

11R-199¹⁰
Intro: 8/22/11
PH: 8/29/11

11060149

CONTRACT DOCUMENTS

CITY OF LINCOLN, NEBRASKA

**Annual Requirements
to
Supply and Deliver ESRI Geographic Information System (GIS)
Software Products, Maintenance Services and Training
State of Nebraska Contract Number 11842 OC**

**Contractor:
ESRI Inc.
380 New York Street
Redlands, CA 92373-8118
909-793-2853**

**CITY OF LINCOLN, NEBRASKA,
CONTRACT AGREEMENT**

THIS CONTRACT, made and entered into by and between ESRI Inc., 380 New York Street, Redlands, CA 92373-8118 hereinafter called Contractor, and the City of Lincoln, Nebraska, a political subdivision, hereinafter called the Owner.

WHEREAS, Neb. Rev. Stat. § 23-3109(1)(d)(iii) allows for waiver of bidding requirements when the price has been established by a cooperative purchasing agreement by which supplies, equipment, or services are procured in accordance with a contract established by another governmental entity or group of governmental entities if the contract was established in accordance with the laws and regulations applicable to the establishing governmental entity or, if a group, the lead governmental entity; and

WHEREAS, the Owner through local inter-governmental cooperative purchasing have chosen to participate in the contract between the State of Nebraska and ESRI Inc., Contract Number 11842 OC, dated May 25, 2011, which was prepared in accordance with the State's usual and customary laws, procedures and policies, and has approved and adopted said documents connected with said, Work, to-wit:

for all materials and equipment necessary to supply and deliver ESRI Geographic Information System (GIS) Software Products, Maintenance Services and Training to the Owner's various departments as the Owners may determine in compliance with the prices as established via the State of Nebraska Contract Number 11842 OC, dated May 25, 2011; and

WHEREAS, the Contractor, in response to the Owner's request to participate in said agreement, has submitted to the Owner, an offer approving Owners participation under the same pricing structure, terms and conditions as the State of Nebraska Contract Number 11842 OC, dated May 25, 2011 for ESRI Geographic Information System (GIS) Software Products, Maintenance Services and Training , with only those exceptions stated herein; and

WHEREAS, the State of Nebraska, in the manner usual and customary to their laws, policies and procedures has opened, read, examined, and canvassed the Proposals submitted in response to the proposal request, and as a result of such canvass has determined and declared the Contractor to be the lowest responsible bidder for the said Work for the sum or sums named in the State of Nebraska, Contract 11842 OC; dated May 25, 2011, a copy thereof being attached to and made a part of this Contract;

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the mutual covenants herein contained, the Contractor and the Owner hereby agree as follows:

1. The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other accessories, services, and facilities necessary to provide ESRI Geographic Information System (GIS) Software Products, Maintenance Services and Training for the Owner's various departments as the Owners may determine.
2. Term of the Contract. This Contract shall be in effect from date of execution through the term listed in the State of Nebraska Contract Number 11842 OC (January 04, 2013).

3. Pricing. Pricing of items will be pursuant to State of Nebraska Contract Number 11842 OC, dated May 25, 2011.
 - 3.1 Terms of payment shall be *net* thirty (30) days for all services meeting Owner's Specifications and approval. Each location will have a separate account number and billing address. The Owner may choose to pay the vendor using an Electronic Funds Transfer. If this option is used, any discounts available to the State of Nebraska shall be made available to the Owner.
4. Independent Contractor. It is the express intent of the parties that this contract shall not create an employer-employee relationship. Employees of the Contractor shall not be deemed to be employees of the Owner and employees of the Owner shall not be deemed to be employees of the Contractor. The Contractor and the Owner shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the Owner's employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. Contractor shall also be responsible for maintaining workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employees' compensation.
5. Indemnification. The Contractor shall indemnify and hold harmless the Owner (City of Lincoln), their agents, principals, officers, and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments and expenses (including court-ordered attorneys' fees), arising out of or resulting from the acts or omissions of the Contractor to the extent such arise out of or result from its principals, officers, agents, or employees in the performance of this contract. Except for an intellectual property infringement claim, which is covered in Article 9 Infringement Indemnity of the License Agreement, liability includes any claims, damages, losses, and expenses arising out of or resulting from performance of this contract that results in any claim for damage whatsoever including any bodily injury, civil rights liability, sickness, disease, or damage to or destruction of tangible property, including the loss of use resulting therefrom. Further, Contractor shall maintain a policy or policies of insurance (or a self-insurance program), sufficient in coverage and amount to pay any judgments or related expenses from or in conjunction with any such claims. Nothing in this contract shall require either party to indemnify or hold harmless the other party from liability for the negligent or wrongful acts or omissions of said other party or its principals, officers, or employees.
6. Equal Employment Opportunity. In connection with the carrying out of this project, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, disability, age or marital status. Such action 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 compensation; and selection for training, including apprenticeship.
7. Owner Inclusion. It is understood and agreed by all parties that "Owner/s" shall include City of Lincoln, Nebraska. Whenever in the Contract documents, including the instructions to bidders, specifications, insurance requirements, bonds, and terms and conditions of any other documents which are a part of the Contract, a singular entity is referenced (i.e., "the City") it shall mean the "Owner" encompassing the City of Lincoln, Nebraska.

8. Termination. This Contract may be terminated by the following:
- 8.1 Termination for Convenience. Either party may terminate this Contract upon fourteen (14) days written notice to the other party for any reason without penalty.
 - 8.2 Termination for Cause. The Owner may terminate the Contract for cause if the Contractor:
 - 8.2.1 Refuses or fails to supply the proper labor, materials and equipment necessary to provide and deliver for light bulbs and ballasts.
 - 8.2.2 Disregards Federal, State or local laws, ordinances, regulations, resolutions or orders.
 - 8.2.3 Otherwise commits a substantial breach or default of any provision of the Contract Document. In the event of a substantial breach or default the Owner will provide the Contractor written notice of said breach or default and allow the Contractor ten (10) days from the date of the written notice to cure such breach or default. If said breach or default is not cured within ten (10) days from the date of notice, then the contract shall terminate.
9. The parties agree that the terms and conditions of this Contract shall prevail and govern in the case of any such inconsistent or additional terms in the Agreement between the State of Nebraska and ESRI Inc., Contract Number 11842 OC, dated May 25, 2011.

The Contract Documents comprise the Contract, and consist of the following:

1. Contract Agreement
2. State of Nebraska, Contract Number 11842 OC, dated May 25, 2011
3. Nebraska Resale or exempt Sale Certificate (Form 13)

This Contract Agreement, together with the other Contract Documents herein above mentioned, form this Contract, and are a part of the Contract as if hereto attached.

The Contractor and the Owner hereby agree that all the terms and conditions of this Contract shall be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Contractor and the Owner do hereby execute this contract.

EXECUTION BY THE CITY OF LINCOLN

ATTEST:

City Clerk

John E. Ross



CITY OF LINCOLN, NEBRASKA

Mayor

[Signature]

Approved by:

Resolution No.

A-86475

Dated

Aug. 31, 2011

EXECUTION BY CONTRACTOR

IF A CORPORATION:

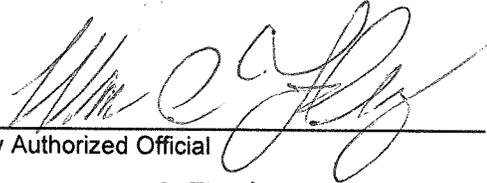
Environmental Systems Research Institute, Inc.

Name of Corporation

380 New York Street, Redlands CA 92373

(Address)

ATTEST:

By: 

Duly Authorized Official

William C. Fleming
Managing Business Attorney

Legal Title of Official

_____(SEAL)

Secretary



IF OTHER TYPE OF ORGANIZATION:

Name of Organization

Type of Organization

(Address)

By: _____
Member

By: _____
Member

STATE OF NEBRASKA CONTRACT AWARD

State Purchasing Bureau
301 Centennial Mall South, 1st Floor
Lincoln, Nebraska 68508
OR

P.O. Box 94847
Lincoln, Nebraska 68509-4847
Telephone: (402) 471-2401
Fax: (402) 471-2089

CONTRACT NUMBER
11842 OC

PAGE 1 of 4	ORDER DATE 05/25/11
BUSINESS UNIT 9001	BUYER RUTH GRAY (AS)
VENDOR NUMBER: 503958	
VENDOR ADDRESS: ESRI INC 380 NEW YORK STREET REDLANDS CALIFORNIA 92373-8118	

AN AWARD HAS BEEN MADE TO THE VENDOR NAMED ABOVE FOR THE FURNISHING OF EQUIPMENT, MATERIAL, OR SUPPLIES AS LISTED BELOW FOR THE PERIOD:

MAY 27, 2011 THROUGH JANUARY 04, 2013

NO ACTION ON THE PART OF THE VENDOR NEEDS TO BE TAKEN AT THIS TIME. ORDERS FOR THE EQUIPMENT OR SUPPLIES WILL BE MADE AS NEEDED BY THE VARIOUS AGENCIES OF THE STATE.

THIS CONTRACT IS NOT AN EXCLUSIVE CONTRACT TO FURNISH THE EQUIPMENT OR SUPPLIES SHOWN BELOW, AND DOES NOT PRECLUDE THE PURCHASE OF SIMILAR ITEMS FROM OTHER SOURCES.

THE STATE RESERVES THE RIGHT TO EXTEND THE PERIOD OF THIS CONTRACT BEYOND THE TERMINATION DATE WHEN MUTUALLY AGREEABLE TO THE VENDOR AND THE STATE OF NEBRASKA.

Original/Bid Document 1689 OF

To supply and deliver Esri Geographic Information System (GIS) Software Products, Maintenance Services and Training to the State of Nebraska on an as needed basis per the attached Sales and Support Contact Sheet, General Contract Requirements, Amendment 2 to the Master Purchase Agreement Contract Number 2006PA3523 (inclusive of ESRI MPA Terms and Conditions E500M 1/05 and General License Terms and Conditions E200M 3/05), Exhibit 1 Scope of Use E300 06/28/2010, Training Terms and Conditions E207 09/2009 and ESRI MPA Price List E417 10/15/2010 for the period May 27, 2011 through January 4, 2013.

Contract subject to thirty (30) days cancellation by either party upon written notice.

Quantities shown are estimates only and are not to be construed to mean firm quantities. The State of Nebraska reserves the right to increase or decrease any quantities shown.

The State may request that payment be made electronically instead of by state warrant. ACH/EFT Enrollment Form can be found at: <http://www.das.state.ne.us/accounting/forms/achenrol.pdf>

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system mean the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Responsibility Act of 1996, 8 U.S.C. 1324a, known as E-Verify Program, or an equivalent federal program designed by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

The contractor certifies that the contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). The contractor also agrees to include the above requirements in any and all subcontracts into which it enters. The contractor shall immediately notify the Department if, during the term of this contract, contractor becomes debarred. The Department may immediately terminate this contract by providing contractor written notice if contractor becomes debarred during the term of this contract. If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of


BUYER
MATERIEL ADMINISTRATOR

STATE OF NEBRASKA CONTRACT AWARD

State Purchasing Bureau
301 Centennial Mall South, 1st Floor
Lincoln, Nebraska 68508

OR
P.O. Box 94847
Lincoln, Nebraska 68509-4847
Telephone: (402) 471-2401
Fax: (402) 471-2089

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11842 OC

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BUSINESS UNIT 9001	BUYER RUTH GRAY (AS)
VENDOR NUMBER: 503958	

Administrative Services website at: www.das.state.ne.us.

2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation require to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

The parties hereby agree that the following documents are incorporated into the contract resulting from this Invitation to Bid:

1. The signed Invitation to Bid Contract document;
2. The original ITB document;
3. Any Addenda and or Amendments to include Questions and Answers;
4. Warranty documents supplied with the bid;
5. The contract award.

Unless otherwise specifically stated in a contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number 1 receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) the contract award, 2) ITB addenda or amendments, to include Questions and Answers, with the latest dated amendment having the highest priority, 3) the original ITB, 4) the signed ITB Contract document, 5) warranty documents supplied with the bid.

Any remaining uncertainty or ambiguity shall not be interpreted against either party because such party prepared any portion of the Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

It is understood by the parties that in the State of Nebraska's opinion, any limitation on the contractor's liability is unconstitutional under the Nebraska State Constitution, Article XIII, Section 3 and that any limitation of liability shall not be binding on the State of Nebraska despite inclusion of such language in documents supplied with the contractor's bid.

Vendor Contact: Lucy Tindall, Contract Specialist
Phone: 909-793-2853 ext. 1985
Fax: 909-307-3020
E-Mail: ltindall@esri.com

Vendor Contact: Leslie Meriwether, Regional Office Administrator
Phone: 636-949-6620 ext. 8510
Fax: 636-949-6735
E-Mail: lmeriwether@esri.com

Regional Office (to obtain Sales Quotes)
Esri - St. Louis Regional Office
3060 Little Hills Expy.
Saint Charles, MO 63301
636-949-6620
OR
Esri - Telebusiness Department
800-447-9778

THIS IS THE SECOND RENEWAL OF THE CONTRACT and is inclusvie of Amendment One (1). (05/25/11 djg)


BUYER INITIALS

STATE OF NEBRASKA CONTRACT AWARD

State Purchasing Bureau
301 Centennial Mall South, 1st Floor
Lincoln, Nebraska 68508

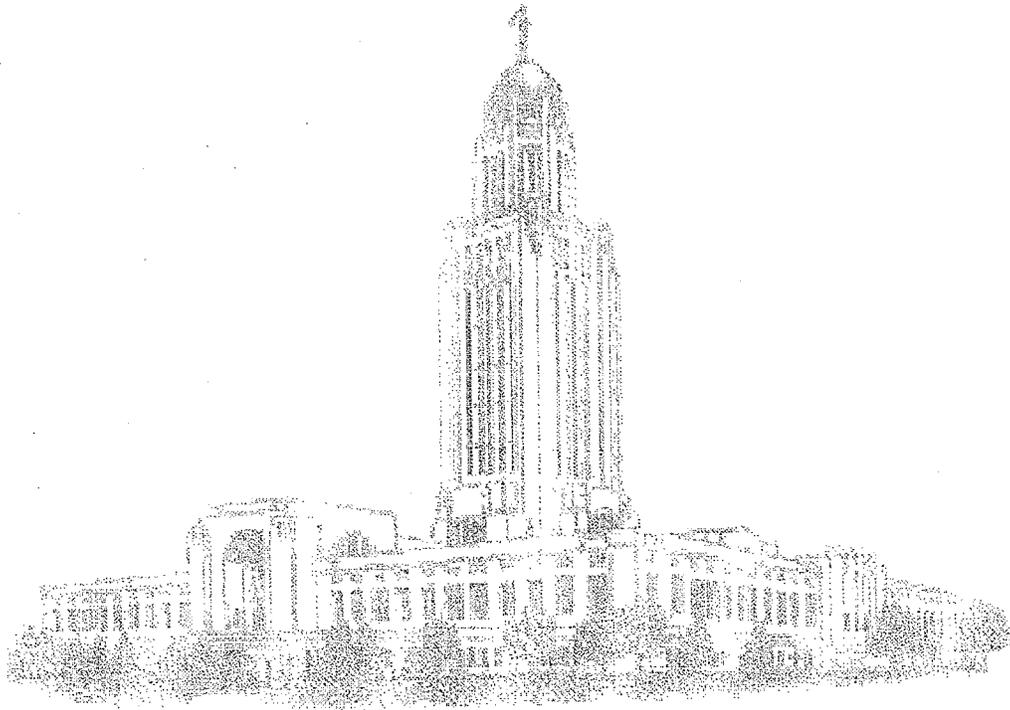
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PAGE 3 of 4		ORDER DATE 05/25/11	
BUSINESS UNIT 9001		BUYER RUTH GRAY (AS)	
VENDOR NUMBER: 503958			

Line	Description	Estimated Quantity	Unit of Measure	Unit Price
1	ESRI GIS PRODUCTS & SERVICES	500,000.0000	\$	1.0000



RG
BUYER INITIALS