

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS**

D&H Distributing Company

1. Introduction

A. Parties

This Contract for products 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 15th Street, Suite 1300, Austin, Texas 78701, and D&H Distributing Company (hereinafter "Vendor"), with its principal place of business at 2525 North Seventh Street, Harrisburg, Pennsylvania 17110.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a posting on the Texas Building and Procurement Commission's Electronic State Business Daily, posting number DIR-BUSOP-TMP-051, on October 12, 2004, for Graphing Calculators and Accessories.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Product and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; and Appendix C, Product Price List; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, and finally Appendix C.

2. Product Offerings

Products available under this Contract are limited to graphing calculators and accessories as specified in Appendix C, Product Price List.

3. Customer Price

The Customer Price for all products offered under this contract is set forth in Appendix C, Product Price List.

4. DIR Administrative Fee

The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is twenty-three hundredths of one percent (0.0023). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$230.

5. Notification

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

If sent to the State:
Sherri Parks, Service Delivery Division
Department of Information Resources

If sent to the Vendor:
Kerri Gallaway
D&H Distributing Company

300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759
Email: sherri.parks@dir.state.tx.us

2525 North Seventh Street
Harrisburg, Pennsylvania 17110
Phone: (800) 340-1006 x 7574
Facsimile: (717) 255-6750
Email: kgalloway@dandh.com

6. Authorized Exceptions to Terms and Conditions.

- I. Services are not within the scope of products awarded based on the posting described in Subsection 1.B above. All references in Appendix A to “products and related services”, “products and services”, “product and service offerings”, or “product or service” shall mean “products” or “product” as applicable.
- II. Vendor is not utilizing designated Order Fulfillers to provide service, sales, and support resources to Customers. All references in Appendix A to “Order Fulfiller” or “Order Fulfillers” shall mean “Vendor”. Should Vendor desire to utilize designated Order Fulfillers, an amendment shall be made to this Contract in accordance with Subsection 5.B of Appendix A.
- III. Appendix A, Subsection 5.E, Survival, is restated in its entirety as follows:

All applicable warranties that are in effect between Vendor and a Customer under the terms and conditions of the Contract shall survive the termination of the Contract. All Purchase Orders issued and accepted by Vendor shall survive termination of the Contract.
- IV. Appendix A, Section 7, Pricing, is restated in its entirety as follows:

A. Customer Price

The maximum Customer Price for all products offered under the Contract is set forth in Appendix C, Product Price List. Customers purchasing products under the Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

If pricing for products available under the Contract is provided at a lower price to: (i) an eligible Customer who is not purchasing those products under the Contract or (ii) any other entity or consortia authorized by Texas law to sell said products to eligible Customers, then the available prices in the Contract shall be adjusted to that lower price. The Contract shall be amended in accordance with Section 5.B.1 within ten (10) days to reflect the lower prices.

B. DIR Administrative Fee

The administrative fee specified in Section 4 of the Contract is included in the Customer Price and shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

C. Shipping and Handling Fees

The Customer Price specified in Appendix C, Product Price List, shall include all shipping and handling fees. Shipments will be Free On Board Customer’s destination. No additional fees shall be charged to the Customer for standard shipping and handling.

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If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

D. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under the Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under the Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

E. Changes to Prices or Product Offering

Appendix C, Product Price List, contains the current pricing for all products offered under the Contract. Upon written acceptance by DIR, Vendor may update the Product Price List to: i) reflect Customer Price decreases, ii) add new products that are within the scope of products awarded based on the posting described in Section 1.B of the Contract, or iii) delete obsolete or discontinued products. Any updates to the Product Price List, as accepted by DIR, shall be incorporated into the Contract through an Amendment in accordance with Subsection 5.B.1 of Appendix A.

- V. Appendix A, Section 10, Software License and Service Agreements, is deleted in its entirety.
- VI. Appendix A, Subsection 12.H, Security of Premises, Equipment, Data and Personnel, is deleted in its entirety.
- VII. Appendix A, Subsection 12.I, Background and/or Criminal History Investigation, is deleted in its entirety.

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

D&H Distributing Company

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

Authorized By: *Signature on File*

Authorized By: *Signature on File*

Name: Gary Brothers

Name: Edward Serna

Title: President

Title: Director of Service Delivery

Date: 3/22/05

Date: 3/21/05

Legal: *Signature on File*