

INTERLOCAL PROCUREMENT PARTICIPATION AGREEMENT

THIS INTERLOCAL PROCUREMENT PARTICIPATION AGREEMENT (“Contract”) is entered into by and between the governmental entities shown below as contracting parties, pursuant to the authority granted and in compliance with the provisions of the Interlocal Cooperation Act, Texas Government Code, Chapter 791; Section 2054.0565, Texas Government Code; and Oklahoma Statutes Title 74, Section 85.5.

SECTION I. CONTRACTING PARTIES

Oklahoma Office of Management and Enterprise Services,
Information Services Division (OMES-ISD) on behalf of the State of Oklahoma
3115 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105
405/522-0122; 405/522-3042 (Fax)

Department of Information Resources (DIR)
300 W. 15th Street, Suite 1300
Austin, Texas 78701
512/475-4700; 512/475-4759 (Fax)

SECTION II. STATEMENT OF PURPOSE

A. The purpose of this Contract is to allow the State of Oklahoma and its governmental affiliates to purchase technology goods and services through DIR Cooperative Contracts and to afford the DIR assistance from time to time with certain procurement functions. This Contract provides for the pilot of a sourcing arrangement, as described below, for the purpose of determining the proper allocation of vendor-paid fees, administrative procurement costs, and risks that will allow the parties to make a better informed decision regarding a potential longer term agreement.

B. The parties agree that the obligations and benefits set forth herein do not constitute a joint or cooperative undertaking and, therefore, do not require a separate legal entity, budget or financing. The parties further agree that nothing contained herein shall authorize the acquisition, holding or disposing of property jointly by DIR and OMES-ISD.

C. This Contract does not create an employment relationship between the parties. Employees of either party performing services required by this Contract are not employees of the other party and, accordingly, shall not be eligible for rights or benefits accruing to employees of the other party including but not limited to health insurance benefits, workers' compensation insurance, paid vacation or other leave, or any other employee benefit.

SECTION III. BACKGROUND

A. The State of Texas, acting by and through DIR, has established a Cooperative Contracts program allowing for the purchase of information technology goods and services by a governmental entity of Texas or another state. Cooperative Contracts established by DIR comply with the competitive procurement requirements established in Texas law, and OMES-ISD believes that such requirements meet the procurement requirements established in Oklahoma law so that the state of Oklahoma may utilize the Cooperative Contracts.

B. OMES-ISD has proposed designating DIR Cooperative Contracts as a Preferred Source to the extent permitted by applicable Oklahoma law and the underlying Cooperative Contracts for information technology and telecommunication goods and services purchases by Oklahoma executive state agencies and governmental affiliates to achieve cost savings and improve efficiency. "Governmental affiliates" is meant to encompass any Oklahoma public entity allowed to use the coop contracts, whether an executive, legislative or judicial state agency, school or a local, county or other similar public entity.

C. OMES-ISD has further proposed that the sourcing arrangement provide for a sharing of the administrative fee collected from a vendor by DIR for purchases made in connection with this Contract.

D. The parties anticipate the following mutual benefits:

1. Lower costs through increased volume;
2. Improved response from Vendors; and
3. Collaborative experience leading to better product specifications.

SECTION IV. STATEMENT OF TERMS AND RESPONSIBILITIES.

A. DIR

1. DIR will allow the State of Oklahoma and its governmental affiliates to procure those information technology and telecommunication goods and services available through existing and future Vendor Cooperative Contracts, in accordance with specifications from the procuring entity. All DIR Vendor Cooperative Contracts will be made available to OMES-ISD via the DIR Internet web site. If a formal vendor protest occurs with respect to any such Cooperative Contract, DIR will comply with the vendor protest procedures under Texas Administrative Code Title 1, Part 10, Chapter 201, §201.1. DIR shall notify the Chief Information Officer of Oklahoma if a formal protest is filed and the disposition of such formal protest related to any Vendor Cooperative Contract covered under this Contract.
2. DIR will provide its DIR Board approved annual procurement plans to OMES-ISD within a reasonable time after approval. Draft annual procurement plans may be provided to OMES-ISD upon request based on a reasonable business purpose.
3. Subject to the provisions of Section VII, Confidentiality, DIR will notify OMES-ISD of any substantial problem in quality or service in relation to a vendor under a DIR Cooperative Contract, to the extent that DIR is made aware of the problem and, upon reasonable request, will update OMES-ISD with respect to progress toward resolution of such vendor problem.

B. OMES-ISD

1. OMES-ISD will designate DIR Cooperative Contracts as a Preferred Source for information technology and telecommunication goods and services to the extent permitted by applicable law. For the purposes of this Contract, "**Preferred Source**" shall mean and refer to a designation by OMES-ISD that the Cooperative Contract pool shall be utilized for applicable procurements by executive state agencies in precedence behind state-wide mandatory contracts. The precedence shall be recommended to governmental affiliates as

well. Both parties acknowledge that OMES-ISD does not have the authority to require governmental affiliates to adhere to the precedence set forth by OMES-ISD for executive state agencies. The State of Oklahoma shall bear no liability for the acts or omissions of a procuring entity that is not a state agency and privity of contract with respect to purchases and performance by such procuring entity shall exist solely between the respective vendor and such procuring entity.

2. Each procuring entity will issue a Purchase Order directly to the relevant vendor in accordance with the ordering instructions posted on the DIR Internet website.
3. Subject to the provisions of Section VII, Confidentiality, OMES-ISD will notify DIR of any substantial problem in quality or service in relation to a vendor under a DIR Cooperative Contract, to the extent that OMES-ISD is made aware of the problem and, upon reasonable request, will update DIR with respect to progress toward resolution of such vendor problem.
4. For issues between DIR and the State of Oklahoma, acting by and through OMES-ISD, in connection with the terms of this Contract, Texas law will apply, with the site of performance stipulated as Travis County, Texas. The parties stipulate that there are no third party beneficiaries to this Contract.
5. Oklahoma procuring entities may, to the extent allowed by Oklahoma law, rules, and associated procurement procedures and processes, negotiate with any vendor for special terms and conditions in a purchase order, addendum, vendor statements of work or service level agreements, such as remedies, acceptance criteria, venue, choice of law, VPAT requirements, information confidentiality and security requirements, and other terms specific to the transaction to the extent such terms and conditions do not conflict with or diminish a term or condition of the DIR Cooperative Contract.
6. Upon request by DIR, OMES-ISD will provide available personnel to assist in the procurement of Cooperative Contracts. DIR will provide OMES-ISD, in advance of assistance being provided, applicable Texas-specific requirements of law, rules, regulations, policy, procedure and business processes and DIR will have the right of oversight by DIR procurement personnel. The parties agree to cooperate in good faith to plan and schedule any such assistance. Assistance may be requested in the following areas, or other areas as determined by the parties:
 - a) Subject matter expert;
 - b) Evaluation of offers;
 - c) Drafting of procurement specifications;
 - d) Vendor and Oklahoma affiliate outreach; and
 - e) Development of marketing plans for Oklahoma governmental affiliates.
7. OMES-ISD will provide a summary of its projected annual technology purchasing plans, including the Oklahoma executive state agencies and governmental affiliates, to DIR by June 1 of each year. The summary shall include both goods and services and related price estimates, covering the annual period from September 1 to August 31.
8. OMES-ISD will work with Oklahoma governmental affiliates to resolve material disputes involving purchases made pursuant to this Contract, including acceptance of goods and services or payments to vendors, before escalating such disputes to DIR. Subject to OMES-

ISD first attempts at resolution, DIR shall assist Oklahoma procuring entities in resolving such disputes.

SECTION V. FEES FOR SERVICES

A. Sharing of Administrative Fees

In consideration for (a) OMES-ISD designating DIR Cooperative Contracts as a Preferred Source of information technology and telecommunication goods and services, and (b) the additional benefits to DIR described in this Contract, DIR agrees to share Cooperative Contracts administrative fees collected by DIR attributable to purchases made by Oklahoma governmental entities during the term of this Contract. The share, payable to OMES-ISD, shall be calculated as follows:

DIR and OMES-ISD shall each recover their respective direct costs in a proportional manner and in the following priority:

- 1) One-time costs
- 2) Monthly operational costs

One time and monthly operational costs shall only include those costs that are directly incurred to solely support the activities contemplated by this Contract. The points of contact designated in Section IX below shall meet regularly to review planned expenses that may be incurred to determine if the expenses meet the criteria for inclusion in the cost recovery calculation.

If at any time the administrative fee revenue is insufficient to recover the parties' unrecovered one time and accrued monthly operational costs, the parties will divide the administrative fee revenue proportionately, according to their unrecovered and accrued costs.

Following recovery of unrecovered one time and accrued monthly operational costs, the remaining administrative fee revenue shall be distributed to DIR and OMES-ISD equally.

All fees for late reporting or late payment of administrative fees paid by Vendors shall be retained by DIR and not included in the administrative fee share calculation.

B. Reporting and payment of fees

1. Monthly Report

DIR shall electronically provide OMES-ISD with a detailed monthly report showing the dollar volume of any and all sales under the Contract attributable to purchases made by Oklahoma governmental entities for the previous month period. Reports shall be submitted to: statewidecontractreports@omes.ok.gov.

Reports are due on the 5th business day after the accounting close of the previous month period. The monthly report shall include, per transaction: the detailed sales for the period, the Order Fulfiller's company name, if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, MSRP or list price, actual unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as required by the parties, to the extent that the information is included in the Monthly Vendor Sales Report.

2. Administrative Fee Share

The OMES-ISD share of the related administrative fee shall be paid by DIR to OMES-ISD on the 5th business day after the accounting close of the previous month period. Payments shall be submitted to:

OMES-ISD
3812 North Sante Fe, Suite 290
Oklahoma City, Oklahoma 73118

C. Reconciliation

Administrative fees received by DIR from vendors after the reporting date in subsection B above, shall be reported and the related administrative fee share paid for the month in which the administrative fees were actually received. Other adjustments, such as those related to refunds, error corrections, or returns, shall be similarly reported and adjusted to OMES-ISD for the month in which the adjustment is made and received by DIR.

SECTION VI. AUDIT RIGHTS.

A. DIR

1. Acceptance of funds under this Contract by OMES-ISD acts as acceptance of the authority of the State Auditor's Office, DIR or any successor agency, to conduct an audit or investigation in connection with those funds. OMES-ISD further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records reasonably requested. OMES-ISD will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through OMES-ISD and the requirement to cooperate is included in any subcontract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.
2. OMES-ISD shall maintain adequate records to establish compliance with this Contract until the later of a period of four (4) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. OMES-ISD shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff.

B. OMES-ISD

1. As used in this Contract, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. DIR agrees any pertinent state or federal agency shall have the right to examine and audit all records relevant to execution and performance of this Contract.
2. DIR shall retain records relative to this Contract for the duration of this Contract and for a period of four (4) years following completion and/or termination of this Contract. If an audit, litigation, or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years

from the date that all issues arising out of the action are resolved, or until the end of the four (4) year retention period, whichever is later.

SECTION VII. CONFIDENTIALITY.

DIR and OMES-ISD acknowledge that each party is a state agency subject to the Texas Public Information Act and the Oklahoma Open Records Act, respectively. Each party will comply with its applicable state and federal law and related Attorney General opinions regarding confidential and otherwise protected information including but not limited to the Texas Public Information Act and the Oklahoma Open Records Act. Information designated as “confidential” by either party will remain in the ownership of the providing party and shall be treated in accordance with the law applicable to the providing party.

The parties agree to cooperate in good faith with regard to matters affecting confidential information. This Section of the Contract shall survive termination of the Contract.

SECTION VIII. TERM OF CONTRACT.

This Interlocal Procurement Participation Agreement will begin when fully executed by both parties and will continue until June 30, 2015. This Contract may be extended by mutual written agreement of the parties.

Either party, upon written notice, may terminate this contract on thirty (30) days advance written notice. In the event this Contract expires or is terminated for any reason, the State of Oklahoma and its governmental affiliates shall retain its rights under this Contract, any Purchase Order issued and additional terms and conditions agreed to between a procuring entity and a vendor prior to the expiration or termination of this Contract. A Purchase Order, vendor contract amendment or other similar document survives the expiration or termination of the Contract for its then effective term.

Following termination of this Contract, DIR will apportion and distribute administrative fees applicable to surviving Purchase Orders in accordance with the terms of this Contract. The parties additionally agree to cooperate to fulfill and perform any outstanding obligations hereunder and to effect a proper wind-up of this Contract.

SECTION IX. POINTS OF CONTACT

Each party shall provide a point of contact for management of this Contract. Either party may change its respective point of contact by written notice to the other party. The initial points of contact for the parties are:

For DIR:

Mary Cheryl Dorwart
Director Technology Sourcing Office
300 W. 15th Street, Suite 1300
Austin, Texas 78701
512/463-3909
mc.dorwart@dir.texas.gov

For OMES-ISD:

Lisa McKim
IT Procurement Manager
3115 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105
405/522-0248
Lisa.mckim@omes.ok.gov

SECTION X. MISCELLANEOUS

- A. If either party defaults in performance of a material obligation hereunder, the other party may provide written notice and description of such default and request that the default be cured within thirty (30) days. Neither party waives sovereign immunity and the right to termination or request cure shall be the exclusive remedy of the non-defaulting party.
- B. The section headings used in this Contract are for convenience only and do not constitute part of the Contract.
- C. If any provision of this Contract is held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

SECTION XI. CERTIFICATIONS OF AUTHORITY.

DIR hereby certifies that it has statutory authority to enter in to this Interlocal Procurement Participation Agreement and perform its duties hereunder pursuant to Texas Government Code, Chapter 791 and Sections 2054.0565 and 2157.068.

OMES-ISD hereby certifies that it has statutory authority to enter in to this Interlocal Procurement Participation Agreement and perform its duties hereunder pursuant to 74 O.S. Section 85.5.

[SIGNATURE PAGE FOLLOWS]

**Signature Page to
Interlocal Procurement Participation Agreement**

**OKLAHOMA OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES,
INFORMATION SERVICES DIVISION, ON BEHALF OF THE STATE OF
OKLAHOMA**

Authorized By: ___Signature on file_____

Name: James L. Reese, II

Title: Interim Chief Information Officer

Date: _____6-11-14_____

**THE STATE OF TEXAS, acting by and through the DEPARTMENT OF INFORMATION
RESOURCES**

Authorized By: ___Signature on file_____

Name: Karen Robinson

Title: Executive Director

Date: _____6-13-14_____

Office of General Counsel: _____6-12-14 ____