CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Fire

AGENDA DATE: 3/17/2009

CONTACT PERSON/PHONE: Manuel Chavira 771-1000
Terrence Freiburg, Purchasing Manager, 541-4313

DISTRICT(S) AFFECTED: All

SUBJECT:
That the Purchasing Manager be authorized to issue a Purchase order(s) to Checkpoint Services Inc., A State Department of Information Resources (DIR) contractor under Dir state Contract DIR- SDD-890 for Dell Computer and equipment products in the amount of $16,050.01

BACKGROUND / DISCUSSION:
Purchasing 17 Dell Computers.

PRIOR COUNCIL ACTION:
No.

AMOUNT AND SOURCE OF FUNDING:
Award amount is $16,050.01

Funds available in 22010090/503101/01101, Fire Administration, equipment Purchase $11,324.01 and 22150024/508035/07175, Grant 220607, Fire Department Grants Communications Equipment, OPS & Safety Program FY06 $4,726.00

SOURCE OF FUNDING:

BOARD / COMMISSION ACTION:
N/A

**********REQUIRED AUTHORIZATION**********

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: Manuel Chavira

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

FINANCIAL SERVICES, PURCHASING DIVISION

DATE: March 3, 2009

TO: Municipal Clerk

FROM: Terrence Freiburg — Ray Heredia

FINANCIAL SERVICES, PURCHASING DIVISION — PROCUREMENT ANALYST

Please place the following item on the Regular Agenda for the Council Meeting of **March 17, 2009**.

Item should read as follows: That the Purchasing Manager be authorized to issue a Purchase Order to Checkpoint Services, Inc., a State Department of Information Resources (DIR) contractor under DIR State Contract DIR-SDD-890 for Dell 755 Optiplex Computers in the amount of $16,050.01. This purchase coupled with the purchase of previous computers ($123,949.92) will increase the total purchases for computers for this vendor to $139,999.93 in this fiscal year.

Participation by the City of El Paso in the DIR Program was approved by Mayor and Council on February 27, 2007.

Award amount is $16,050.01
Funds available in: 22010090-503101-01101 Fire Administration, Equipment Purchases and 22150024-508035-07175 Grant 2206007, Fire Dept. Grants Communications Equipment, OPS & Safety Program FY06.

Department: Fire

SPECIAL INSTRUCTIONS: _____

City Clerk's Use ITEM NO._____

Dedicated to Outstanding Customer Service for a Better Community

SERVICE SOLUTIONS SUCCESS

To: Ray Heredia, Procurement Analyst

From: Chief Manuel Chavira, Acting Fire Chief

Authorized Signature

Date: March 9, 2009

Re: Texas Department of Information Resources, Contract DIR# TOF82ABO DIR SSD-890

The Fire Department recommends purchasing these 14 Dell Optiplex 755 and 3 Dell Latitude E6400 computers. The purpose of the purchase of these computers is to replace the outdated computers that are approximately eight years old.

1. *Is there an urgent need for the product/service? In other words, is time of the essence?*
Yes, there is an urgent need for these computers. The department is in the process of implementing three software programs that will require the service capacity that the new computers will provide. Time is of the essence since the implementation phase of the upgrade is ongoing at this time.

2. *Does the purchase through the Program promote the standardization of equipment?*
Yes, the purchase has been vetted through the Information Technology Department, who checked for standardization and the purchase is being made through their recommendation.

3. *Does the purchase through the Program support local business? If not, is there a comparable product/service available locally?*
Yes, the purchase supports local business as Checkpoint Services, the vendor, is a locally-owned business.

4. *Do the available vendors have prior work experience and/or familiarity with the City?*
Yes, the Fire Department has made several purchases with Checkpoint and they are familiar with our purchase requirements and service.

5. *Is the pricing reasonable as compared to other similar products/work performed for the City of El Paso in the past or as quoted from other companies?*
Yes, the pricing is reasonable as compared to other vendors.

The participation by the City of El Paso in the Texas Department of Information Resources was approved by Mayor and City Council on February 27, 2007. The standard factors used to determine the use of a Cooperative Purchasing program were approved by City Council on June 24, 2008.

THE CITY OF EL PASO TEXAS

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susannah M. Byrd

District 3
Emma Acosta

District 4
Melina Castro

District 5
Rachel Quintana

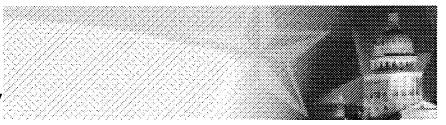
District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Beto O'Rourke

City Manager
Joyce A. Wilson

State of Texas
Department of Information Resources
Leadership for Texas Government Technology



DIR Store - Products and Services

- Buyer Alerts
- Overview
- Go DIRect Program
- Customer Eligibility
- Customer FAQs
- Vendor FAQs

Related Information

- Contracting and Procurement Services Division
- Current Contracting Initiatives

Search DIR

Enter text here

Search

Advanced Search

Go DIRect

for Purchase or Lease of Dell-Branded Hardware and Relatec Services

Dell Marketing, L.P. and its resellers offer Dell-branded hardware, related services, and select third party peripherals to Texas governmental and public educational entities at discounted prices through DIR's Go DIRect Program.

- Available Equipment
- How to Order
- Contract Information
- Contacts

Available Equipment

- Desktops
- Monitors
- Notebooks/Portables
- Peripherals
- Servers
- Storage
- Software
- Third Party Software and Peripherals
- Related Accessories, Components

How to Order

- Visit the Premier Dell website, a secure, customizable procurement and support site designed to save DIR eligible customers time and money through all phases of I/T product ownership.
- For information on leasing Dell equipment, please contact one the Dell representatives listed at the bottom of the page.
- Prices shown are for all DIR customers. Pricing is not separat for Government, Higher Education and K-12. Ground shipping free; if you request an expedited orde ryou are responsible foı additional shipping charges.

- When you have completed the order information, print your qu form or submit the order online.
- If you have never ordered directly from Dell, Dell requires that you submit a Tax Exemption Certificate. Your order will be delayed if Dell does not have a copy of your tax certificate on
- Under this contract eligible customers have the following orde options:
  - Customers may place purchase orders directly with Dell Customers buying directly from Dell will generate a purchase order payable to **Dell Marketing.**
  - Customers may place their purchase orders directly with Dell Participating Reseller, listed below, of their choice. Customers buying directly from Participating Resellers w generate a purchase order payable to the **Participating Reseller**. Customers placing orders with Participating Resellers that are certified by the State as a Historically Underutilized Business (HUB) will capture 100% HUB credit for the procurement.

  Note: All customer purchase orders must reference contract number **DIR-SDD-890** and contract code **#48ABO** when submitted to Dell or a Participating Reseller.
- Fax your purchase order, quote form, and tax certificate (if required) to the appropriate number below.

Contract Information

To access PDF files, use the free Adobe Acrobat Reader.

Contract DIR-SDD-890 expires 01/14/2010 (78 KB)
Appendix A, Standard Terms and Conditions (151 KB)
Appendix B, HUB Subcontracting Plan (90 KB)
Appendix C, Product and Pricing Index (55 KB)
Appendix D, Customer Master Services Agreement (66 KB)
Amendment 1 (16 KB)
Appendix E Master Lease Agreements:

- Lease Purchase Schedule (51 KB)
- Dell Flex Lease Purchase Schedule (65 KB)
- True Lease Schedule (46 KB)
- Master Lease Agreement (140 KB)

Contacts

Vendor Contacts

Vendor	HUB	Contact
Dell Marketing, L.P. **Vendor ID: 174-261-6805-400**	No	Dell contacts

Advant Tech Solutions **Vendor ID: 142-160-6450-200**	Woman Owned	Cindy Moreno Phone: 832-595-878 Fax: 832-595-1980
Austin Ribbon and Computer **Vendor ID: 174-233-9797-900**	Woman Owned	ARC contacts Phone: 800-783-745 Fax: 512-452-0691
Checkpoint Services **Vendor ID: 174-277-5490-200**	Woman Owned	Kristen Cox Phone: 915-581-118 Fax: 915-585-7751
Commonwealth Computer **Vendor ID: 174-274-8769-300**	Black Male	Bill Broadus Phone: 210-698-382 Fax: 210-698-3231
NWN Corp. **Vendor ID: 104-353-2235-800**	No	Shearrard Thomas Phone: 281-506-111 Fax: 281-983-5599
QNet **Vendor ID: 175-283-7171-300**	Black Male	QNet contact Phone: 214-341-763 Fax: 214-348-590
SHI-GS **Vendor ID: 122-369-5478-500**	Asian Male	SHI-GS contacts Phone: 800-870-607 Fax: 512-732-0232
Summus Industries **Vendor ID: 176-053-3392-500**	Black Male	Summus contact Phone: 281-340-203 Fax: 281- 340-2053
xNet Systems **Vendor ID: 176-057-7006-800**	Woman Owned	Barry Boland Phone: 281-539-088 Fax:281-539-0885

Dell Contacts

Equipment Purchases
Lorri Bailey
Phone: 512-723-0016
Fax: 512- 283-9092

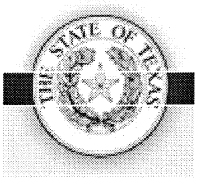
Equipment Leasing
Michael Hall
Phone: 512-238-6800
Cell: 512-695-1786

Caren Wright
Phone: 512-728-6628

Email: State and Local Government Customers

Email: Education Customers

DIR Contract Contact
Brian Bell
Phone: 512-475-4903



Department of Information Resources
300 West 15th St., Suite 1300
Austin, TX 78701 (Map & Directions)
1-512-475-4700

Privacy & Security Pc
Accessibility | Open Records Pc
Link Policy | Compact with Tex
DIR Contacts | dirinfo@dir.state.t:

Last updated February 20, 2009

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES

CONTRACT FOR PRODUCTS AND RELATED SERVICES

DELL MARKETING, L.P.

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Dell Marketing, L.P. (hereinafter "Vendor"), with its principal place of business at One Dell Way, MS RR8-06, Round Rock, Texas 78682.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-120, on April 1, 2008, for Dell-Branded Hardware Products and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-120 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, Product and Pricing Index; Appendix D, Customer Master Services Agreement; Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-120, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-120, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. 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, then Appendix D, then Exhibit 1 and finally Exhibit 2. 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 one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to IT technology products, as defined in the State of Texas Government Code, Chapter 2157 as sold by Vendor, whether Dell-branded or third party products. 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.

B. Services

Services available under this Contract are limited to services related to IT Technology Products described in Section 3.A. above. 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

A. Manufacturer's Suggested Retail Price (MSRP)

MSRP is defined as Dell's published retail price.

B. Customer Discount

The minimum Customer discount for all products and services will be the percentage off MSRP as detailed in Appendix C Product and Pricing Index.

Vendor agrees that the DIR standard pricing discounts contained in Appendix C will remain one percent (1%) better than the Western States Contracting Alliance (WSCA) Category A level, standardized discounts. This extension of competitive volume sales pricing is intended solely to insure that DIR will, at a minimum, remain competitive with the standard price rates set for WSCA as a whole. DIR may not apply, without the express consent of Vendor, any pre-existing discount structure to the WSCA pricing being offered to DIR by Vendor. DIR may either use DIR discounted pricing or the WSCA pricing but may not combine, or compound the two.

In the event that DIR pricing fails to remain competitive to WSCA standardized, category level pricing, Vendor shall extend such pricing to DIR. Vendor shall use its commercially reasonable best efforts to notify DIR of such WSCA price change and amend this Contract within thirty (30) days after the amendment to the Vendor's WSCA contract. The introduction of the WSCA pricing to the DIR contract shall be effective from the date of execution into the Contract by amendment. Both parties agree that the pricing shall not be retroactive for DIR and shall not extend back to the date that Vendor reduced WSCA catalog pricing. Further, the parties agree that DIR, or the State of Texas, does not have the right to audit the WSCA contract held by the Vendor. References to the Vendor's WSCA contract are only contained in this Contract for purposes of referencing the pricing discounts contained therein. Both parties acknowledge that the Vendor's WSCA contract and pricing are readily available to the public and may be freely accessed by the internet for the purposes of validation under the terms and conditions of this Contract.

C. Customer Price

1) The price to the Customer shall be calculated as follows:

Customer Price = MSRP – Customer Discount

2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

3) During the term of this Contract, and except for promotional offers, if substantially the same or a smaller quantity of the same product or type of service is sold by the Vendor under like terms and conditions outside of this Contract at a lower price, the price under this Contract shall be immediately reduced to the lower price.

D. DIR Administrative Fee

The administrative fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

E. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery. Title to all products shall pass upon shipment from Vendor's dock. Risk of loss shall pass to the Customer upon delivery.

F. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). For any Customers who are not tax exempt, Vendor reserves the right to charge applicable taxes.

G. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized by the current State Travel Regulations. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

H. Changes to Prices

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately at the time of submission of a purchase order, but shall not be retroactive to products for which a purchase order has been received, or for services currently being rendered under a prior purchase order.

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 Contract is one quarter of one percent (0.25%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling $100,000 shall be $250.00.

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 written notice to Vendor. 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:
Sherri Parks, Director
Contracting & Procurement Services
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759
Email: sherri.parks@dir.state.tx.us

If sent to the Vendor:
Lorri Bailey
Dell Marketing L.P.
One Dell Way, M/S RR8-35
Austin, TX 78682
Phone: (512) 723-0016
Facsimile: (877) 248-3734
Email: Lorri_Bailey@Dell.com

7. Software License and Service Agreements

A. Software License Agreement

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

B. Shrink/Click-wrap License Agreement

Vendor may sell third-party shrink/click-wrap software products as awarded under this Contract. All software sold is subject to the license agreement provided with the

software by the publisher. Customers are bound by, and will abide by all such software licensing agreements.

C. Service Agreement

Services provided under this Contract shall be in accordance with the Service Agreement as set forth in Appendix D of this Contract. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.

1. **Appendix A, Section 5.A.2., Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapter 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)**, is hereby restated in its entirety as follows:

   2) Upon request by DIR, Vendor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) or a copy of the applicable VPAT for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (http://www.buyaccessible.gov). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at http://www.section508.gov/.

2. **Appendix A, Section 5.B.3., Purchase of Commodity Items (Applicable to State Agency Purchases Only)** is hereby restated in its entirety as follows:

   3) Vendor agrees to coordinate all State agency commodity item sales by Vendor are through existing DIR contracts. Vendor shall use commercially reasonable efforts so that Order Fulfillers shall sell or license commodity items under this Contract. Vendor will include this term as a standard term in its Order Fulfiller contracts. Institutions of higher education are exempt from this Subsection 5.B.

3. **Appendix A, Section 6.A., Service, Sales and Support of the Contract** is hereby restated in its entirety as follows:

   A. Service, Sales and Support of the Contract

   Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use its best efforts to ensure that potential Texas Customers are made aware of the existence of the Contract. All sales to Customers for products and services available under the

Contract shall be processed through the Contract when Customer specifies this Contract number on the Purchase Order.

4. **Appendix A, Section 6.D., Customer Site Preparation** is hereby restated in its entirety as follows:

   D. Customer Site Preparation
   Customers shall prepare and maintain its site in accordance with written instructions furnished by Vendor or Order Fulfiller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

5. **Appendix A, Section 6.E.1., Vendor Website** is hereby restated in its entirety as follows:

   1) Vendor Website

   Vendor will maintain a website specific to the products and services being offered under the Contract which is clearly distinguishable from other, non-DIR contract offerings at the Vendor's website. The website must include at a minimum:

   A. The Contract number and a statement that the customer must reference the Contract Number on their purchase order
   B. A statement designating who can procure through the Contract
   C. All products and services offered under the contract
   D. All product and services specifications for products offered under the contract
   E. Current Contract pricing
   F. Contact information for Vendor business segments (i.e. State and Local, Higher Education, K-12, Health, etc.)
   G. Named Order Fulfillers and contact information for each designated Order Fulfiller
   H. Instructions for obtaining quotes and placing Purchase Orders through Dell direct or through a designated Order Fulfiller
   I. Warranty policy terms and conditions
   J. Return policy terms and conditions.

   The Vendor's website shall list the DIR Contract number, reference the DIR Go DIRect program, display the DIR logo in accordance with the requirements in paragraph F of this Section, and contain a link to the DIR website for the Contract.

6. **Appendix A, Section 6.E.3., Website Compliance Checks** is hereby restated in its entirety as follows:

   3) Website Compliance Checks
   Periodic compliance checks of the information posted for the Contract on Vendor's website will be conducted by DIR. Upon request by DIR, Vendor shall use commercially reasonable efforts to provide verifiable documentation that pricing listed upon this website is uniform with the pricing as stated in Section 4 of the

Contract within thirty (30) days of the request.

7. **Appendix A, Section 6.E.5., Use of Access Data Prohibited** is hereby restated in its entirety as follows:

   5) Use of Access Data Prohibited
   If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract, and shall not be disseminated to third parties, other than Order Fulfillers or Subcontractors, as necessary, or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, so long as DIR publically posts the document. However, Vendor may agree with an individual Customer to implement security measures such as password protected online ordering. Upon request, Vendor shall provide DIR with a list of any Premier Pages existing under this Contract. By purchasing under this Contract, a Customer acknowledges that DIR may request from Customer "read only access" to Customer's online ordering page with Vendor that is under this Contract (also known as a Dell Premier Page).

8. **Appendix A, Section 6.H., Trade Show Participation** is hereby restated in its entirety as follows:

   H. Trade Show Participation
   At DIR's discretion, Vendor may be required to participate in no more than two (2) DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor must display the DIR logo at all trade shows in the State of Texas that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's or Order Fulfiller's booth.

9. **Appendix A, Section 6.K., DIR Cost Avoidance** is hereby restated in its entirety as follows:

   K. DIR Cost Avoidance
   As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Vendor shall make available to DIR a detailed report of the following information regarding a representative sample of products sold under the Contract: product part number and price to Customer under the Contract. Such information may be made available through Vendor's website.

10. **Appendix A, Section 7.A., Purchase Orders** is hereby restated in its entirety as follows:

    A. Purchases Orders
    All Customer Purchase Orders will be placed directly with the Vendor and/or the Order Fulfiller. Accurate Purchase Orders shall be effective and binding upon Vendor when accepted by Vendor. Customer shall have the ability to order products through electronic or paper submissions of purchase orders.

11. **Appendix A, Section 7.B., Invoices** is hereby restated in its entirety as follows:

    B. Invoices
    1) Invoices shall be submitted by Vendor or the Order Fulfiller directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the Customer to Vendor or the Order Fulfiller.

    2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the product or services by the Customer.

12. **Appendix A, Section 7.D., Acceptance** is hereby added in its entirety as follows:

    D. Acceptance
    A Customer shall determine whether all Products and Services delivered meet the Vendor's published specifications. No payment shall be made for any Products or Services until the Customer has accepted the Products or Services. Unless otherwise agreed upon between the Customer and the Vendor, the Customer shall within fifteen (15) calendar days from the date of the receipt of the Vendor's invoice, issue a written notice of partial acceptance or rejection of the Products or Services; otherwise, the Product or Services shall be deemed accepted.

13. **Appendix A, Section 8.A.2., Vendor Contract Administrator** is hereby restated in its entirety as follows:

    2) Vendor Contract Administrator
    Vendor shall provide a dedicated Contract Administrator whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute resolution between Vendor or a Order Fulfiller and a Customer, and iii) advising DIR of Vendor's or Order Fulfiller's performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Administrator if the assigned Contract Administrator is not, in

the opinion of DIR, adequately serving the needs of the State. In such instance, Vendor requests twenty (20) calendar days notice.

14. **Appendix A, Section 8.B.1., Reporting Responsibility** is hereby restated in its entirety as follows:

    1) Reporting Responsibility

    a) Vendor shall be responsible for reporting all products and services purchased from Vendor or through Order Fulfillers under the Contract. Vendor shall file the monthly reports which contain sales by Order Fulfillers, and pay the administrative fees in accordance with the due dates specified in this section.

    b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Vendor's purchase orders and invoices at DIR's expense. Upon receipt of ten (10) days notice, Vendor shall grant DIR, during normal business hours, necessary access to Customer purchase orders and invoices generated under and pertaining to this Contract.

15. **Appendix A, Section 8.B.2., Detailed Monthly Report** is hereby restated in its entirety as follows:

    2) Detailed Monthly Report

    Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous month period. Reports shall be submitted to the DIR Go DIRect Coordinator. Reports are due on the fifteenth (15th) calendar day after the close of the previous month period, unless such day falls on a weekend or holiday, and then the report shall be sent to DIR on the first business day thereafter. It is the responsibility of the Vendor to collect and compile all sales under the Contract from participating Order Fulfillers and submit one (1) monthly report. The monthly report shall include, per transaction: the detailed sales for the period, the Order Fulfiller's company name, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section.

16. **Appendix A, Section 8.B.3.a., Historically Underutilized Businesses Subcontract Report** is hereby restated in its entirety as follows:

    a) Vendor shall electronically provide DIR with a listing of their relevant purchases from Vendor or through Order Fulfillers under this Contract, so DIR and Customer can compile the appropriate Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Such listing of purchases shall be on the monthly report

17. **Appendix A, Section 8.B.4.a., DIR Administrative Fee** is hereby restated in its entirety as follows:

    a) An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The administrative fee is specified in Section 5 of the Contract. Payment of the administrative fee shall be due thirty (30) calendar days after the close of the previous month period.

18. **Appendix A, Section 8.C.2., Records and Audit** is hereby restated in its entirety as follows:

    2) Vendor shall maintain adequate records to establish compliance with the 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. Such records shall include the monthly DIR reports that contain: Customer name, invoice date, invoice number, description, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other reasonable documentation as DIR may request.

19. **Appendix A, Section 8.C.3., Records and Audit** is hereby restated in its entirety as follows:

    3) Vendor shall grant access to items retained by Vendor in accordance with generally accepted accounting principles relating to the requirements of this Contract and relevant to the performance of the Contract to DIR, including the compliance checks designated by DIR, the State Auditor's Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor shall provide electronic copies requested by DIR without charge. DIR shall provide Vendor ten (10) business days' notice prior to inspecting, Compliance Checking, and/or electronic records, shall be made available during regular office hours. Vendor personnel familiar with the Vendor's books and records shall be available to DIR staff and designees as needed.

20. **Appendix A, Section 9.A., Indemnification** is hereby restated in its entirety as follows:

A. Indemnification

1) Acts or Omissions

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, FROM AND AGAINST ANY AND ALL ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, and that result in personal injury or damage to physical property resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCIES AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

2) Infringements

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, from any and all third-party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights for Vendor branded products or Vendor provided services in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR and the CUSTOMER agree to furnish timely written notice to each other of any such claim. VENDOR AGREES TO DEFEND AGAINST ANY AND ALL THIRD PARTY CLAIMS WITH REGARDS TO VENDOR–BRANDED PRODUCT OR SERVICES, AT VENDOR'S EXPENSE, WHETHER OR NOT SUCH CLAIMS BECOME THE SUBJECT OF LITIGATION SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING REASONABLE ATTORNEYS' FEES PROVIDED THAT CUSTOMER (i) NOTIFIES VENDOR PROMPTLY OF SUCH CLAIM (ii) GRANTS VENDOR CONTROL OVER THE DEFENSE AND SETTLEMENT THEREOF AND (iii) REASONABLY COOPERATES IN RESPONSE TO VENDOR'S REQUEST FOR ASSISTANCE. The defense shall be coordinated by the Office of the Attorney General FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

b) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with timely notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing or (iii) accept return of the Product freight collect and provide a reasonably depreciated refund for the Product.

3) Independent Contractor
VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR OR THE STATE OF TEXAS.

21. **Appendix A, Section 9.B., Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE** is hereby restated in its entirety as follows:

B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL APPLICABLE STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACOTRS SHALL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER AS A RESULT OF THIS CONTRACT `AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS AND/OR REPRESENTATIVES FROM ANY AND ALL ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES, RELATING TO VENDOR'S TAX LIABILITY, VENDOR'S UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF BENEFITS BY VENDOR, ITS EMPLOYEES, VENDOR'S AGENTS OR VENDOR'S SUBCONTRACTORS IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE FOR CLAIMS RELATED TO THIS CLAUSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS, IF REQUESTED BY THE STATE OF TEXAS OR CUSTOMER THAT IS A NON-STATE AGENCY.

22. **Appendix A, Section 9.C., Vendor Certifications** is hereby restated in its entirety as follows:

C. Vendor Certifications

Vendor certifies that it: (i) has not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract, (ii) is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate, (iii) neither they, nor to the best of Vendor's knowledge, anyone acting for them, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage, (iv) has not received payment from DIR or any of its employees for participating in the preparation of the Contract, (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate, (vi) to the best of its knowledge and belief, there are no suits or proceedings pending or threatened against or affecting it, which if determined adversely to it will have a material adverse effect on the ability to fulfill its obligations under the Contract, (vii) is not suspended or debarred from doing business with the federal government as listed in the Excluded Parties List System (EPLS) maintained by the General Services Administration, and (viii) as of the effective date of the Contract, is not listed in the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

23. **Appendix A, Section 9.I, Security of Premises, Equipment, Data and Personnel** is hereby restated in its entirety as follows:

I. Security of Premises, Equipment, Data and Personnel

Vendor may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. Customer shall be solely responsible for backing up data on a routine basis as mutually agreed to by Vendor and Customer.

24. **Appendix A, Section 9.K, Limitation of Liability** is hereby restated in its entirety as follows:

K. Limitation of Liability

EXCEPT AS SPECIFICALLY SET FORTH IN SECTIONS 9.A.1 AND 9.A.2, AND FOR PAYMENT OBLIGATIONS UNDER THIS CONTRACT, VENDOR AND DIR EACH EXPRESSLY AGREE AND UNDERSTAND THAT THE OTHER PARTY WILL NOT HAVE ANY LIABILITY FOR PRODUCTS NOT BEING AVAILABLE FOR USE, OR FOR LOST OR CORRUPTED DATA OR SOFTWARE. NEITHER PARTY SHALL BE LIABLE FOR ANY CLAIM OR CAUSE OF ACTION ARISING UNDER OR RELATED TO THE CONTRACT: I) NONE OF THE PARTIES SHALL BE LIABLE TO THE OTHER FOR INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES, EVEN IF IT IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND II) VENDOR'S LIABILITY FOR DAMAGES OF ANY KIND TO THE CUSTOMER SHALL BE LIMITED TO THE LESSER OF ONE MILLION DOLLARS ($1,000,000) OR THE U.S. DOLLAR EQUIVALENT OF THE TOTAL DOLLAR VALUE OF PRODUCTS AND SERVICES PURCHASED FROM VENDOR BY SUCH CUSTOMER UNDER THE CONTRACT DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE ACCRUAL OF THE CLAIM OR CAUSE OF ACTION. IN THE EVENT THE LAW OF ANY JURISDICTION WHICH APPLIES TO THIS CONTRACT PROHIBITS IN ANY PART ANY LIMITATION IN THIS PARAGRAPH, THE PARTIES AGREE THAT SUCH LIMITATION SHALL BE MODIFIED, WITHOUT FURTHER ACTION OF EITHER PARTY, SO AS TO BROADLY APPLY TO THE MAXIMUM EFFECT ALLOWED BY GOVERNING LAWS.

25. **Appendix A, Section 9.L, Overcharges** is hereby restated in its entirety as follows:

L. Overcharges

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq. to the extent that the overcharge suffered by the Vendor was, in fact, passed on the DIR or its Customers in the products or other goods and/or services purchased by DIR or is Customers under this Contract during the time period referenced in the litigation.

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

Dell Marketing, L.P.

Authorized By: Signature on File

Name: John Mullen

Title: VP & GM Major Public Accounts Education and State & Local Government

Date: January 14, 2009

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

Authorized By: Signature on File

Name: Cindy Reed

Title: Deputy Executive Director Operations & Statewide Technology Sourcing

Date: 1/14/09

Legal: Signature on File