



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET

February 18, 2010

TO: ALL STATE AGENCIES, SCHOOL DISTRICTS, MUNICIPALITIES, VOLUNTEER
FIRE COMPANIES AND POLITICAL SUBDIVISIONS

FROM: Michael Bacu
State Contract Procurement Officer
302-857-4522

SUBJECT: **AWARD NOTICE – Addendum 12**
CONTRACT NO. GSS10228-SOFTWARE
MICROCOMPUTER SOFTWARE

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KEY CONTRACT INFORMATION

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Award Notice
Contract No. GSS10228SOFTWARE
MICROCOMPUTER SOFTWARE

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GOVERNMENT SUPPORT SERVICES – CONTRACTING

100 ENTERPRISE PLACE – SUITE 4 – DOVER, DE 19904-8202

PHONE: (302) 857-4550 – Fax: (302) 739-3779 – GSS.OMB.DELAWARE.GOV

1. MANDATORY USE CONTRACT:

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REF: Title 29, Chapter 6911(d) Delaware Code. Every state department and agency within the Executive Branch and Judicial Branch of the state government shall procure all material, equipment and nonprofessional services through the statewide contracts administered by Government Support Services, Office of Management and Budget. Delaware State University, Delaware Technical and Community College, the operations funded by Public School Districts, Delaware Transit Corporation, the Legislative Branch and the Board of Pension Trustees and their consultants are specifically exempted from the requirements of this subsection.

Government Support Services has joined with the State of Wisconsin for the State's Microcomputer Software needs. Microcomputer Software is defined as:

- "Shrink-Wrapped" software
- "Off-the-Shelf" software
- Licensed Software
- Software Media
- Software Upgrades
- Maintenance/Support Agreements offered by the Publisher/licensor
- Subscription Software (limited) (No services can be included)

The scope of this Contract **does not include:**

- Specialized and highly-customizable software
- Software that requires implementation costs
- Software services other than maintenance/support
- Specific Symantec anti-virus software.

The scope of the Contract **does not include** any professional services, such as consulting, software enhancements or any other professional services offered by a Contractor or Publisher/licensor.

2. CONTRACT PERIOD:

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Each contractor's contract shall be valid through August 31, 2013.

3. VENDORS:

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Contract # GSS10228-SOFTWAREV05

State of Wisconsin Contract: 28031-D-KA

FSF Vendor ID: 0000031087

Digital Information Services (DIS) d/b/a Computer Intelligence Association

Attn: Michael Carpenter

10425 Dalebrooke Lane

Potomac, MD 20854-6412

Phone: (301) 762-1051

Fax: (301) 762-6719

Email: mike@digitalgovernment.net

Website: www.ciacentral.com/wisconsin

GSS10228-SOFTWAREV10

State of Wisconsin Contract: 28031-E-KA FSF Vendor ID: 0000085400 En Pointe Technologies Sales, Inc. Attn: Rob Thomas 18701 S. Figureroa St. Gardena, CA 90248-4506 Phone: (701) 610-9562 Fax: (310) 258-2373 Email: robthomas@enpointe.com Website: www.enpointe.com
Contract # GSS10228-SOFTWAREV09 State of Wisconsin Contract: 28031-B-KA FSF Vendor ID: 0000022295 Insight Public Sector, Inc. Attn: Don Bartolo 444 Scott Drive Bloomington, IL 60108-3111 Phone: (800) 467-4448 x 5598 Fax: (480) 760-7860 Email: don.bartolo@insight.com Website: https://www.ips.insight.com/pages/landingpage.web?id=10100
GSS10228-SOFTWAREV07 State of Wisconsin Contract: 28031-C-KA FSF Vendor ID: 0000016884 SHI International Corp (SHI) Attn: Alexander Queller 33 Knightsbridge Road Piscataway, NJ 08854-3925 Phone: (732) 868-5811 Fax: (732) 868-6020 Email: alexander_queller@shi.com Website: www.publicsector.shidirect.com

4. **ORDERING METHODS:**

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Each Contractor shall have a toll free number for any type of Customer Service (ask questions, obtain price quotes, place orders, etc.) answered by a live person the majority of the time from Monday through Friday (excluding Wisconsin designated legal holidays) from 9:00 a.m. – 6:00 p.m. Eastern Time.

Each Authorized User shall be responsible for placing its own orders which may be accomplished by written purchase order, telephone, fax or computer online systems. Payment may be made by the State's Purchasing Card (P-Card) or by Contractor's invoices.

Software Quote Request for Resellers (Contractors, Vendors)
http://vendornet.state.wi.us/vendornet/wais/bulldocs/2577_3.XLS

5. **SHIPPING TERMS:**

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All shipments shall be F.O.B. destination.

6. DELIVERY AND PICKUP:

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The contractor is expected to deliver the products by the delivery date specified in any executed order referencing the Contract, or within seven (7) days After Receipt of the Order (ARO), if no date is specified.

A packing label shall be on each box and include the following items, where applicable, visible on the outside of the box:

- Contractor Purchase Order Number, if applicable
- Authorized User Purchase Order Number
- Authorized User's Name
- Address
- Division Name and floor (if applicable)
- Contact Name (Name of Purchaser)
- Number of parcels

A packing slip shall also be included with each shipment, which shall include at least the following information in no particular order:

- Line item description
- Quantity ordered
- Quantity included in shipment
- Any back order items
- Unit Price
- Purchase Order Number
- Authorized User name
- F.O.B. (destination)
- All information contained on the packing label

7. RETURN OF PRODUCT:

Any materials delivered in poor condition, in excess of the amount authorized by the purchase order shall, at the discretion of the Authorized User, be returned to the Contractor's warehouse at the Contractor's expense within thirty (30) days. Credit for returned goods shall be issued immediately once Contractor receives returned goods.

If any product is returned to a Contractor for failure of performance, the Contractor shall, at the State's discretion, refund all amounts paid to the Contractor for such product or replace the product or replace the product, and the following shall apply:

- Within twenty (20) days of written notification by the Authorized User, the Contractor shall make arrangements for the return of the product.
- Contractor shall bear all shipping and insurance costs.
- Contractor shall be liable for damages to the product, unless caused by fault or negligence of the Authorized User that occur during the return process.
- Authorized User shall be responsible for all costs associated with the preparation of the product for shipping, and all shipping costs to the Contractor's nearest service location, if the product is returned to the Contractor for any other reason.

8. EXTRA FEES NOT ALLOWED:

The Contractor shall not invoice service fees or additional costs to the State or any Authorized User during the term of the Contract. There shall be no “small order”, “minimum order”, or “special order” charges or surcharges, unless otherwise required in the VLA.

There shall be no return fees for inaccuracies or other errors on the part of the Contractor.

Any expedited delivery that occurs as a result of Contractor’s error (e.g., stock-outs, etc.) shall be free of charge. No handling surcharges shall be added or discount lost for any expedited orders.

9. SOFTWARE LICENSE CERTIFICATES:

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For electronic delivered software, the Contractor shall provide Authorized User either directly or through the Publisher/Distributor one of the following:

- License key code
- Serial number
- Activation code
- License certificate
- License confirmation certificate

For software delivered via media, the Contractor shall provide Authorized User either directly or through the Publisher/Distributor a license confirmation certificate (or similar document) unless the license is included in the media package.

For all software, the Contractor shall work with the Publisher to resolve any issues regarding licenses for the Authorized User.

When possible, the Contractor shall include Purchase Order numbers (Contractor’s and State’s) with any paperwork.

Contractor should have the ability to report the Contractor’s Purchase Order Number that applies to a transaction to each Authorized User and/or to provide those Purchase Order Numbers, upon request.

10. ELECTRONIC MEDIA FULFILLMENT:

The Authorized User should have the option to receive software media or a link and password that allows the authorized User to download the software from the Publisher’s or the Contractor’s website.

The Contractor should have a tool that allows the Authorized User to receive the data required to feed into their internal electronic software distribution servers or to create their own CD’s for major licensing programs.

Upon Publisher’s approval, the Contractor should be able to make files available on the server as CD Images, or as Compressed File archives. These could be used to burn a CD at the Authorized User’s site, or load an Authorized User’s internal servers or software distribution systems.

11. QUALITY ASSURANCE and WARRANTY GUARANTEE:

The Contractor shall honor the Publisher’s warranty and facilitate the necessary notices and responsibilities for any product deemed to be defective by the State to be returned.

12. NEGOTIATION ASSISTANCE, VOLUME LICENSE AGREEMENT FACILITATION:

The Contractor shall assist the Authorized Users with software deployment and migration strategies for purposes of upgrades from/to and to suggest competitive upgrades paths.

The contractor shall advise the Authorized User of the various software versions and plans available, especially when there are various choices.

13. PRICING:

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Prices will remain firm for the term of the contract year.

http://vendornet.state.wi.us/vendornet/wais/bulldocs/2577_2.XLS

- **Cost-Plus Percentages:**

The Cost-Plus Percentages established in the Contract shall be honored for all the applicable Publisher's software and maintenance/support offerings whether the order is placed using the Contractor's website (online ordering), purchase order, PCard, etc. the Contractor's Cost shall be the base price the Contractor uses to calculate the State's Unit Price.

All Cost-Plus Percentages offered shall be the maximum percentage used to calculate the State's Unit Price and shall not increase during the term of the Contract. The Cost-Plus Percentage can be reduced at any time.

Contractor shall be responsible for ensuring that the Contractor's staff quote and invoice the Authorized User the correct Unit Prices(s) using the Cost and the Contract's Cost-Plus Percentage.

- **List-Less Discount Percentages:**

List-Less Discount Percentages are established for Novell's software products and maintenance.

All List-Less Discount Percentages offered shall be the minimum percentage used to calculate the State's Unit Price and shall be decrease during the term of the Contract, unless by Contract Amendment issued by the State of Wisconsin. The List-Less Discount Percentages can be increased at any time.

All List-Less Discount products shall be priced using the correct price list and the Contract's List-Less discount Percentage. The contractor shall be responsible for ensuring that the Contractor's staff quote and invoice the authorized User the correct Unip price(s) using the appropriate price list and the Contract's List-Less Discount Percentage.

- **Novell Software Products and Maintenance:**

The list-Less Discount Percentages established in the Contract shall be honored for software and maintenance/support offerings. The List Price in the Publisher's price list shall be the base price the Contractor uses to calculate the State's Unit Price. The List Price and the stated List-Less Discount Percentage times the List Price is subtracted from the List Price to determine the State's Unit Price.

The Contractor shall use the appropriate Novell price list to determine the List Price based on the State of Wisconsin's agreement (MLA) with Novell. During the period 7/1/2010-6/30-2012, the List Price on Novell's July 2010 price list shall be used to calculate the Unit Price. List Prices for

products not listed on the 2010 price list shall be determined using the item's List Price when first published on a Novell price list.

14. SERVICE FEES:

The Contractor shall not invoice service fees or additional fees to Authorized Users during the term of the Contract. There shall be no "small order", "minimum order" or "special order" charges or surcharges, unless otherwise required in the Publisher's Value License Agreement (VLA) or the Publisher's Master License Agreement (MLA).

The Contractor shall not charge any Authorized User for returns based on Contractor's inaccuracies or other errors on the part of the Contractor.

Any Expedited delivery that occurs as a result of contractor's error shall be free of charge. No handling surcharges shall be added or discounts lost for any expedited orders.

15. PUBLISHER'S END USER TERMS AND CONDITIONS, LICENSE AGREEMENTS, ETC;

This Contract does not cover many of the individual Publisher's software licensing terms and conditions required by many software Publishers for their products. Therefore, every purchaser of software who signs, agrees to or clicks agreement to Publisher's terms and conditions is responsible for ensuring that the terms and conditions are allowable, acceptable and legal for the State of Wisconsin. If you are not positive, then you must submit the terms and conditions to your purchasing and/or your legal people. There are some terms and conditions that the state cannot agree to or sign.

Listed below are some terms to watch out for.

- State must indemnify the vendor—(State can never indemnify any vendor)
- Induced Inhibiting Code
- Disabling Devices—(i.e., Ability for Publisher to shut down the software)
- Audit Terms—(i.e., Ability for Publisher to audit unannounced)
- Infringement Indemnification—(Publisher will not infringe any intellectual property rights of any third party and will indemnify the State)
- Applicable Law—(Only the Laws of the State of Delaware can be agreed to)
- Assignment—(i.e., Ability for Publisher to sell or assign agreement without your knowledge. You want the terms you agreed to follow any sale or assignment)

16. RETIREMENT OF LICENSES:

The Contractor shall facilitate with the Publisher the process for the retirement of any licenses for the Authorized User, as needed. This requires that the Contractor determine to policies of the Publisher and provide the State with the proper procedures and paperwork in order that the retirement of the license becomes effective before the next maintenance period is invoiced or becomes effective.

17. LICENSE DEPLOYMENT MANAGEMENT:

The contractor shall assist the Authorized Users with software deployment and migration strategies for purposes of upgrades from/to and to suggest competitive upgrade paths.

The contractor shall advise the Authorized User of the various software versions and plans available, especially when there are various choices.

18. SOFTWARE LICENSE CERTIFICATES:

For electronic delivered software, the Contractor shall provide Authorized User either directly or through the Publisher/Distributor one of the following:

- License key code
- Serial number
- Activation code
- License certificate
- License confirmation certificate

For software delivered via media, the Contractor shall provide Authorized User either directly or through the Publisher/Distributor a license confirmation certificate (or similar document) unless the license is included in the media package.

For all software, the contractor shall work with the Publisher to resolve any issues regarding licenses for the Authorized User.

When possible, the Contractor shall work with the Publisher to resolve any issues regarding licenses for the Authorized User.

When possible, the Contractor shall include Purchase Order numbers (Contractor's and/State's) with any paperwork.

Contractor should have the ability to report the Contractor's Purchase Order Number that applies to a transaction to each Authorized User and/or to provide those Purchase Order Numbers upon request.

19. ELECTRONIC MEDIA FULFILLMENT:

The Authorized User should have the option to receive software media or a link and password that allows the Authorized User to download the software from the Publisher's or the Contractor's web site.

The Contractor should have a tool that allows the Authorized User to receive the data required to feed into their internal electronic software distribution servers or create their own CD's for major licensing programs.

Upon Publisher's approval, the Contractor should be able to make files available on the server as CD images, or as Compressed File archives. These could be used to burn a CD at the Authorized User's site, or load an Authorized User's internal servers or software distribution systems.

20. ENROLLMENT AGREEMENTS:

The Contractor shall obtain a signed enrollment agreement (if required) from the enrolling Authorized User prior to any sale of software. All Enrollment Agreements shall be safeguarded not destroyed. At the expiration of the Contract or termination, the Contractor agrees to forward all agreements to the Authorized User either electronically or in hard copy (Authorized User's preference).

21. LICENSE INVENTORY AND TRACKING:

The Contractor shall provide an online, real-time, product license inventory and tracking database (spreadsheet format preferably in Excel is acceptable) through the Internet for any Authorized User, who requests it. The license inventory and tracking database system shall at a minimum include the following:

- Contractor is responsible for maintaining the license expiration dates in the license inventory and tracking database.
- System shall be able to set up each Agency as a separate user account, so only that account information is visible to appropriate Authorized User(s).
- Agency accounts shall be set up for the Agency Account Manager to view all the licenses and their expiration dates of the Agency.
- Provide the Authorized User the ability to obtain reports of expiration dates for all their licenses. The State's Contract Manager or designee shall have the ability to obtain reports of expiration dates for all licenses in the Contractor's database owned by the State.
- License inventory and expiration date reports shall be available online as well as via email to the Authorized User and the Contract Manager, if requested.
- Contractor shall notify the Authorized User's Agency Account Manager and the Authorized User's back-up person ninety (90) days and thirty (30) days in advance of each license expiration date. The Contractor and the Authorized Users are responsible for keeping the names of the people who receive notifications for licenses tracking current.

The Contractor shall provide the Authorized User and any successor contractor a file of all information regarding the license inventory and tracking database at the end of the Contract or termination of the Contract.

22. MAINTENANCE/SUPPORT AGREEMENT INFORMATION AND TRACKING:

The Contractor shall be responsible for coordination and communication of maintenance/support agreement information between the Publisher and the Authorized User. This includes the following minimum requirements:

- Provide the Authorized User with all Publisher registration numbers, agreement numbers and maintenance agreement period dates. This activity shall occur when the maintenance is purchased or when the order transaction has been completed.
- Provide the Authorized User with maintenance and support plan features, Publisher contact telephone numbers and websites for obtaining maintenance/support.
- Coordinate co-termination of the second (2nd) year of a maintenance/support contract with the State's fiscal year if requested by Authorized User and allowed by the Publisher.

If requested by an Authorized User, the Contractor shall provide tracking of maintenance/support agreements in its license tracking database (spreadsheet format preferably in Excel is acceptable). This includes the following minimum requirements:

- Maintain the maintenance/support expiration dates in the license inventory and tracking database.
- Provide the Authorized User and the Contract Manager or designee the ability to obtain reports of expiration dates for all their maintenance/support agreements.
- Notify the Authorized User and the Authorized User's back-up person, ninety (90) days and thirty (30) days prior to the expiration of any Authorized User's maintenance/support agreements.
- Maintain the contact names for the Authorized User's back-up person, ninety (90) days and thirty (30) days prior to the expiration of any Authorized User's maintenance/support agreements.
- Maintain the contact names for the Authorized User's Agency Account Manager, or other designee who shall receive the notifications and the Authorized User's back-up person. The Contractor and the authorized Users are responsible for keeping the names of the people who receive notifications for maintenance tracking current.

The Contractor shall provide the Authorized User and any successor contractor a file of all information regarding the maintenance agreement tracking database at the end of the contract or termination of the Contract.

23. REPORTS TO PUBLISHERS:

Contractor shall provide to Publishers information regarding the purchase of software and maintenance/support as required by the Publisher in a timely manner. Any delay of required reporting to any Publisher that results in increased prices and/or contractual issues between the State and the Publisher may be grounds for breach of Contract.

ADDITIONAL TERMS AND CONDITIONS:

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24. BILLING:

The successful vendor is required to **"Bill as Shipped" to the respective ordering agency(s).** Ordering agencies shall provide at a minimum the contract number, ship to and bill to address, contract name and phone number.

25. PAYMENT:

The agencies or school districts involved will authorize and process for payment each invoice within thirty (30) days after the date of receipt. The contractor or vendor must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means at the State's option, without imposing any additional fees, costs or conditions.

26. PRODUCT SUBSTITUTION:

All items delivered during the life of the contract shall be of the same type and manufacture as specified unless specific approval is given by Government Support Services to do otherwise. Substitutions may require the submission of written specifications and product evaluation prior to any approvals being granted.

27. ORDERING PROCEDURE:

Successful contractors are required to have either a local telephone number within the (302) area code, a toll free (800) number, or agree to accept collect calls. Each agency is responsible for placing their orders and may be accomplished by written purchase order, telephone, fax or computer on-line systems. The contractor or vendor must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means at the State's option, without imposing any additional fees, costs or conditions.

Digital Information Services (DIS) Contact: John Bowers, Contract Manager Phone: 877-843-2421 Fax: 877-329-2429 Email: john@digitalgovernment.net Web: http://www.ciacentral.com/wisconsin/ Customer Relations: 877-843-2421

Education Account Contact: see above Field Account Executive: Olivia Seiceanu Phone: 877-843-2421 Email: olivia@digitalgovernment.net Day to Day Contact: John Bowers
En Pointe Contact: Rob Thomas Phone: 866-686-0329 Fax: 310-258-2373 Email: mmcdonough@enpointe.com Web: Customer Relations: 877-609-5173 Education Account Contact: See above Field Account Executive: Rob Thomas Phone: : 866-686-0329 Email: robthomas@enpointe.com Day to Day Contact: Rob Thomas
Insight Public Sector, Inc. Contact: Don Bartolo Phone: 800-467-4448 x5598 Fax: 480-760-7860 Email: don.bartolo@insight.com Web: www.ips.insight.com Customer Relations: 800-467-4448 Education Account Contact: see above Field Account Executive: Ron Nagel Phone: 608-251-0165 Email: rnagel@insight.com Day to Day Contact: Erica Falchetti Phone: 800-543-2437
SHI International Corp. (SHI) Contact: Steven Nemeth, Account Executive Phone: (800) 527-6389 ext 7246 Fax: (732) 537-7247 Email: steven_nemeth@shi.com Web: www.publicsector.shidirect.com Customer Relations: (800) 527-6389, Ext 7246 Education Account Contact: see above Field Account Executive: Steven Nemeth Phone: (800) 527-6389, Ext 7246 Email: steven_nemeth@shi.com Day to Day Contact: Steven Nemeth

28. HOLD HARMLESS:

The contractor agrees that it shall indemnify and hold the State of Delaware and all its agencies harmless from and against any and all claims for injury, loss of life, or damage to or loss of use of property caused or alleged to be caused, by acts or omissions of the contractor, its employees, and invitees on or about the premises and which arise out of the contractor's performance, or failure to perform as specified in the Agreement.

29. NON-PERFORMANCE:

In the event the contractor does not fulfill its obligations under the terms and conditions of this contract, the ordering agency may purchase equivalent product on the open market. Any difference in cost between the contract prices herein and the price of open market product shall be the responsibility of the contractor. Under no circumstances shall monies be due the contractor in the event open market products can be obtained below contract cost. Any monies charged to the contractor may be deducted from an open invoice.

30. FORCE MAJEURE:

Neither the contractor nor the ordering agency shall be held liable for non-performance under the terms and conditions of this contract due, but not limited to, government restriction, strike, flood, fire, or unforeseen catastrophe beyond either party's control. Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract.

31. AGENCY'S RESPONSIBILITIES:

The Agency shall:

- a. Examine and review in detail all letters, reports, drawings and other documents presented by the Contractor to the Agency and render to the Contractor in writing, findings and decisions pertaining thereto within a reasonable time so as not to delay the services of Contractor.
- b. Give prompt written notice to the Contractor whenever the Agency observes or otherwise becomes aware of any development that affects the scope or timing of the Contractor's services.
- c. When an ordering agency first experiences a relatively minor problem or difficulty with a vendor, the agency will contact the vendor directly and attempt to informally resolve the problem. This includes failure to perform by the date specified and any unacceptable difference(s) between the purchase order and the merchandise received. Ordering agencies should stress to vendors that they should expedite correction of the differences because failure to reply may result in an unfavorable rating in the execution of the awarded contract.
- d. The state has several remedies available to resolve non-performance issues with the contractor. The Agency should refer to the Contract Terms and Conditions to view these remedies. When a default occurs, the Agency should first review the contract to confirm that the issue is a part of the contract. If the issue is not covered by the contract, the state cannot expect the contractor to perform outside the agreement. If the issue is a part of the contract, the Agency or GSS - Contracting must then contact the contractor, discuss the reasons surrounding the default and establish a date when the contractor will resolve the non-performance issue.
- e. If there is a performance deficiency, a Corrective Action Report (CAR) may be used. Complete this form to report concerns with vendors or commodities. Be sure to furnish as much detail as possible. <http://gss.omb.delaware.gov/divisionwide/forms.shtml>.

Award Notice
Contract No. GSS10228SOFTWARE