

STATE OF WISCONSIN PARTICIPATING ADDENDUM

COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES
WISCONSIN CONTRACT 11-20400-400
MASTER PRICE AGREEMENT A63316
Xiotech Corporation

1. Scope

The State of Wisconsin as represented by the State Bureau of Procurement enters into this agreement with the changes listed in section 2 of this addendum. This convenience contract will be available for use by state agencies including the University of Wisconsin system as well as all local entities as defined in the Wisconsin Statutes (s. 16.70(8), and ss. 66.0301(1) and (2)).

2. Changes:

- A) Wisconsin's Terms and Conditions (Attachment C) as they apply to this agreement.
- B) Wisconsin's Cooperative Purchasing Agreement, Attachment B.
- C) Quarterly reports for Wisconsin activity should be submitted to the contact below.

3. Primary Contact:

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

Lyman Fuson
I. T. Procurement Manager
State of Wisconsin, Department of Administration
101 E Wilson St. 6th Floor
P.O Box 7867
Madison, WI 53707-7867
Telephone: (608) 266-9796
Fax: (608) 267-0600
E-mail: lyman.fuson@doa.state.wi.us

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

Name: Mary Reuss
Contractor: XIOTECH Corporation
Address: 6455 Flying Cloud Drive, Eden Prairie, MN 55344-3305
Telephone: 952.983.2433
Fax: 952.983.2527
E-mail: mary_reuss@xiotech.com

4. Servicing Subcontractors:


All purchase orders shall be sent and payments made directly to the Contractor. Service Subcontractors are not authorized to receive or accept purchase orders or payments.

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.

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

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

State Bureau of Procurement

By: 
Lyman Fuson
I.T. Procurement Manager

Date: 12/13/04

Contractor:

By: 

Date: 12-7-04

Contractor must also submit completed Cooperative Purchasing Agreement (attached).



Attachment B



Vendor Agreement
Wisconsin's Cooperative Purchasing Service

Wisconsin statutes (s. 16.73, Wis. Stats.) establish authority to allow Wisconsin municipalities to purchase from state contracts. Participating in the service gives vendors opportunities for additional sales without additional bidding. Municipalities use the service to expedite purchases. A "municipality" is defined as any county, city, village, town, school district, board of school directors, sewer district, drainage district, vocational, technical and adult education district, or any other public body having the authority to award public contracts (s. 16.70(8), Wis. Stats.). Federally recognized Indian tribes and bands in this state may participate in cooperative purchasing with the state or any municipality under ss. 66.0301(1) and (2), Wis.Stats.

Interested municipalities:

- will contact the contractor directly to place orders referencing the state agency contract number; and
- are responsible for receipt, acceptance, inspection of commodities directly from the contractor, and making payment directly to the contractor.

The State of Wisconsin is not a party to these purchases or any dispute arising from these purchases and is not liable for delivery or payment of any of these purchases.

The State of Wisconsin will determine the contractor's participation by checking a box below.

MANDATORY: Bidders/Proposers must agree to furnish the commodities or services of this bid/proposal to Wisconsin municipalities. Vendors should note any special conditions below.

Special Conditions (if applicable):			
Signature <i>Boyd Johnson</i>		Date (mm/dd/ccyy) 12/9/04	
Name (Type or Print) Boyd Johnson		Title Associate General Counsel	
Company Xiotech Corporation		Telephone (952) 983-2208	
Address (Street) 6455 Flying Cloud Drive	City Eden Prairie	State MN	ZIP + 4 55344-3305
Commodity/Service Computer Hardware, Software & Service - Storage		Request for Bid/Proposal Number	

This form can be made available in accessible formats upon request to qualified individuals with disabilities.

Attachment C--Wisconsin Terms and Conditions

- 1.0 QUALITY:** The State of Wisconsin will defer to section 11 of the Master Price Agreement.
- 2.0 DELIVERY:** The State of Wisconsin will defer to section 10 of the Master Price Agreement.
- 3.0 ORDERING:** Purchase orders or releases via purchasing cards shall be placed directly to the contractor by an authorized agency as. No other purchase orders are authorized.
- 4.0 PAYMENT TERMS AND INVOICING:** Applicable law governing terms in Section 11, subsection B(2) of the Master Price Agreement is Wisconsin Statutes 16.528; 16.53(2); 16.53(11); 16.71(1) The State of Wisconsin normally will pay properly submitted vendor invoices within thirty (30) days of receipt providing goods and/or services have been delivered, installed (if required), and accepted as specified.
- Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to purchase order number and submittal to the correct address for processing.
- A good faith dispute creates an exception to prompt payment.
- 5.0 TAXES:** The State of Wisconsin and its agencies are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below.
- The State of Wisconsin, including all its agencies, is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of Wisconsin sales or use tax on its purchases. The State of Wisconsin may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials.
- 6.0 GUARANTEED DELIVERY:** The State of Wisconsin will defer to section 18 of the Master Price Agreement.
- 7.0 ENTIRE AGREEMENT:** The State of Wisconsin will defer to section 5 of the Master Price Agreement.
- 8.0 APPLICABLE LAW AND COMPLIANCE:** This contract shall be governed under the laws of the State of Wisconsin. The contractor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. The State of Wisconsin reserves the right to cancel this contract if the contractor fails to follow the requirements of s. 77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax. The State of Wisconsin

also reserves the right to cancel this contract with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

- 9.0 ANTITRUST ASSIGNMENT:** The contractor and the State of Wisconsin recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Wisconsin (purchaser). Therefore, the contractor hereby assigns to the State of Wisconsin any and all claims for such overcharges as to goods, materials or services purchased in connection with this contract.
- 10.0 ASSIGNMENT:** No right or duty in whole or in part of the contractor under this contract may be assigned or delegated without the prior written consent of the State of Wisconsin.
- 11.0 NONDISCRIMINATION / AFFIRMATIVE ACTION:** In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Wis. Stats., sexual orientation as defined in s. 111.32(13m), Wis. Stats., or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities.
- 11.1** Contracts estimated to be over twenty-five thousand dollars (\$25,000) require the submission of a written affirmative action plan by the contractor. An exemption occurs from this requirement if the contractor has a workforce of less than twenty-five (25) employees. Within fifteen (15) working days after the contract is awarded, the contractor must submit the plan to the contracting state agency for approval. Instructions on preparing the plan and technical assistance regarding this clause are available from the contracting state agency.
- 11.2** The contractor agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the contracting state agency that sets forth the provisions of the State of Wisconsin's nondiscrimination law.
- 11.3** Failure to comply with the conditions of this clause may result in the contractor's becoming declared an "ineligible" contractor, termination of the contract, or withholding of payment.
- 12.0 SAFETY REQUIREMENTS:** All materials, equipment, and supplies provided to the State of Wisconsin must comply fully with all safety requirements as set forth by the Wisconsin Administrative Code and all applicable OSHA Standards.

13.0 INSURANCE RESPONSIBILITY: The contractor performing services for the State of Wisconsin shall:

13.1 Maintain worker's compensation insurance as required by Wisconsin Statutes, for all employees engaged in the work.

13.2 Maintain commercial liability, bodily injury and property damage insurance against any claim(s) which might occur in carrying out this agreement/contract. Minimum coverage shall be one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out this contract. Minimum coverage shall be one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.

13.3 The state reserves the right to require higher or lower limits where warranted.

14.0 CANCELLATION: The State of Wisconsin reserves the right to cancel any contract in whole or in part without penalty due to nonappropriation of funds or for failure of the contractor to comply with terms, conditions, and specifications of this contract.

15.0 VENDOR TAX DELINQUENCY: Vendors who have a delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.

16.0 PUBLIC RECORDS ACCESS: It is the intention of the state to maintain an open and public process in the solicitation, submission, review, and approval of procurement activities. The books, records, documents, and accounting procedures and practices of the Contractor and its employees, agents, or subcontractors relevant to the Wisconsin transactions are subject to Wisconsin Statutes Chapter 19, Subchapter II, *Public Records and Property*.

17.0 PROPRIETARY INFORMATION: Any restrictions on the use of data contained within a request, must be clearly stated in the bid/proposal itself. Proprietary information submitted in response to a request will be handled in accordance with applicable State of Wisconsin procurement regulations and the Wisconsin public records law. Proprietary restrictions normally are not accepted. However, when accepted, it is the vendor's responsibility to defend the determination in the event of an appeal or litigation.

17.1 Data contained in a bid/proposal, all documentation provided therein, and innovations developed as a result of the contracted commodities or services cannot be copyrighted or patented. All data, documentation, and innovations become the property of the State of Wisconsin.

17.2 Any material submitted by the vendor in response to this request that the vendor considers confidential and proprietary information and which qualifies as a trade secret, as provided in s. 19.36(5), Wis. Stats., or material which can be kept confidential under the Wisconsin public records law, must be identified on a

Designation of Confidential and Proprietary Information form (DOA-3027). Bidders/proposers may request the form if it is not part of the Request for Bid/Request for Proposal package. Bid/proposal prices cannot be held confidential.

18.0 DISCLOSURE: If a state public official (s. 19.42, Wis. Stats.), a member of a state public official's immediate family, or any organization in which a state public official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to this agreement, and if this agreement involves payment of more than three thousand dollars (\$3,000) within a twelve (12) month period, this contract is voidable by the state unless appropriate disclosure is made according to s. 19.45(6), Wis. Stats., before signing the contract. Disclosure must be made to the State of Wisconsin Ethics Board, 44 East Mifflin Street, Suite 601, Madison, Wisconsin 53703 (Telephone 608-266-8123).

State classified and former employees and certain University of Wisconsin faculty/staff are subject to separate disclosure requirements, s. 16.417, Wis. Stats.

19.0 RECYCLED MATERIALS: The State of Wisconsin is required to purchase products incorporating recycled materials whenever technically and economically feasible. Bidders are encouraged to bid products with recycled content which meet specifications.

20.0 MATERIAL SAFETY DATA SHEET: If any item(s) on an order(s) resulting from this award(s) is a hazardous chemical, as defined under 29CFR 1910.1200, provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).

21.0 PROMOTIONAL ADVERTISING / NEWS RELEASES: Reference to or use of the State of Wisconsin, any of its departments, agencies or other subunits, or any state official or employee for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the State of Wisconsin. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the contracting agency.

22.0 HOLD HARMLESS: The State of Wisconsin will defer to Section 24 of the Master Price Agreement.