

**STATE OF TEXAS**  
**DEPARTMENT OF INFORMATION RESOURCES**  
**CONTRACT FOR PRODUCT, SERVICES, AND RELATED SERVICES**  
**Environmental Systems Research Institute Inc.**

## **1 Introduction**

### **1.1 Parties**

This contract for Geographic Information Systems (GIS) Hardware, Software, and Services and Information Technology (IT) Based Surveying Hardware, Software and Related 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 Environmental Systems Research Institute Inc., a California corporation (hereinafter “Successful Respondent”), with its principal place of business at 380 New York Street, Redlands, CA 92373.

### **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-444, on 12/20/2019, for Geographic Information Systems (GIS) Hardware, Software, and Services and Information Technology (IT) Based Surveying Hardware, Software and Related Services (the “RFO”). Upon execution of all Contracts, a notice of award for DIR-CPO-TMP-444 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-444, including all Addenda; and
  - vii. Exhibit 2, Successful Respondent’s Response to RFO DIR-CPO-TMP-444, 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.

### **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 ninety (90) calendar days. 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-444 for Geographic Information Systems (GIS) Hardware, Software, and Services and Information Technology (IT) Based Surveying Hardware, Software and Related Services. At DIR’s sole discretion, Successful Respondent may incorporate changes or make 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 Filler Pricing to Customer**

Order Filler 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:**

Lee Schuh  
Environmental Systems Research Institute Inc.  
380 New York Street  
Redlands, CA 92373  
Email: [bids@esri.com](mailto:bids@esri.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**

- a) Appendix A, Section 5, Intellectual Property, is hereby deleted and replaced in its entirety with the following:

The Contract does not contemplate, authorize or support acquisition of custom software products or services. If Successful Respondent and a Customer seek to contract for such

product or service, they must use a separate contract or seek amendment with DIR of the Contract. If DIR and Successful Respondent decide to authorize customized software or hardware products; then the intellectual property language will be negotiated and applied.

- b) Appendix A, Section 10.1.1, Indemnities by Successful Respondent, is hereby deleted and replaced in its entirety with the following:

A. Successful Respondent shall defend, indemnify, and hold harmless DIR, the State of Texas, and Customers, AND/OR THEIR OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUCCESSORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, resulting from, or related to:

- i) any acts or omissions of Successful Respondent, its employees, or Third Party Providers in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract;
- ii) any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights (an “Infringement”) in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract. Successful Respondent shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Successful Respondent’s written approval, or (iii) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement;
- iii) any breach, disclosure, or exposure of data or information of or regarding DIR or any Customer that is provided to or obtained by Successful Respondent in connection with the Contract, including DIR data, Customer data, confidential information of DIR or Customer, any personal identifying information, or any other protected or regulated data by Successful Respondent, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract; and
- iv) tax liability, unemployment insurance or workers’ compensation or expectations of benefits by Successful Respondent, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract.

**B. THE DEFENSE SHALL BE COORDINATED BY SUCCESSFUL RESPONDENT WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND SUCCESSFUL RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST**

OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. FOR NON-STATE AGENCY CUSTOMERS, THE DEFENSE SHALL BE COORDINATED BY CUSTOMER'S LEGAL COUNSEL. SUCCESSFUL RESPONDENT AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER AND TO DIR OF ANY SUCH CLAIM.

C. THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE SUCCESSFUL RESPONDENT TO INDEMNIFY OR HOLD HARMLESS THE STATE OR DIR FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE STATE, DIR, OR THE EMPLOYEES OF THE STATE OR DIR.

c) Appendix A, Section 10.12, Limitation of Liability, is hereby deleted and replaced in its entirety as follows:

A. For any claim or cause of action arising under or related to the Contract, to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages.

B. Successful Respondent and a Customer may include in a Purchase Order or quotation a term limiting Successful Respondent's liability for damages in any claim or cause of action arising under or related to such Purchase Order; provided that any such term may not limit Successful Respondent's liability below two-times the total value of the Purchase Order. Such value includes all amounts paid and amounts to be paid over the life of the Purchase Order to Successful Respondent by such Customer as described in the Purchase Order. If included in a quotation, such term shall not be valid unless it is attached to or incorporated by reference into the corresponding Purchase Order.

C. Notwithstanding the foregoing or anything to the contrary herein, any limitation of Successful Respondent's liability contained herein or in a Purchase Order shall not apply to: claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under the Contract, except as allowed by subsection 10.12(D) below; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

D. Successful Respondent and a Customer may include in a Purchase Order or quotation a term limiting Successful Respondent's liability to such Customer under such Purchase Order or quotation for indemnification requirements under Section 10.1.1(A)(iii); provided that any such term may not limit Successful Respondent's liability for such indemnification requirements below (i)\$1 million or (ii) two-times the total value of the Purchase Order, whichever is greater. Such limitation shall be distinct and calculated separately from any limitation included in such Purchase Order or quotation pursuant to Section 10.12(B) above. Such term shall not be valid unless it is stated on a standalone page signed by both parties and attached to or incorporated by reference into the corresponding Purchase Order. NOTE: CUSTOMER SHOULD CONSULT WITH

**LEGAL COUNSEL AND CAREFULLY CONSIDER POTENTIAL RISKS  
ASSOCIATED WITH A DATA BREACH TO DETERMINE LIMITATIONS  
APPROPRIATE FOR SUCH PURCHASE ORDER OR QUOTATION.**

(Remainder of this page intentionally left blank.)

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

**Environmental Systems Research Institute Inc.**

**Authorized By:** Signature on File

**Name:** Timothy Brazeal

**Title:** Commercial & Government Contracts

**Date:** 07/14/2022

**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:** 07/18/2022

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

**Date:** 07/18/2022