

AGREEMENT

This Agreement is effective November 8, 2021, by and between Eagle County Health Service District, dba Eagle County Paramedic Services (the “Principal Procurement Agency”), Public Safety Association Inc (the “Company”) and Henry Schein, Inc. (the “Supplier”).

RECITALS

- A. The Company, on behalf of the Principal Procurement Agency, issued a Request for Bid for Medical Equipment, RFB #2021-06 (“RFB”), soliciting bids for the supply and support of Medical Equipment.
- B. Supplier duly submitted proposal in response to the RFB (“RFB Response”), which outlines Supplier’s agreement to or exceptions with the RFB.
- C. The Principal Procurement Agency, Company and Supplier have negotiated certain amendments or exceptions to the RFB and RFB Response, and desire to enter into this Agreement with the intent of memorializing the final terms of the parties’ agreement.


AGREEMENT

In consideration of the provisions, representations, warranties, covenants and agreements contained in this Agreement, the parties agree to the terms set forth in this Agreement.

1. Agreement: The parties agree that this Agreement, together with the RFB, the Notice to Bidders dated and published on August 19, 2021 and August 26, 2021, the RFB Response, together with all documents specifically referred to therein, as gathered and compiled in that certain binder entitled “Eagle County Paramedic Services, Public Safety Association Inc and Henry Schein, Inc.” attached hereto, as modified by the attached deviation letter submitted by Henry Schein, Inc. (together, all such documents shall be referred to herein as the “**Contract Documents**”), shall constitute the binding agreement between the Principal Procurement Agency, Company and Supplier for Supplier’s provision of products and services to the Company pursuant to the terms therein.
2. Entire Agreement: The parties agree that this Agreement, together with the Contract Documents, represent the only agreement among the parties concerning the subject matter thereof and supersedes all prior agreements, whether written or oral, relating thereto.
3. Modifications: No purported amendment, modification or waiver of any provision in the Agreement and the Contract Documents shall be binding unless set forth in a written document signed by all parties (in case of amendment and modifications) or by the party charged thereby (in the case of waivers). Any waiver shall be limited to the provision hereof and the circumstance or event specifically made subject hereto and shall not be deemed a waiver of any other term hereof or of the same circumstance or event upon any recurrence thereof.
4. Term of Agreement: This agreement is set to expire November 8, 2024.

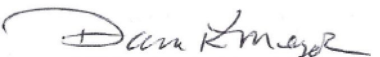
IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on November 8, 2021.

Eagle County Health Service District
dba, Eagle County Paramedic Services
(the "Principal Procurement Agency")

By: 

Printed Name: Steve Vardaman
Its: Operations Manager

Public Safety Association Inc
(the "Company")

By: 

Printed: Dane Meyer
Its: President

Henry Schein, Inc.
(the "Supplier")

By: _____

Printed Name: Jeff Klingler_____

Its: _____

ATTACHED TO RFB

Re: Deviations for Eagle County Health Service District/Public Safety Association Inc. Request to Bid Number PSAI RFB 2021-06 Medical Equipment such as: Automated External Defibrillators, Cardiac Monitors/Defibrillators, Automated CPR Devices, Ventilators, Video Laryngoscopes, Other Medical Equipment, Training, Accessories, Service Plans and Financing (the "RFB")

Dear Sir/Madam:

Henry Schein Medical, a division of Henry Schein, Inc. ("Henry Schein" or "Bidder") submits the following deviations (this "Deviation Letter") to the terms of the RFB:

Standard Contract Terms and Conditions, Section 3.3 - Price Escalation Clause, Subsections 1, 2 and 3

Henry Schein would like to delete these Subsections in their entirety. Henry Schein agrees to maintain the line item pricing firm and the Catalog Discount firm throughout the term of the 3 year Contract. However throughout the Term of the 3 year Contract resulting from this RFP, Henry Schein shall have the right to increase the purchase prices by the same percentage of any manufacturer price increases.

Standard Contract Terms and Conditions, Section 3.2 Price Reduction Clause, Subsection 3

Henry Schein would like to delete this clause in its entirety.

Standard Contract Terms and Conditions, Section 5.1 Purchase Volume / Sales Reports, Subsection 3; and Attachment 7 – Cost / Financial Proposal Section 3 – Performance Under Contract, subsection f (3);

Henry Schein would like to delete the sections outlined above in their entirety. Henry Schein will not provide penalties for late reporting.

Attachment 7 – Cost / Financial Proposal Section 3 – Performance Under Contract, subsection f

Henry Schein would like to revise the first paragraph of subsection f to read as follows:

"Allow access to PSAI authorized personnel for inspection of operating facilities, and auditing of purchase orders during the contract period, and for a period extending thru the completion of any outstanding orders. Site inspection may be arranged not less than ten (10) calendar days prior, shall include the names of all participants, ~~and~~ shall be at no expense to Contractor and shall be limited to once annually."

Standard Contract Terms and Conditions, Section 10 – Warranty; and Special Terms and Conditions, Section 4.0 - Warranty on Asset Based Purchases;

Henry Schein is a distributor for all products offered in this proposal; any transferable product warranties and indemnifications will be provided, at the time of sale, as provided to Henry Schein by the manufacturer. Henry Schein would like to delete the sections outlined above in their entirety and replace them with the following:

"Bidder will pass through to PSAI, and all of their respective members (hereinafter collectively referred to as the "Indemnitees"), at the time of sale, any transferable product warranties, indemnities and remedies provided to the Bidder by the Manufacturer. TO THE EXTENT PERMITTED BY LAW, THE BIDDER PROVIDES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND THE INDEMNITEES SHALL LOOK TO THE MANUFACTURER OF THE PRODUCT FOR ANY WARRANTY THEREON."

Standard Contract Terms and Conditions, Section 14 – Conflicts of Interest; and Attachment 3, Section 2

Henry Schein would like to delete this section in its entirety; Henry Schein is a publicly traded company with thousands of shareholders. Accordingly, it is impossible to determine whether any employee, officer or board member of PSAI presently has any financial interest in Henry Schein as a shareholder.

Standard Contract Terms and Conditions, Section 18 – Compliance with law and Regulation, subsection 18.2

Henry Schein understands that many PSAI members are government agencies and subject to federal, state and local procurement laws and regulations. However, Henry Schein would need to review and mutually agree on any laws or and regulations that the member agencies would like to incorporate into an agreement before agreement is made.

Standard Contract Terms and Conditions, Section 19.1 – Promotion and Publicity, Subsection 19.2 PSAI Website Promotion, 19.3 Trade shows and Signage, Subsection 19.3 – Vendor Website Promotion, and Subsection 19.4 – Publicity;

Standard Contract Terms and Conditions, Section 20.0 – Sales Calls; and

Exhibit A – Public Safety Association Inc. – National Cooperative Contract Section 1.2;

Henry Schein would like to remove these sections in their entirety. Henry Schein is willing to discuss and negotiate these sections further, upon award.

Standard Contract Terms and Conditions, Section 18.0 – Compliance with Law and Regulation

Henry Schein would like to add the following language as it pertains to the Contract Management Fee.

“18.3 The parties agree that in carrying out their duties and responsibilities under this Contract, they will neither undertake nor cause nor permit to be undertaken, any activity which either is illegal under any applicable laws, decrees, rules, or regulations.

18.4 The parties agree to comply with all applicable legal requirements including establishing a business relationship in which payments by Bidder to PSAI comply with the exceptions to the Medicare and Medicaid Anti-Kickback Statute set forth at 42 U.S.C. §1320a-7b (b)(3) (A) and (C) and the “safe harbor” regulations in 42 C.F.R. §1001.952 (j), and 42 C.F.R. §1001.952 (h), and PSAI agrees that it will consult with its counsel to assure compliance. PSAI specifically warrants that it will have a written agreement with, or provide an equivalent effective written notice to, all Members to which Bidder may furnish goods or services, that states that PSAI’s participating vendors from which the individual or entity will purchase goods or services will pay a fee to PSAI of 3% or less of the purchase price of the goods or services (or if an amount greater than 3% is paid, such greater amount), and that it will also advise Members in writing, at least annually, of the amount of administrative fees received based on purchases by the particular Member during the year, or at a minimum, advise Members that such information is available to them at least annually, upon their request. PSAI also agrees that to the extent any amount of such administration fees are distributed to Members, the amounts so distributed shall be treated as discounts as defined in the Anti-Kickback Statute at 42 C.F.R. §1001.952 (h)(5). Accordingly, to the extent PSAI makes distributions of, or provides similar benefits related to administration fee revenue to Members, it will advise its Members that they will need to disclose the discount when computing, for government reporting purposes, the cost of the purchased goods. PSAI agrees to provide copies of agreements with Members (redacted as appropriate) to Bidder as reasonably requested from time to time. PSAI acknowledges and understands that for any period it is not in compliance with the foregoing the administration fee referenced in this Contract will not be due or owing for such period. For the purposes of this paragraph, and consistent with the definition found in 42 C.F.R. §1001.952(j), “group purchasing organization” (GPO) shall mean an entity authorized to act as a purchasing agent for a group of individuals or entities who are: (i) furnishing services that may be paid for in whole or in part under Medicare, Medicaid or other Federal health care programs, and (ii) neither wholly-owned by the GPO, nor subsidiaries of a parent corporation that wholly owns (either directly or indirectly) the GPO.

18.5 The parties acknowledge that the Physician Payments Transparency Requirements enacted as section 6002 of the Patient Protection and Affordable Care Act of 2010 (codified at 42 U.S.C. §1320a-7h) and the regulations of the Centers for Medicare and Medicaid Services promulgated thereunder (collectively, the “Sunshine Act”) require pharmaceutical, medical device, and other companies, to annually report certain information about compensation, expenses, and other payments or transfers of value provided directly or indirectly to U.S. physicians (including licensed dentists, orthodontists and dental surgeons) and teaching hospitals to the Centers for Medicare and Medicaid Services (CMS), which will in turn publicly post the information. PSAI agrees: (a) not to contest any such reporting made by Bidder in its reasonable judgment; (b) to provide Bidder with any information requested to allow its timely, accurate and complete reporting; and (c) to comply with its annual reporting obligations under the Sunshine Act, to the extent required, including filing appropriate ownership reports.

Standard Contract Terms and Conditions, Section 22.1 – Default, Subsection 22.2

As mentioned previously, Henry Schein is a distributor for all products offered in this proposal; any transferable product warranties and indemnifications will be provided, at the time of sale, as provided to Henry Schein by the manufacturer. Therefore, Henry Schein would like to make the following changes to this section:

22.1 Bidder Events of Default. The occurrence of any of the following events shall be considered an event of default (a “**Bidder Default**”) by Bidder under the Contract:

- (1) Failure to pay the Contract Management Fee;
- (2) Violation of the Contract Pricing terms in Section 3;
- (3) Failure to file complete and timely submit sales reports;
- (4) ~~Provision of Products that do not conform to Contract specifications; and~~
- (5) Other acts or omissions by Bidder in violation of the terms of this Contract.

Standard Contract Terms and Conditions, Section 24.1 – Contract Documents; Order of Precedence, Subsection 24.2

Henry Schein would like to make the following changes to this section.

The Contract shall consist of the following documents (inclusive of attachments and amendments), which are presented in order of precedence: (1) Deviation Letter; (2) Contract Award; ~~(32)~~ RFB Cover Sheet; ~~(43)~~ Attachment 1 – Special Terms and Conditions; ~~(54)~~ Attachment 2 – Bid Requirements; ~~(65)~~ Attachment 3 – Bidder Worksheet; ~~(75)~~ Attachment 4 – Product Specifications and Pricing Worksheet ~~(86)~~ Attachment 5 – Designation of Confidential and Proprietary Information ~~(97)~~ Attachment 6 – Supplier Worksheet for National Program Consideration ~~(108)~~ Attachment 7 – Cost / Financial Proposal ~~(119)~~ Form 1 – Core Bid Items Pricing ~~(1210) Form 2 – Additional Items Bid.~~

Special Terms and Conditions, Section 1.0 – Contract Management Fee; and Attachment 3 – Bidder worksheet, Certification, Section 1;

Henry Schein would like to update Special Terms and Conditions, Section 1.0 – Contract Management section as follows and would like to note this change that pertains to Attachment 3 – Bidder Worksheet, Certification Section 1:

1.0 Contract Management Fee.

The Contact Management Fee paid by Bidder to PSAI will be -percent (2%) based on Net of the value gross Sales made under this Contract by PSAI Members and calculated based on the gross sales of each calendar month invoiced, regardless of when Bidder receives payment from the Member. “Net Sales” shall mean gross sales less returns, allowances, credits, sales or use taxes and freight.

handling charges. Bidder reserves the right to exclude from Net Sales- any Product, mutually agreed to between Bidder and PSAI, which Bidder earns less than a 5% gross profit margin. Therefore, Bidder shall not be obligated to pay any Contract Management Fee in connection with such sales.

Special Terms and Conditions, Section 6.0 – Delivery and logistics

Henry Schein can agree to this section for stocked products only. Non-stocked items or customized items delivery may take up to 4-6 weeks. Shipments for Alaska and Hawaii may take longer than the standard 5 day shipping. Special orders, drop ship orders, equipment delivery, and holiday, weekend or expedited deliveries may be subject to additional freight charges.

Special Terms and Conditions, Section 7.0 Return of Products, subsection 7.1

All product returns will be subject to our HSI's Return Policy attached to this deviation letter.

Attachment 1, Special Terms and Conditions, Section 3.2 Technical Support;
Attachment 1, Special Terms and Conditions, Section 3.3 Parts/Service Availability; and
Attachment 1, Special Terms and Conditions, Section 3.3

For the requested outlined in the above sections, PSAI agrees to look solely to the manufacturer of the product for these such requests.

Attachment 1, Special Terms and Conditions, Section 3.5 Delivery, subsection 3.5.1

Henry Schein can agree to 30 day delivery for stocked items. However, for non-stocked items or customized items delivery may take up to 4-6 weeks. Further, rush orders requested to be upgraded to next day air will incur additional charges in accordance with UPS shipping zone schedules for the weight of the package.

Attachment 3, Certification, Section 5

Henry Schein certifies that it has reviewed the terms and conditions of the RFB, and represents that it understands the obligations under any Contract that could be awarded as a result of its Bid. Henry Schein further warrants that, upon Contract Award, Henry Schein agrees to be bound to the terms of the resulting Contract, including, without limitation, the Standard Contract Terms and Conditions and the Special Terms and Conditions in Attachment 1, provided that the deviations outlined in this Deviation Letter take precedence.

Attachment 4, Certification, Section 2

Henry Schein certifies that it understands and agrees to the Contract Pricing terms of the Standard Contract Terms and Conditions, including, without limitation the Price Escalation and Price Reduction clauses provided that this Deviation Letter take precedence.

Attachment 7 – Cost/Financial Proposal, Section 1 – Contract Fee

Henry Schein would like to delete this section in its entirety and replace it with the following:

“Bidder agrees to pay PSAI a Contract Management Fee (as defined in the Special Terms and Conditions) for each PSAI Purchase during the Contract Term in accordance with the terms set forth in this Deviation Letter.

Exhibit A – Public Safety Association Inc. – National Cooperative Contract, Section 2.0 - REPRESENTATIONS AND COVENANTS

This section must be mutual in nature. Henry Schein proposes the following language:

“As a condition to ~~Supplier~~ both parties entering into the Master Agreement, which would be available to all Public Agencies, ~~the parties~~ ~~Supplier~~ must make certain representations, warranties and covenants to ~~each~~

~~other both the Principal Procurement Agency and PSAI designed to ensure the success of the Master Agreement for all Participating Public Agencies as well as the Supplier.~~

Exhibit A – Public Safety Association Inc. – National Cooperative Contract Section 2.1 – Corporate Commitment (4)

Henry Schein has read and agrees to the terms and conditions of the Administration Agreement with PSAI and will execute such agreement concurrent with and as a condition of its execution of the Master Agreement with the Principal Procurement Agency, provided that the deviations outlined in this Deviation Letter take precedence.

Exhibit A – Public Safety Association Inc. – National Cooperative Contract Section 2.2 – Pricing Commitment

Henry Schein would like to delete this clause in its entirety. Henry Schein prices its products competitively and takes into consideration many factors in arriving at the proper pricing, terms and conditions for each of its customers, taking into account, among other factors, price, financing terms, shipping costs, insurance, regulatory fees, customer and market type, sales support spending, marketing materials, national and cooperative advertising spending, end-user incentives, rebates and technical support. Given all of these variable factors as well as Henry Schein's size, its multiple independent divisions and product lines, as well as its diverse client base and markets in which it operates, we have found that it is not possible to conduct an accurate or comprehensive competitive comparison of our agreements from customer to customer.

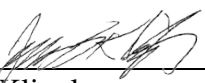
Exhibit A – Public Safety Association Inc. – National Cooperative Contract Section 2.3 – Sales Commitment

Henry Schein would like to delete this section in its entirety. Henry Schein does not dictate what contract and/or program customers should use. The customer will always dictate what contract or program they would like to utilize.

The parties hereby agree that to the extent there is any inconsistency in any terms or conditions set forth in the Contract and this Deviation Letter, the terms and conditions of this Deviation Letter shall control. Additionally, the parties hereby agree that all other terms and conditions of the Contract shall remain in full force and effect, except as modified by this Deviation Letter. Capitalized terms used herein but not defined herein shall have the meaning set forth in the Contract.

IN WITNESS WHEREOF, the parties have executed this Deviation Letter as of the date set forth above.

Henry Schein Medical, a division of Henry Schein, Inc.

By: 
Jeff Klingler
Vice President and General Manager, Enterprise Health

PSAI

By: 


Name: Mickey Schulte

Title: Vice President

Accepted and Agreed



Eagle County Health Service District/Public
Safety Association Inc.

By: 

Name and title

Steve Vardaman, Operations Manager

Eagle County Health Service District dba, Eagle County Paramedic Services