

University of Nebraska Alcatel-Lucent Enterprise Equipment and Maintenance Contract

MHEC Addendum

Whereas, the University of Nebraska at Omaha (University) underwent a competitive sourcing event for the purchase and maintenance of Alcatel-Lucent Enterprise Network Equipment pursuant to Invitation Number xxxxxx; and

Whereas, University extended access to any contract resulting from the competitive sourcing event to the Eligible Organizations eligible to utilize contracts held by the Midwestern Higher Education Commission(MHEC); and

Whereas, MHEC reserved the right to enter into an addendum to any contract entered into between the University and the successful Bidder resulting from the competitive sourcing event; and

Whereas, successful Bidder was awarded the bid and entered into a contract with the University upon completion of the competitive sourcing event, Contract Number xxxxxx (Contract); and

Therefore, in consideration of mutual covenants, conditions and promises contained herein, MHEC and Successful Bidder agree as follows:

Scope: This contract addendum (Addendum) allows for the purchase by Eligible Organizations under the Midwestern Higher Education Compact the Alcatel-Lucent Enterprise Product catalogue categories awarded to successful Bidder pursuant to the University of Nebraska at Omaha Invitation to Bid, Invitation Number xxxxx. Eligible Organization shall purchase under this Addendum by executing a valid order with successful Bidder. Each quote supplied to Eligible Organization from successful Bidder, and each order placed pursuant to this Amendment, shall include the University of Nebraska contract number xxxxxx.

Midwestern Higher Education Commission (or MHEC) shall be defined as the governing body of the Midwestern Higher Education Compact, an interstate compact of twelve Midwestern states, such states being: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin.

Eligible Organizations shall be defined as all public and private non-profit colleges, universities, community colleges, technical colleges and higher education agencies located in a member state of the Midwestern Higher Education Compact. Additionally, because MHEC is an instrumentality of state government for each of the Compact's 12 member states, participation may be offered to any of the following entities if agreeable by all parties: K-12 schools and districts, including public libraries; cities, counties, and local subdivisions; and state agencies, located in a member state of the Midwestern Higher Education Compact.

Procuring Eligible Organization shall be defined as an Eligible Organization which desires to purchase under this contract addendum and has executed a valid order.

The terms and conditions of the Contract shall apply to the Procuring Eligible Organization as well as to the University unless amended or modified in this Addendum. Where the terms and conditions of the Contract and/or Addendum are in conflict with the Procuring Eligible Organization's state and/or institutional laws or regulations, the Procuring Eligible Organization and successful Bidder may enter into an amendment to amend the terms and conditions of the Contract and/or Addendum to conform to the Procuring Eligible Organization's state and/or institutional laws or regulations.

This Addendum will be effective upon the signature of the parties hereto. The Addendum will be coterminous with the Contract and any extension of the Contract, unless terminated pursuant to the terms of this addendum.

Order of Precedence:

- 1) An executed amendment between Procuring Eligible Organization and successful Bidder the terms and conditions of which shall only apply between applicable Procuring Eligible Organization and successful Bidder;
- 2) The terms and conditions of this Addendum which shall not diminish, change or impact the rights of the University of Nebraska with regard to the University of Nebraska's contractual relationship with the successful Bidder under the terms of the Contract;
- 3) The Contract between the University of Nebraska and successful Bidder

Contract Modifications or Additional Terms and Conditions to Contract:

1. Termination of Addendum: (a) MHEC may terminate the Addendum at any time if the successful Bidder fails to carry out its terms or fails to make substantial progress toward the fulfillment of those terms. In such event, MHEC shall provide the successful Bidder with thirty (30) day written notice of the terms in breach. If after such notice, the successful Bidder fails to remedy the breach within those 30 days, MHEC may immediately cancel the Addendum. In the event the Addendum is terminated for any reason, a Procuring Eligible Organization shall retain its rights in all products and services accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted. (b) Procuring Eligible Organization may, at its discretion, terminate an order under this Addendum at any time if the successful Bidder fails to carry out its terms or fails to fulfill the terms of the Addendum. In such event, Procuring Eligible Organization shall provide the successful Bidder with thirty (30) days written notice of the terms in breach. If after such notice, the successful Bidder fails to remedy the breach within those 30 days, Procuring Eligible Organization may immediately cancel the Addendum. The Procuring Eligible Organization shall pay the successful Bidder only for such performance as has been properly completed and is of use to Procuring Eligible Organization. The Procuring Eligible Organization may, at its discretion, contract for provision of the goods or services required to complete the order and hold the successful bidder liable for all expenses incurred in such additional contract over and above the total cost of performance. This provision shall not preclude the pursuit of other remedies for breach of contract as allowed by law.

2. Indemnity, General and Patent: The successful Bidder shall indemnify, defend and save harmless MHEC and its respective officers, agents and employees from and against any and all liabilities and losses whatsoever, including without limitation, costs and expenses in connection therewith, on account of, or by reason of, injury to or death of, any person whosoever, or loss of or damage to any property whatsoever, suffered or sustained in the case of, or in connection with, the performance of the contract, except for that liability and loss arising from the acts or omissions of MHEC.

With respect to anything provided to MHEC or Procuring Eligible Organization by the Bidder pursuant to this bid, the Bidder shall indemnify and defend MHEC and its respective officers, agents and employees against liability, including costs and attorney's fees for infringement of any United States patent, copyright, trade infringement or other intellectual property right arising out of the manufacture, delivery and use of such by Procuring Eligible Organization.

3. Governing Law; Venue: (a) As between Procuring Eligible Organization and successful Bidder, this Addendum will be construed in accordance with, and its performance governed by the laws of the state in which Procuring Eligible Organization resides. Venue for all legal proceedings arising out of this Addendum, or breach thereof, shall be in a state or federal court with competent jurisdiction located in a state in which Procuring Eligible Organization resides. (b) As between MHEC and successful Bidder, this Addendum will be construed in accordance with, and its performance governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this Addendum, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the State of Minnesota. (c) As between Procuring Eligible Organization, MHEC and successful Bidder, this Addendum will be construed in accordance with, and its performance governed by the laws of the state in which Procuring Eligible Organization resides. Venue for all legal proceedings arising out of this Addendum, or breach thereof, shall be in a state or federal court with competent jurisdiction located in a state in which Procuring Eligible Organization resides.
4. Qualified to do Business and Compliance with Laws: Successful Bidder certifies that it is qualified to conduct business in each of the member states of the Midwestern Higher Education Compact, such states being Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin, and shall comply with all applicable laws and governmental regulations required by such states.
5. Federal, State and Local Sales Taxes; Federal Excise Taxes: Purchases made by Procuring Eligible Organization may be exempt from payment of state sales and use taxes and federal excise taxes. Certification of these exemptions will be provided to the successful Bidder upon request.
6. Sovereign Immunity: All parties to this Addendum and any orders placed hereunder acknowledge and agree that nothing in the solicitation or the Contract or Addendum shall be construed as a modification, compromise or waiver by the Procuring Eligible Organization of any rights or defenses of any immunities provided by Federal law or the laws of the state where Procuring Eligible Organization resides to Procuring Eligible Organization or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract or Addendum. To the extent that this section conflicts with any other section of the Contract or Addendum, this section shall govern.

7. **Records and Audit:** Successful Bidder agrees to maintain records directly related to the invoices and orders under this Addendum for a period of six (6) years or such term as required by applicable law from the date of receipt of final payment after termination of the Addendum. These records shall be subject to inspection, which may be initiated no more than twice annually, with reasonable advance notice, by Procuring Eligible Organization and appropriate governmental authorities within Procuring Eligible Organization's state. The Procuring Eligible Organization shall have the right to request copies of invoices either before or after payment. Payment under this Addendum shall not foreclose the right of the Procuring Eligible Organization to recover excessive or illegal payments.
8. **Legal Relationship:** Successful Bidder and its agents and employees are independent contractors and are not employees of MHEC or any Eligible Organization. Successful Bidder has no authorization, express or implied to bind MHEC or any Eligible Organization to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent of MHEC or any Eligible Organization, except as expressly set forth herein. Nothing in this Addendum is intended, or shall be deemed, or construed to constitute a partnership or a joint venture between the parties.
9. **Assignment:** This Addendum shall not be transferred or assigned without the prior written consent of MHEC.
10. **MHEC not Liable for Procuring Eligible Organizations:** MHEC shall not be liable to successful Bidder for the failure of any Procuring Eligible Organization to make any payment or to otherwise fully perform pursuant to the terms and conditions of the Contract and this Addendum or an order made pursuant to the Contract and this Addendum. An Eligible Organization shall not be liable or responsible for any other Eligible Organization that executes its own order pursuant to the Contract and this Addendum. MHEC makes no guarantee that any Eligible Organization or number of Eligible Organizations will make any purchases or utilize the Contract and/or Addendum in any manner.
11. **Administrative Reporting and Fees:** On a calendar-quarterly basis (where quarter one is January 1- March 31 and the quarter one report is due by April 30), successful Bidder will, in a timely manner, make available to MHEC utilization reports and information generated by this Addendum, reflecting net product and service sales to all Procuring Eligible Organizations. The information and reports shall be accompanied with a check payable to the Midwestern Higher Education Commission for an amount equal to one and one half percent (1.5%) of the net Product and Service sales for that quarter period (the "Fee"). The successful Bidder shall not include in the calculation of the Fee any sales of product or services to the University of Nebraska.
12. **Announcement and Publicly:** Any announcement and publicity given to MHEC (or an Eligible Organization) resulting from this Addendum must receive the prior approval of MHEC (or Eligible Organization). Successful bidder will not make any representations of MHEC's (or Eligible Organization's) opinion or position as to the quality or effectiveness of the products, supplies, and/or services that are subject of this Addendum without the prior written consent of MHEC (or Eligible Organization).

- 13. Marketing: Successful bidder will assist MHEC in the development and implementation of appropriate marketing strategies including seminars, printed material and full service, on-line MHEC-specific web site to receive information on products, supplies, services and prices and to place orders.
- 14. Oversight Committee: An oversight committee comprised of representatives of Eligible Organizations shall be appointed by MHEC to assist and support MHEC and Successful bidder in developing and refining the implementation of the Contract and Addendum in the Compact member states. This shall included, but not be limited to, assistance with marketing strategies, representing the interests of Eligible Organizations in assuring quality and timely products and services; and to advise the Successful bidder on the effectiveness of its implementation progression. There will be an annual meeting between Successful bidder and MHEC (and perhaps members of the oversight committee) to perform a contract health check; including items such as those above.
- 15. Vendor Representative: Successful Bidder shall assign a senior level representative who shall be the primary MHEC contact for all matters related to this Addendum and all sales and marketing efforts made pursuant to this Addendum.
- 16. Notification: Whenever under the terms of this Addendum any notice is required or permitted to be given by one party to the other, such notice shall be given in writing and shall be deemed to have been sufficiently given for all purposes hereof if given by facsimile or mail, postage prepaid, to the parties at the addresses set forth below, or at such other address as the parties may direct in writing from time to time:

To MHEC	To Successful Bidder
Nathan Sorensen	
105 Fifth Avenue South	
Suite 450	
Minneapolis, MN 55401	
e-mail: nathans@mhec.org	
Fax: 612-767-3353	

To Procuring Eligible Organizations: Notices shall be sent to Procuring Eligible Organization’s business address. The term “business address” shall mean the “Bill” to address set forth in an invoice submitted to Procuring Eligible Organization.

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

Midwestern Higher Education Commission

Successful Bidder

Name: _____

Title: _____

Date: _____
