

11/17/2005

PARTICIPATING ADDENDUM
COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES

MASTER PRICE AGREEMENT

Lexmark International, Inc.

CONTRACT NUMBER A63315

State of North Dakota

1. Scope

Agencies, boards, bureaus, commissions, institutions of higher education of the state of North Dakota, and other North Dakota government and education (public, primary and secondary) entities that are authorized to purchase from contracts established for and by the State are purchasing agencies under the Master Price Agreement A63315 and may make purchases under the terms and conditions of that agreement. This agreement is not a purchase order and it does not guarantee any purchases will be made by any North Dakota purchasing agency. Each North Dakota purchasing agency is responsible for complying with any laws that regulate its individual purchase authority.

2. Changes:

See Attachment A

3. Primary Contacts:

The primary participating entity contact for this participating addendum is as follows:

Name: Dillys Bach

Participating Entity Name: State of North Dakota

Address: 600 East Boulevard Ave, Bismarck ND 58505-0100

Telephone: 701.400.4589

Fax: 701.328.1615

E-mail: dbach@state.nd.us

The primary Contractor contact for this participating addendum is as follows:

Name: LeAnn Spradling

Contractor: Lexmark, International, Inc.

Address: 740 New Circle Road, Lexington KY 40550

Telephone: 859.232.7383

Fax: 859.232.2010

E-mail: lspradli@lexmark.com

4. Servicing Subcontractors:

In addition to a direct purchasing model, Lexmark has available to it, business partners or "authorized resellers" for pre-sales assistance under this Agreement. Lexmark reserves the right to add or delete identified business partners from these lists for time to time, and with the advice and consent of the Customer, as circumstances require. Lexmark will acquire the consent from the State before adding or deleting a subcontractor.

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On-site repair services under this Agreement are provided by IBM, Banc Tec, or a Lexmark authorized business partner in the State of North Dakota.

The Master Price Agreement Number MUST be shown on all Purchase Orders issued against this Agreement.

This Addendum and the 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 Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the 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 Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by Contractor below.

Signatures as required by State Statutes, Rules or Policies

State of North Dakota

Signed: Sherry L. Neas

Printed Name: Sherry L. Neas

Title: State Procurement Manager

Date: 11-18-2005

Lexmark International, Inc.

Signed: Sharon Brindley

Printed Name: Sharon Brindley

Title: Vice President, Public Sector Healthcare

Date: 11/17/05

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EXHIBIT A

Changes to WSCA Master Price Agreement State of North Dakota AND Lexmark International, Inc. (Contractor).

This Participation Addendum is entered into between the State of North Dakota, acting through its State Procurement Office (State) and Lexmark International, Inc. (Contractor) to amend the documents entitled Western States Contracting Alliance Master Price Agreement for Manufacturers of Personal Computer Equipment and Related Service A63315 (collectively known as "Contract"). The parties agree to the following terms and conditions and expressly agree that if any of the following terms and conditions are in conflict with any of the terms and conditions of the Contract, then, notwithstanding any term in the Contract, and its attachments, the following terms and conditions govern and control the rights and obligations of the parties. Any amendments to the Participating Addendum, or any other amendments, must be in writing and executed by each party.

Changes:

1. Section 12 (A.), Patent, Copyright, Trademark and Trade Secret Indemnification, is hereby amended to insert the following after the first sentence: "Any attorney that represents the state of North Dakota must first be appointed as a special attorney general by North Dakota's Attorney General."

2. Renewal. This agreement will not automatically renew. The State of North Dakota will give written notice of its intent to renew at least 60 days prior to the termination of this agreement. The renewal will be agreed to in writing by both parties.

3. Applicable Law and Venue. Section 32 Governing Law is hereby deleted and replaced with. This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action commenced to enforce this Contract must be brought in the District Court of Burleigh County, North Dakota.

4. Spoliation. Contractor shall promptly notify State of all potential claims that arise from or result from this Contract. Contractor shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the State the opportunity to review and inspect the evidence, including the scene of an accident.

5. Insurance

Contractor shall secure and keep in force during the term of this agreement and Contractor shall require all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.**
- 2) **Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.**
- 3) **Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.**
- 4) **Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an**

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The insurance coverages listed above must meet the following additional requirements:

- 1) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 2) The insurance required in this agreement, through a policy or endorsement, shall include:
 - a) a "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
 - b) a provision that the policy and endorsements may not be canceled or modified without the Contractor endeavoring to provide thirty days prior written notice to the undersigned State representative;
 - c) the Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable;
 - d) failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

6. Attorney Fees. In the event a lawsuit is instituted on behalf of the State to obtain performance due of any kind under this Contract, and the State is the prevailing party, Contractor shall, except when prohibited by N.D.C.C. § 28-26-04, pay the State's reasonable attorney fees and costs in connection with the lawsuit.

7. Alternative Dispute Resolution – Jury Trial. The State does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to legal action to enforce available remedies. The State does not waive any right to a jury trial.

8. Confidentiality. Contractor agrees not to use or disclose any information it receives from the State under this Contract that the State has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by the State. The State agrees not to disclose any information it receives from Contractor that the Contractor has previously identified as confidential and which the State determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. § 44-04-18. The duty of State and Contractor to maintain confidentiality of information under this section continues beyond the term of this Contract, or any extensions or renewals or it.

9. Compliance with Public Records Act. Contractor understands that, except for disclosures prohibited in Section 13, the State must disclose to the public upon request any records it receives from Contractor under this Contract. Contractor further understands that any records that are obtained or generated by the Contractor under this Contract, except for records that are confidential under Section 13, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. Contractor agrees to contact the State immediately upon receiving a request for information under the open records law and to comply with the State's instructions on how to respond to the request.

10. Nondiscrimination - Compliance with Laws. The Contractor agrees to comply with all applicable laws and rules, including those relating to nondiscrimination, accessibility, and civil rights. Contractor will timely file all required reports, make all payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment

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compensation, and workers compensation premiums. Contractor will have and keep current at all times during the term of this Contract all required licenses and permits.

11. State Audit. Upon request with 30-days notice, all records, generally maintained by the industry, regardless of physical form, and the accounting practices and procedures of Contractor relevant to this Contract are subject to examination by the North Dakota State Auditor or the Auditor's designee. Contractor will maintain all such records for at least three years following completion of this Contract.

12. Prepayment. The State will not make any advance payments before performance by the Contractor under this Contract.

13. Taxpayer Identification. The Contractor's federal employer ID number is 46-431398.

14. Effective Date. This Contract is not effective until fully executed by both parties.

15. Reports. The Contractor agrees to provide periodic utilization reports in a format as mutually agreed to the Primary Contractor on a quarterly basis in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 30	July 31
September 30	October 30
December 31	January 31
March 31	April 30

16. Purchase Orders. The State requires that there be no minimum order requirements or charges to process an individual Purchase Order. It is specifically noted that the WSCA Contract Number and associated Participating Addendum Number must be indicated on all Purchase Orders, Invoices, and other associated documents. The Parties agree that Purchase Orders shall be issued as follow: one PO for hardware/supplies/warranty and one PO issued for associated services.

17. Invoicing and Payment. Contractor will issue individual invoices for hardware and services. Invoices will be issued as follows:

- 1) Invoices for hardware are issued at the same time as the shipment of the equipment.
- 2) Invoices for services are issued upon the completion of the services.

Customer will pay invoices net 30 days from date of invoice.

18. Purchasing Card. Contractor agrees to accept a State of North Dakota purchasing card for order placement in addition to accepting a properly issued Purchase Order, without passing the purchasing card processing fee back to the State.

19. Electronic Funds Transfer Payment. In the event that the State elects to make payment via electronic funds transfer to Contractor; Contractor, upon request of Customer, shall provide its bank routing information to (identify who gets information).

20. Electronic Data Interface (EDI). In the event that the State elects to utilize electronic purchase orders and invoices, Contractor may require an EDI Document on File outlining certain electronic information necessary for transactions to occur.