

STATE OF NEBRASKA SERVICE CONTRACT AWARD

State Purchasing Bureau
1526 K Street, Suite 130
Lincoln, Nebraska 68508

Telephone: (402) 471-6500
Fax: (402) 471-2089

PAGE 1 of 1	ORDER DATE 10/04/17
BUSINESS UNIT 65060031	BUYER NANCY STORANT (AS)
VENDOR NUMBER: 2574796	
VENDOR ADDRESS: SHI INTERNATIONAL CORP 290 DAVIDSON AVE SOMERSET NJ 08873-4145	

CONTRACT NUMBER
79380 04

AN AWARD HAS BEEN MADE TO THE VENDOR/CONTRACTOR NAMED ABOVE FOR THE SERVICES AS LISTED BELOW FOR THE PERIOD:

OCTOBER 04, 2017 THROUGH SEPTEMBER 16, 2026

THIS CONTRACT IS NOT AN EXCLUSIVE CONTRACT TO FURNISH THE SERVICES SHOWN BELOW, AND DOES NOT PRECLUDE THE PURCHASE OF SIMILAR SERVICES FROM OTHER SOURCES.

THE STATE RESERVES THE RIGHT TO EXTEND THE PERIOD OF THIS CONTRACT BEYOND THE TERMINATION DATE WHEN MUTUALLY AGREEABLE TO THE VENDOR/CONTRACTOR AND THE STATE OF NEBRASKA.

Supply and delivery of Cloud Services for the State of Nebraska per the following Contract information and attached Participating Addendum.

The State Purchasing Bureau encourages state agencies to contact the Office of the CIO to learn more about these services.

The Purchase Order must include the State of Nebraska NASPO ValuePoint Contract #79380 04 and the SHI International Corporation NASPO ValuePoint Master Agreement Number AR2488.

Political Subdivisions are responsible for processing Purchase Orders directly with the contracted vendor.

(For the File: This RFP and Contract are bid and awarded by the State of Utah. All backup bids, etc., are retained by the State of Utah, State Procurement Office.)

(For the File: The NASPO ValuePoint/SHI International Corporation. Master Price Agreement contract period was effective on September 2, 2016. The NASPO ValuePoint/SHI International Corporation Participating Addendum became effective on October 4, 2017.

(wc 10/4/17)

Line	Description	ESTIMATED Quantity	Unit of Measure	Unit Price	Extended Price
1	CLOUD SERVICES	4,000,000.0000	\$	1.0000	4,000,000.00
Total Order					4,000,000.00

10/4/17
PK
BUYER
MATERIEL ADMINISTRATOR
R43500|NISK0002|NISK0002 20150901

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Master Agreement #: AR2488

Contractor: **SHI INTERNATIONAL CORP.**

Participating Entity: **STATE OF NEBRASKA**

State Of Nebraska Participating Addendum Contract #79380 O4

The following products or services are included in this contract portfolio:

- *All products and accessories listed on the Contractor page of the NASPO ValuePoint website.*

Master Agreement Terms and Conditions:

1. Scope: This addendum covers **Cloud Solutions** led by the State of Utah for use by state agencies and other entities located in the Participating State *[or State Entity]* authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher education, political subdivisions and other entities authorized to use statewide contracts in the State of Nebraska. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. Access to Cloud Solutions Services Requires State CIO Approval: Unless otherwise stipulated in this Participating Addendum, specific services accessed through the NASPO ValuePoint cooperative Master Agreements for Cloud Solutions by state executive branch agencies are subject to the authority and prior approval of the State Chief Information Officer's Office. The State Chief Information Officer means the individual designated by the state Governor within the Executive Branch with enterprise-wide responsibilities for leadership and management of information technology resources of a state.
4. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Nick Grappone
Address:	290 Davidson Avenue Somerset, NJ 08873
Telephone:	732-564-8180
Fax:	
Email:	nick.grappone@shi.com

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Participating Entity

Name:	Nancy Storant
Address:	1526 K Street, Suite 130, Lincoln, NE 68508
Telephone:	402-471-0974
Fax:	402-471-2089
Email:	Nancy.Storant@nebraska.gov

5. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

☐ No changes to the terms and conditions of the Master Agreement are required.

☒ The following changes are modifying or supplementing the Master Agreement terms and conditions.

A. CONTRACT PERIOD

October 4, 2017 through September 16, 2026.

B. DRUG POLICY

Contractor certifies that it maintains a drug free workplace environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy upon request of its drug free workplace policy at any time upon request by the State.

C. NE ACCESS TECHNOLOGY STANDARDS

Contractor shall review the Nebraska Technology Access Standards, found at <http://nitc.nebraska.gov/standards/2-201.html> and will inform the State if the products and/or services provided under the contract are in compliance or will comply with the applicable standards to the greatest degree possible. In the event such standards change during the Contractor's performance, the State may create an amendment to the contract to request that contract comply with the changed standard at a cost mutually acceptable to the parties.

D. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION

The Contractor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State of Nebraska, and their

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Subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §§ 48-1101 to 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Contractor shall insert a similar provision in all subcontracts for Services to be covered by any contract.

E. PERMITS, REGULATIONS, LAWS

The Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of the contract. The Contractor shall comply with all applicable local, state, and federal laws, ordinances, rules, orders, and regulations.

F. COOPERATION WITH OTHER CONTRACTORS

The State may already have in place or choose to award supplemental contracts related to this contract or any portion thereof.

1. The State reserves the right to award the contract jointly between two or more potential Contractors, if such an arrangement is in the best interest of the State.
2. The Contractor shall agree to cooperate with such other Contractors, and shall not commit or permit any act which may interfere with the performance of work by any other Contractor.
3. The State reserves the right to award multiple contracts or to award line by line contract.

G. INDEPENDENT CONTRACTOR

It is agreed that nothing contained herein is intended or should be construed in any manner as creating or establishing the relationship of partners between the parties hereto. The Contractor represents that it has, or will secure at its own expense, all personnel required to perform the reseller services, i.e. sourcing and fulfilling the product ("Reseller Services") under the contract. The Contractor's employees and other persons engaged in Reseller Services required by the Contractor under the contract shall have no contractual relationship with the State; they shall not be considered employees of the State.

All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination against the Contractor, its officers, or its agents) shall in no way be the responsibility of the State. The Contractor will hold the State harmless from any and all such claims. Such personnel or other persons shall not require nor be entitled to any compensation, rights, or benefits from the State including without limit, tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.

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H. CONTRACTOR RESPONSIBILITY

The Contractor is solely responsible for fulfilling the contract, with responsibility for the resale of Products to be delivered. "Products" shall mean collectively third party software provided by Contractor. The Contractor shall be the sole point of contact regarding all contractual matters.

I. CONTRACT CONFLICTS

Contractor shall insure that contracts or agreements with sub-contractors and agents, and the performance of Services in relation to this contract by sub-contractors and agents, does not conflict with this contract.

J. FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS

The State may terminate the contract, in whole or in part, in the event funding is no longer available. The State's obligation to pay amounts due for fiscal years following the current fiscal year is contingent upon legislative appropriation of funds for the contract. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal years for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) calendar days prior to the effective date of any termination, and advise the Contractor of the location of any related equipment. All obligations of the State to make payments after the termination date will cease and all interest of the State in any related equipment will terminate. In no event shall the Contractor be paid for a loss of anticipated profit.

K. ASSIGNMENT BY THE STATE

The State shall have the right to assign or transfer the contract or any of its interests herein to any agency, board, commission, or political subdivision of the State of Nebraska. There shall be no charge to the State for any assignment hereunder.

L. ATTORNEY'S FEES

In the event of any litigation, appeal, or other legal action to enforce any provision of the contract, the parties agree to pay all expenses of such action, as permitted by law and if ordered by court, including attorney's fees and costs, if the State is the other party prevails.

M. ADVERTISING

The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its services are endorsed or preferred by the State. News releases pertaining to the project shall not be issued without prior written approval from the State.

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N. EARLY TERMINATION

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract at any time.
2. The State, in its sole discretion, may terminate the contract for any reason upon thirty (30) calendar days written notice to the Contractor. Termination shall not relieve the Contractor of warranty or other obligations incurred under the terms of the contract. In the event of cancellation the Contractor shall be entitled to payment, for those products received and accepted by the State.
3. The State may terminate the contract immediately for the following reasons:
 - a. if directed to do so by statute;
 - b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
 - c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
 - d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;
 - e. an involuntary proceeding has been commenced by any party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
 - f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
 - g. Contractor intentionally discloses confidential information;
 - h. Contractor has or announces it will discontinue support or provision of the deliverable;
 - i. second or subsequent documented "vendor performance report" form deemed acceptable by the State Purchasing Bureau; or
 - j. Contractor engaged in collusion or ones' actions which could have provided Contractor an unfair advantage in obtaining this contract.

O. BREACH BY CONTRACTOR

The State may terminate the contract, in whole or in part, if the Contractor fails to perform its obligations under the contract in a timely and proper manner. The State may, by providing a written notice of default to the Contractor, allow the Contractor to cure a failure or breach of contract within a period of thirty (30) calendar days (or longer at State's

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discretion considering the gravity and nature of the default). Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing the Contractor time to cure a failure or breach of contract does not waive the State's right to immediately terminate the contract for the same or different contract breach which may occur at a different time. In case of default of the Contractor, the State may contract the goods from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

P. FORCE MAJEURE

Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the contract due to a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of the contract. The party so affected shall immediately give notice to the other party of the Force Majeure Event. The State may grant relief from performance of the contract if the Contractor is prevented from performance by a Force Majeure Event. The burden of proof for the need for such relief shall rest upon the Contractor. To obtain release based on a Force Majeure Event, the Contractor shall file a written request for relief with the State Purchasing Bureau. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the contract.

Q. PROHIBITION AGAINST ADVANCE PAYMENT

Payments shall not be made until Products are received and accepted by the State.

R. PAYMENT

State will render payment to Contractor when the terms and conditions of the contract and specifications have been satisfactorily completed on the part of the Contractor as solely determined by the State. Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §§ 81-2401 through 81-2408). The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any goods provided by the Contractor under this contract prior to the Effective Date, and the Contractor hereby waives any claim or cause of action for any such claims.

S. INVOICES

Invoices for payments must be submitted by the Contractor to the agency requesting the Products with sufficient detail to support payment. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term

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or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

T. TAXES

The State is not required to pay taxes of any kind and assumes no such liability as a result of this solicitation. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

U. SEVERABILITY

If any term or condition of the contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

V. PROPRIETARY INFORMATION

Data contained in all documentation provided therein, become the property of the State of Nebraska and the data becomes public information. If the Contractor wishes to have any information withheld from the public, such information must fall within the definition of proprietary information contained within Nebraska's public record statutes. **All proprietary information the Contractor wishes the State to withhold must be submitted in a sealed package, which is separate from the remainder of the contract, and provide supporting documents showing why such documents should be marked proprietary.** The separate package must be clearly marked PROPRIETARY on the outside of the package. Pricing submitted may not be marked as proprietary information. Proprietary information is defined as trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose (see Neb. Rev. Stat. § 84-712.05(3)). In accordance with Attorney General Opinions 92068 and 97033, Contractors submitting information as proprietary may be required to prove specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive. Although every effort will be made to withhold information that is properly submitted as proprietary and meets the State's definition of proprietary information, the State is under no obligation to maintain the confidentiality of proprietary information and accepts no liability for the release of such information.

W. INDEMNIFICATION

1. INTELLECTUAL PROPERTY

If a judgment or settlement is obtained or reasonably anticipated against the State's use of any intellectual property for which the Contractor has indemnified the State, the Contractor shall, at the Contractor's sole cost and expense, promptly

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modify the item or items which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State's election, the actual or anticipated judgment may be treated as a breach of warranty by the Contractor, and the State may receive the remedies provided under this Agreement.

2. PERSONNEL

The Contractor shall, at its expense, indemnify and hold harmless the State from and against any claim with respect to, withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel, including subcontractor's and their employees, provided by the Contractor.

3. SELF-INSURANCE

The State of Nebraska is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this agreement, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 – 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 *et seq.* and under any other provisions of law and accepts liability under this agreement to the extent provided by law.

x. EMPLOYEE WORK ELIGIBILITY STATUS

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <http://das.nebraska.gov/materiel/purchasing.html>

The completed United States Attestation Form should be submitted with the Participating Addendum.

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2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

Y. POLITICAL SUB-DIVISIONS

Contractor may extend the Contract to political subdivisions conditioned upon the honoring of the prices charged to the State. Terms and conditions of the Contract must be met by political subdivisions. Under no circumstances shall the State be contractually obligated or liable for any purchases by political subdivisions or other public entities not authorized by Neb. Rev. Stat. § 81-145, listed as "all officers of the state, departments, bureaus, boards, commissions, councils, and institutions receiving legislative appropriations." A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

Z. REPORTS

The Contractor shall also provide to the State of Nebraska primary contact person quarterly utilization reports containing information as set forth in the Master Agreement, which at a minimum, shall include the following information pertaining to State of Nebraska Utilization:

1. Purchase order number;
2. Description;
3. Quantity; and
4. Price

These reports will be provided in Excel format as prescribed in the Master Agreement and sent via email on a quarterly basis as follows:

<u>Period End</u>	<u>Report Due</u>
December 31	January 31
March 31	April 30
June 30	July 31
September 30	October 31

AA. ADMINISTRATIVE FEE /REBATE

The Contractor agrees to provide a quarterly administrative fee in the form of a check. The fee will be payable to the State of Nebraska for an amount equal to .25 percent (.25%) of

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the net sales (net of any returns, credits, or adjustments under this Addendum) for the quarterly period. The Contractor's NASPO ValuePoint pricing to the State of Nebraska shall not be adjusted to offset for the equivalent fee amount. Payments shall be made in accordance with following schedule:

<u>Period End</u>	<u>Fee Due</u>
December 31	January 31
March 31	April 30
June 30	July 31
September 30	October 31

The Contractor agrees to provide an Administrative Fee report, reflecting new sales to the State during the associated fee period. The report shall be in the format developed by the Lead State and as agreed to by the Contractor. The report will be provided in secure electronic format and/or submitted electronically to the State contact listed in the Addendum.

BB. ADMINISTRATIVE FEE/REBATE REMITTANCE LOCATION

All Administrative Fees/Rebates will be sent to the following address:

State Purchasing Bureau
c/o Central Finance, Administrative Services
1526 K Street, Suite 240
Lincoln, NE 68508

cc. CONTRACT MONITORING

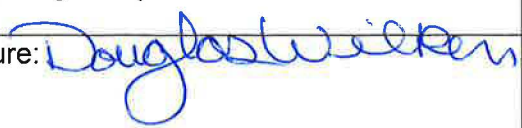
The Contractor is obligated under the NASPO ValuePoint Master Price Agreement to furnish audit information to the Lead State to confirm if the Purchasing Entity paid the discount price or lower in accordance with Attachment C1 – Pricing Submission Sheet. Upon request in support of an audit, Contractor agrees to provide the same information as submitted to the Lead State directly to the State. . Such requests shall not exceed four (4) per calendar year unless requests are mutually agreed to by both parties.

- 6. Subcontractors:** All contactors, dealers, and resellers authorized by the State of Nebraska as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
- 7. Orders:** Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

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

Participating Entity: State of Nebraska	Contractor: SHI International Corp
Signature: 	Signature: 
Name: 	Name: Natalie Castagno
Title: Materiel Administrator	Title: Director of Response Team
Date: 	Date: 10/2/17

[Additional signatures may be added if required by the Participating Entity]

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	775-720-3404
Email:	sberry@naspovaluepoint.org

**Please email fully executed PDF copy of this document
to
PA@naspovaluepoint.org
to support documentation of participation and posting
in appropriate data bases.**