freight claims with carriers. The Contracted Supplier must pay title and risk of loss or damage charges.

The Purchasing Entities reserve the right to examine freight cost and route shipments with their own contracted carrier.

F.O.B Destination, freight prepaid

Seller – Pays freight charges

Seller – Bears freight charges and selects carrier

Seller – Owns goods in transit

Seller – Files claims (if any)

9. OEM CONTRACT ADMINISTRATOR AND USAGE REPORT ADMINISTRATOR

The Contracted Supplier must provide a dedicated Contract Administrator to manage compliance with the Scope of Work and Terms and Conditions for this contract. The following Information, at a minimum, regarding the Contract Administrator must be provided:

- a. Administrator’s number of years' experience in the office furniture industry.
- b. Confirmation that the OEM Contract Administrator has authority to enforce the Scope of Work and Terms and Conditions of the resulting contract.
- c. Ability to provide the reporting requirements as stated in the Section 35 of the *Attachment A: State of Utah Standard Terms and Conditions for Goods and Services*.
- d. Contracted Supplier must identify the person responsible for providing the mandatory quarterly usage reports. This contact information must be kept current during the entire contract period.

10. ADMINISTRATIVE FEE AND USAGE REPORTING REQUIREMENTS

The following Contract Administrative Fee and Quarterly Report requirements will apply to the awarded contract:

Quarterly Administrative Fee: Contractor agrees to provide a quarterly administrative fee to the Division of Purchasing in the form of a Check or EFT payment. The quarterly administrative fee will be payable to the “State of Utah Division of Purchasing” and will be sent to State of Utah, Division of Purchasing, 3150 State Office Building, Capitol Hill, PO Box 141061, Salt Lake City, UT 84114. The Administrative Fee will be **0.50%** and will apply to all purchases (net of any returns, credits, or adjustments) made under the awarded contract.

Quarterly Utilization Report: Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The quarterly utilization report will show, at a minimum, the quantities and dollar volume of purchases by each: State of Utah Departments and Agencies, Cities, Counties, School Districts, Higher Education, Special Service Districts, and Other. The quarterly utilization report will be provided in secure electronic format and/or submitted electronically to the State reports email address: salesreports@utah.gov.

Report Schedule: The quarterly utilization report shall be made in accordance with the following schedule:

Period Ends:	Reports Due:
March 31st	April 30th
June 30th	July 31st
September 30th	October 31st
December 31st	January 31st

Fee Payment: After the Division of Purchasing receives the quarterly utilization report, it will send the Offeror an invoice for the total quarterly administrative fee owed to the Division of Purchasing. Offeror shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.

Timely Reports and Fees: If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or the quarterly utilization report is not received by the report due date, then the Offeror will be in material breach of the awarded contract.

Past Reports and Fees: The State reserves the right to not sign a contract with a vendor that was awarded a previous contract that is not current on its administrative fee and administrative reports.

11. PRODUCT LINE ADDITIONS AND AUTHORIZED DEALER UPDATES

During the term of the contract, Contracted Supplier's may submit a request to update the awarded product line within the scope of the contract as products are introduced or removed from the market. The contract manager will evaluate requests and update the contract offering via written amendment as appropriate. The Contracted Supplier must update the dedicated website, price lists, and catalogs to reflect approved changes. Pricing must utilize the same pricing structure as was used for products falling into the same awarded product category.

12. RIGHT TO PUBLISH

Throughout the duration of the contract term, Contracted Suppliers must secure from the contract manager prior approval for the release of any information that pertains to the potential work or activities covered by the contract. The Contracted Supplier must not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this contract without prior written consent of the contract manager. Failure to adhere to this requirement may result in termination of the contract for cause.

13. CHANGES IN REPRESENTATION

The Contracted Supplier must notify the contract manager of changes in the Contracted Supplier's Contract Administrator or Contract Usage Report Administrator, in advance and in writing and upon approval by the contract manager. The contract manager reserves the right to require a change in Contracted Supplier(s) representatives if the assigned representative(s) is not, in the opinion of the contract manager, meeting the Terms and Conditions of the contract.

14. STATE SEAL USE

The Utah Great Seal Rule states, in section R622-2-3 - Custody and Use, that "pursuant to Section 67-1a-2(1)(d), (e), (f) of the Utah Code; the lieutenant governor shall ' . . . keep custody of the Great Seal of the state of Utah; to keep a register of, and attest, the official acts of the governor; and to affix the Great Seal, with an attestation, to all official documents and instruments to which the official signature of the governor is required.'"

15. PRODUCT OFFERING

All products offered must be new. Any used, shopworn, refurbished, demonstrator, prototype, or discontinued models are not acceptable.

16. DEDICATED WEBSITE

The Contracted Supplier(s) must maintain a contract website. Such Contract Websites must, at a minimum, contain:

- a. Product offerings and options, limited to the products under contract.
- b. Maintain a list of Authorized Dealers within the State that is authorized to service the Contract.
- c. Pricing information limited to the products approved by the contract.
- d. Contracted Supplier(s) must have website implemented within ninety (90) calendar days of execution of a contract.

17. WARRANTY

The OEM must, at a minimum, warrant the office furniture products and materials offered under this contract as defined below. OEM's may exclude textiles, color fastness, pneumatic cylinders and other moving parts from the ten (10) year warranty but must describe the warranty offered and period of time for these items. If not explicitly excluded, they will carry the ten (10) year warranty. Specialty products, ancillary products, and accessories may be excluded from the following requirements and must offer a warranty minimum of five (5) years. Warranties must contain descriptive warranty information for all specialty products, ancillary products, and accessories, if applicable.

- a. Seating - Minimum ten (10) years
- b. Products (including parts and components) that fail under normal use as a result of a defect in design, materials, workmanship, or installation must be repaired or replaced free of charge (including labor, delivery, and installation) throughout the warranty period.
- c. Products that require warranty repair or replacement must be repaired or replaced within a reasonable time frame that is agreed to in writing by the Purchasing Entity. This process is to ensure sufficient lead time for ordering warranty parts, components or products during the entire warranty period.

18. GEOGRAPHIC COVERAGE

Your firm must provide the proposed products to all eligible entities in the entire State of Utah.

19. INSURANCE REQUIREMENT

The Insurance Requirements found in Section 18 of the *Attachment A: State of Utah Standard Terms and Conditions for Goods and Services* will apply to all orders.

20. DELIVERY SERVICES

Unless otherwise noted on a purchase order the Contracted Supplier must comply with the following delivery requirements:

- a. The Contracted Supplier must be able to offer the following delivery methods. All additional delivery charges must be included on the purchase order.

- Drop Ship – FOB Destination Freight Prepaid. Product is brought to the tailgate or end of truck and purchasing entity is responsible to unload. No additional freight or installation fees apply.
 - Dock Delivery – Products will be delivered and unloaded by a common carrier to a dock. There are times when a purchasing entity may want to order, as an example, seating or accessories, and does not need assistance with installation or assembly and prefers the product to delivery directly to their facility dock. No additional freight or installation fees apply.
 - Inside Delivery – Products will be delivered by the Contracted Supplier inside an office building location as designated on a purchase order. Products will be unloaded and unboxed with no assembly required by the Contracted Supplier. Installation fees may apply. Any installation services fees must be quoted and included on the purchase order.
 - Liftgate Service – Products will be delivered to a receiving address that does not have a loading dock. Manual unloading is necessary and a liftgate truck that can raise and lower a shipment from the truck to the ground will be required. Additional freight charges may apply. Any additional freight charges must be quoted and included on the purchase order. No installation fees apply.
 - Installation – Products will be delivered, unloaded, and assembled by the contracted supplier, according to design plan and to a move-in ready condition incorporating Section 2.12 Installation of Product requirements. Installation fees may apply. Any installation fees must be quoted and included on the purchase order.
- b. Delivery of goods must be made to any location specified on the purchase order. This could include multiple delivery locations on one (1) purchase order. These locations may include, but are not limited to, standard office buildings, high-rise office buildings, receiving docks, and staging areas.
 - c. It is the responsibility of the Contracted Supplier to offer the services required to deliver, unload, uncrate, and assemble items ordered.
 - d. The Contracted Supplier is responsible for the removal of all packaging materials from the job site on a daily basis. Dumpster and trash receptacles that belong to the Purchasing Entity for the Participating State must not be used.
 - e. Under no circumstances will Purchasing Entity personnel assist with unloading product.
 - f. The Purchasing Entities may elect to accept partial deliveries, however, final payment will not be made until all products have been received and accepted unless a partial delivery was at the request of the Purchasing Entity.
 - g. The Contracted Supplier is responsible for storage of product(s) prior to the delivery and installation date as established on the purchase order. If a delivery is delayed by the purchasing entity, they shall negotiate a new delivery date with the Contracted Supplier and

revise the purchase order. Storage costs associated with the delayed deliveries requested by the purchasing entity will be negotiated on a project basis.

- h. Emergency or rush deliveries requested by the Purchasing Entity that require special shipping and handling charges may be at the Purchasing Entity's expense, but only with prior written approval from the Purchasing Entity and a delivery date agreement from the Contracted Supplier. Emergency or rush shipping charges must be added to an invoice as a separate line item.
- i. In the event emergency or rush delivery is required as the result of an OEM or Contracted Supplier's error, all shipping and handling charges must be paid by the Contracted Supplier.
- j. The acceptance of delivery with or without objection shall not waive the right to claim damage for breach nor constitute a waiver of requirements for timely delivery or performance of any actions that must remain the obligation of the Contracted Supplier. Unless otherwise stated in the project agreement, if delivery of critical components to perform job function are delayed more than ten (10) business days beyond the delivery terms as stated in the purchase order, the Contracted Supplier will be given the opportunity to provide a substitute product that meets the needs of the Purchasing Entity until the ordered product is delivered. The Purchasing Entity reserves the right to determine if the substitute product is acceptable and meets its needs. Should substitute product not meet the needs of the Purchasing Entity or if the Contracted Supplier does not provide a substitute product then the Purchasing Entity may impose a penalty equal to 3% of delayed product cost per week (Monday through Friday business week) for every week the delivery is delayed, assessed on the first day of each week. This penalty may be imposed at the discretion of the Purchasing Entity, but does not preclude the Purchasing Entity from compensation from the Contracted for other expenses or penalties caused by the late delivery. Purchasing Entity acknowledges that Contracted Supplier will not be liable to the extent that any such delays are caused by order changes requested by the Purchasing Entity, construction/inspection delays at Purchasing Entity's site, and/or force majeure events.
- k. All product shipped, with the exception of accessories, must have an identification tag/sticker which must include the following information: manufacturer's name, model number, and year built.

21. DAMAGE AND INCORRECT PRODUCT

- a. Damaged or Incorrect Product must be reported to the Contracted Supplier by the Purchasing Entity within five (5) calendar days after the damage is noticed.
- b. The Contracted Supplier is responsible for pick-up and repair or replacement of all damaged goods within a reasonable time frame acceptable to the Purchasing Entity.
- c. The Contracted Supplier must bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the Purchasing Entity.

- d. The Contracted Supplier is responsible for filing all claims for damage with carriers or other responsible parties in a timely manner, per the Freight Terms detailed in this Scope of Work.
- e. The Contracted Supplier is required to keep the Purchasing Entities informed of the replacement process and delivery date for any and all replacement orders.
- f. The Purchasing Entity will not be charged a re-stock fee for any returns due to a Contracted Supplier error.
- g. In the event that a Purchasing Entity does not accept product due to damages or shipment error as described above, no Purchasing Entity shall pay additional shipping and handling charges for the shipment of replacement products.

22. PRODUCT MANUALS

Upon request, an owner's manual, which may include installation instructions and serviceable parts lists, must be supplied for all procured products. Manuals may be available via the Contracted Supplier's website. The manuals must be available that contain complete assembly and disassembly instructions including all necessary parts lists and diagrams.

23. CUSTOMER SERVICE

- a. The Contracted Supplier must have a contract administrator representative. Contact information must be kept current.
- b. The Contracted Supplier Customer Service Representative(s) must be available by telephone or email at a minimum, from 8 A.M. to 5 P.M. on Monday through Friday for the applicable time zones.
- c. The Contracted Supplier Customer Service Representative will respond to inquiries immediately or within one (1) business day.
- d. The Contracted Supplier must provide Installation Services when requested.
- e. Project Management Services must be provided by the contracted supplier at no additional charge.
- f. Quotes provided to the entity by the Contracted Supplier must contain, at a minimum, the following elements:
 - Contract number
 - Item list price
 - Contracted discount percent
 - Contract price
 - Installation fees, for the applicable services, shown as hourly rates
- g. Quotes provided by the Contracted Supplier must be approved by the Purchasing Entity prior to work commencement.

- h. Invoices provided by the Contracted Supplier must contain, at a minimum, the following elements:
- Purchase order number or other identifying order number.
 - Contract number.
 - Payment terms must be in line with the State's standard terms and conditions.
 - Pricing that reflects that which is on the purchase order or other ordering confirmation documentation as applicable (i.e. signed quote, work order etc.).

24. INSTALLATION OF PRODUCTS

The Contracted Supplier must take precautions during the installation of any product not to damage the premises or the property of the Purchasing Entity. If damages do occur as a result of operations under this contract, the Contracted Supplier or Authorized Dealer is responsible for ensuring that the affected area/item(s) are returned/restored to their original condition or the Contracted Supplier must make restitution, as agreed upon by the parties.

- a. The Contracted Supplier must be fully responsible for the assembly team and the supervision of the team.
- b. The Contracted Supplier is responsible for ordering any missing, damaged, or incorrect items upon discovery.
- c. The Purchasing Entity must incur no additional charges as a result of the Contracted Supplier error or omission.
- d. The Purchasing Entity reserves the right to hire or make arrangements for additional cleaning personnel if the Contracted Supplier, after notification and request for correction, is not able to properly clean and ready the site for occupation by the designated move in date.
- e. The cost of additional cleaning must be fully reimbursed by the Contracted Supplier if the Contracted Supplier does not correct the issue promptly to allow for occupation of the site on the designated move in date.
- f. Installation must happen in a manner that allows assembly and disassembly to occur with minimal disruption, time, noise volume, and space usage.

The Contracted Supplier must be fully responsible for the assembly of the product unless drop ship delivery or inside delivery is selected by the Purchasing Entity. Installed items must be fully assembled and ready for use within the agreed upon timeframe of the Purchasing Entity.

25. PRODUCT MANDATORY REQUIREMENTS

Value Seating

The value seating category is intended to include quality, affordable seating products only. Value Seating products shall not exceed \$400 net price per chair. Seating includes high back and standard

executive chairs, conference room chairs, task/work chairs that may have multiple seat pan sizes that are either mesh back or fabric with arms or without, reception/lounge seating and guest/side chairs that have both four (4) point and star bases. Other optional products in this category include dispatch chair, stackable/foldable chairs and stationary and height adjustable stools.

Seating Mandatory Minimum Requirements:

All Contractors must meet the requirements listed in (a) through (c) below.

- a. Offers for the Seating category must include, at a minimum, mid back and standard executive chairs, conference room chairs, and task/work chairs, side/guest chairs, and stackable seating that are either mesh back or fabric.
- b. All products must be standard catalog items for which printed literature, specifications, and certified test results are available if applicable.
- c. All product shipped must have an identification tag/sticker which must include the following information: manufacturer's name, model number or serial number, and year built. Identification tag/sticker must include all information required for a warranty claim.

26. GLOSSARY

Authorized Representative: An individual with the authority to legally bind the Offeror to the Terms and Conditions of the Master Agreement (s) established as a result of this RFP. This individual must have the authority and ability to accurately reflect the ability of the Offeror to meet the requirements detailed in this RFP.

Authorized Dealer: A qualified firm that has been designated by the OEM as authorized to sell products and perform services under the resulting Contract(s).

California Technical Bulletin 117-2013: "Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture", June 2013.

Contract Administrator: A dedicated person with the authority and ability to manage compliance with the scope and Terms and Conditions for this contract. Also referred to as contract manager.

Contracted Supplier or Contractor: An authorized dealer of office furniture that has been awarded a contract as a result of this procurement.

Ergonomic: The science of designing office furniture to fit the user and optimize human well-being and overall office furniture performance.

Mandatory Minimum Requirements: Requirements that must be met in order to be considered for further evaluation. Mandatory minimum requirements are non-negotiable. An offer that does not meet the mandatory minimum requirements will be disqualified from further consideration.

MSDS or SDS or Safety Data Sheets: Material Safety Data Sheets. See www.msds.com for more information.

NFPA 260: National Fire Protection Association – Flammability requirements for textiles. See www.nfpa.org for more information.

OSHA: Occupational Safety Health Administration. See www.osha.gov for more information.

Project Management Services: A person who is responsible for ensuring that the furniture project is finished on time and accurately. Includes, but not limited to, coordination of ordering, installation, correcting any problems or issues that may arise, and project finalization.

PUBLISHED COMMERCIAL PRICE LIST: Manufacturer's Price list, also known as the list price.

Purchasing Entity: An eligible state agency, city, county, school district, higher education, or other political subdivision of the State, and a nonprofit organization that issues a Purchase Order against the contract and becomes financially committed to the purchase.

Qualified Entity: An entity that is eligible to use the contract(s).

Usage Report Administrator: A person responsible for the quarterly sales reporting and payments described in Section 2.10 OEM Contract Administrator and Usage Report Administrator.

Volume Discount: A percentage discount offered by the seller to the buyer for purchasing a stated dollar amount of furniture products to be delivered at one time or over a specified period.

Attachment D: Discount Matrix

Seating Detail

Vendor Name: Midwest Commercial Interior

Brand	Collection(s) Offered	Price Tier 1 Percentage Discount Less than or equal to \$50k	Price Tier 2 Percentage Discount Over \$50k to \$125k	Price Tier 3 Percentage Discount Over \$125k
9to5	Acclaim	62.50%	63.00%	64.50%
9to5	Agent	62.50%	63.00%	64.50%
9to5	Axis	62.50%	63.00%	64.50%
9to5	Aria	62.50%	63.00%	64.50%
9to5	Bella	62.50%	63.00%	64.50%
9to5	Brio	62.50%	63.00%	64.50%
9to5	Bristol	62.50%	63.00%	64.50%
9to5	Cayman	62.50%	63.00%	64.50%
9to5	Core	62.50%	63.00%	64.50%
9to5	Cortina	62.50%	63.00%	64.50%
9to5	Cosmo	62.50%	63.00%	64.50%
9to5	Cydia	62.50%	63.00%	64.50%
9to5	Diddy	62.50%	63.00%	64.50%
9to5	Indy	62.50%	63.00%	64.50%
9to5	Link	62.50%	63.00%	64.50%
9to5	Logic	62.50%	63.00%	64.50%
9to5	Logic Plus-Bariatric	62.50%	63.00%	64.50%
9to5	Luna	62.50%	63.00%	64.50%
9to5	Mimi	62.50%	63.00%	64.50%
9to5	Neo	62.50%	63.00%	64.50%
9to5	Sophie - lounge, bariatric, benches, tables	62.50%	63.00%	64.50%
9to5	Strata	62.50%	63.00%	64.50%
9to5	Theory	62.50%	63.00%	64.50%
9to5	Vault	62.50%	63.00%	64.50%
9to5	Vesta	62.50%	63.00%	64.50%
9to5	Zoom	62.50%	63.00%	64.50%
AMQ	Bella	55.35%	58.38%	60.98%
AMQ	Bodi	55.35%	58.38%	60.98%
AMQ	Zilo	55.35%	58.38%	60.98%
AMQ	Tizu Work	55.35%	58.38%	60.98%
OFS Brands	First Office Boost- Ottoman/Bench	50.50%	52.00%	52.50%
OFS Brands	First Office Coact- Ottoman/Bench	50.50%	52.00%	52.50%
OFS Brands	First Office Mention	50.50%	52.00%	52.50%
OFS Brands	First Office Rhyme	50.50%	52.00%	52.50%
OFS Brands	First Office Reason	50.50%	52.00%	52.50%
OFS Brands	Highmark Acen	50.50%	52.00%	52.50%
OFS Brands	Highmark Airus	50.50%	52.00%	52.50%
OFS Brands	Highmark Bolero	50.50%	52.00%	52.50%
OFS Brands	Highmark Citro	50.50%	52.00%	52.50%
OFS Brands	Highmark Emme	50.50%	52.00%	52.50%
OFS Brands	Highmark Genus	50.50%	52.00%	52.50%
OFS Brands	Highmark HB	50.50%	52.00%	52.50%
OFS Brands	Highmark In-Touch	50.50%	52.00%	52.50%
OFS Brands	Highmark Intu	50.50%	52.00%	52.50%
OFS Brands	Highmark Kadet	50.50%	52.00%	52.50%
OFS Brands	Highmark Lynx	50.50%	52.00%	52.50%
OFS Brands	Highmark Modela	50.50%	52.00%	52.50%
OFS Brands	Highmark Number Nine	50.50%	52.00%	52.50%
OFS Brands	Highmark Quickstacker (LIGHT TASK)	50.50%	52.00%	52.50%
OFS Brands	Highmark Repose	50.50%	52.00%	52.50%
OFS Brands	Highmark Revel	50.50%	52.00%	52.50%
OFS Brands	Highmark Team up	50.50%	52.00%	52.50%
OFS Brands	Highmark Ten	50.50%	52.00%	52.50%
OFS Brands	Highmark Valence	50.50%	52.00%	52.50%

OFS Brands	Highmark Team up	50.50%	52.00%	52.50%
OFS Brands	Loewenstein Caprice	50.50%	52.00%	52.50%
OFS Brands	Loewenstein Hinchada- Ottoman/Bench	50.50%	52.00%	52.50%
OFS Brands	Loewenstein Murano	50.50%	52.00%	52.50%
OFS Brands	Loewenstein Heidi	50.50%	52.00%	52.50%
OFS Brands	Loewenstein Tiffany	50.50%	52.00%	52.50%
OFS Brands	Loewenstein Veneto	50.50%	52.00%	52.50%
OFS Brands	Loewenstein Skara	50.50%	52.00%	52.50%
OFS Brands	OFS Flair	50.50%	52.00%	52.50%
OFS Brands	OFS Flexy	50.50%	52.00%	52.50%
OFS Brands	OFS Focal Point- Ottoman/Bench	50.50%	52.00%	52.50%
OFS Brands	OFS Prague	50.50%	52.00%	52.50%
OFS Brands	OFS Mingle	50.50%	52.00%	52.50%
OFS Brands	OFS Balance	50.50%	52.00%	52.50%
OFS Brands	OFS Sleek	50.50%	52.00%	52.50%
Valo	Coco	54.76%	56.47%	58.38%
Valo	Flexo	54.76%	56.47%	58.38%
Valo	Getti	54.76%	56.47%	58.38%
Valo	Jax	54.76%	56.47%	58.38%
Valo	Lucille	54.76%	56.47%	58.38%
Valo	Luxo	54.76%	56.47%	58.38%
Valo	Sync 2	54.76%	56.47%	58.38%
Valo	Vida	54.76%	56.47%	58.38%
Valo	Seatwise	54.76%	56.47%	58.38%
Valo	Talli	54.76%	56.47%	58.38%
VIA	Run II	54.76%	56.47%	58.38%
VIA	Riva ACT II	54.76%	56.47%	58.38%
VIA	Proform Mesh	54.76%	56.47%	58.38%
VIA	Spec	54.76%	56.47%	58.38%
VIA	Splash	54.76%	56.47%	58.38%
VIA	Sutro	54.76%	56.47%	58.38%
VIA	Vista Side	54.76%	56.47%	58.38%
VIA	Zee	54.76%	56.47%	58.38%

ATTACHMENT D

PRICING INFORMATION: PRICE LIST

The following price lists are used by Midwest Commercial Interiors for this contract:

The 2018 9 to 5 Seating

Pricelist The 2018 AMQ Seating

Pricelist

The 2018 OFS Brands Pricelist

The 2018 VIA Seating Pricelist

The 2016 VALO Pricelist