



Rev.: 9/25/12

STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES
GENERAL SERVICES DIVISION
OFFICE OF PROCUREMENT SERVICES
4200 SURFACE ROAD, COLUMBUS, OH 43228-1395

REQUIREMENTS CONTRACT: WSCA Lenovo (United States) Inc. COMPUTER EQUIPMENT, PERIPHERALS AND RELATED SERVICES

CONTRACT No.: 0A1069

EFFECTIVE DATES: 09/14/09 to 08/31/12
Renewal though 06/30/13

The Department of Administrative Services (DAS) has agreed to participate in a multi-user contract for Computer Equipment, Software, Peripherals and Related Services with Lenovo (United States) Inc. (Lenovo) under the Western States Contracting Alliance (WSCA), and the National Association of State Procurement Officials (NASPO). The State of Ohio Department of Administrative Service is a member WSCA/NASPO and has accepted prices as a result of the WSCA/NASPO RFP WS 1999 which opened on September 29, 2008. The respective bidder response, including Terms and Conditions from Lenovo Master Price Agreement B27168 and supplemental Contract Terms and Condition from the Ohio Lenovo Participating Addendum has been determined to be the lowest responsive and responsible bidder and has been awarded a contract for the items listed.

The Lenovo Master Price Agreement is effective September 1, 2009 through August 31, 2014 unless, prior to the expiration date, the Contract is renewed, terminated or cancelled in accordance with the Contract Terms and Conditions.

The Lenovo Master Price Agreement is available to all State Agencies, State institutions of higher education and properly registered members of the Cooperative Purchasing Program of the Department of Administrative Services, as applicable.

SPECIAL NOTE: State agencies may make purchases und this Price Agreement up to \$2,500.00 using the state of Ohio payment card. Any purchase that exceeds \$2,500.00 will be made using the Ohio Office of Information Technologies' (OIT) Release and Permit system. Any non-state agency, institution of higher education or Cooperative Purchasing member will use forms applicable to their respective agency.

Question regarding this and/or the Master Price Agreement may be directed to:

Dan Myers

dan.myers@das.state.oh.us

This Master Price Agreement and any Amendments or Addendums thereto are available from the DAS Web site at the following address:

<http://Procure.ohio.gov>

PARTICIPATING ADDENDUM

[hereinafter "Addendum"]

For

WSCA/NASPO PC Contracts 2009-2014

COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES

MASTER PRICE AGREEMENT NUMBER B27160

Between

Dell Marketing L.P.

[hereinafter "Contractor"]

and

Ohio, State of, Administrative Services, Dept. of

[hereinafter "Participating State" or "Participating Entity"]

Participating State Contract Number 0A1068

Page 1 of 10

1. Scope

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

2. Participation

The Ohio Revised Code (ORC) establishes the Ohio Department of Administrative Services (ODAS) as the central procurement authority for most state agencies. Law also permits political subdivisions, emergency medical service organizations, private fire companies, and other non-state entities located within the state of Ohio to make purchases from ODAS contracts (ORC 125.04).

3. Changes:

The additional terms and conditions contained in Ohio Exhibit A, attached, are hereby incorporated by reference. In the event of a conflict between the terms contained within Ohio Exhibit A and the WSCA/NASPO Master Price Agreement #B27160, Ohio Exhibit A shall control. In the event that any provision of this Addendum or the Master Price Agreement is contrary to Ohio law, such provision shall be null and void. This Agreement shall be governed by Ohio law.

a. **Elections Law.** Contractor, by signature affixed on this document, hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of O.R.C. Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of O.R.C. Section 3517.13.

The Contractor is solely responsible to know the requirements and limitations set forth in the above-referenced Divisions of O.R.C. Section 3517.13, and to comply with those requirements and restrictions. The Contractor shall not accept a Contract and/or any purchase order issued under the Contract if the Contractor is unable to certify compliance with all provisions set forth in O.R.C. Section 3517.13. If the Contractor is unable to certify such compliance and accepts a Contract and/or purchase order issued under the Contract, DAS shall deem the Contractor in breach. As such, DAS may deem the Contract invalid and immediately cancel the Contract. If DAS cancels the Contract and applicable purchase order(s), the Contractor will be subject to all

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Participating State Contract Number 0A1068

Page 2 of 10

legal remedies available to the Department of Administrative Services up to and including debarment from doing business with the State of Ohio..

Additional information regarding Contribution Restrictions is available on the Office of Budget & Management's website at: www.obm.ohio.gov.

b. Section 9 of the Master Price Agreement is deleted and replaced with the following:

Appropriation Of Funds. The State of Ohio's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the General Assembly fails at any time to continue funding for the payments or any other obligations due by the State under this Contract, the State will be released from its obligations on the date funding expires. Neither the State nor Contractor will have any further obligations, except for those identified elsewhere in this Agreement that survive termination or expiration of this Agreement . In addition, the State or other purchasing entity, if properly appropriated funds are available, will remit payment to the Contractor for all properly submitted invoices that the State received prior to the non-appropriation event.

The current General Assembly cannot commit a future General Assembly to an expenditure. Therefore, this Contract will automatically expire at the end of a current biennium on June 30, 2011. The State may renew this Contract in the next biennium by issuing written notice to the Contractor.

c. **Travel Expenses.** Any travel or living expenses required by the Contractor to do its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior, written approval. All additional travel and living expenses that the State requests in addition to what this Contract requires the Contractor to provide at the Contractor's expense will be paid in accordance with the Office of Budget and Management's Travel Rules in Section 126-1-02 of the Ohio Administrative Code.

d. Section 8.A of the Master Price Agreement is deleted and replaced with the following:

Termination for Convenience. The State may terminate this Contract for its convenience thirty (30) days after issuing written notice to the Contractor. Contractor may terminate the agreement for convenience by giving the State sixty (60) days written notice. If the Contractor will be entitled to compensation for any products that the Contractor has delivered before the

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Participating State Contract Number 0A1068

Page 3 of 10

termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only after the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount determined by the State to be owing to the Contractor.

e. Section 8.B of the Master Price Agreement is deleted and replaced with the following:

Termination for Cause. Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, a reasonable time which shall take into account the breaching party's good faith efforts to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

f. Section 24.A of the Master Price Agreement shall be deleted and replaced with the following:

Indemnity. The Contractor will indemnify the State for any and all claims, damages, lawsuits, costs, judgments, expenses, and any other liabilities resulting from bodily injury to any person (including injury resulting in death) or damage to real or tangible personal property that arises out of Contractors performance under this Contract, provided such bodily injury or property damage is due to the negligence of the Contractor, its employees, agents, or subcontractors. The State agrees that Contractor shall not be liable to the State for any actions, damages, claims, liabilities, costs, expenses or losses in any way arising out of or relating to the goods provided or services performed hereunder for an aggregate amount in excess of \$4,000,000.

g. Section 24.C is modified as follows:

The sentence "The Contractor's liability under the contract for any cause whatsoever shall be limited to an aggregate amount of \$2,000,000" is deleted and replaced with "The Contractor's liability under the contract for any cause whatsoever shall be limited to an aggregate amount of \$4,000,000."

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Participating State Contract Number 0A1068

Page 4 of 10

h. Sections 12.A, B. and C of the Master Price Agreement are deleted and replaced with the following

The Contractor will defend, at its own expense, any claim that any Contractor Branded Product or Contractor Branded Service provided under this Agreement infringes any U.S. or Puerto Rico copyright, patent, trade secret, or similar intellectual property rights, and shall pay all costs, damages and attorneys' fees that a court finally awards. This obligation will not apply where the infringement arises from (i) the State's modification or misuse of the Product and the claim of infringement, is based on the modification or misuse, (ii) the State's improper use of the Product, including use prohibited by Specifications or related application notes, (iii) Contractor's compliance with the State's designs, specifications, or instructions, (iv) Contractor's use of technical information or technology provided by the State, and (v) the State's use of Product with products that are not Contractor branded . The State agrees to give the Contractor notice of any such claim as soon as reasonably practicable and to give the Contractor the authority to settle or otherwise defend any such claim. Notwithstanding anything in this section, should a settlement of a claim of infringement require the State to either (a) admit fault or (b) pay monetary damages, Contractor agrees to settle such claims only upon consultation with and approval by the Office of the State Attorney General. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor will take one (1) of the following four (4) actions at its option:

1. Modify the Product so that it is no longer infringing.
2. Replace Deliverable with an equivalent or better item.
3. Acquire the right for the State to use the infringing Deliverable as it was intended for the State to use under this Contract; or
4. Accept return of the Product and refund the fee the State paid for the Deliverable less reasonable depreciation.

No other changes to the Master Price Agreement are necessary.

4. Continuation of Participation from WSCA/NASPO PC Contracts 2004-2009:

RESERVED

PARTICIPATING ADDENDUM

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For

**WSCA/NASPO PC Contracts 2009-2014
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Participating State Contract Number 0A1068

Page 5 of 10

5. Lease Agreements

Leasing is authorized under this Addendum

6. Primary Contacts

The primary government **contact individuals for this Addendum** are as follows (or their named successors):

Master Agreement 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 Lead:

Name: Stephanie Miller
Address: One Dell Way, Mail Stop 8708, Round Rock, TX 78682
Telephone: (512) 723-4355
Fax: (512) 283-9092
E-mail: Stephanie_G_Miller@dell.com

Participating Addendum Contacts

Participating State:

Name: W. Thomas Hart
Office of Procurement Services
Address: 4200 Surface Road
Columbus, OH 43228-1395
Telephone: (614) 644-8497
Fax: (614) 644-9152
E-mail: tom.hart@oit.ohio.gov

PARTICIPATING ADDENDUM

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Participating State Contract Number 0A1068

Page 6 of 10

Contractor State Contract Manager:

Name: Jill Henderson

Address: One Dell Way, Mail Stop 8708, Round Rock, TX 78682

Telephone: 512-725-0542

Fax: (512) 283-9092

E-mail: Jill_Henderson@dell.com

7. Servicing Subcontractors:

Dell may engage third party service providers to perform various services and has several authorized Dell Service Providers (DSPs). DSPs will not accept orders or payments.

Dell wishes to identify *Servicing Subcontractor(s)* ("**WSCA Agent**") to market Dell's Products and Services, as identified on Dell's Products & Services Schedule ("PSS"), on behalf of Dell. The Participating Entity may utilize WSCA Agents pursuant to the Dell defined WSCA Agent program as defined in a separate written Agreement between Dell and WSCA Agent.

WSCA Agents authorized within the State will have their names identified on the State's respective www.Dell.com/naspowsca Dell state store page.

Placement of Orders and shipment of Order directly from Dell will remain unchanged in the PA. All orders and payments are to be issued directly to: **Dell Marketing L.P.**

All purchase orders issued by purchasing entities with the jurisdiction of this Addendum must include the Participating State contract number 0A1068; and the Master Price Agreement Number B27160

8. Compliance with reporting requirements of the "American Recovery and Reinvestment Act of 2009" ("ARRA"): If Dell is notified by ordering entity that a specific purchase order is being made with ARRA funds, Dell agrees to assist the ordering entity with their requirement to comply with the data element and reporting as currently defined in Federal Register Vol 74 #61, Pages 14824-14829 (or subsequent changes or modifications to these requirements as published by the Federal OMB). Ordering entity is responsible for informing Dell at the time of purchase order placement that ARRA funds are being used. Dell will include the tracking data, if provided by ordering entity, as an element within the utilization report, as per Article 44 of the MPA. Dell, as it relates to purchases under this contract, is not a subcontractor or subgrantee, but simply a provider of goods and related services.

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Participating State Contract Number 0A1068

Page 7 of 10

9. Services:

The terms of the Agreement shall apply each time Customer engages Dell to provide services.

All services provided will be described in one or more of the following:

- (i) "Service Descriptions" used to describe any services purchased by an entity;
- (ii) any mutually agreed upon "Statement of Work" ("SOW") executed by the parties; or
- (iii) any "Technical Specification Form" approved by the parties

10. Evaluation Equipment:

Dell, by mutual agreement with the Participating Entity, wishes to allow the use of equipment for the purposes of evaluation prior to purchase. Purchases of the equipment shall comply with the terms of the Master Purchase Agreement and participating addendum.

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.

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Participating State Contract Number 0A1068

Page 8 of 10

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

Signatures as required by State Statutes, Rules or Policies

State of Ohio

Dell Marketing L.P.

By: *Hugh Quill* / EAH

By: *Teresa Walden*

Name: HUGH QUILL

Name: TERESA WALDEN

Title: DIRECTOR, DAS

Title: SR. CONTRACTS MANAGER

Date: 11-24-09

Date: 11-23-09

Ohio Exhibit A
to
Participating Addendum
For WSCA/NASPO 2009-2014 Contracts

Ohio General Conditions

1. Contractor's Revenue Share

The Contractor agrees to provide a quarterly administrative fee in the form of a Check or EFT payment. The fee will be payable to the Participating Entity in an amount equal to one percent (1%) of the net sales (net of any returns, credits, or adjustments) under this Addendum for the applicable period. The Contractor's WSCA pricing to the Participating Entity shall be adjusted to offset for the equivalent fee amount. Payment(s) shall be made in accordance with the following schedule:

| <u>Period End</u> | <u>Fee Due</u> |
|-------------------|----------------|
| June 30 | July 31 |
| September 30 | October 31 |
| December 31 | January 31 |
| March 31 | April 30 |

The Contractor agrees to provide a quarterly utilization report, reflecting net sales to the Participating Entity during the associated fee period. The report shall be in the format developed by the Lead State and as agreed by the Contractor. The report will be provided in secure electronic format and/or submitted electronically to the state contact listed in the Addendum.

- 2. Certification of Funds.** This Agreement is subject to Section 126.07 of the ORC. That section provides that orders under an agreement with the State are not valid or enforceable until the director of the Office of Budget and Management certifies that there is a balance in the applicable appropriation not already obligated to pay existing obligations.
- 3. Ethics, Executive Order, Political Contributions.** The Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of the Ohio ethics laws.

In accordance with Executive Order 2007-01 S, Contractor, by signature on this document certifies: (1) it has reviewed and understands Executive Order 2007-015, (2) has reviewed and understands the Ohio ethics and conflict of interest laws, and (3) will take no action inconsistent with those laws and this order. The Contractor understands that failure to comply with Executive Order 2007-01 S is, in itself, grounds for termination of this Agreement or grant and may result in the loss of other contracts or grants with the State of Ohio.

The Contractor hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of ORC Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of ORC Section 3517.13.

- 4. Equal Employment Opportunity.** The Contractor will comply with all state and federal laws regarding equal employment opportunity, including ORC Section 125.11 and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the ODAS Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by going to the Equal Opportunity Departments web site: <http://www.das.ohio.gov/Eod/AAEEO.htm>

- 5. Declaration of Material Assistance/Non-Assistance to a Terrorist Organization.** In accordance with ORC Section 2909.33(C), Contractor certifies that it meets one of the following conditions:
- a) Contractor has not received, nor will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year; or
 - b) (1) Contractor has received, or will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year, and
(2) Contractor has either pre-certified with the OBM, or has completed the attached

Declaration of Material Assistance form certifying that Contractor has not provided material assistance to any organization on the Terrorist Exclusion List, as that term is defined in ORC 2909.21.

6. **Contractor's Warranty Against an Unresolved Finding for Recovery.** Contractor warrants that it is not subject to an unresolved finding for recovery under ORC 9:24. If the warranty was false on the date the parties signed this Agreement, the Agreement is void *ab initio*.

7. **Reserved**

8. **Drug Free Workplace.** The Contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace and shall make a good faith effort to ensure that all its employees, while working on state property, will not purchase, transfer, use or possess illegal drugs, or alcohol or abuse prescription drugs in any way.

9. **Invoice Requirements.** The Contractor must submit an original invoice to the office designated in the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information:

- a) The purchase order number authorizing the delivery of products or services,
- b) A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit pricing, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).

If an authorized reseller has fulfilled the purchase order, then the reseller's information should be supplied in addition to the Contractor's information.

10. **Payment Due Date.** Payments under this Addendum will be due on the 30th calendar day after the later of:

- a) The date of actual receipt of a proper invoice in the office designated to receive the invoice or the date the service is delivered and accepted in accordance with the terms of the Agreement.
- b) The date of the warrant issued in payment will be considered the date payment is made. Interest on late payments will be paid in accordance with ORC Section 126.30.

How To Order

Information pertaining to the WSCA/NASPO PC Contracts 2009-2014 Computer Equipment, Peripherals, and Related Services Contract can be found at:

<http://www.aboutwsca.org/contract.cfm/contract/w2-1999>

Information regarding purchasing Dell computers off of the Dell WSCA contract can be found at:

<http://www.dell.com/us/slqov/p/d/slq/ohio.aspx>