

PARTICIPATING ADDENDUM

[hereinafter "Addendum"]

For

WSCA/NASPO PC Contracts 2009-2014

COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES

MASTER PRICE AGREEMENT NUMBER B27166

Between

IBM Corporation

[hereinafter "Contractor"]

and

(State of Oklahoma)

[hereinafter "Participating State"]

(Participating State/Entity Contract Number 1961)

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1. Scope

This Addendum covers the WSCA/NASPO PC Contracts 2009-2014 (Computer Equipment, Peripherals and Related Services) lead by the State of Minnesota for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts.

2. Participation

Use of specific WSCA/NASPO cooperative contract by state agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the approval of the respective State Purchasing Director. Issues of interpretation and eligibility for participation are solely within the authority of the State Purchasing Director Official.

- a) The State of Oklahoma will participate in only the following product bands:
 - Band 1 – Servers
 - Band 4 – Storage Solutions
 - Operating Systems and Middleware
- b) The State of Oklahoma imposes the following configurations limits:
 - Individual units (standalone) \$100,000 each and configurations for servers and storage (SANS, etc.) should not exceed \$300,000 each.

3. Changes:

- a) Modification to Term #6.D. Invoices: Modify the second sentence to read:

“Contractor shall provide a commercial invoice with the appropriate purchase order number referenced on the invoice.”

- b) Modification to Term #8.A. Termination for Convenience: Add the following after the last paragraph:

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"The State may terminate the Contract immediately, without a 30-day written notice to IBM, when the contract is found to be an impediment to the function of the State and detrimental to its cause, when conditions preclude the 30-day notice, or when the State Purchasing Director determines that an administrative error occurred prior to Contract performance."

- c) Modification to Term #11.B Warranties: Add the following as the second sentence:

"Approved modified warranties will pertain only to those products and/or services purchased after the modification. Warranties of products purchased prior to the modification will not change."

- d) Delete language in Term #19. Force Majeure and replace with the following:

Definition: Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force Majeure shall include acts of God, war, riots, strikes, fire, floods, or other similar occurrences.

Force Majeure shall not include, or be related to, the following occurrences:

Late delivery or equipment, supplies or materials or an oversold condition of the market.

Inability of either the Contractor or approved subcontractor to acquire or maintain any required insurance, bond, license, or permit.

Notification: If either party is delayed by Force Majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force Majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of it shall be provided. The time of completion for the suppliers' performance may be extended by contract modification for a period of time as

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determined by the State Purchasing director equal to the time that the results or effects of such delay prevented the supplier from performing in accordance with this contract, or longer period if such equitable adjustment is appropriate under the circumstances.

Rights Reserved: The state reserves the right to cancel the contract and/or purchase materials, equipment or services from the best available source during the time of Force Majeure, and consider the cancellation a Termination for Convenience in accordance with section 3a) above Contractor shall have no recourse against the state.

- e) Addition to Term #20 Records and Audits: Add the following paragraph to the end of the term:

“Contractor agrees to maintain detailed records pertaining to the price of services rendered and products delivered to the State of Oklahoma procuring entities for a period of three years from the completion and/or termination of the contract. If audit, litigation, or other action involving such records are started before the end of the three year period, the records will be maintained until all issues arising out of the action, including appeals, are resolved or until the end of the three year retention period, whichever is later.”

- f) Addition to Term # 24 Indemnification, Hold Harmless and Limitation of Liability: Add the following paragraph to the beginning of the term:

“On April 14, 2006, the Attorney General of Oklahoma issued Attorney General Opinion No. 06-11 that, among other things, opined that under the Oklahoma State Constitution contractual limitation of liability provisions contained in agreements with State agencies are void and unenforceable unless the amount of liability the State assumes is certain and budgeted for. While the parties to this agreement acknowledge the Attorney General’s Opinion, the Parties further recognize that Supplier disagrees with the Attorney General’s Opinion and contends that contractual limitation of liability provisions such as the one contained in this agreement are enforceable and do not violate the State Constitution. As a

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result, in the event that the Parties to this agreement have a dispute in which the enforceability of a contractual limitation of liability clause is relevant, then the Parties agree that either Party may initiate suit in the State District Court for Oklahoma County seeking a declaratory judgment or any other relief available in law or equity regarding, among other things, the enforceability of a contractual limit of liability. Further, the parties shall have the right to appeal any ruling from the District Court to the extent permitted by applicable law.

For purposes of this agreement, the contractual limit of liability subject to the paragraph above is shown below."

- g) Addition to Term # 24 Indemnification, Hold Harmless and Limitation of Liability: Add the following paragraph after the last paragraph of the term:

The following language relates only to **Section 8 "Electronic and Information Technology Accessibility"**:

"To the extent the obligations are requirements of the Contractor under the applicable Oklahoma law and administrative rules and subject to the exceptions found in the applicable Oklahoma law and administrative rules, IBM accepts the language contained in Section 8 "Electronic and Information Technology Accessibility:"

- h) Addition to Term #44.B. Participating Entity Reports and Fees: Add paragraph 4 to this section as follows:

"The Contractor agrees to provide periodic utilization reports to the State of Oklahoma encompassing all sales within the parameters of this participating addendum in standard WSCA/NASPO format. Report dues dates are as scheduled in Master Agreement 44.A.2. The Contractor shall submit a check payable to DCS Central Purchasing for an amount equal

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to one-half of one percent (0.005) of the net sales for the period. Fee remittance will follow the same period and due dates as the reports."

- i) Addition to Term #56 Value Added Services: Add the following paragraph to this term as follows:

"If additional value added service pricing is not listed on the PSS, the entities may not participate in the service. Pricing that is listed, as "TBD", "Contact sales representative" or any other nomenclature that is not an actual price is not viable and will not be included within the scope of this addendum. Furthermore, all purchasing entities obtaining value added services must follow the purchasing guidelines as established for their jurisdiction and/or addressed in the State of Oklahoma Contract Award notice for the contract resulting from this addendum."

4. Lease Agreements

Leasing provisions have not been approved by the State of Oklahoma by procuring agencies within this jurisdiction. The State of Oklahoma reserves the right to open the possibility of adding the leasing provision at a later date. Leasing is allowed for all other authorized purchases (non-state agencies) under this Addendum.

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5. Primary Contacts

Lead State

Name: Bernadette Kopischke
Address: 112 Admin Bldg, St Paul, MN 55155
Telephone: (651) 201-2450
Fax: (651) 297-3996
E-mail: bernie.kopischke@state.mn.us

Contractor

Name: Karen Schneider
Address: 4660 La Jolla Village Drive, Ste 300, San Diego, CA, 92122
Telephone: 858-587-5137
Fax: 858-587-5099
E-mail: kasch@us.ibm.com

Participating State

Name: Gary Rowland
Address: 2401 N. Lincoln, Ste 116, Oklahoma City, Oklahoma 73105
Telephone: 405-521-2131
Fax: 405-528-1078
E-mail: gary_rowland@dcs.state.ok.us

6. Servicing Subcontractors

Only those IBM Business Partners authorized by IBM are eligible to support the IBM WSCA/NASPO Master Price Agreement and will be identified in the individual Participating Addendum or on the individual website for the Participating Entity. IBM Business Partners are only authorized to quote to the Participating Entity the Products and pricing specified by IBM for

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the WSCA/NASPO Master Price Agreement. Inclusion of the Business Partner identifier in the Purchase Order may result in a fee payment to the Business Partner. Such fee payment will not affect the pricing specified in the WSCA/NASPO Master Price Agreement.

All orders are to be issued directly to:

IBM Corporation
IBM State Contracts Team
7100 Highlands Parkway
Smyrna, GA 30082

And all payments are to be issued to: IBM Corporation. You may remit payment to the address which will appear on your invoice:

ATLANTA
Lockbox 534151
P.O. Box 534151
Atlanta, GA 30353-4151

All purchase orders issued by purchasing entities with the jurisdiction of this Addendum must include the Participating State contract number: 1961; and the Master Price Agreement Number: B27166.

7. Compliance with reporting requirements of the "American Recovery and Reinvestment Act of 2009" ("ARRA"):

If or when contractor is notified by ordering entity that a specific purchase or purchases are being made with ARRA funds, contractor agrees to comply with the data element and reporting requirements as defined in Section 1512 of ARRA as implemented through Office of

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Management and Budget Memorandum 09-21 entitled **Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009 " (the Memorandum)"** (or subsequent changes or modifications to these requirements as published by the Office of Management and Budget). Contractor shall only comply with those requirements in the Memorandum that are applicable to vendors. Ordering entity is responsible for informing contractor as soon as the ordering entity is aware that ARRA funds are being used for a purchase or purchases. Contractor will provide the required report to the ordering entity with the invoice presented to the ordering entity for payment. The contractor, as it relates to purchases under this contract, is not a subcontractor or sub grantee, but simply a provider of goods and related services.

8. Electronic and Information Technology Accessibility

Pursuant to Title 74, Section 85.7d and OAC 580:15-6-21 electronic and information technology procurements, solicitations, agreements, and contracts shall comply with applicable Oklahoma Information Technology Accessibility Standards issued by the Oklahoma Office of State Finance.

EIT Standards may be found at www.ok.gov/DCS/Central_Purchasing/index.html or http://www.ok.gov/OSF/documents/isd_itas.doc.

1) For Information Technology or Communications Products, Systems and Applications not requiring development and/or customization. The Contractor shall provide a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system or application by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request.

The Contractor shall indemnify and hold harmless the State of Oklahoma and any Oklahoma Government entity purchasing the products, systems, or applications not requiring development

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and/or customized by the Contractor from any claim arising out of the Contractor's failure to comply with applicable Oklahoma Information Technology Accessibility Standards subsequent to providing certification of compliance to such Standards.

2) For Information Technology or Communications Products, Systems or Applications requiring development and/or customization. The Contractor shall provide a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system, or application developed and/or customized by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request. Additional requirements and documentation may be required and compliance will be necessary on the Contractor's part. Such requirements will be stated in documents such as State Bids, Request for Proposals, Contracts, Agreements, Purchase Orders, and Amendments.

The Contractor shall indemnify and hold harmless the State of Oklahoma and any Oklahoma Government entity purchasing the products, systems, or applications from the Contractor, from any claim arising out of the Contractor's failure to comply with applicable Oklahoma Information Technology Accessibility Standards subsequent to providing certification of compliance to such Standards. However, the Contractor shall no longer have an obligation to indemnify the State for liability resulting from products, systems or applications developed and/or customized that are not in compliance with applicable Oklahoma Information Technology Accessibility Standards ("Standards") after the State has tested and confirmed that the product, system or application meets the accessibility requirements in the Standards.

9. Voluntary Product Accessibility Product (VPAT) Requirements

The contractor will provide a website:

www.ibm.com/able/product_accessibility/index.html

accessible by participating agencies to print a VPAT by entering the product description or part number, obtained from the State of Oklahoma contractor's website.

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10. Authorized Users

During the term of this contract, any state department, board, commission, agency, or institution may utilize this contract. The Oklahoma statutes state that counties, school districts, and municipalities of Oklahoma may avail themselves of the contract subject to the approval of the contractor. For purposes of the operation of this contract, counties, school districts, and municipalities shall have the same benefits and responsibilities as a state agency. Under this contract, the State of Oklahoma bears no liability for the actions of counties, school districts and municipalities and the privity of contract exists solely between the contractor and the county, school board or municipality.

11. Compliance with Applicable Laws

The products and services supplied under the Contract shall comply with all applicable federal, state, and local laws that are applicable to providers of Information Technology, and IBM shall maintain all applicable licenses and permit requirements.

12. Gratuities

The right of the contractor to perform under this contract may be terminated, by written notice, if the Contracting Officer determines that the contractor, or its agent or another representative offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of Central Purchasing. Further more a contractor convicted of such violation may also be suspended or debarred.

13. Oklahoma Computer Equipment Recovery Act

The contractor must provide evidence of compliance with the Oklahoma Computer Equipment Recovery Act as stated in Title 27A Section 2-11-601 through Section 2-11-611.

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14. Disk Drive Ownership

In conjunction with the Oklahoma Computer Equipment Recovery Act and the Office of State Finance's Information Security, Policies, Procedures, and Guidelines, Appendix E – Revisions, #3 – Media Sanitization Procedures for the Destruction or Disposal of all Electronic Storage Media; disk drives purchased with or for use in personal computers, laptops, or tablets for this contract remain the property of the State of Oklahoma.

15. State of Oklahoma WSCA Website

The contractor will maintain a specific State of Oklahoma website. The website must contain a least the following:

- a) Presents only the products and services allowed in this agreement.
- b) Contract name and number
- c) A listing of the contact personnel of the awarded vendor and the pertinent contact numbers
- d) A general category grouping of products available for ease in researching systems.
 - This general category grouping should have an expanding tree of information for the selected configuration. Once selected the configuration should expand to provide all available configuration options and accessories to allow for complete hardware/software configuration.
- e) Except for any circumstance beyond the reasonable control of the Contractor, website availability should at least ninety-nine (99%) percent of the time during the hours of 7:00am through 7:00pm Central Time, Monday through Saturday.

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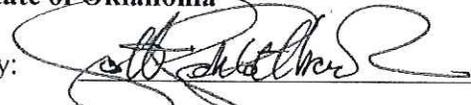
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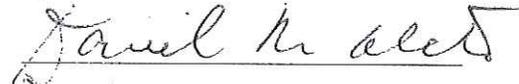
This Addendum and the Master Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Price Agreement and its exhibits, by any subsequent Purchase Order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms. This Addendum applies only in the jurisdiction of the Participating State or Participating Entity, which has executed this Addendum.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by Contractor below.

State of Oklahoma

IBM Corporation

By: 

By: 

Name: SCOTT SCHLOTTHAUER

Name: DANIEL M. ALETTO

Title: STATE purchasing Director

Title: CLIENT MANAGER

Date: 11/4/2009

Date: 11/3/09

Signatures as required by State Statutes, Rules or Policies