

PARTICIPATING ADDENDUM
NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICERS
SOFTWARE VALUE ADDED RESELLER CONTRACT (SVAR)
MASTER PRICE AGREEMENT NUMBER ADSP016-130651
Administered by the State of Arizona (hereinafter "Lead State")
Between
The State of Delaware (hereinafter "Participating State") and SHI International Corp
("Contractor" or "SHI")

Vendor Name: SHI International Corp

Participating State Contract Number: GSS16642SOFTWAREVAR
Software Value-Added Reseller

1. SCOPE

- a. This agreement is made between the State of Delaware, Office of Management and Budget, Government Support Services and SHI International Corp (Contractor), to establish Software Value Added Resellers.
- b. Under Delaware Code, Title 29 §6933 and §6987, The State of Delaware is authorized to participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of materiel or nonprofessional services, or professional services with 1 or more public procurement units either within the State or within another state in accordance with an agreement entered into between the participants.
- c. The requirements herein are in addition to those in the executed NASPO ValuePoint contract and shall continue through April 7, 2018. At the sole discretion of Government Support Services, this Participating Addendum may further be extended to include any extensions as agreed to, by and between NASPO ValuePoint and **SHI International Corp**.
- d. This Participating Addendum shall provide access to all awarded categories as bid and awarded under the Arizona Master Agreement. SHI International Corp shall be limited to selling items, under conditions stated, as identified in Section 2, Item y, Subsection a and b, identified below.

2. CHANGES

a. MANDATORY INSURANCE REQUIREMENTS (29 Del. C. §6929)

As a part of the contract requirements, the contractor must obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. All contractors must carry the following coverage depending on the type of service or product being delivered.

- a. Commercial General Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate,

And at least one of the following, as outlined below:

- b. Medical/Professional Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate,

or

- c. Miscellaneous Errors and Omissions - \$1,000,000 per occurrence/\$3,000,000 aggregate,

or

- d. Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate,

The successful contractor must carry (a) and at least one of (b), (c), or (d) above, depending on the type of Service or Product being delivered.

If the contractual service requires the transportation of departmental clients or staff, the contractor shall, in addition to the above coverage's, secure at its own expense the following coverage;

- e. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to other,

and

- f. The contractor shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The contractor is an independent contractor and is not an employee of the State of Delaware.

All contractors must carry (a), (e), and (f), and at least one of (b), (c), or (d), depending on the type of service or product being delivered.

Before any work is done with the State, a Certificate of Insurance referencing the name and contract number stated herein, shall be filed with the State. The certificate holder is as follows:

**State of Delaware
Government Support Services
Contract # GSS16642-SOFTWAREVAR
100 Enterprise Place, Suite 4
Dover, DE 19904-8202**

Note: The State of Delaware shall not be named as an additional insured.

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

b. ELECTRONIC CATALOG

At the discretion of Government Support Services, the successful contractor(s) may be required to submit their items list in an electronic format designated by the State.

By example, but not limited to, the following items may be required:

- Electronic catalogs,
- Electronic catalogs converted to a CSV format with contract specific pricing,

- Items designated by commodity/classification code: United Nations Standard Products and Services Code (UNSPSC), and/or
- A unique item ID for all items in your system and/or our award.

c. INTENT TO LOAD CATALOGS IN STATE ePROCUREMENT SOLUTION

Contractors will be required to provide catalog(s) and the corresponding price list(s) for all awarded goods that are being offered to the State for purchase, and shall include all applicable and awarded price tiers available for each product. These documents may be required and supplied by the contractor in an electronic format as determined by the State over the life of the contract. The prices listed therein will be the prices paid by the State for purchases during the contract term.

At the discretion of the State, all awarded items will need to be provided in an electronic format for use in a hosted catalog offering which will be presented in the State's eProcurement solution. The awarded contractor(s) will be directed to supply the catalog file to an identified state representative or the State's designated eProcurement contractor at any time after execution of the contract, but no later than 45 days after the contract execution. The failure and/or inability to comply with this hosted catalog requirement may subject the awarded contractor to corrective action, up to and possibly including termination of the contract.

A hosted catalog is defined as a contractor supplied electronic catalog of all awarded items, including item descriptions, attributes and the award prices, which will be stored and publically visible in the State's eProcurement solution.

d. SEVERABILITY

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

e. PERMITS AND LICENSES

All necessary permits, licenses, insurance policies, etc. required by local, State or Federal laws, shall be provided by the Contractor at its own expense.

f. PATENTED DEVICES, MATERIAL AND PROCESSES

1. The Contractor shall provide or resell the right to use any patented design, device, material, or process to be used or furnished under this contract by suitable legal agreement with or as an authorized reseller of the patentee or owner.

2. The Contractor and the surety shall hold and save harmless the State of Delaware, the Agency, the Director, their Officers or Agents from any and all claims because of the resale of such patented design, device, material, or process in connection with the work agreed to be performed under this contract. If the Contractor will not provide indemnification or will not hold and save harmless, the Contractor shall use commercially reasonable efforts to ensure that the manufacturer will provide indemnifications for the State.

g. STATE OF DELAWARE BUSINESS LICENSE

Prior to commence performance under this agreement, the Contractor shall either furnish Government Support Services with proof of State of Delaware Business Licensure or initiate the process of application, where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P. O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone: 302-577-8778. <http://revenue.delaware.gov/services/BusServices.shtml>

Information regarding the State of Delaware's decision to enter into this participating addendum will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject your organization to applicable fines and/or interest penalties.

h. EMERGENCY TERMINATION OF AGREEMENT

1. Due to restrictions which may be established by the United States Government on material, or work, a contract may be terminated by the cancellation of all or portions of the contract.
2. In the event the Contractor is unable to obtain the material required to complete the items of work included in the contract because of restrictions established by the United States Government and if, in the opinion of the Agency, it is impractical to substitute other available material, or the work cannot be completed within a reasonable time, the incomplete portions of the work may be cancelled, or the contract may be terminated.

i. INDEMNIFICATION

1. **General Indemnification:** By submitting a proposal, the proposing contractor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the contractor's its agents and employees' performance work or services in connection with the contract.
2. **Proprietary Rights Indemnification:** Contractor shall warrant that all elements of its solution that it manufactures, including all equipment, software, documentation, services and deliverables ("Contractor Goods"), do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the State of Delaware, the State of Delaware shall promptly notify the contractor in writing and Contractor shall defend such claim, suit or action at contractor's expense, and contractor shall indemnify the State of Delaware against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

If any Contractor Goods are or in Contractor's reasonable judgment are likely to be, held to constitute an infringing product, Contractor shall at its expense and option either:

- a. Procure the right for the State of Delaware to continue using the Contractor Good(s);
- b. Replace the Contractor Goods with a non-infringing equivalent that satisfies all the requirements of the contract; or

- c. Modify the Contractor Good(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Contractor Good(s) or any part of the work to fail to conform to the requirements of the Contract, or only alters the Contractor Good(s) to a degree that the State of Delaware agrees to and accepts in writing.

Should Contractor not save and hold harmless or indemnify the State as required, the Contractor shall use best efforts to enforce the manufacturer's representations and indemnifications.

j. NON-PERFORMANCE

In the event the Contractor does not fulfill its obligations under the terms and conditions of this contract, in addition to proceeding with termination of the contract, the ordering agency may purchase equivalent product on the open market and reserves the right to seek any and all claims for damages based on the Contractor's breach of this Participating Addendum and related Master Agreement.

k. OPPORTUNITY BUYS

The Director for the State of Delaware, Office of Management and Budget, Government Support Section can waive use of a central contract pursuant to 29 Del. C. §6911(e). A process has been developed to permit any contractor the opportunity to submit an Opportunity Buy offer to the State for goods and/or services for consideration despite the existence of a central contract. See [Opportunity Buy Flowchart](#).

The Director will afford any contractor on an existing central contract an opportunity to match or to beat the Opportunity Buy offer made by a non-contracted contractor prior to a waiver being granted.

l. I FOUND IT CHEAPER

Director for the State of Delaware, Office of Management and Budget, Government Support Section can waive use of a central contract pursuant to 29 Del. C. §6911(e). A process has been developed to permit any State employee or Contractor to identify a lower price for material and or services for consideration despite the existence of a central contract. See [I Found It Cheaper Flowchart](#).

The Director will afford any Contractor on an existing central contact an opportunity to match or to beat the I Found It Cheaper suggestion and if not matched or beaten, approve the purchase via a waiver.

m. REQUIRED REPORTS

One of the primary goals in administering this contract is to keep accurate records regarding its actual value/usage. This information is essential in order to update the contents of the contract and to establish proper bonding levels, if they are required. The integrity of future contracts revolves around our ability to convey accurate and realistic information to all interested parties.

A complete and accurate Usage Report (Attachment A) shall be furnished in an Excel format and submitted electronically, no later than the 15th (or next business day after the 15th day) of each month, detailing the purchasing of all items on this contract. The reports shall be submitted and sent as an attachment to vendorausage@state.de.us. Submitted reports shall contain accurate descriptions of the products, goods or services procured,

purchasing agency information, including the six-digit department and organization code, quantities procured and prices paid. Any exception to this mandatory requirement or failure to submit complete reports, or in the format required, may result in corrective action, up to and including the possible cancellation of the award. Failure to provide the report with the minimum required information may also negate any contract extension clauses. Additionally, Contractors who are determined to be in default of this mandatory report requirement may have such conduct considered against them, in assessment of responsibility, in the evaluation of future proposals.

In accordance with Executive Order 44, the State of Delaware is committed to supporting its diverse business industry and population. The successful Contractor will be required to accurately report on the participation by Diversity Suppliers which includes: minority (MBE), woman (WBE), veteran owned business (VOBE), or service disabled veteran owned business (SDVOBE) under this awarded contract. The reported data elements shall include but not be limited to; name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women's Business Enterprise Council, VetBiz.gov). The format used for Subcontracting 2nd Tier reporting is shown as Attachment B.

Accurate 2nd Tier reports shall be submitted to the contracting Agency's Office of Supplier Diversity at vendorusage@state.de.us on the 15th (or next business day) of the month following each quarterly period. For consistency quarters shall be considered to end the last day of March, June, September and December of each calendar year. Contract spend during the covered periods shall result in a report even if the contract has expired by the report due date.

n. DELAWARE ECONOMIC IMPACT

Each awarded contractor shall provide an annual report of the economic impact of their operations in Delaware. This report shall be submitted by February 15th of each calendar year, and shall report on the immediately prior one full calendar year of operations.

The following basic information is required under this agreement:

- # of Delaware Locations
- # of Delaware Employees
- Annual Taxes, licenses & Fees Paid to Delaware
 - This may be payroll, franchise, service taxes, etc.
- Major Delaware Investments/ Partnerships
 - Amount paid to Major partners or Suppliers in Delaware
 - Highlight of Delaware MWBE, Veteran, Small Business (SBA criteria) and Disabled Veteran partnerships/ supply chain
 - Rent to Delaware Locations or value of Delaware real property
 - Utility Expenses paid to Delaware utilities

The report shall be submitted to contracting@state.de.us.

o. FUNDING OUT or NON-APPROPRIATION

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be

terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

p. INDEPENDENT CONTRACTORS

The parties to any contract from this solicitation shall be independent contractors to one another, and nothing herein shall be deemed to cause the agreement to create an agency, partnership, joint venture or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding and all other similar matters. Neither party shall be liable for any debts, accounts, obligations or other liability whatsoever of the other party or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

q. TEMPORARY PERSONNEL ARE NOT STATE EMPLOYEES UNLESS AND UNTIL THEY ARE DIRECTLY HIRED

Contractor agrees that any individual or group of temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation shall remain the employee(s) of Contractor for all purposes including any required compliance with the Affordable Care Act by the Contractor. Contractor agrees that it shall not allege, argue, or take any position that individual temporary staff person(s) provided to the State pursuant to this Solicitation must be provided any benefits, including any healthcare benefits by the State of Delaware and Contractor agrees to assume the total and complete responsibility for the provision of any healthcare benefits required by the Affordable Care Act to aforesaid individual temporary staff person(s). In the event that the Internal Revenue Service, or any other third party governmental entity determines that the State of Delaware is a dual employer or the sole employer of any individual temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation, Contractor agrees to hold harmless, indemnify, and defend the State to the maximum extent of any liability to the State arising out of such determinations.

Notwithstanding the content of the preceding paragraph, should the State of Delaware subsequently directly hire any individual temporary staff employee(s) provided pursuant to this Solicitation, the aforementioned obligations to hold harmless, indemnify, and defend the State of Delaware shall cease and terminate for the period following the date of hire. Nothing herein shall be deemed to terminate the Contractor's obligation to hold harmless, indemnify, and defend the State of Delaware for any liability that arises out of compliance with the ACA prior to the date of hire by the State of Delaware. Contractor will waive any separation fee provided an employee works for both the contractor and hiring agency, continuously, for a three (3) month period and is provided thirty (30) days written notice of intent to hire from the agency. Notice can be issued at second month if it is the State's intention to hire.

r. FAIR BACKGROUND CHECK PRACTICES

Pursuant to 29 Del. C. §6909B, the State does not consider the criminal record, criminal history, credit history or credit score of an applicant for state employment during the initial application process unless otherwise required by state and/or federal law. Contractors doing business with the State are encouraged to adopt fair background check practices. Contractors can refer to 19 Del. C. §711(g) for applicable established provisions.

s. VENDOR BACKGROUND CHECK REQUIREMENTS

Contractor(s) selected for an award that access state property or come in contact with vulnerable populations, including children and youth, shall be required to complete background checks on employees serving the State's on premises contracts. Unless otherwise directed, at a minimum, this shall include a check of the following registry:

- Delaware Sex Offender Central Registry at:
<https://sexoffender.dsp.delaware.gov/>

Individuals that are listed in the registry shall be prevented from direct contact in the service of an awarded state contract, but may provide support or off-site premises service for contract contractors. Should an individual be identified and the Contractor(s) believes their employee's service does not represent a conflict with this requirement, may apply for a waiver to the primary agency listed in the solicitation. The Agency's decision to allow or deny access to any individual identified on a registry database is final and at the Agency's sole discretion.

By Agency request, the Contractor(s) shall provide a list of all employees serving an awarded contract, and certify adherence to the background check requirement. Individual(s) found in the central registry in violation of the terms stated, shall be immediately prevented from a return to state property in service of a contract award. A violation of this condition represents a violation of the contract terms and conditions, and may subject the Contractor to penalty, including contract cancellation for cause.

Individual contracts may require additional background checks and/or security clearance(s), depending on the nature of the services to be provided or locations accessed, but any other requirements shall be stated in the contract scope of work or be a matter of common law. The Contractor(s) shall be responsible for the background check requirements of any authorized Subcontractor providing service to the Agency's contract.

t. DRUG TESTING REQUIREMENTS FOR LARGE PUBLIC WORKS

Pursuant to 29 Del. C. [§6908\(a\)\(6\)](#), OMB has established regulations that require Contractors and Subcontractors to implement a program of mandatory drug testing for Employees who work on Large Public Works Contracts funded all or in part with public funds. The regulations establish the mechanism, standards and requirements of a Mandatory Drug Testing Program that will be incorporated by reference into all Large Public Works Contracts awarded pursuant to 29 Del. C. [§6962](#).

Final publication of the identified regulations can be found at the following:

[4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects](#)

u. SERVICING SUBCONTRACTORS

1. Contractor may use State-approved Subcontractors or Distributors under this Participating Addendum for sales and service functions as defined herein.
2. Contractor shall be responsible for successful performance and compliance with all requirements in accordance with the terms and conditions under this Participating Addendum, even if work is performed by Servicing Subcontractors.
3. Contractor will be the sole point of contact with regard to Participating Addendum contractual matters, reporting and administrative requirements.
4. For the purposes of this Participating Addendum, Servicing Subcontractors are classified as follows:

a. "Authorized Reseller"

- i. Authorized Resellers may provide quotes, accept purchase orders, fulfill purchase orders, perform maintenance/warranty services and accept payment from ordering agencies for products and associated services offered under this Participating Addendum.
- ii. Authorized Resellers are responsible for sending a copy of all purchase orders and invoices to the Contractor for compliance with quarterly usage reporting and administrative requirements.
- iii. All purchase documents to Authorized Resellers shall reference the Participating Addendum Number and **SHI International Group** as the Contractor.

b. "Agent"

- i. Agents are only authorized to provide quotes, sales assistance, configuration guidance and ordering support for products and associated services offered under this Participating Addendum.
 - ii. Agents are not authorized to accept orders or payments.
5. Subject to the approval of the State, Servicing Subcontractors may be added or deleted during the contract term.
 6. Proposed Servicing Subcontractors, as well as the Contractor, must complete the [Delaware Substitute Form W-9](#).
 7. State-approved Servicing Subcontractors will be posted on the [State's Contracting website](#).

v. **ORDERING PROCEDURE**

Contractor is required to have either a local telephone number within the (302) area code, a toll free (800) number, or agree to accept collect calls. Depending on the nature and scope of the event, each State agency or other governmental entity shall be responsible for contacting the awarded contractor directly for all required resources. All consumables delivered by the Contractor and received by a State agency or other governmental entity, become the property of that State agency or entity. Orders may be accomplished by written purchase order, telephone, fax or computer on-line systems. All Purchase Orders **must** include the State's contract number.

w. **BILLING**

The Contractor is required to "[Bill as Shipped](#)" to the respective ordering agency(s). Ordering agencies shall provide contract number, ship to and bill to address, contact name and phone number. Per Del. C. [§ 6516 \(d\) \(4\)](#), the Contractor shall not charge a late fee that exceeds more than one percent (1%) per month, not to exceed twelve percent (12%) per annum.

Agencies will make every effort to achieve available discount opportunities under this contract. Contractors shall be required to report semi-annually opportunities to enhance the discounts achieved.

x. **METHOD OF PAYMENT**

1. For each P.O. issued as part of this contract, the State will pay Contractor monthly, within thirty (30) days of receipt of the Contractor's billing, the amount which is legitimately earned by the Contractor. A current progress report of the work shall accompany each billing.

Final settlement for total payment to the Contractor will be made within thirty (30) days from the date of final written State acceptance of the work and services as agreed to in the P.O.

2. No premium time for overtime will be paid without prior written State authorization. Indirect overhead cost shall not be applied to the premium portion of the overtime.
3. The agencies or school districts using this award will authorize and process for payment each invoice within thirty (30) days after the date of receipt of a correct invoice. The State of Delaware intends to maximize the use of the P-Card for payment for goods and services provided under contract. Contractors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally, there shall be no minimum or maximum limits on any P-Card transaction under the contract. While it is the State's intention to utilize the P-card payment method the State reserves, at its discretion, the right to pay by ACH/ ACI or check. Should the Contractor wish to provide a financial incentive to not process payment by P-Card, they are to prepare a proposal to clearly outline any incentives for alternative payment methods the Contractor is willing to accept.

y. FORMAL CONTRACT AND/OR PURCHASE ORDER

No employee of the Contractor(s) is to begin any work prior to receipt of a State of Delaware Purchase Order signed by authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office. A purchase order, email, telephone, fax or State of Delaware's credit card shall serve as the authorization to proceed with work in accordance with the bid specifications and the special instructions, once it is received by the Contractor(s).

a. On-Premises Software

Agencies shall retain discretionary rights to buy directly from the awarded reseller and install on-premises operated commercial off-the-shelf ("COTS") software and/or solutions without secondary approval from the Delaware Department of Technology and Information ("DTI"). Agencies shall be responsible for understanding, verifying and/or seeking DTI Business Case approvals prior to purchase and installation of on-premises software so that the Agency shall remain compliant with internal division IT and/or Executive Order #20 review, requiring DTI oversight and approvals.

b. Off-Premises, XaaS and/or Cloud Hosted Software and Solutions

Agencies shall not procure any software or solution that requires off-site and/or cloud hosted data storage and/or operation without the prior approval or waiver from the Delaware Department of Technology and Information. Further, Agencies shall identify the Business Case (BC) approval number, provided by DTI, or acknowledgement of a waiver from the BC process on any Purchase Order provided to the Vendor. This limitation has been implemented to ensure that all appropriate off-site or cloud DTI terms, conditions, and protections have been enabled and obtained from the end supplier prior to product implementation. If absent on any Purchase Order, the Vendor shall ask for and obtain the BC approval code and/or presence of a waiver from the requesting Agency prior to fulfilling any order for off-site, XaaS (anything as a service), or cloud hosted solutions.

z. MINIMUM WAGE RATES

Work performed under this solicitation may fall under the [State of Delaware Minimum Wage Rates](#) or the Delaware Prevailing Wage rates. Prior to issuing a purchase order, the ordering agencies must obtain from the Department of Labor a determination if prevailing wage applies to the project and, if appropriate, what the applicable prevailing wage rates would be for the work to be performed. No work shall proceed without a determination by the Department of Labor. Request for prevailing wage certification can be found at: <http://dia.delawareworks.com/labor-law/prevailing-wage.php>

aa. PREVAILING WAGE

The prevailing wage law, 29 Del. C. [§6960](#), is enforced by the Department of Labor and states that the specifications for every contract or aggregate of contracts relating to a public works project in excess of \$100,000 for new construction (including painting and decorating) or \$15,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction (including painting and decorating of building or works) to which this State or any subdivision thereof is a party and for which the State appropriated any part of the funds and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Delaware Department of Labor, Division of Industrial Affairs, to be prevailing in the county in which the work is to be performed. [Prevailing Wage Determination](#)

bb. DISPUTE RESOLUTION

At the option of, and in the manner prescribed by the Office of Management and Budget (OMB), the parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable shall not be rendered inadmissible.

If the matter is not resolved by negotiation, as outlined above, or, alternatively, OMB elects to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to mediation by a mediator selected by OMB, and if the matter is not resolved through mediation, then it shall be submitted, in the sole discretion of OMB, to the Office of Management and Budget, Government Support Services Director, for final and binding arbitration. OMB reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by Delaware law and venue shall be in Delaware. The parties shall maintain the confidential nature of the arbitration proceeding and the Award, including the Hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits. Each party shall bear its own costs of mediation, arbitration or litigation, including attorneys' fees.

cc. TERMINATION OF INDIVIDUAL ORDERS OR PURCHASE ORDERS

As a central contract, this agreement shall include individual orders from state agencies and other entities authorized by law to procure from this contract. The individual orders may be terminated as follows:

1. **Termination for Cause** - If, for any reasons, or through any cause, the Contractor fails to fulfill in timely and proper manner his obligations, or if the Contractor violates any of the covenants, agreements, or stipulations of this contract, the Agency shall have the right to terminate the P.O. by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor in the performance of the P.O. shall, at the option of the Agency, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the Agency.
2. **Termination for Convenience** - The Agency may terminate the P.O. at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the department, become its property and the Contractor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials which are usable to the Agency.
3. **Termination for Non-appropriation** - In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

dd. TERMINATION OF PARTICIPATING ADDENDUM

As a central contract, the contract resulting from this RFP may be terminated as follows by Government Support Services.

1. **Termination for Cause:** If, for any reasons, or through any cause, the Contractor fails to fulfill in timely and proper manner its obligations under this Contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor under this Contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the State.

On receipt of the contract cancellation notice from the State, the Contractor shall have not less than five (5) days to provide a written response and may identify a method(s) to resolve the violation(s). A contractor response shall not effect or prevent the contract cancellation unless the State provides a written acceptance of the contractor response. If the State does accept the Contractor's method and/or action plan to correct the identified deficiencies, the State will define the time by which the Contractor must fulfill its corrective obligations. Final retraction of the State's termination for cause will only occur after the Contractor successfully rectifies the original violation(s). At its discretion the State may

reject in writing the Contractor's proposed action plan and proceed with the original contract cancellation timeline.

2. **Termination for Convenience:** The State may terminate this Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Contractor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.
3. **Termination for Non-Appropriations:** In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

ee. PUBLICATION, REPRODUCTION AND USE OF MATERIAL

No material produced in whole or part under this contract shall be subject to copyright in the United States or in any other country. The State shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared by Contractor under this contract. If the State plans to publish, disclose, distribute, and/or otherwise use the manufacturer's materials, the State will notify Contractor of those plans. Contractor will seek the authority from the manufacturers for the State provided, however, that the State agrees not to use any design or engineering plans prepared by the Contractor for anything other than their intended purpose under this Contract. The Contractor shall have the right to publish any and all scientific findings. Appropriate acknowledgment and credit for the State's support shall be given in the publication.

ff. RIGHTS AND OBLIGATIONS

The rights and obligations of each party to this agreement shall not be effective, and no party shall be bound by the term of this agreement, unless and until a valid executed purchase order has been approved by the State of Delaware Secretary of Finance, and all reasonable procedures of the State of Delaware Department of Finance have been complied with. A separate purchase order shall be issued for every project or order.

gg. ASSIGNMENT OF ANTITRUST CLAIMS

As consideration for the award and execution of this contract by the State, the Contractor hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, regarding the specific goods or services purchased or acquired for the State pursuant to this contract. Upon either the State's or the Contractor notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, the State and Contractor shall meet and confer about coordination of representation in such action.

hh. REMEDIES

Except as otherwise provided in this Participating Addendum, all claims, counterclaims, disputes, and other matters in question between the State of Delaware and the Contractor

arising out of, or relating to, this addendum, or a breach of it may be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

ii. AUDIT ACCESS TO RECORDS

The Contractor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect performance hereunder. The Contractor agrees to preserve and make available to the State, upon request, such records for a period of five (5) years from the date services were rendered by the Contractor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Contractor agrees to make such records available for inspection, audit, or reproduction to any official State representative in the performance of their duties under the Contract. Upon notice given to the Contractor, representatives of the State or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost and billing records or other material relative to this Contract. The cost of any Contract audit disallowances resulting from the examination of the Contractor's financial records will be borne by the Contractor. Reimbursement to the State for disallowances shall be drawn from the Contractor's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

jj. SUBCONTRACTS

Subcontracting is permitted under this Participating Addendum. However, every subcontractor, authorized representative or reseller shall be identified (Attachment C) and agreed to in writing by the State or as are specifically authorized in writing by the Agency during the performance of the contract. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior written approval of the State.

The Contractor shall be responsible for compliance by the subcontractor or reseller with all terms, conditions and requirements of the Master Agreement and this Participating Addendum and with all local, State and Federal Laws. The Contractor shall be liable for any noncompliance by any subcontractor or reseller. Further, nothing contained herein or in any subcontractor agreement shall be construed as creating any contractual relationship between the subcontractor and the State.

kk. CONTRACTOR EMERGENCY RESPONSE POINT OF CONTACT

If available for normal business operations, the awarded contractor(s) shall provide the name(s), telephone, or cell phone number(s) of those individuals who can be contacted during business hours and in the event of an emergency, after hours, where there is a critical need for commodities or services when the Governor of the State of Delaware declares a state of emergency under the Delaware Emergency Operations Plan or in the event of a local emergency or disaster where a state governmental entity requires the services of the contractor. Failure to provide this information could render the proposal as non-responsive.

In the event of a serious emergency, pandemic or disaster outside the control of the State, the State may negotiate, as may be authorized by law, emergency performance from the Contractor to address the immediate needs of the State, even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

II. POTENTIAL CONTRACT OVERLAP

Contractors shall be advised that the State, at its sole discretion, shall retain the right to solicit for goods and/or services as required by its agencies and as it serves the best interest of the State. As needs are identified, there may exist instances where contract deliverables, and/or goods or services to be solicited and subsequently awarded, overlap previous awards. The State reserves the right to reject any or all bids in whole or in part, to make partial awards, to award to multiple contractors during the same period, to award by types, on a zone-by-zone basis or on an item-by-item or lump sum basis item by item, or lump sum total, whichever may be most advantageous to the State of Delaware.

mm. CONFIDENTIALITY AND DATA INTEGRITY

The Department of Technology and Information is responsible for safeguarding the confidentiality and integrity of data in State computer files regardless of the source of those data or medium on which they are stored: e.g., electronic data, computer output microfilm (COM), tape, or disk. Computer programs developed to process State Agency/School District data will not be modified without the knowledge and written authorization of the Department of Technology and Information. All data generated from the original source data, shall be the property of the State of Delaware. The control of the disclosure of those data shall be retained by the State of Delaware and the Department of Technology and Information.

The Contractor is required to agree to the requirements in the CONFIDENTIALITY AND INTEGRITY OF DATA STATEMENT; Attachment D attached, and made a part of this RFP. Contractor employees, individually, may be required to sign the statement prior to beginning any work.

nn. SECURITY

As computer, network, and information security are of paramount concern, the State wants to ensure that computer/network hardware and software does not compromise the security of its IT infrastructure. Therefore, when warranted by the manufacturer, the Contractor is guaranteeing that any systems or software meets or exceeds the Top 20 Critical Security controls located at <https://www.cisecurity.org/critical-controls/Library.cfm>

oo. TAX EXEMPTION

1. Material covered by this proposal is exempt from all FEDERAL and STATE TAXES. Such taxes shall not be included in prices quoted.
2. Any material which is to be incorporated in the work or any equipment required for the work contemplated in the proposal may be consigned to the Agency. If the shipping papers show clearly that any such material is so consigned, the shipment will be exempt from the tax on the transportation of property under provisions of Section 3475 (b) of the Internal Revenue Code, as amended by Public Law 180 (78th Congress). All transportation charges shall be paid by the Contractor.

pp. EQUALITY OF EMPLOYMENT OPPORTUNITY IN PUBLIC WORKS

During the performance of any contract for public works financed in whole or in part by appropriation of the State of Delaware, the contractor agrees as follows:

- a. The contractor, as set forth in Title 19 Delaware Code Chapter 7 section 711, will not discriminate against any employee or applicant for employment with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action

to ensure that applicants are employed and that employees are treated equally during employment without regard to their race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training including apprenticeships. The contractor agrees to post in conspicuous places, notices to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.

b. During the performance of this contract, the contractor agrees as follows:

1. The contractor, as set forth in Title 19 Delaware Code Chapter 7 section 711, will not discriminate against any individual with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. 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 forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin."

c. The term "contractor for public works" means construction, reconstruction, demolition, alteration, and/or repair work, maintenance work, and paid for in whole or in part out of the funds of a public body except work performed under a vocational rehabilitation program. The manufacture or furnishing of materials, articles, supplies or equipment is not a public work within the meaning of this subsection unless conducted in connection with and at the site of the public work.

qq. DOCUMENT EXECUTION

The State of Delaware requires completion of the Delaware Substitute Form W-9 to make payments to contractors. Successful completion of this form enables the creation of a State of Delaware vendor record. The Taxpayer ID (SSN or EIN) and Applicant (contractor) name are submitted to the Internal Revenue Service for "matching." If the Taxpayer ID and name do not match, the vendor record cannot be approved.

It is the applicant's responsibility to select the appropriate 1099 Withholding Type and Class. If incorporated, a business is not subject to 1099 reporting unless the business is providing legal or medical services.

3. **PRIMARY CONTACTS**

The primary government contact individuals for this Addendum are as follows (or their named successors):

Lead State

Contact: Terri Johnson
Address: 100 N 15th Avenue, Phoenix, AZ 85007
Phone: 602-542-9122
Fax:
Email: Terri.Johnson@azdoa.gov

Contractor

Contact: Nick Grappone
Address: 290 Davidson Avenue, Somerset, NJ 08873
Phone: 732-564-8189
Fax:
Email: nick_grappone@shi.com

Participating State Delaware, Government Support Services


Contact: Theresa Newman
Address: 100 Enterprise Place, Suite # 4, Dover, DE 19904-8202
Phone: 302-857-4552
Fax: 302-739-3779
Email: Theresa.Newman@state.de.us

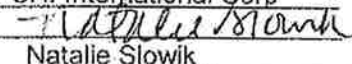
4. **CONTRACT NUMBER**

The contract number for the State of Delaware is: GSS16642-SOFTWARVAR.

This participating addendum and the Master Price Agreement, Number ADSP016-130651, (administered by the State of Arizona) 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 Master Contract, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Contract 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 Master Contract and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

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

State of Delaware
By: 
Name: Peter Korelyk
Title: Deputy Director
Date: 12/15/16

Contractor: SHI International Corp
By: 
Name: Natalie Slowik
Title: Sr. Contracts Manager
Date: 12/15/16

STATE OF DELAWARE
MONTHLY USAGE REPORT
SAMPLE REPORT - FOR ILLUSTRATION PURPOSES ONLY

Check here if there were no transactions for the reporting period

Note: A copy of the Usage Report will be sent by electronic mail to the Awarded Contractor. The report shall be submitted electronically in **EXCEL** and sent as an attachment to vendorusage@state.de.us. It shall contain the six-digit department and organization code for each agency and school district.

SUBCONTRACTOR INFORMATION FORM

Attachment C

PART I – STATEMENT BY CONTRACTOR		
1. CONTRACT NO. GSS16642-SOFTWARVAR	2. Proposing Vendor Name:	3. Mailing Address
4. SUBCONTRACTOR		
a. NAME	4c. Company OSD Classification: Certification Number: _____	
b. Mailing Address:	4d. Women Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4e. Minority Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4f. Disadvantaged Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4g. Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4h. Service Disabled Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No	
5. DESCRIPTION OF WORK BY SUBCONTRACTOR		
6a. NAME OF PERSON SIGNING	7. BY (Signature)	8. DATE SIGNED
6b. TITLE OF PERSON SIGNING		
PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR		
9a. NAME OF PERSON SIGNING	10. BY (Signature)	11. DATE SIGNED
9b. TITLE OF PERSON SIGNING		

* Use a separate form for each subcontractor



DEPARTMENT OF TECHNOLOGY AND INFORMATION

William Penn Building
801 Silver Lake Boulevard
Dover, Delaware 19904-2407

CONFIDENTIALITY (NON-DISCLOSURE) AND INTEGRITY OF DATA AGREEMENT

The Department of Technology and Information is responsible for safeguarding the confidentiality and integrity of data in State computer files regardless of the source of those data or medium on which they are stored; e.g., electronic data, computer output microfilm (COM), tape, or disk. Computer programs developed to process State Agency data will not be modified without the knowledge and written authorization of the Department of Technology and Information. All data generated from the original source data, shall be the property of the State of Delaware. The control of the disclosure of those data shall be retained by the State of Delaware and the Department of Technology and Information.

I/we, as an employee(s) of SHI International Corp or officer of my firm, when performing work for the Department of Technology and Information, understand that I/we act as an extension of DTI and therefore I/we are responsible for safeguarding the States' data and computer files as indicated above. I/we will not use, disclose, or modify State data or State computer files without the written knowledge and written authorization of DTI. Furthermore, I/we understand that I/we are to take all necessary precautions to prevent unauthorized use, disclosure, or modification of State computer files, and I/we should alert my immediate supervisor of any situation which might result in, or create the appearance of, unauthorized use, disclosure or modification of State data.

Penalty for unauthorized use, unauthorized modification of data files, or disclosure of any confidential information may mean the loss of my position and benefits, and prosecution under applicable State or Federal law.

This statement applies to the undersigned Contractor and to any others working under the Contractor's direction.

I, the Undersigned, hereby affirm that I have read DTI's Policy on Confidentiality (Non-Disclosure) and Integrity of Data and understood the terms of the above Confidentiality (Non-Disclosure) and Integrity of Data Agreement, and that I/we agree to abide by the terms above.

Contractor Signature Natalie Slowik
Title: Sr. Contracts Manager
Date: 12/16/16
Contractor Name: Natalie Slowik

My Marketplace Document Submission

Agency Contact: Theresa Newman
 Phone Number: 302-857-4552
 Email Address: Theresa.Newman@state.de.us

Vendor Information

A separate form must be completed for AGREEMENT vendor and authorized resellers/dealers for AGREEMENT vendor. YELLOW fields are MANDATORY, GREEN are if applicable.

Contract Title: GSS16642-SOFTWAVAR
 Contract Number: Software Value Added Reseller

Vendor/Company Name:

DBA (if applicable):

Address 1:

Address 2:

City:

State:

Zip Code:

Website:

* The identified information will be provided by State of Delaware agency.

* FSF Vendor Identification Number:

* Vendor Contract Number:

(for Cooperative Type contracts)

* MWBE Certified: ☐ Yes

☐ No

* Vets/SDV Certified: ☐ Yes ☐ No

* Delaware Vendor: ☐ Yes

☐ No

PRIMARY CONTACT

Contact Name:

Phone Number:

(xxx-xxx-xxxx, Ext. xxxx)

Secondary Phone:

(xxx-xxx-xxxx, Ext. xxxx)

Fax Number:

(xxx-xxx-xxxx)

Cell Number:

(xxx-xxx-xxxx)

Email Address:

SECONDARY CONTACT

Contact Name:

Phone Number:

(xxx-xxx-xxxx, Ext. xxxx)

Secondary Phone:

(xxx-xxx-xxxx, Ext. xxxx)

Fax Number:

(xxx-xxx-xxxx)

Cell Number:

(xxx-xxx-xxxx)

Email Address:

Please enter contract specific keywords in the space provided below. The keywords will identify the products, goods or services your company provides under the intended state contract. This information will be used to make your contract award visible in the State of Delaware eMarketplace system and allow users to search and find your contract award.

Contract Keywords: Software, Microsoft, licenses, asset management

Your keyword total input is limited to 1000 characters (including the single space required between individual words). The space above will expand to accept the larger available field as data is entered.

For example a plumbing supply house may include the following keywords:
plumbing sink toilet valve faucet

Contractors are responsible for providing the keyword information, but review and final acceptance will be subject to the sole discretion of the State. Any and all inappropriate words, phrases and/or expansion of contract scope outside the intended award will be removed.

As part of the vendor registration process, if you are not already supplying goods/services to the State of Delaware or its agencies, you MUST complete a Substitute W-9, which can be found at the following site:

<https://w9.accounting.delaware.gov/W9form.aspx>

Completion of Substitute W-9 form (date):

Federal Tax ID#:



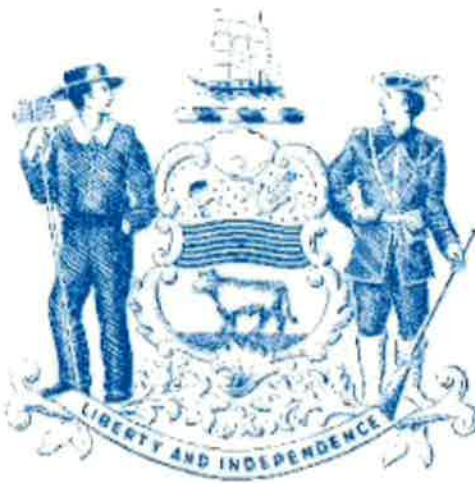
**State of Delaware
Office of Supplier Diversity
Certification Application**

The most recent application can be downloaded from the following site:

<http://gss.omb.delaware.gov/osd/certify.shtml>

Submission of a completed Office of Supplier Diversity (OSD) application is optional and does not influence the outcome of any award decision.

The minimum criteria for certification require the entity must be at least 51% owned and actively managed by a person or persons who are eligible: minorities, women, veterans, and/or service disabled veterans. Any one or all of these categories may apply to a 51% owner.



Complete application and mail, email or fax to:

Office of Supplier Diversity (OSD)

100 Enterprise Place, Suite 4

Dover, DE 19904-8202

Telephone: (302) 857-4554 Fax: (302) 677-7086

Email: osd@state.de.us

Web site: <http://gss.omb.delaware.gov/osd/index.shtml>

THE OSD ADDRESS IS FOR OSD APPLICATIONS ONLY.