



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 B27168

Between

Lenovo (United States) Inc.

[hereinafter "Contractor"]

and

State of Ohio

[hereinafter "Participating State"]

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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

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 Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

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 #B27168, 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.

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

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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 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.

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.

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. The State may renew this Contract in the next biennium by issuing written notice to the Contractor or by actions of the State of the decision to do so.

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.

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Patent, Copyright, Trademark and Trade Secret Indemnification. The following text replaces Section 12, Subsection A, Part 2.

"The State will notify the Vendor promptly upon learning of any claim for which defense or settlement may be sought. The State will also notify the State of Ohio Attorney General (Attorney General) of such claim, if applicable, and either (a) the Attorney General shall provide authorization to the Vendor to use counsel reasonably experienced in the subject matter at issue, control the defense, and settle the claim, or (b) the State shall promptly notify Vendor that the State will control the defense."

Termination for Convenience. The following text replaces the first sentence of Section 8(A).

"The State may terminate this Contract for its convenience after issuing thirty (30) days prior written notice to the Contractor. If the termination is for the convenience of the State, the Contractor will be entitled to compensation for any Deliverable that the Contractor has delivered before the 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."

Termination for Cause. The following sentence is added to the beginning of Section 8(B).

"If Contractor's default is unable to be cured in a reasonable time, the State may terminate the Contract by written notice to the Contractor."

Indemnity and Limitation of Liability. The following sentence replaces the first two sentences of Section 24

"The Contractor will indemnify the State for any and all claims, damages, lawsuits, costs, judgments, expenses, and any other liabilities resulting from

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bodily injury to any person (including injury resulting in death) or damage to real or tangible personal property that may arise out of or are related to Contractors performance under this Contract, providing such bodily injury or property damage is due to the negligence of the Contractor, its employees, agents, or subcontractors. Except for the indemnification provided in Sections 12 and this Section 24, the State agrees that the maximum cumulative liability of the Contractor, its employees, agents, and subcontractors to the State for all actions, damages, claims, liabilities, costs, expenses or losses in any way arising out of or relating to the goods provided or services performed hereunder shall not exceed two times the amount of all purchase orders under this Contract during the Term of this Contract."

The following text will be added at the end of Section 24:

EXCEPT FOR THE INDEMNIFICATION PROVIDED IN SECTIONS 12 AND THIS SECTION 24, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR (A) LOSS OF PROFITS, BUSINESS REVENUE, GOODWILL OR ANTICIPATED SAVINGS; (B) DAMAGES OR LOSSES TO THIRD PARTIES; (C) LOSS OF OR DAMAGE TO DATA; OR (D) ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWSOEVER CAUSED.

Patent, Copyright, Trademark and Trade Secret Indemnification. The following text replaces Section 12(A) and (B)

The Contractor will also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim of infringement, is based on the modification or misuse. 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 upon consultation with and approval by the Office of the State Attorney General. If a successful claim of

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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:

1. Modify the Deliverable so that the deliverable is no longer infringing.
2. Replace Deliverable with a functionally 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.

No other changes to the Master Price Agreement are necessary.

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

To the extent permitted by the laws and rules of the state in which an individual participating entity is located, valid participating addenda for the WSCA/NASPO PC Contracts 2004-2009 are hereby extended to include participation in the WSCA/NASPO PC Contracts 2009-2014 under the same terms and conditions in the current participating addendum.

If re-execution of a participating addendum or amendment to an existing participating addendum is required by a participating entity, the authorization to participate in the WSCA/NASPO PC Contracts 2004-2009 is sufficient to permit participation in the WSCA/NASPO PC Contracts 2009-2014, unless specifically denied by the appropriate chief state procurements official.

5. Lease Agreements

No Leasing Is Authorized to State Agencies Under this Addendum at this time.

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Political subdivisions or educational entities that have the authority may finance their purchase. If financing is through a lease agreement, that agreement is separate from this agreement and between the Contractor and the agency.

6. Primary Contacts

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

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: Gerolynn Martin
Address: 1009 Think Place, Building 1,3A17
Telephone: (919) 294-2860
Fax: (919) 257-4987
E-mail: gmartin4@lenovo.com

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

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7. Servicing Subcontractors:

Lenovo will use "Reseller Agents" to assist with marketing of Lenovo products to the WSCA/NASPO end users and may utilize "Resellers" to order and fulfill product based on an individual state's request in their Participating Addendum.

All contractor authorized Reseller Agents, are listed on the state's individual WSCA/NASPO page on this website <http://www.lenovo.com/shop/deals/oh>. Resellers will be listed separately if approved by both Lenovo and the State of Ohio.

All orders are to be issued directly to:

Lenovo (United States) Inc.

1009 Think Place, B1

Morrisville, NC 27560

Fax: (919) 257-4988

- OR -

To the Lenovo approved Reseller

And all payments are to be issued to:

Lenovo (United States), Inc.

PO Box 643068

Pittsburg, PA 15264-3068

- OR -

To the Lenovo approved Reseller

All purchase orders issued by purchasing entities with the jurisdiction of this Addendum must include the Participating State contract number: 0A1069; and the Master Price Agreement Number: B27168

8. Compliance with reporting requirements of the "American Recovery and Reinvestment Act of 2009" ("ARRA"): If Contractor is notified by ordering entity that a specific purchase order is being made with ARRA funds, Contractor agrees to assist

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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 Contractor at the time of purchase order placement that ARRA funds are being used. If the ordering entity indicates that ARRA funds are being used as per above, Contractors agrees to include a yes/no ARRA data element within the utilization report to assist the entity with the tracking of ARRA funded purchases, as per Article 44 of the MPA. Contractor, as it relates to purchases under this contract, is not a subcontractor or subgrantee, but simply a provider of goods and related services.

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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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

Lenovo (United States) Inc.

By: *Hugh Quill / SAH*

By: _____

Name: *HUGH QUILL*

Name: Gerolynn Martin _____

Title: *DIRECTOR, DAS*

Title: Senior Program Manager _____

Date: *1-5-2010*

Date: _____

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 Lenovo computers off of the Lenovo WSCA contract can be found at:

http://shop.lenovo.com/SEULibrary/controller/e/1213521260/LEPortal/en_US/LE:Home