

Contract Number

**DIR-CPO-4877**

Contract Start Date: **08/26/22** ⓘ

Contract Term Date: **08/26/26** ⓘ

Contract Expiration Date: **08/26/27** ⓘ

Vendor Information

**Insight Public Sector, Inc.**

Vendor ID: **1363949000500**

HUB Type: **Non HUB** ⓘ

RFO: **DIR-CPO-TMP-550**

Contract Status: **Active**

**VENDOR CONTACT:**

Brittany Dunaway [↗](#)

Phone: (800) 474-7121

[Vendor Website](#) [↗](#)

**DIR CONTACT:**

Eliza Garcia [↗](#)

Phone: (512) 475-4631

**STATE OF TEXAS**  
**DEPARTMENT OF INFORMATION RESOURCES**  
**CONTRACT FOR PRODUCTS AND SERVICES**  
**Insight Public Sector, Inc.**

## **1 Introduction**

### **1.1 Parties**

This contract for Cybersecurity Products and Services (this “Contract”) is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and Insight Public Sector, Inc., an Illinois For-Profit Corporation (hereinafter “Successful Respondent”), with its principal place of business at 6820 South Harl Avenue, Tempe, Arizona 85283.

### **1.2 Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-CPO-TMP-550, on 12/20/2020, for Cybersecurity Products and Services (the “RFO”). Upon execution of all Contracts, a notice of award for DIR-CPO-550 shall be posted by DIR on the Electronic State Business Daily.

### **1.3 Order of Precedence**

- a) For transactions under this Contract, the order of precedence shall be as follows:
  - i. this Contract;
  - ii. Appendix A, Standard Terms and Conditions;
  - iii. Appendix B, Successful Respondent’s Historically Underutilized Businesses Subcontracting Plan;
  - iv. Appendix C, Pricing Index;
  - v. Appendix D, Service Agreement;
  - vi. Exhibit 1, RFO DIR-CPO-TMP-550, including all Addenda; and
  - vii. Exhibit 2, Successful Respondent’s Response to RFO DIR-CPO-TMP-550, including all Addenda.
- b) Each of the foregoing documents is hereby incorporated by reference and together constitute the entire agreement between DIR and Successful Respondent governing purchase transactions.

## 1.4 Definitions

Capitalized terms used but not defined herein have the meanings given to them in Appendix A, Standard Terms and Conditions.

## 2 Term of Contract

The initial term of this Contract shall be up to two (2) years commencing on the date of the last signature hereto (the “Initial Term”), with one (1) optional two-year renewal and one (1) optional one-year renewal (each, a “Renewal Term”). Prior to expiration of the Initial Term and each Renewal Term, this Contract will renew automatically under the same terms and conditions unless either party provides written notice to the other party at least sixty (60) days in advance of the renewal date stating that the party wishes to discuss amendment or non-renewal.

## 3 Option to Extend

Successful Respondent agrees that DIR may require continued performance under this Contract at the rates specified in this Contract following the expiration of the Initial Term or any Renewal Term. This option may be exercised more than once, but the total extension of performance hereunder shall not exceed four (4) calendar months. Such extension of services shall be subject to the requirements of this Contract, with the sole and limited exception that the term shall be extended pursuant to this provision. DIR may exercise this option upon thirty (30) calendar days written notice to Successful Respondent.

## 4 Product and Service Offerings

Products and services available under this Contract are limited to the technology categories defined in Request for Offer DIR-CPO-TMP-550 for Cybersecurity Products and Services. At DIR’s sole discretion, Successful Respondent may incorporate changes or make additions to its service offering, provided that any changes or additions must be within the scope of the RFO.

## 5 Pricing

### 5.1 Pricing Index

Pricing to Customers shall be as set forth in **Appendix C, Pricing Index**, and shall include the DIR Administrative Fee (as defined below).

### 5.2 Customer Discount

- a) The minimum Customer discount for all products and services will be the percentage off List Price (as defined below) or MSRP (as defined below), as applicable, as specified in **Appendix C, Pricing Index**. Successful Respondent shall not establish a List Price or MSRP for a particular solicitation. For purposes of this Section, “List Price” is the price

for a product or service published in Successful Respondent's price catalog (or similar document) before any discounts or price allowances are applied. For purposes of this Section, "MSRP," or manufacturer's suggested retail price, is the price list published by the manufacturer or publisher of a product and available to and recognized by the trade.

- b) Customers purchasing products or services under this Contract may negotiate additional discounts with Successful Respondent. Successful Respondent and Customer shall provide the details of such additional discounts to DIR upon request.
- c) If products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract, or (ii) to any other customer under the same terms and conditions provided for the State for the same products and services under this contract, then the price of such products and services under this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Successful Respondent for a quantity of one (1), but does not apply to volume or special pricing purchases. Successful Respondent shall notify DIR within ten (10) days of providing a lower price as described in this Section, and this Contract shall be amended within ten (10) days to reflect such lower price.

### **5.3 Changes to Prices**

- a) Subject to the requirements of this section, Successful Respondent may change the price of any product or service upon changes to the List Price or MSRP, as applicable. Discount levels shall not be subject to such changes, and will remain consistent with the discount levels specified in this Contract.
- b) Successful Respondent may revise its pricing by publishing a revised pricing list, subject to review and approval by DIR. If DIR, in its sole discretion, finds that the price of a product or service has been increased unreasonably, DIR may request that Successful Respondent reduce the pricing for the product or service to the level published before such revision. Upon such request, Successful Respondent shall either reduce the pricing as requested, or shall remove the product or service from the pricing list for this Contract. Failure to do so will constitute an act of default by Successful Respondent.

### **5.4 Shipping and Handling**

Prices to Customers shall include all shipping and handling fees. Shipments will be Free On Board Customer's Destination. No additional fees may be charged to Customers for standard shipping and handling. If a Customer requests expedited or special delivery, Customer will be responsible for any additional charges for expedited or special delivery.

## 6 DIR Administrative Fee

- a) Successful Respondent shall pay an administrative fee to DIR based on the dollar value of all sales to Customers pursuant to this Contract (the “DIR Administrative Fee”). The amount of the DIR Administrative Fee shall be seventy-five hundredths of a percent (0.75%) of all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.
- b) All prices quoted to Customers shall include the DIR Administrative Fee. DIR reserves the right to increase or decrease the DIR Administrative Fee during the term of this Contract, upon written notice to Successful Respondent without amending this Contract. Any increase or decrease in the DIR Administrative Fee shall be incorporated in the price to Customers.

## 7 Internet Access to Contract and Pricing Information

In addition to the requirements listed in Appendix A, Section 7.2, Internet Access to Contract and Pricing Information, Successful Respondent shall include the following with its webpage:

- a) A current price list or mechanism to obtain specific contract pricing;
- b) MSRP/list price or DIR Customer price;
- c) Discount percentage (%) off MSRP or List Price;
- d) Warranty policies; and,
- e) Return policies.

## 8 Use of Order Fulfillers

### 8.1 Authorization to Use Order Fulfillers

Subject to the conditions in this Section 8, DIR agrees to permit Successful Respondent to utilize designated order fulfillers to provide products, services, and support resources to Customers under this Contract (“Order Fulfillers”).

### 8.2 Designation of Order Fulfillers

- a) Successful Respondent may designate Order Fulfillers to act as the distributors for products and services available under this Contract. In designating Order Fulfillers, Successful Respondent must be in compliance with the State’s Policy on Utilization of Historically Underutilized Businesses. DIR and Successful Respondent will agree on the number of Order Fulfillers that are Historically Underutilized Businesses as defined by the CPA.
- b) In addition to the required Subcontracting Plan, Successful Respondent shall provide DIR with the following Order Fulfiller information: Order Fulfiller name, Order Fulfiller

business address, Order Fulfiller CPA Identification Number, Order Fulfiller contact person email address and phone number.

- c) DIR reserves the right to require Successful Respondent to rescind any Order Fulfiller participation or request that Successful Respondent name additional Order Fulfillers should DIR determine it is in the best interest of the State.
- d) Successful Respondent shall be fully liable for its Order Fulfillers' performance under and compliance with the terms and conditions of this Contract. Successful Respondent shall enter into contracts with Order Fulfillers and use terms and conditions that are consistent with the terms and conditions of this Contract.
- e) Successful Respondent may qualify Order Fulfillers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers based upon Successful Respondent's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the criteria.
- f) Successful Respondent shall not prohibit any Order Fulfiller from participating in other procurement opportunities offered through DIR.

### **8.3 Changes in Order Fulfiller**

Successful Respondent may add or remove Order Fulfillers throughout the term of this Contract upon written authorization by DIR. Prior to adding or removing Order Fulfillers, Successful Respondent must make a good faith effort to revise its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. Successful Respondent shall provide DIR with its updated Subcontracting Plan and the Order Fulfillers information listed above.

### **8.4 Order Fulfiller Pricing to Customer**

Order Fulfiller pricing to the Customer shall be in accordance with Section 5.

## **9 Notification**

All notices under this Contract shall be sent to a party at the respective address indicated below.

### **If sent to the State:**

Hershel Becker or Successor in Office  
Chief Procurement Officer  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-4700  
Email: [hershel.becker@dir.texas.gov](mailto:hershel.becker@dir.texas.gov)

**If sent to Successful Respondent:**

Lisanne Steinheiser  
Global Compliance Officer  
Insight Public Sector, Inc.  
6820 S. Harl Avenue, Tempe, Arizona 85283  
Phone: (480) 333-3012  
Email: Lisanne.Steinheiser@Insight.com

**10 Software License and Service Agreements**

**10.1 Software License Agreement**

- a) Customers acquiring software licenses under this Contract shall hold, use, and operate such software subject to compliance with the Software License Agreement. Customer and Successful Respondent may agree to additional terms and conditions that do not diminish a term or condition in the Software License Agreement, or in any manner lessen the rights or protections of Customer or the responsibilities or liabilities of Successful Respondent. Successful Respondent shall make the Software License Agreement terms and conditions available to all Customers at all times.
- b) Compliance with the Software License Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Software License Agreement.

**10.2 Service Agreement**

Services provided under this Contract shall be in accordance with the Service Agreement as set forth in **Appendix D** of this Contract. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Successful Respondent and DIR. Successful Respondent and Customer may agree to terms and conditions that do not diminish or lessen the rights or protections of the Customer or the responsibilities or liabilities of the Successful Respondent.

**11 Conflicting or Additional Terms**

- a) The terms and conditions of this Contract shall supersede any additional conflicting or additional terms in any additional service agreements, statement of work, and any other provisions, terms, conditions, and license agreements, including those which may be affixed to or accompany software upon delivery (sometimes called shrink-wrap or click-wrap agreements), and any linked or supplemental documents, which may be proposed, issued, or accepted by Successful Respondent and Customer in addition to this Contract (such additional agreements, "Additional Agreements"), regardless of when such Additional Agreements are proposed, issued, or accepted by Customer. Notwithstanding

the foregoing, it is Customer's responsibility to review any Additional Agreements to determine if Customer accepts such Additional Agreement. If Customer does not accept such Additional Agreement, Customer shall be responsible for negotiating any changes thereto.

- b) Any update or amendment to an Additional Agreement shall only apply to Purchase Orders for the associated product or service offering after the effective date of such update or amendment; provided that, if Successful Respondent has responded to a Customer's solicitation or request for pricing, any subsequent update or amendment to an Additional Agreement may only apply to a resulting Purchase Order if Successful Respondent directly informs such Customer of such update or amendment before the Purchase Order is executed.
- c) Successful Respondent shall not require any Additional Agreement that: i) diminishes the rights, benefits, or protections of Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of Customer; or ii) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.
- d) If Successful Respondent attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to this Contract or the Purchase Order between Successful Respondent and Customer, and Successful Respondent will nonetheless be obligated to perform such Purchase Order without regard to the prohibited documents, unless Customer elects instead to terminate such Purchase Order, which in such case may be identified as a termination for cause against Successful Respondent.

## **12 Authorized Exceptions to Appendix A, Standard Terms and Conditions**

### **12.1 Section 5.1 Intellectual Property Matters Definitions is hereby deleted in its entirety and replaced with the following:**

#### 5.1.1 "Work Product"

Means any and all deliverables produced by Successful Respondent for Customer under a Statement of Work issued pursuant to the Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived by Successful Respondent or its Third-Party Providers specifically for Customer at any time following the Effective Date, including but not limited to any:

- (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, configurations, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web

- pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works),
- (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin,
  - (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how,
  - (iv) domain names,
  - (v) any copies, and similar or derivative works to any of the foregoing,
  - (vi) all documentation and materials related to any of the foregoing,
  - (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and
  - (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with the Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit:
    - a. by any Successful Respondent personnel or Customer personnel, or
    - b. any Customer personnel who then became personnel to Successful Respondent or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Successful Respondent or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

### 5.1.2. "Intellectual Property Rights"

Means the worldwide legal rights or interests, including but not limited to all United States and foreign patents, copyrights, trademarks, service marks, trade secrets, moral rights, author's rights, reversionary rights, and any and all other intellectual property or similar rights, evidenced by or embodied in:

- i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how;
- ii) any work of authorship, including any copyrights, moral rights or neighboring rights;
- iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin;
- iv) domain name registrations;
- v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses; and
- vi) any derivative works relating to any of the foregoing.

### 5.1.3. "Third Party IP"

Means the Intellectual Property Rights of any third party that is not a party to the Contract or a Purchase Order or Statement of Work issued under the Contract, and that is not directly or indirectly providing any goods or services to Customer under the Contract or a Purchase Order or Statement of Work issued under the Contract.

#### 5.1.4 “Successful Respondent IP”

Shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Successful Respondent:

- i) prior to providing any services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the services or Work Product, or
- ii) after the Effective Date if such tangible or intangible items or things were independently developed by Successful Respondent outside Successful Respondent’s provision of services or Work Product for Customer hereunder (except as to Successful Respondent’s derivative works) and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Successful Respondent or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Successful Respondent or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

#### **12.2 Section 5.2 Ownership is hereby deleted in its entirety and replaced with the following:**

As between Successful Respondent and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Successful Respondent. Successful Respondent specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Successful Respondent hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title, and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Successful Respondent acknowledges that Successful Respondent and Customer do not intend Successful Respondent to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Successful Respondent, to all Successful Respondent materials, premises, and computer files containing the Work Product to the extent necessary to establish Customer’s Intellectual Property Rights. Successful Respondent and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Successful Respondent (not including Third Party IP that Customer licenses itself).

#### **12.3 Section 5.9 Third-Party Underlying and Derivative Works is hereby deleted in its entirety and replaced with the following:**

- A. To the extent that any Successful Respondent IP or Third Party IP (not including Third Party IP that is directly licensed by Customer) are embodied or reflected in the Work

Product, or are necessary to provide the services, Successful Respondent hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to

- i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Successful Respondent IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and
  - ii) authorize others to do any or all of the foregoing. Successful Respondent agrees to notify Customer on delivery of the Work Product or services if such materials include any Third Party IP not already licensed directly by Customer.
- B. On request, Successful Respondent shall provide Customer with documentation indicating a third party's written approval for Successful Respondent to use any Third Party IP that may be embodied or reflected in the Work Product.

(Remainder of this page intentionally left blank.)

This Contract is executed to be effective as of the date of last signature.

**Insight Public Sector, Inc.**

**Authorized By:** Signature on File

**Name:** Lisanne Steinheiser

**Title:** Global Compliance Officer

**Date:** 8/19/2022

**The State of Texas, acting by and through the Department of Information Resources**

**Authorized By:** Signature on File

**Name:** Hershel Becker

**Title:** Chief Procurement Officer

**Date:** 8/26/2022

**Office of General Counsel:** Initial on File

**Date:** 8/26/2022