

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES**

CONTRACT FOR SERVICES

**BERRY, DUNN, MCNEIL & PARKER, LLC DBA BERRY, DUNN, MCNEIL &
PARKER, PLLC**

1. Introduction

A. Parties

This Contract for Services (“Contract”) is entered into between the State of Texas (“State”), acting by and through the Department of Information Resources (“DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701 and Berry, Dunn, McNeil & Parker, LLC dba Berry, Dunn, McNeil & Parker, PLLC (“Vendor”), with its principal place of business at 100 Middle Street, Portland, Maine 04101.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-253, on August 4, 2016, for Deliverables-Based Information Technology Services (DBITS). Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-253 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Deliverables-Based Information Technology Services Contract Terms and Conditions; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Sample Statement of Work; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-253, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-253, 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 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substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.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) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR may extend this Contract, by amendment, 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. Service Offerings

Services available under this Contract are limited to the Deliverables-Based Information Technology Services Technology Categories as specified below. Vendor may incorporate changes to their services offering; however, any changes must be within the scope of the RFO and services awarded based on the posting described in Section 1.B above. Vendor may not add services which were not included in the Vendor's response to the solicitation described in Section 1.B above.

No hardware or software products and related services may be sold through this contract. Any products needed to deliver final services must be procured through another contract vehicle. Examples of these products include: Software as a Service (SaaS), subscriptions, annual license maintenance and support, and web hosting.

Information Technology Procurement Assistance

- 1) Definition: Information Technology Procurement Assistance services may include assistance in IT Statement of Work (SOW) and/or Request for Offer (RFO) development. Procurement assistance activities may include requirements gathering, scoring criteria development, and evaluation criteria development.
- 2) Examples of included services: specification development, Statement of Work (SOW) development, and RFO development for IT products and services.

Note: Under Texas Government Code, § 2155.004, a state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The selected Vendor and the employees of that Vendor who perform IT Procurement Assistance Services will be ineligible to respond to any resulting solicitation(s).

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 7, Pricing, Purchase Orders, Invoices and Payment, and as set forth in the Customer's Statement of Work and shall include the DIR Administrative Fee. Customers purchasing services under this Contract shall negotiate pricing directly with the Vendor in accordance with the Customer's Statement of Work.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three-quarters of one percent (.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 by Vendor 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 A. Parker, CTPM, CTCM
Director, Cooperative Contracts
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4000
Facsimile: (512) 475-4759
Email: kelly.parker@dir.texas.gov

If sent to the Vendor:

Maret Freeman, Senior Manager
Berry, Dunn, McNeil & Parker, LLC dba Berry, Dunn, McNeil & Parker, PLLC
100 Middle Street
Portland, Maine 04101
Phone: (207) 541-2259
Facsimile: (207) 774-2375
Email: rfps@berrydunn.com

7. Statement of Work

A) Services provided under this Contract shall be based on the Sample Statement of Work as set forth in Appendix C of this Contract. Customers may negotiate the terms and conditions of a SOW to suit their business needs, so long as the SOW terms and conditions do not conflict with this Contract.

B) Conflicting or Additional Terms

In the event that conflicting or additional terms in Statement of Work 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.

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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.

8. Authorized Exceptions to Contract and any Appendices.

No exceptions have been agreed to by DIR and Vendor.

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

Berry, Dunn, McNeil & Parker, LLC dba Berry, Dunn, McNeil & Parker, PLLC

Authorized By: Signature on File

Name: Charles Leadbetter

Title: Principal

Date: 8/29/2017

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

Authorized By: Signature on File

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 9/8/2017

Office of General Counsel: 9/7/2017