

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES
CA, INC.

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 CA, Inc. (hereinafter “Vendor”), with its principal place of business at One CA Plaza, Islandia, New York 11749.

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-265, on November 21, 2016, for CA Branded and Lenovo Branded Products and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-265 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Foundation Agreement including all exhibits thereto; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-265, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-265, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, 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substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.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 two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to two (2) optional one-year terms.

Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

3. Product and Service Offerings

A. Products

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

B. Services

Services available under this Contract are limited to CA Branded maintenance and support, installation, implementation, product training, project management, Software as a Service, and other related services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

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

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

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

6. Notification

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

If sent to the State:

Kelly Parker, CTPM, CTCM
Director, Cooperative Contracts
Department of Information Resources

300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-1647
Facsimile: (512) 475-4759
Email: kelly.parker@dir.texas.gov

If sent to the Vendor:

Tina Ratcliff, Sr. Director, Financial Contracts
CA, Inc.
2291 Wood Oak Dr.
Herndon, VA 20171
Phone: (703) 709-4809
Email: Tina.Ratcliff@ca.com

7. Software License and Service Agreements

A. Software License Agreement

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the Software License Agreement set forth in Appendix D, Foundation and Exhibit 2, Software Module to Appendix D of this Contract. No changes to the Foundation Agreement and Software Module terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D; provided however, that a Customer and Vendor may agree to additional terms and conditions that do not diminish a term or condition in the Software License Agreement, or in any manner lessen the rights or protections of Customer or the responsibilities or liabilities of Vendor. Order Fulfillers shall make the Software License Agreement terms and conditions available to all Customers at all times.

2) Compliance with the Software License Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the 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

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

the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.

C. Service Agreement

Services provided under this Contract shall be in accordance with the Service Agreement and as set forth in Appendix D, Foundation Agreement and Exhibit 2, Services Module to Appendix D of this Contract. No changes to the Foundation Agreement and Services Module terms and conditions may be made unless previously agreed to by Vendor and DIR.

D. Software as a Service

Software as a Service (SaaS) provided under this Contract shall be in accordance with the Software as set forth in Appendix D, Foundation Agreement and Exhibit 3, Software as a Service (SaaS) Module to Appendix D of this Contract. No changes to the Foundation Agreement and SaaS Module terms and conditions may be made unless previously agreed to by Vendor and DIR.

E. Conflicting or Additional Terms

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

In the event of a conflict, any linked documents may not take precedence over the printed or referenced documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.

In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall not be effective until reviewed and approved in writing by Customer's authorized signatory.

Vendor shall not without prior written agreement from Customer's authorized signatory, require any document that: 1) diminishes the rights, benefits, or protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the

definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.

If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Vendor or Vendor and Customer, and Vendor will nonetheless be obligated to perform the contract without regard to the prohibited documents, unless Customer elects instead to terminate the contract, which in such case may be identified as a termination for cause against Vendor.

The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and a reseller who attempts to pass through documents and obligations from its Manufacturer of Publisher.

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

A. Appendix A, Section 3, Definitions, A. Customer is hereby replaced in its entirety as follows:

A. Customer - “any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.”

B. Appendix A, Section 5. Intellectual Property Matters is hereby replaced in its entirety as follows:

5. Intellectual Property Matters

“Work Product” means all items produced for Customer’s use under a SOW except for custom code application development work unique to Customer and void of CA’s proprietary Licensed Programs and other intellectual property, including any derivatives and extensions thereof.

CA retains all right, title, copyright, patent, trademark, trade secret and all other proprietary interests to all CA Offerings and any derivatives thereof. No title, copyright, patent, trademark, trade secret or other right of intellectual property not expressly granted under the Agreement is exchanged between the Parties.

CA grants to Customer, a non-exclusive, limited, non-transferable license to use the Deliverables and Modifications for internal business purposes subject to terms of the Agreement. Where the Deliverables or Modifications are to be used in conjunction with CA software then the license to use the Deliverables or Modifications shall be consistent with the usage limitations as set out in the license agreement for such CA software.

C. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, C. Customer Price, Subsection 3) is hereby replaced in its entirety as follows:

3) If pricing for products or services available under this Contract are sold by the Vendor at a lower price to an eligible Texas State Agency Customer who is not purchasing those products or services under this Contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services sold by Vendor for a quantity of one (1) under same terms and conditions, and does not apply to volume or special pricing purchases. Vendor shall notify DIR within ten (10) business days of delivery to DIR of Vendor's Quarterly Usage Reports for any such sales in the prior quarter and this Contract shall be amended to reflect the lower price.

D. Appendix A, Section 10. Vendor Responsibilities, N. Required Insurance Coverage, first paragraph is hereby replaced in its entirety as follows:

N. Required Insurance Coverage

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that have an A rating and a Financial Size Category Class of VII from A.M. Best, and are licensed in the State of Texas and authorized to provide the corresponding coverage. DIR will be named as Additional Insureds on all required coverage except workers' compensation. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

(Remainder of page left blank intentionally)

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

CA, Inc.

Authorized By: Signature on File

Name: Lisa Kiefer

Title: Principal, Sales Accounting

Date: 3/23/2017

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

Authorized By: Signature on File

Name: Dana Collins for Hershel Becker

Title: Chief Procurement Officer

Date: 3/23/2017

Office of General Counsel: Signature on File 3/23/2017