



Office of General Services
Procurement Services

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FIRST AMENDMENT TO AGGREGATE AGREEMENT 23-01

Dell Marketing LP

GROUP 73600, AWARD 22802

Hardware Aggregate Buy

THIS FIRST AMENDMENT, (the "Amendment") is made between the People of the State of New York, acting by and through the Commissioner of General Services (hereinafter "State" or "OGS") whose principal place of business is the 36th Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, pursuant to authority granted under New York State Finance Law §163, and Dell Marketing LP (hereinafter "Contractor"), with its principal place of business at One Dell Way Round Rock, TX 78682. The foregoing are collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, OGS entered into an Aggregate Agreement for the acquisition of certain hardware configurations, (hereinafter referred to as the "Agreement") with Dell Marketing LP on November 7, 2023; and

WHEREAS, the Agreement provided for an initial term of November 7, 2023 through and including November 6, 2024 and an option for an extension of the initial term was provided for in Section 3.9, as follows:

The term of this Agreement shall be one (1) year. The term shall not commence until OGS execution, final approval by the Office of the State Comptroller ("OSC") and posting of the final executed documents to the OGS Procurement Services website. OGS reserves the right, at its sole discretion, to extend all or some Configurations of the Agreement for a period up to an additional one (1) year upon written notice to the Contractor; and

WHEREAS, the State will extend the term of the Agreement through and including November 6, 2025, pursuant to Agreement Section 3.9, and to amend other terms as set forth below; and

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties do hereby agree as follows:

TERM

Pursuant to **Section 3.9**, the term of the Agreement is extended for one (1) year through and including November 6, 2025.

The Agreement is amended to add the following language, to read as follows:

PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

In accordance with Section 889 of the National Defense Authorization Act (NDAA) for fiscal year 2019, under this Agreement or any subagreement, Contractor or Subcontractor shall not provide to the State or Authorized User any equipment, system, or service that uses covered telecommunications equipment or services, as defined by the NDAA, as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception applies or the covered telecommunications equipment or services are covered by a waiver, as set forth in the NDAA and the rules and regulations promulgated thereunder.

APPENDIX A

Appendix A *Standard Clauses for New York State Contracts*, included in the original Agreement, is deleted in its entirety and replaced with the Appendix A dated June 2023, attached hereto, which is expressly made a part of this Amendment as fully as if set forth at length herein. All references in the Agreement to Appendix A shall be deemed to reference Appendix A, *Standard Clauses for New York State Contracts* (June 2023).

3.3 AGREEMENT DOCUMENTS/ORDER OF PRECEDENCE

Section 3.3 *Agreement Documents/Order of Precedence* of the Agreement is deleted in its entirety and replaced with the following new Section 3.3 *Agreement Documents/Order of Precedence*, to read as follows:

3.3 AGREEMENT DOCUMENTS/ORDER OF PRECEDENCE

Conflicts among the documents shall be resolved in the following order of precedence:

1. Contractor's OGS Technology Umbrella Contract – Manufacturer Based (Statewide), in the order of precedence located therein;
2. This First Amendment;
3. Aggregate Hardware Buy 23-01 Agreement TERMS AND CONDITIONS (this document);
4. Attachment 1 – Pricing Pages, which consists of the price list for each awarded Configuration as approved by OGS from time to time during the term of this Agreement;
5. Attachment 2 – Issue Escalation Plan;
6. Attachment 3 – Aggregate Hardware Buy – Sales Report;
7. Attachment 4 – Agreement Price List Modification Form;
8. Attachment 5 – Pricing Modification Form;
9. Attachment 6 – How to Use – Aggregate Hardware Buy Agreement 23-01. OGS reserves the right to unilaterally make revisions, changes and/or updates to this attachment without processing a formal amendment and/or modification to this Agreement;
10. Attachment 7 – Contractor Information;
11. Attachment 8 – Aggregate Hardware Buy – Delayed Delivery Report;
12. Request for Quotations 23-01, Aggregate Hardware Buy;
 - RFQ 23-01, Aggregate Hardware Buy;
 - Attachment A – Technical Response;
 - Attachment B – Contractor Questions and Comments;
 - Attachment C – Financial Response;
 - Attachment D – Issue Escalation Plan;
 - Appendix 1 – Aggregate Hardware Buy – Sales Report;
 - Appendix 2 – Agreement Price List Modification Procedures;
 - Appendix 3 – Pricing Modification Form;
 - Appendix 4 – How to Prepare a Successful Quote;
 - Appendix 5 – Aggregate Hardware Buy – Delayed Delivery Report;
 - Responses to Inquiries Released (3/15/2023);
 - Responses to Inquiries Released (3/22/2023);

Except as herein modified, all other terms of The Agreement shall remain in full force and effect.