MINNESOTA MULTISTATE CONTRACTING ALLIANCE FOR PHARMACY

AGREEMENT OF UNDERSTANDING and

JOINT POWERS AGREEMENT
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This Agreement of Understanding is entered into this 5th day of September, 2000, by and between the Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP), acting through the State of Minnesota, and the State of New Hampshire, by and through its Department of Administrative Services, Division of Plant and Property Management, Bureau of Purchase and Property.

I. SCOPE

The Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP) is a coalition of states and governmental units formed to standardize and consolidate state requirements for pharmaceuticals, supplies and services, and to cooperatively contract for such requirements. MMCAP may offer cooperative multistate contracting agreements for additional health-care related supplies, equipment and services to participating states and facilities (e.g., state correctional facilities, state mental health facilities, state public health facilities, etc.). Participating states and facilities reserve the right to utilize or not utilize any MMCAP contracted agreements.

II. PURPOSE

The purpose of this agreement is to establish a method by which participating states and other governmental units may join together in cooperative multistate contracting and to ensure the commitment of each participating state. Further, this agreement shall provide an understanding of the contracting process, the responsibilities of the participants and describe the organization and operating policies of MMCAP.

III. MISSION AND GOALS

A. Mission Statement

The mission of the Minnesota Multistate Contracting Alliance for Pharmacy is to provide value via reduced costs and improved services to its participating states and facilities through voluntary cooperative purchasing of pharmaceuticals and allied products and services.

B. Goals

1. Maximize cost savings and reduce administrative costs.

2. Standardize specifications and consolidate requirements to encourage product availability and market competition.

3. Promote environmentally responsible purchasing.

4. Develop quality assurance standards.

5. Ensure quality distribution of pharmaceuticals and allied products and services to contract participants.
IV: AUTHORIZATION

By executing this agreement, each participating state is certifying that it is authorized to enter into this agreement pursuant to applicable laws, rules and regulations. The designated individual executing this agreement certifies that he or she has the authority to represent his or her state and is authorized to commit his or her state on matters related to the business of MMCAP. The State of New Hampshire is authorized to participate in the MMCAP cooperative purchasing program by New Hampshire Revised Statutes Annotated, Chapter 21-I:11,IV.

V. ORGANIZATION AND OPERATION

A. Membership and Participation

1. MMCAP membership (the membership) is comprised of participating states. Other governmental units may participate in MMCAP contracting activities as determined by the membership provided such membership is authorized pursuant to applicable law.

2. Participation in MMCAP is voluntary and may be initiated at any time by submitting a copy of this Agreement of Understanding, executed by the state’s chief procurement officer or his/her designee, for approval to the MMCAP Manager. Participation shall continue until termination occurs either by the participating state or the MMCAP Manager.

3. Each member state is responsible to ensure its participating state facilities are authorized by applicable law to participate in MMCAP contracting activities. Each member state agrees to indemnify, save and hold harmless the State of Minnesota from any causes of action arising from improper or unauthorized use of MMCAP contracts by one or more of its state’s facilities.

B. Organization

The MMCAP organization shall consist of a Manager appointed from the State of Minnesota, an elected Vice Chairperson and the remaining membership. The Vice Chairperson shall be elected by a majority vote of the membership on a biennial basis. The MMCAP Manager, to the extent allowed by law and to the extent permitted by delegated authority pursuant to Minn. Stat. § 16C.03, subd. 16, shall render all decisions relating to MMCAP contracting activities. In accordance with Minn. Stat. § 16C.03, all other contracting and contract management decisions shall be made by the State of Minnesota, Commissioner of Administration or authorized delegate. The Advisory Panel shall be elected by the membership at the annual business meeting. The Advisory Panel shall consist of the Vice Chairperson and eight representatives from the membership. Four of the eight representatives shall be state purchasing agents and the remaining four representatives shall be pharmacists selected from the main practice areas participating in MMCAP. The Advisory Panel membership term shall be determined by the MMCAP Manager, but in no event will a term of a single member exceed two consecutive years. The Advisory Panel shall meet quarterly and provide recommendations to the MMCAP Manager on matters presented to the panel by the MMCAP Manager.

C. Business Meeting

The meeting of the representatives of the membership of MMCAP shall be conducted on an annual or on an as-needed basis as determined by the MMCAP Manager. The elected Vice Chairperson shall participate in presiding over the meeting with the MMCAP Manager. On matters brought to a vote by the MMCAP Manager, each participating state present shall have equal voting rights. Voting members must possess the authority to commit the state they represent.
D. Fees

The MMCAP Manager may, pursuant to contract terms and conditions, require the contract awardee(s) to pay an administrative fee. The fee shall be based on a percentage of sales made by the individual awardee. Fees shall be collected by the MMCAP office. Fees shall be utilized to pay for the administrative costs incurred in the operation of MMCAP as approved by the MMCAP Manager. Any remaining balance of funds shall be returned to active participating facilities by means of a credit to their wholesaler account proportionate to the individual facility’s contract purchases via the contracted wholesaler(s).

VI. DUTIES

A. State of Minnesota

The State of Minnesota shall be the state known as the "contract administrator," which, on behalf of all participating states shall:
- Select commodities or services for cooperative contracting;
- Develop a procurement plan, including the time schedule, specifications, use description and the preliminary solicitation/contract documents;
- Manage the fees collected from the contract awardee(s);
- Coordinate any document review to be done by participating states;
- Issue the solicitation for bids or request for proposals;
- Receive the bids or proposals;
- Coordinate any necessary solicitation evaluation;
- Conduct final analysis, review participating state’s recommendations for contract award(s) if provided, and make final contract award determinations;
- Issue all contract amendments or contract cancellations, if required;
- Provide copies of contract documents if requested;
- Handle administrative protests arising from the solicitations in accordance with the State of Minnesota laws and regulations.
- Maintain vendor performance records;
- Assist in resolving administrative contract or supplier problems that cannot be resolved by independent states or facilities; and
- Prepare copies of the award catalog and arrange for distribution.

B. Participating States

Participating states shall:
- Attend MMCAP business meeting(s);
- Participate in the evaluation of proposals and provide recommendations for award(s) to the MMCAP Manager; and
- Prepare a "Participating Addendum" if required. A "Participating Addendum" is an instrument that may be used in limited circumstances where the standard MMCAP contract terms and conditions do not include provision(s) required by the laws of the participating state or when the standard MMCAP contract terms and conditions conflict with the laws of the participating state. If these circumstances exist, a participating state may prepare a "Participating Addendum" to set forth additional or altered terms and conditions agreeable to the participating state, the contract awardee, and MMCAP. The "Participating Addendum" applies only to the relationship between the state initiating the addendum and the contract vendor. A "Participating Addendum" shall not affect the rights of the other states or the obligation of the contract vendor to the other states. The participating state is responsible for creating and negotiating any "Participating Addendum" and must notify the MMCAP Manager and provide a copy of the "Participating Addendum" for approval prior to its execution.
VII. PROTESTS

The MMCAP Manager shall be responsible for all protests arising from the MMCAP solicitation process. Protests shall be handled in accordance with Minnesota law, rules, regulations and policy. Any state or facility receiving a protest concerning an MMCAP contract will immediately notify the MMCAP Manager.

VIII. CONTRACTS

MMCAP contracts shall include standard contractual requirements contained in State of Minnesota contracts. The MMCAP manager shall consider the inclusion of contract language based upon the recommendations of the membership or of the Advisory Panel. All contracts shall clearly delineate contract use and cancellation. Each participating state or facility shall issue its own purchase documents against the master cooperative contract(s).

IX. JOINT POWERS AGREEMENT

The State of Minnesota and participating states and facilities are empowered to enter into this agreement pursuant to Minn. Stat. § 471.59, subd. 10 (1998) authorizing governmental units to enter into joint powers agreements whereby one of the governmental units performs on behalf of the other any service or function which the governmental unit providing the service or function is authorized to provide for itself. The participating state, by means of this joint powers agreement, may authorize ordering from contracts established by MMCAP. Participating states and facilities agree to order under the established terms and conditions of the MMCAP contract or under terms and conditions established pursuant to a “Participating Addendum” prepared in accordance with and under the circumstances described in Section VI. B. Payment for all orders made by a participating state or facility is the responsibility of that state and/or facility.

X. GENERAL PROVISIONS

A. Liability

Neither party shall assume any responsibility for the accountability of funds expended by the other or the issuance or non-issuance of a purchase order by the other party. Each party shall be separately accountable for its own expenditures of public funds made hereunder.

B. Cancellation

This Agreement may be terminated with or without cause by either the State of Minnesota or the participating state upon 30 days written notice. Cancellation terminates the authority of the state and its facilities using MMCAP contracts. States and facilities are liable for their outstanding orders at the time of cancellation.

C. Assignment

The participating state shall not assign, delegate, or transfer any rights or obligations under this Agreement without the prior written consent of the State of Minnesota.

D. Amendments

Any amendment or modification to this Agreement shall be in writing and shall not be effective until executed by the State of Minnesota and the participating state and approved by all State officials as required by law.
E. State Audits

As required by Minn. Stat. § 16C.05, subd. 5, the books, records, documents and accounting procedures and practices of the participating states and facilities and its employees, or agents relevant to this Agreement shall be made available and subject to examination by the State of Minnesota, including the contracting agency/division, Legislative Auditor, and State Auditor for a minimum period of six years after the termination of this Agreement.

F. Jurisdiction and Venue

This Agreement, and executed amendments thereto, shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings between the State of Minnesota and a participating state or facility arising out of this Agreement, or breach thereof, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota. Any claims against a participating state or any of its facilities, where the State of Minnesota or MMCAP is not a party, must be brought in the courts, or before an administrative body of the participating state, in accordance with the laws of that state and will not be negotiated, arbitrated, or settled on its behalf by any of the other states.

IN WITNESS WHEREOF, the undersigned parties have caused this Agreement of Understanding and Joint Powers Agreement to be signed on their behalf intending to be bound thereby.

FOR THE PARTICIPATING STATE:
On behalf of the Participating State, the undersigned person warrants that he or she is authorized to execute the contract and legally bind the Participating State thereto.

State OF NEW HAMSHIRE

By

Donald S. Hill
Commissioner, Dept. Of Administrative Services

Date 9/1/00

Director, Div. Of Plant & Property Mgt.

Date 9/5/00

Administrator, Bur. Of Purchase & Property

Date

Data Control & Purchasing Operations Mgr.

Date

FOR THE STATE OF MINNESOTA:

By

Richard J. Dominy
Title AMS, Sr.

Date 9-18-00

ATTORNEY GENERAL, as to form and execution:

By

Original signed Notte

Title

Date by Patricia S. Nolte

COMMISSIONER OF ADMINISTRATION, as delegated to the Materials Management Division:

By

Title ASSISTANT DIRECTOR

Date 9/17/2000
Amendment to the
Minnesota Multi-State Contracting Alliance for Pharmacy (MMCAP)
Agreement of Understanding and Joint Powers Agreement with the
State of New Hampshire

This Amendment is by and between the State of Minnesota, acting through its
Commissioner of Administration on behalf of the Minnesota Multi-State Contracting
Alliance for Pharmacy (MMCAP) and the State of New Hampshire, Department of
Administrative Service, Division of Plant and Property Management, Bureau of Purchase
and Property.

For strategic business purposes, MMCAP and its participating states would like to amend
the Agreement of Understanding and Joint Powers Agreement to allow for Advisory
Panel member terms to be for up to four years, and for Advisory Panel Chairperson terms
to be for up to three years.

To accomplish this change in terms, the parties are willing to amend the agreement as
follows:

V. ORGANIZATION AND OPERATION

B. Organization

The MMCAP organization shall consist of a Manager appointed from the State of
Minnesota, an elected Vice Chairperson and the remaining membership. The
Vice Chairperson shall be elected by a majority vote of the membership on a
biennial basis have prior experience as an Advisory Panel member and shall be
appointed by the MMCAP Manager to a term not to exceed three years. The
MMCAP Manager, to the extent allowed by law and to the extent permitted by
degenerated authority pursuant to Minn. Stat. Sec. 16C.03, subd. 16, shall render all
decisions relating to MMCAP contracting activities. In accordance with Minn.
Stat. Sec. 16C.03, all other contracting and contract management decisions shall
be made by the State of Minnesota, Commissioner of Administration or
authorized delegate. The Advisory Panel shall be elected by the membership at
the annual business meeting. The Advisory Panel shall consist of the Vice
Chairperson and eight representatives from membership. Four of the eight
representatives shall be state purchasing agents and the remaining four
representatives shall be pharmacists selected from the main practice areas
participating in MMCAP. The Advisory Panel membership term shall be
determined by the MMCAP Manager, but in no event will a term of a single
member exceed two four consecutive years. The Advisory Panel shall meet
quarterly and provide recommendations to the MMCAP Manager on matters
presented to the panel by the MMCAP Manager.
C. Business Meeting

The meeting of the representatives of the membership of MMCAP shall be conducted on an annual or on an as-needed basis as determined by the MMCAP Manager. The elected Vice Chairperson shall participate in presiding over the meeting with the MMCAP Manager. On matters brought to a vote by the MMCAP Manager, each participating state present shall have equal voting rights. Voting members must possess the authority to commit the state they represent.

In Witness Whereof, the undersigned parties have caused this Amendment of the Agreement of Understanding and Joint Powers Agreement to be signed on their behalf intending to be bound thereby. This Amendment is effective on the first date on which it is signed by both parties.

FOR THE PARTICIPATING STATE:

On behalf of the Participating State, the undersigned person warrants that he or she is authorized to execute the contract and legally bind the Participating State thereto.

State New Hampshire

By

Title Commissioner

Date 1/23/09

FOR THE STATE OF MINNESOTA:

By

Title MMO Director

Date 1/23/09

COMMISSIONER OF ADMINISTRATION, as delegated to Materials Management division:

By

Date Jan. 23, 2009