

PARTICIPATING ADDENDUM

[hereinafter "Addendum"]

Amendment #1

For

WSCA/NASPO PC Contracts 2009-2014

COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES

MASTER PRICE AGREEMENT NUMBER B27160

Between

Dell Marketing, L.P.

[hereinafter "Contractor"]

and

State of Florida

[hereinafter "Participating State"]

(Participating State Contract No. 250-WSCA-10-ACS)

WHEREAS, The State of Florida (the "State") Department of Management Services (the "Department") is authorized by Section 287.042(16) Florida Statutes (F.S.), to evaluate contracts let by the Federal Government, another state, or a political subdivision and, when determined in writing to be cost-effective and in the best interest of the State, to enter into agreements authorizing agencies (as defined by s. 287.012(1) F.S.) to make purchases under such contracts, and;

WHEREAS, agencies and Eligible Users (as that phrase is defined in Rule 60A-1.005, F.A.C.) may purchase commodities and contractual services from contracts established by the Department, and;

WHEREAS, the Department has evaluated the Western States Contracting Alliance Contract No. B27160: Computer Equipment, Peripherals, and Related Services, together with any amendments and exhibits thereto, (hereinafter the "Master Price Agreement"), and hereby acknowledges in writing that authorizing use of the Master Price Agreement and this Addendum is cost-effective and in the best interest of the State, and;

WHEREAS, the parties, entered into this purchasing agreement on October 12, 2009, and;

WHEREAS, pursuant to Section 25 of the Master Price Agreement, the parties, upon mutual agreement, may Amend the Contract in whole or in part, and;

NOW THEREFORE, the Department enters this Amendment that replaces and supersedes the previous purchasing agreement for the purpose of authorizing and regulating the use of the Master Price Agreement by state agencies and other Eligible Users.

A. 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.

B. 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.

C. Changes:

1. This Participating Addendum shall become effective on the last date signed below and shall have a term that is coterminous with the Master Price Agreement, unless terminated earlier pursuant to the Master Price Agreement, this Participating Addendum, or Florida law. In addition to the rights contained in the Master Price Agreement, the Department reserves the right to terminate this Participating Addendum, effective upon notice, for Contractor failure to comply with the provisions of this Participating Addendum, including, but not limited to, the MyFloridaMarketPlace Transaction Fee provisions of Paragraph C.4., and the provisions of Section 287.058(1)(a) through (f), F.S. as required by Paragraph C.6.

2. **Purpose and Strategy.** The Department's intent is that the vendor will act with the State to furnish quality Computer Equipment, Peripherals and Related Services as outlined in the Master Price Agreement at the lowest price available in a timely and efficient manner for Eligible Users.

The Department has developed a list of "Market Basket" products to include but not be limited to the categories of Standard Desktop Configurations, Standard Laptop Configurations, Monitors, Other Desktops, Other Laptops, Ruggedized and Semi-Rugged, Tablets and Ultra Mobile, Warranty, Services, Desktop and Laptop Peripherals, Processors, Memory, Storage, and Other. For items in these categories the Department will obtain "firm pricing" for each item that the vendor offers on the Master Price Agreement.

On a periodic basis, not to exceed six months, a request may be issued to the vendor to provide updated firm pricing for the "Market Basket" products. These requests will contain spreadsheets that may contain updated Standard Configurations for Desktops and Laptops, and new products and/or new product categories to adjust to technology changes and emerging needs. The purpose of these updated price requests is for the Department to continue to obtain the most favorable pricing offered by the vendor while also maintaining a flexible "Market Basket" of products. The Department may accept the submissions by the vendor or request negotiation sessions to discuss the submissions further. The requests may also include tiered discounts for quantity and bulk purchases. All pricing submitted by the Contractor and accepted by the Department shall be in effect for the duration of the pricing cycle.

State Agency Purchase of Standard Desktops and Laptops. Florida's Agency for Enterprise Information Technology (AEIT) developed the initial standard configurations/specifications for desktops, laptops, and monitors. State Agencies shall be required to purchase these items from the vendor that provides the lowest pricing for the Standard Desktops, Laptops, and Monitors during the specific pricing cycle.

3. **Purchasing Requirements.** In order to procure products or services hereunder, Eligible Users shall issue purchase orders referencing "Alternate Contract Source No. 250-WSCA-12-ACS (WSCA No. B27160 -- Dell Marketing, LP)". Eligible Users are responsible for reviewing the terms and conditions of this Participating Addendum and the Master Price Agreement. Eligible Users must follow their applicable statutes, laws, rules, ordinances, codes, policies, and procedures in the purchase of goods or services under this Participating Addendum. Unless otherwise provided by Florida law, statute, rule, or this Participating Addendum, the Department will not implement any additional restrictions on any Eligible User to purchase off of this Participating Addendum. Neither the Department nor the Western States Contracting Alliance is a party to any purchase order authorized by or issued under this Participating Addendum.
4. **MyFloridaMarketPlace Registration and Transaction Fee.** In order to complete any transaction between the Eligible User and the Contractor, the Contractor must be

registered in MyFloridaMarketPlace. Rule 60A-1.031, F.A.C., is hereby incorporated by reference.

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to Section 287.057(22), F.S., all payments shall be assessed a Transaction Fee of one percent (1.0%), which the vendor shall pay to the State. For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the vendor. If automatic deduction is not possible, the vendor shall pay the Transaction Fee pursuant to subsection 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, vendor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee. The Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the vendor in default. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.**

5. **Contract Reporting Requirements.** The Contractor shall be responsible to submit a Monthly Transaction Fee Report, Quarterly Sales Reports, and an Annual Product Replacement Cycle Matrix will be provided under a Non-Disclosure Agreement ("NDA") during the quarterly business review. These reports will be submitted as follows:

Monthly Transaction Fee Report. The Contractor is required to submit monthly Transaction Fee Reports in electronic format. For information on how to submit Transaction Fee Reports online, please reference the detailed fee reporting instructions and Vendor training presentations available online at the Transaction Fee Reporting and Vendor Training subsections under Vendors on the MyFloridaMarketPlace website (located at <http://dms.myflorida.com/mfmp>). Assistance is also available with the Transaction Fee Reporting System from the MyFloridaMarketPlace Customer Service Desk at feeprocessing@myfloridamarketplace.com or 866-FLA-EPRO (866-352-3776) between the hours of 8:00 AM to 5:30 PM Eastern Time.

Quarterly Sales Report. The following data must be reported electronically to the Department on a quarterly basis using a Contract Sales Summary form supplied to the contractor by the Department's Primary Contact shown in Paragraph F below. The electronic report shall include:

- Contractor's Company Name,
- Contractor's Company Address,
- Reporting Period,
- Contractor's Company Contact Person with email address and phone number
- Excel report itemizing each purchase for the period that includes columns for the following information: Part Number/SKU, Item Description/Service Name, Item Category, Item Family, Product Description, Customer Name, Commodity Code (if available), Unit of Measure, Unit of Measure Description, Volume/Quantity, Order Date, Date Delivered, List Price, Contract Price, and Additional Fields (if needed).

The reporting periods coincide with the State of Florida's fiscal year which is July 1st through June 30th of each year. The quarters are divided as follows:

- 1st Quarter – July 1st through September 30th
- 2nd Quarter – October 1st through December 31st
- 3rd Quarter – January 1st through March 31st
- 4th Quarter – April 1st through June 30th

Failure to provide quarterly reports, including no sales, within thirty (30) calendar days following the end of each quarter, or annual EXCEL™ line item reports within thirty (30) calendar days, may result in the default proceeding and/or termination of this contract.

Initiation and submission of the Contract Sales Summaries are to be the responsibility of the Contractor, and supplied without prompting or notification by the Primary Contact. The Contractor will submit the completed Contract Sales Summary forms by email to the Primary Contact as stipulated. The Primary Contact shall distribute at the time of contract formation, in electronic format, the Contract Sales Summary form to be used by the Contractor.

The Contractor shall report to the Department the amount of spend with certified and other minority business enterprises. Reports must include the period covered, the name, minority code and Federal Employer Identification Number of each minority vendor utilized during the period, commodities and services provided by the minority business enterprise, and the amount paid to each minority vendor on behalf of each purchasing agency ordering under the terms of this contract.

6. The provisions of Section 287.058(1)(a), (c), and (f), F.S. are hereby incorporated by reference. If the transaction involves contractual services, the provisions of Section 287.058(1)(b), (d), and (e), F.S. are also incorporated by reference.
7. The State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature. The Contractor shall comply with Sections 11.062, F.S. and 216.347, F.S., prohibiting use of funds to lobby the Legislature, Judiciary, or state agencies.
8. The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. By way of non-exhaustive example, the Contractor shall comply with Section 247 of the Immigration and Nationality Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, disability, marital status, or veteran's status.
9. Payment shall be made in accordance with Section 215.422, F.S. Interest penalties for late payment are available subject to the provisions in Section 215.422, F.S. A Vendor Ombudsman, whose duties include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency may be contacted at 850-468-2924 or by calling the State Comptroller's Hotline, 1-800-848-3792.
10. The exclusive venue of any legal or equitable action that arises out of or relates to this Participating Addendum shall be the appropriate State court in Leon County, Florida; in any such action Florida law shall apply and both parties waive any rights to a jury trial that either party may have.
11. The Department, at its sole discretion, may unilaterally amend the Primary Contact name and their contact information in Paragraph F of this Participating Addendum during the term of this Participating Addendum. Any amendment shall be contained in a separate document affixed to this Participating Addendum.

12. If an additional ordinance, rule, or other local governmental authority requires additional contract language before an Eligible User can make a purchase from this Participating Addendum, in lieu of this Participating Addendum the Eligible User is responsible for signing a separate Participating Addendum with the Contractor.
13. **Intellectual Property:** Intellectual Property: The parties do not anticipate that any Intellectual Property ("IP") will be developed as a result of this Participating Addendum. It is understood that the State shall own all right, title and interest to the Deliverables and Dell agrees to grant to the State a perpetual, non-exclusive, non-transferable, royalty-free license to use Dell's Background IP (defined below), Utilities, and Residual IP solely for the State to use the Deliverables, subject to the following:
- Dell has received full payment for the Deliverables and applicable Services,
 - Each party will retain all Intellectual Property Rights that it owned or controlled prior to the effective date of this Agreement or that it develops or acquires from activities independent of the Services performed under this Agreement ("Background IP"),
 - Dell will retain all right, title and interest in and to all Intellectual Property Rights in or related to the Services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates or output which are developed, created or otherwise used by or on behalf of Dell in the course of performing the Services or creating the Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or data of the State (collectively, the "Residual IP"), even if embedded in the Deliverable, and
 - The State use of software, online services, or software-enabled services in connection with the Services is pursuant to the terms of the Dell Services Acceptable Use Policy, which is available for review at www.dell.com/auip.

This provision will survive the termination or expiration of the contract.

14. **Price Guarantees:** Section 13 (Price Guarantees) of the Master Price Agreement shall apply to this Participating Addendum.
15. **Termination for Convenience:** The State may terminate the Contract in whole or in part, by providing thirty (30) days written notice to the Contractor, when the State determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.
16. **Employment Eligibility Verification:** Pursuant to State of Florida Executive Orders Nos.: 11-02 and 11-116, Contractor is required to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment of all new employees hired by the Contractor during the contract term. Also, Contractor shall include in related subcontracts a requirement that subcontractors performing work or providing services pursuant to the state contract utilize the E-Verify system to verify employment of all new employees hired by the subcontractor during the contract term.

17. Electronic Invoicing. The Contractor shall supply electronic invoices in lieu of paper-based invoices for those transactions processed through the MFMP. Contractor agrees, upon DMS' request, to establish electronic invoicing within ninety (90) days of written request. Electronic invoices shall be submitted to the agency through the Ariba Supplier Network (ASN) in one of three mechanisms as listed below. Suppliers can select the method that best meets their capabilities from the following list:

- **cXML (commerce eXtensible Markup Language)**
This standard establishes the data contents required for invoicing via cXML within the context of an electronic environment. This transaction set can be used for invoicing via the ASN for catalog and non-catalog goods and services. *The cXML format is the Ariba preferred method for eInvoicing.*
- **EDI (Electronic Data Interchange)**
This standard establishes the data contents of the Invoice Transaction Set (810) for use within the context of an Electronic Data Interchange (EDI) environment. This transaction set can be used for invoicing via the ASN for catalog and non-catalog goods and services.
- **PO Flip via ASN**
The online process allows suppliers to submit invoices via the ASN for catalog and non-catalog goods and services. Suppliers have the ability to create an invoice directly from their Inbox in their ASN account by simply "flipping" the PO into an invoice. This option does not require any special software or technical capabilities.

For the purposes of this section, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third party provider of MFMP, a State Contractor, the right and license to use, reproduce, transmit, distribute, and publicly display within the system the information outlined above. In addition, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third party provider the right and license to reproduce and display within the system the Contractor's trademarks, system marks, logos, trade dress, or other branding designation that identifies the products made available by the Contractor under the Contract.

18. Scrutinized Companies Lists. In executing this agreement, Contractor certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, Florida Statutes. Pursuant to section 287.135(5), F.S., Contractor agrees the Department may immediately terminate this contract for cause if the Contractor is found to have submitted a false certification or if Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List during the term of the contract.

19. Punch-out Catalog Request. The Contractor hereby agrees to cooperate with the Department and MyFloridaMarketPlace (and any authorized agent or successor entity to MyFloridaMarketPlace) in the event the Department selects this statewide contract to be exhibited on the MyFloridaMarketPlace. At a minimum, the Contractor agrees to the following:

- a. Contractor agrees, upon the Department's request, to deliver a punch-out catalog within ninety (90) days of the date that the Participating Addendum is signed by the Department. The punchout catalog content must be limited to the Contractor's statewide contract offering.
Punch-out Catalog. By providing a punch-out catalog, Contractor is providing its own online catalog, which must be capable of communication between the

MyFloridaMarketPlace eProcurement System (MFMP) and a supplier's ERP system via Commerce eXtensible Markup Language (cXML). In this scenario, the Contractor ensures its online catalog marketplace is up-to-date by periodically updating the offered products/services and pricing listed on its online catalog.

- b. In addition to the Contractor's punchout catalog in MFMP, the Contractor shall provide a specific online ordering portal and product catalog (referred to as the online catalog) to the State of Florida containing only State of Florida items and prices. The contractor will, within ninety (90) days of contract award, make available the online catalog that contains only items that are in the scope of the awarded contract. For each item, the following information shall be provided at a minimum: item description, manufacturer name, manufacturer part number, unit of measure, list price and contract price, and item image.
- c. The Contractor agrees to meet the following requirements:
 - Catalog must contain the most current pricing, including all applicable administrative fees and or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with the statewide contract; and
 - The accuracy of the catalog must be maintained by Contractor throughout the duration of the statewide contract; and
 - The catalog must include a State-specific contract identification number; and
 - The catalog must include detailed product line item descriptions; and
 - The catalog must include pictures when possible; and
 - The catalog must include any additional content required by the Department.
- d. Contractor agrees that the Department controls which statewide contracts appear in MFMP and that the Department may elect at any time to remove any Contractor's offering from MFMP.
- e. Contractor must be able to accept Purchase Orders via fax, e-mail, cXML or EDI INT AS 12.

D. Lease Agreements

Agencies may lease equipment through alternative financing arrangements other than CEFP. This option is governed by § 287.063 and 287.064, Florida Statutes; Rule 69I-3, Florida Administrative Code; and Comptroller Memorandums 10 (1992-93), 13 (1985-86), 04 (1995-96), and 07 (1995-96). The Department of Financial Services (DFS) Finance and Leasing Section will review proposed leases to determine compliance with all requirements and to ensure leases are economical and cost effective. The Contractor and Customer (working together) will be required to complete and submit to DFS the "Checklist for Requesting Department of Financial Services Approval to Lease Equipment" for any lease valued at \$25,000 or more. A copy of the form may be found on the DFS website under the heading of "Equipment Leases":

http://www.myfloridacfo.com/aadir/statewide_financial_reporting/

Each piece of equipment or service offered on this WSCA Participating Addendum shall be available for lease. The customer is authorized to enter into a lease agreement for equipment by issuance of a purchase order referencing this contract number and that incorporates the manufacturer's lease terms and conditions as approved by DFS.

E. Primary Contacts

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

MASTER AGREEMENT CONTACTS:

Lead State

Name: Sue Kahle
Address: 50 Sherburne Ave., 112 Admin Bldg, St Paul, MN 55155
Telephone: (651) 201-2434
Fax: (651) 297-3996
E-mail: susan.kahle@state.mn.us

Contractor State Contract Manager

Name: Ashleigh Lane
Address: One Dell Way, RR8-07, Round Rock, TX 78682
Telephone: (512) 723-1033
Fax: (512) 283 9092
E-mail: Ashleigh.Lane@Dell.com

Contractor WSCA Program Manager

Name: Stephanie G. Miller Address: One Dell Way, RR8-07, Round Rock, TX 78682
Telephone: (512) 723-4355
Fax: (512) 283-9092
E-mail: stephanie_g_miller@dell.com

Participating State

Name: Joel Atkinson
Address: 4050 Esplanade Way, Tallahassee, FL 32399
Telephone: 850-487-4196
Fax: 850-414-6122
E-mail: Joel.Atkinson@dms.myflorida.com

F. Servicing Subcontractors:

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

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

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

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

All purchase orders issued by purchasing entities with the jurisdiction of this Addendum must include the Participating State contract number: 250-WSCA-12-ACS; and the Master Price Agreement Number B27160.

G. Compliance with reporting requirements of the "American Recovery and Reinvestment Act of 2009" ("ARRA"): If Dell is notified by ordering entity that a specific purchase order is being made with ARRA funds, Dell agrees to assist the ordering entity with their requirement to comply with the data element and reporting as currently defined in Federal

Register Vol 74 #61, Pages 14824-14829 (or subsequent changes or modifications to these requirements as published by the Federal OMB). Ordering entity is responsible for informing Dell at the time of purchase order placement that ARRA funds are being used. Dell will include the tracking data, if provided by ordering entity, as an element within the utilization report, as per Article 44 of the MPA. Dell, as it relates to purchases under this contract, is not a subcontractor or subgrantee, but simply a provider of goods and related services.

H. Services:

The terms of the Agreement shall apply each time Customer engages Dell to provide services. All services provided will be described in one or more of the following:

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

I. Evaluation Equipment:

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

This Addendum and the Master Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms. This Addendum applies only in the jurisdiction of the Participating State or Participating Entity which has executed this Addendum.

IN WITNESS WHEREOF, the parties have executed this Amendment to the Addendum, which is effective as of the date of the last signature below.

State of Florida
Department of Management Services

Kelly Loll
Kelly Loll, C.P.M.
Chief Procurement Officer and
Director of State Purchasing

4/13/12
Date

Contractor: Dell Marketing, L.P.

Ashleigh Lane
Signature

Ashleigh Lane
Name

Contract Manager
Title

04/10/2012
Date

Approved as to form and legality

By: Bethany [Signature]
Office of the General Counsel

4/10/12
Date