



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET

May 23, 2011

TO: ALL STATE AGENCIES AND DIAMOND STATE PORT CORPORATION
FROM: PETER KOROLYK
STATE CONTRACT PROCUREMENT OFFICER
302-857-4559
SUBJECT: **AWARD NOTICE – Addendum #1 – Effective September 14, 2011**
CONTRACT NO. GSS10059-MUNICIPAL_LS
MASTER MUNICIPAL LEASE PURCHASE AGREEMENT

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KEY CONTRACT INFORMATION

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, Department of Elections, the Legislative Branch and the Board of Pension Trustees and their consultants are specifically exempted from the requirements of this subsection.

2. **CONTRACT PERIOD:**

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The TD Equipment Finance contract shall be valid for a two (2) year period from May 12, 2011 through May 11, 2013.

The Banc of America Public Capital Corp. contract shall be valid for a two (2) year period from May 16, 2011 through May 15, 2013.

Each contract may be renewed for two (2) additional one (1) year period through negotiation between the contractor and Government Support Services. Negotiation may be initiated no later than ninety (90) days prior to the termination of the current agreement.

ADDITIONAL TERMS AND CONDITIONS

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3. **LESSEE:**

The Lessee is the State of Delaware, acting on behalf of various State Agencies, or if legislative authority is granted, Diamond State Port Corporation.

4. **LESSOR:**

TD Equipment Finance, Inc.
1006 Astoria Blvd
Cherry Hill, NJ 08304

FSF # 0000087640

Contact: Christopher L. Campbell, Regional Manager
Phone: 215-282-3841
Fax: 215-557-6209
Email: Christopher.campbell@yesbank.com

OR

4. **LESSOR (cont'd):**

Banc of America Public Capital Corp.
1111 East Main Street
Richmond, VA 23219-3500

FSF # 0000024098

Contact: Charles T. Maguire, Senior Vice President
Phone: 804-788-3345
Fax: 804-262-8344
Email: Charles.maguire@baml.com

5. **LEASE TERM:**

TD Equipment Finance and leases may be scheduled for two, three, four, five, six, seven, or ten years in duration. The Agency will have the flexibility to structure the payments monthly, quarterly, or semi-annually.

Banc of America leases may be scheduled for one, two, three, four, five, six, seven, ten or fifteen years in duration. The Agency will have the flexibility to structure the payments monthly, quarterly, or semi-annually.

6. **TRANSACTION:**

The financing will be structured as a State of Delaware tax-exempt Lease Purchase transaction in the form of a Master Lease/Purchase Agreement. This is based upon the Lessee's compliance with the requirements of the Internal Revenue Code of 1986, as amended, relating to the Lessee's ability to enter into a Master lease/Purchase Agreement on a tax-exempt basis. The Lessee agrees to cooperate with the with Banc of America Leasing and Capital LLC in providing evidence as deemed necessary or desirable to substantiate such tax status.

7. **AUTHORITY TO EXECUTE SCHEDULE:**

Prior to executing a Schedule funded by one of the contracted vendors, each requesting state agency, or Diamond State Port Corporation, must make an informal application to the Office of Management and Budget, Government Support Services. All requests must be forwarded to the department personnel designated on the Award Notice detailing the amount requested, purpose of procurement and essential use of equipment requested.

Once OMB-GSS approval has been received, an agency representative will be selected to execute a Schedule with the appropriate vendor. The agency representative must complete an C-2 Exhibit Agreement (see Item #21 – Procedures for Lease Purchase Financing), and have the C-2 signed by one of the following:

- William W. Pickrum – Deputy Director
- D. Terry Barton – Fleet Administrator
- Victoria L. Ford – Chief of Administration

8. **MINIMUM PURCHASE:**

For TD Equipment Finance, the minimum amount to be financed on any transaction under this agreement will be \$5,000.00. In order to meet the \$5,000.00 minimum, the following guidelines will apply;

- One single piece of equipment must meet the \$5,000.00 minimum.
- Equipment purchased in multiple quantities may be financed provided each item will cost at least \$1,500.00 and the total of the item meets the \$5,000.00 minimum.

For Banc of America, the minimum amount to be financed on any transaction under this agreement shall be \$100,000.00.

For either vendor, prior approval must be obtained from the Secretary of Finance for any financing equal to or exceeding \$2,000,000 (two million dollars).

9. **INTEREST RATE:**

Upon the final acceptance of each equipment Schedule by the Lessee, the Lessor will calculate the interest rate.

TD Equipment Finance

The interest rate chart below references the annual percentage rate calculation using a percentage of like term U.S. Treasury interest rate swaps as quoted in the Federal Reserve H.15 Statistical Release as of July 6, 2010. Rates are available through the Federal Reserve website, <http://www.federalreserve.gov/releases/H15/update>, for the one, two, three, four, five, six, seven, or ten year maturities. This index will be used to calculate rates at the time that an individual Lease Schedule is prepared. The multiplier is .690 of any change in the index.

	<u>2 YR</u>	<u>3 YR</u>	<u>4 YR</u>	<u>5 YR</u>	<u>6 YR</u>	<u>7 YR</u>	<u>10 YR</u>
\$10MM - \$50MM	1.35	1.56	1.81	2.05	2.30	2.49	3.03
\$5MM - \$10MM	1.35	1.56	1.81	2.05	2.30	2.49	3.03
\$1M - \$5MM	1.42	1.63	1.88	2.12	2.36	2.49	3.03
\$500K - \$1MM	1.52	1.74	1.91	2.23	2.47	2.56	3.10
\$5K - \$500K	1.59	1.81	1.98	2.30	2.54	2.60	3.21

Where the index does not contain a rate for a term identical to that requested by Lessee, Lessor shall obtain the rate by interpolating between the two closest terms available in the index.

9. **INTEREST RATE (cont'd):**

For Banc of America Public Capital Corp.

The interest rate chart below references the financing term and percentage rate calculation using a percentage of like term U.S. Treasury as quoted in the Federal Reserve H.15 Statistical Release available through the Federal Reserve website <http://www.federalreserve.gov/releases/H15> for the one, two, three, four, five, six, seven or ten year maturities at the time the Schedule is prepared. The chart provides a percentage rate calculation based on monthly, quarterly and semi-annual payment frequencies for payment in advance.

Term	Average	Average Life H15 Swap	X	Plus Basis Point Spread (Monthly)	Plus Basis Point Spread (Quarterly)	Plus Basis Point Spread (Semi- Annual)
<u>Years</u>	<u>Life</u>	<u>Swap</u>	<u>0.65</u>			
1	1	.43	0.2795	71.43	71.53	71.67
2	1	.43	.02795	89.51	89.64	89.84
3	2	.88	0.5720	79.12	79.31	79.59
4	2	.88	0.5720	107.04	107.34	107.79
5	3	1.42	0.9230	99.45	99.86	100.48
6	3	1.42	0.9230	123.87	124.37	125.13
7	4	1.92	1.2480	112.60	113.25	114.23
10	6	2.68	1.7420	121.12	122.13	123.67
15	9	3.39	2.2035	163.85	165.37	167.56

The Contract Rate is equal to Average Life H15 Swap times 65% plus the Basis Point Spread, depending on Monthly, Quarterly or Semi-Annual repayment structure, for the interest rate to be charged for each Schedule.

Addendum #1 adds a Banc of America interest rate schedule for payment in arrears as follows:

Term	Average	Average Life H15 Swap	X	Plus Basis Point Spread (Monthly)	Plus Basis Point Spread (Quarterly)	Plus Basis Point Spread (Semi- Annual)
<u>Years</u>	<u>Life</u>	<u>Swap</u>	<u>0.65</u>			
1	1	.43	0.2795	65.85	68.13	71.58
2	1	.43	.02795	81.41	87.61	92.06
3	2	.88	0.5720	80.45	83.06	87.56
4	2	.88	0.5720	100.72	104.49	110.21
5	3	1.42	0.9230	94.32	98.25	104.24
6	3	1.42	0.9230	120.66	124.43	130.18
7	4	1.92	1.2480	114.08	118.06	123.46
10	6	2.68	1.7420	143.03	146.89	152.11
15	9	3.39	2.2035	181.86	185.78	191.11

The interest rate formula described in the executed contract (as displayed above) shall be effective for any Schedules executed before April 1, 2012. Schedules executed on or after April 1, 2012 shall be subject to interest rates and/or formulas as determined by the Lessor and delivered to Lessee in writing.

10. **REPAYMENT SCHEDULE:**

Each Agency will have the ability to choose lease payments on a monthly, quarterly, or semi-annual basis at time of financing request. The repayment schedule will not affect the calculated interest rate.

11. **LEASE CONTINUATION:**

The Original Term of each lease will begin on the Commencement Date of each Schedule and end on the on the fiscal year of the Lessee in effect at such Commencement Date. Lease Renewal Terms each having a duration of one year and a term coextensive with the Lessee's fiscal year shall automatically renew unless canceled by the Lessee.

12. **LEASE PRE-PAYMENT:**

For TD Equipment Finance, there is no prepayment under the lease during the first twelve (12) months of any Lease Term, except for instances of damage, theft, chronic mechanical problems, etc. The Lessee will be required to indentify reason for prepayment decision, or inability to continue lease. Partial prepayment of a Schedule will be calculated on a pro-rata basis based on original equipment cost relative to the individual lease transaction.

Otherwise, after the twelve (12) month restriction is passed, prepayments may be made on the Rental Payment dates specified in the appropriate Lease, upon not less than thirty (30) days prior written notice, and upon payment in full of the full of the Rental Payments then due.

For Banc of America, Lessee may prepay on the Rental Payment dates specified in the appropriate Lease, upon not less than thirty (30) days prior written notice, and upon payment in full of the full of the Rental Payments then due. No prepayment penalty will be assessed, and no time limitations have been established.

Additionally for both finance companies:

The lessee will build equity in the equipment with each lease payment and will have the option to purchase the Equipment on any payment date at the applicable purchase option price provided in the lease agreement. The lessee will own the Equipment after the last lease payment.

Upon receipt of a State warrant for payment, the Lessor shall immediately release the lien on the equipment or property and provide the title or a letter indicating the equipment or property is released, in five business days or less.

Lease payment schedules shall be calculated to include a \$1.00 (one dollar) buy-out concurrent with the last lease payment.

13. **LESSEE'S RESPONSIBILITIES:**

All responsibilities imposed by the ownership of possession of the equipment including but not limited to, taxes, insurance and equipment maintenance, shall be borne by the Lessee.

14. **NET LEASE:**

All obligations, costs and responsibilities associate with ownership of the equipment will be borne by the Lessee including, but not limited to, insurance, maintenance and applicable taxes.

15. **FEES/EXPENSES:**

There will be no fees for lease origination or documentation on this transaction. However, the Lessee and/or each State Agency will be responsible for any fees and expenses incurred by the Lessee in completing this transaction, including the attorney's fees.

16. **TITLE/SECURITY:**

The Lessee will retain title to the equipment throughout the term. The Lessor will retain a first priority security interest in the equipment until Lessee has performed all duties required under the lease. For

For TD Equipment Finance, Certificates of Title shall show the lienholder as follows:

TD Equipment Finance, Inc.
1006 Astoria Blvd
Cherry Hill, NJ 08034

For Banc of America, Certificates of Title shall show the lienholder as follows:

Banc of America Public Capital Corp
555 California Street, 4th Floor
Mail Code CA5-705-04-01
San Francisco, CA 94104

Titles must be provided to the appropriate vendor with ten (10) business days of issuance.

17. **PROOF OF INSURANCE:**

The Agency (Lessee) may be required by the Lessor to provide proof of insurance which shows the equipment or property is protected from loss. It will be the obligation of the Agency to contact the Insurance Coverage Office to obtain a letter from the Risk Manager which states the extent of the coverage on the equipment or property. Insurance inquiries should be directed to:

State Risk Manager
Insurance Coverage Office
Duncan Center, 3rd Floor
500 West Loockerman Street
Dover, DE 19904
Phone: (302) 739-3651

18. **TAX EXEMPT:**

The State of Delaware and any agency eligible to obtain financing under the terms and conditions of this contract, is tax exempt and shall not be required to pay any tax, fee or charge above and beyond payment of principal and interest, with the possible exception of costs associated with an escrow account.

Federal Form 8038G must be completed and filed with each Lease/Purchase Agreement. It is the responsibility of the Agency (Lessee) to make sure this form is properly completed and filed with the successful vendor. **Each Federal Form 8038G must be signed by the Secretary of Finance. The Secretary of Finance is the only authorized signature.**

19. **OPINION OF COUNSEL:**

Prior to each lease acceptance, all lease documents are to be reviewed by the agency's (lessee's) Deputy Attorney General or legal counsel. In addition to this, an "Opinion of Counsel" statement must be submitted verifying that the agency legally meets the terms and conditions of the lease agreement.

20. **ASSIGNMENT BY LESSOR:**

No assignment, transfer or conveyance shall be permitted without written notification to Government Support Services. After notification, and on specific conditions, the Lessor may assign its right, title, or interest to equipment covered by a lease or group of leases to one or more assignees.

21. **PROCEDURES FOR LEASE PURCHASE FINANCING:**

Prior to executing a Schedule with an awarded vendor, each state agency (or Diamond State Port Corporation) must receive prior approval from Government Support Services. Once approval has been granted, the requesting agency shall receive a set of lease processing procedures and set of Exhibits from a GSS contract supervisor or officer.

Exhibits included in the preparation package may include the following (specific to the awarded vendor):

- (1) Schedule of Property (Exhibit A) – list of equipment to be purchased.
- (2) Certificate for Schedule (Exhibit C-2) – identification of, and authorization of a state agency representative to execute a Schedule
- (3) Opinion of Counsel to Lessee (Exhibit D) – standard format for legal counsel to approve legitimacy of lease transaction.
- (4) Acceptance Certificate (Exhibit E) – form the state agency must sign upon receipt and acceptance of leased equipment.
- (5) Memorandum of Understanding (Exhibit G) – standard MOU format for Diamond State Port Corporation to utilize lease Agreement
- (6) Essential Use Certificate (Exhibit H) – state agency certification that equipment is essential use