

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES
EXECUTIVE INFORMATION SYSTEMS, LLC

1. Introduction

A. Parties

This Contract for Products and Related Services (“Contract”) is entered into between the State of Texas (“State”), acting by and through the Department of Information Resources (“DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Executive Information Systems, LLC (“Vendor”), with its principal place of business at 6901 Rockledge Drive, Suite 600, Bethesda, MD 20827-0076.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State. DIR determined that the GSA Schedule GS-35F-0170K held by Vendor (“GSA Schedule”) offered best value to the State of Texas, under the authority granted by Chapter 2155, Subchapter I, Government Code, as amended by Acts of the 80th Legislature, HB 2918, Section 8, effective September 1, 2007. Upon execution of this Contract, a notice of award shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Exhibit 1, the GSA Schedule, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor (collectively, the “Agreement”). In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, and finally the GSA Schedule. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend this Contract, upon mutual agreement, for up to two (2) optional one-year terms.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to products as specified in the GSA Schedule. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

B. Services

Services available under this Contract are limited to services as specified in the GSA Schedule. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three-quarters of one percent (0.75%). For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon thirty (30) days advance written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Dana L. Collins, CTPM, CTCM
Manager, Contract and Vendor Management
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 936-2233
Facsimile: (512) 475-4759

Email: dana.collins@dir.texas.gov

If sent to the Vendor:

Pat Krause
Executive Information Systems, LLC
6901 Rockledge Drive, Suite 600
Bethesda, MD 20827-0076
Phone: (301) 581-8594
Facsimile: (301)581-2573
Email: PKrause@execinfosys.com

7. Software License and Service Agreements

A. Software License Agreement

Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the terms and conditions of the GSA Schedule. No changes to the GSA Schedule terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in the GSA Schedule. Order Fulfiller shall make the GSA Schedule terms and conditions available to all Customers at all times.

Compliance with the GSA Schedule is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with GSA Schedule. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the GSA Schedule terms and conditions.

B. Shrink/Click-wrap License Agreement

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher. Shrink/Click-wrap License Agreement shall not

include any additional services or software terms which may be included by mutual agreement of the parties to any Purchase Order issued by any Customer.

C. Service Agreement

Services provided under this Contract shall be in accordance with the GSA Schedule. No changes to the GSA Schedule terms and conditions may be made unless previously agreed to by Vendor and DIR.

D. Conflicting or Additional Terms

In the event that conflicting terms in Vendor Software License Agreements, Shrink/Click Wrap License Agreements, Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, any such conflicting terms shall not take precedence over the terms of this Contract.

8. Authorized Exceptions to Contract or any Appendices.

A. Appendix A, Section 5. Intellectual Property Matters, M. is hereby added as follows:

Notwithstanding anything else contained to the contrary in this Section 5, the parties acknowledge and agree that SAS Institute Inc. shall own all right, title, and interest in all of its Vendor IP, as well as (i) all SAS software licensed to any Customer hereunder, as well as any derivatives (whether or not pre-existing) of its existing intellectual property created at any time (including in the course of performing services for any Customer), and (ii) any concepts, techniques, skills, inventions or ideas (whether or not pre-existing) that are inherently disclosed or developed through the performance of the services (collectively, "Existing IP"). No other term or provision shall otherwise operate to transfer ownership in the Existing IP to DIR, any Customer, or any other third party. To the extent any Existing IP is embedded within any Work Product delivered to DIR or any Customer hereunder, SAS hereby grants Customer (or DIR, applicable), a perpetual, nontransferable, non-assignable, royalty-free license to use such Existing IP within such Work Product only with the SAS software with which the Work Product is designed to operate, and only for as long as Customer maintains a license for such software. Such license granted to such Existing IP shall not be construed as granting Customer a license to any SAS software, which must be separately licensed by DIR or Customer.

Notwithstanding the definition contained in Section 5(A)(1) hereof, with respect to any "Work Product" produced by Vendor, the parties further acknowledge and agree that such term shall only include reports, statistical analyses, work papers, specifications, or designs that are the output caused by operation of any licensed SAS software which result from any services rendered by EIS; provided, however, such Work Product shall not include the Existing IP, including without limitation that part thereof that causes the SAS software system to create and display such output. Such Work Product as defined

in the preceding sentence and copyright therein is the only work to be developed, or for which ownership purchased, under any resulting contract between Vendor and any Customer.

Each Customer shall own all right, title, and interest in and to its own Customer Materials. Each Customer grants to EIS a limited, nontransferable, nonexclusive, royalty-free license to use, and to allow SAS to use, any Customer Materials in connection with EIS' performance of any Services for a specific Customer. "Customer Materials" means (a) any Customer computer code, documentation or other materials developed by or for a Customer prior to performance of the services and (b) any Customer confidential information which is contained in any Work Product delivered to a Customer by EIS hereunder and any portion of any Work Product that discloses any such Customer Information, including, with respect to both items (a) and (b), all intellectual property rights therein.

The parties acknowledge and agree that this Section 5 shall only apply to the delivery of services hereunder and shall not apply to the license of any SAS software to any Customer. The parties further acknowledge and agree that: (i) subsection (I) of this Section 5 shall not refer to or include any SAS software, which must be separately licensed and the terms of which are not otherwise subject to this Section 5, and (ii) the third to last sentence of subsection (B) of this Section 5 shall not apply to Vendor.

B. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, B. Customer Discount, is hereby deleted in its entirety and replaced as follows:

The price to the Customer shall be the then-current GSA Contract Price. Vendor shall provide updates to DIR of any changes to the GSA Contract Price. The "GSA Contract Price" is defined as the product sales price available to Customers pursuant to the GSA Schedule held by Vendor.

C. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, C. Customer Price, is hereby deleted in its entirety and replaced as follows:

The minimum Customer discount for all products and services will be the GSA Contract Price in effect at the time of the order. Customer Price includes the DIR Administrative Fee.

D. Appendix A, Section 8. Pricing, Purchase Orders, Invoices and Payments, G. Changes to Prices, is hereby deleted in its entirety and replaced as follows:

Vendor may change the price of any Product or Service at any time, based upon changes to the applicable GSA Contract Price. GSA Contract Price decreases shall take effect automatically during the term of this Agreement for new Orders received on or after the date such decreases become effective pursuant to the GSA Schedule.

E. Appendix A, Section 10, Vendor Responsibilities, K. Limitation of Liability, is hereby deleted in its entirety and replaced as follows:

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages (arising in contract or tort), even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages relating to all matters covered by the Agreement or use of the Software, or any Work Product resulting from any services delivered hereunder, shall be limited to the greater of (i) \$1 million dollars or (ii) three times the license or service fees identified on the purchase order for the specific Software product(s), or services, at issue during the then-current license period. However, this limitation of Vendor's liability shall not apply to claims of bodily injury, or violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement.

F. Appendix A, Section 10, Vendor Responsibilities, N.1) Required Insurance Coverage, 1. , is hereby deleted in its entirety and replaced as follows:

Commercial General Liability must include a combined single limit of \$1,000,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate limit of \$2,000,000. Agencies may require additional Umbrella/Excess Liability insurance, provided such amount is mutually agreed upon by the parties. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured;
- d) 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

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This Contract is executed to be effective as of the date of last signature.

Executive Information Systems, LLC

Authorized By: Signature on File

Name: R. Patrick Krause

Title: Vice President

Date: 9/9/14

The State of Texas, acting by and through the Department of Information Resources

Authorized By: Signature on File

Name: Todd Kimbriel on behalf of Karen Robinson

Title: Executive Director

Date: 9/12/14

Office of General Counsel: drb 9/12/14