



STATE OF MISSOURI  
 OFFICE OF ADMINISTRATION  
 DIVISION OF PURCHASING AND MATERIALS MANAGEMENT

**NOTIFICATION OF STATEWIDE CONTRACT**

May 15, 2012

**CONTRACT TITLE: BMC SERVICE DESK EXPRESS SUITE SOFTWARE MAINTENANCE**

**CURRENT CONTRACT PERIOD: JUNE 26, 2012 THROUGH JUNE 25, 2013**

**BUYER INFORMATION:** Name: EARL PETTIT  
 Phone: (573) 751-5430  
 Email address: [Earl.Pettit@oa.mo.gov](mailto:Earl.Pettit@oa.mo.gov)

RENEWAL INFORMATION	Original Contract Period	Potential Final Expiration
	06/26/09 to 06/25/10	06/25/13

ALL PURCHASES MADE UNDER THIS CONTRACT MUST BE FOR **PUBLIC USE ONLY**.  
 PURCHASES FOR PERSONAL USE BY PUBLIC EMPLOYEES OR OFFICIALS ARE PROHIBITED.

THE USE OF THIS CONTRACT IS **NOT MANDATORY**.

This contract has been established for the convenience of state agencies. Local Purchase Authority may be used to purchase supplies/services included in this contract from an alternative source at the discretion of the agency.

The entire contract document may be viewed and printed from the Division of Purchasing & Materials Management's **Public Record Search and Retrieval System** located on the Internet at <http://www.oa.mo.gov/purch>.

*~ Instructions for use of the contract, specifications, requirements, and pricing are attached ~.*

CONTRACT NUMBER	VENDOR NUMBER	VENDOR INFORMATION	MBE/WBE	COOP PROCUREMENT
C209057001	1336805660 0	Seamless Technologies, Inc. 35 Airport Road Morristown, NJ 07960  Contact Information:  Adrian Buckley 973-326-8900 x 2028 <a href="mailto:abuckley@seamlessti.com">abuckley@seamlessti.com</a>	N	N

## STATEWIDE CONTRACT HISTORY

The following summarizes actions related to this Notification of Statewide Contract since its initial issuance. Any and all revisions have been incorporated into the attached document.

Contract Period	Issue Date	Summary of Changes
06/26/12 to 06/25/13	05/15/12	Changed buyer information from Julie Lombard to Earl Pettit.
06/26/12 to 06/25/13	02/27/12	Contract renewal with no increase.
06/26/11 to 06/25/12	06/10/10	Contract renewal with no increase.
06/26/10 to 06/25/11	06/10/10	Contract renewal with no increase.
6/26/09 to 6/25/10	7/15/09	Amendment #001 allows Department of Revenue the ability to order from the contract and to add the option of continuous 24 x7 maintenance support coverage.
6/26/09 to 6/25/10	06/26/09	Initial issuance of new statewide contract

### SAM II information:

Line Item	C/S Code / Description	Unit of Measure
001	92045 Software Maintenance (8 hours a day, 5 days a week support coverage)	Each License
002	92045 Software Maintenance (Continuous Support, 24 hours a day, 7 days a week)	Each License
003	92045 Software Maintenance Licensed Add-On – Software Maintenance with Continuous Support (24 x7)	Each License

## GENERAL CONTRACT INFORMATION

*For a complete copy of the contract, please go to the online Contract Document Search and Retrieval System at the following web site: <http://oa.mo.gov/purch/webimaging/Homepage.htm> and search by contract number C209057001.*

### 1.1 Purpose:

- 1.1.1 For the acquisition of BMC Service Desk Express Suite (formerly MAGIC Help Desk) software maintenance support services for various State of Missouri agencies located in Jefferson City, Missouri in accordance with the requirements and provisions stated in contract C209057001.

## 2. BACKGROUND:

### 2.1 General Information:

- 2.1.1 Currently the Missouri Department of Health and Senior Services (DHSS) as well as the Missouri Department of Transportation (MoDOT) have existing BMC Software help desk licenses that require on-going maintenance support services. DHSS has thirty-six (36) licenses of the BMC Service Desk Express Suite (BMC Support contract number 108232) and MoDOT has one hundred one (101) licenses of the BMC Service Desk Express Suite (BMC Support contract number 104077).

- 2.1.2 The State of Missouri makes no guarantees about single order quantities or total aggregate order quantities.

### 2.2 Other Agencies May Order:

- 2.2.1 The state reserves the right to allow other state agencies to order from the contract, providing prior approval of the Division of Purchasing and Materials Management is obtained.

## 3. CONTRACT PROVISIONS

### 3.1 Contract:

- 3.1.1 A binding contract shall consist of: (1) the IFB, amendments thereto, (2) the contractor's bid, (3) clarification of the bid, if any, and (4) the Division of Purchasing and Materials Management's acceptance of the bid by "notice of award" or by "purchase order". All Exhibits and Attachments included in the IFB shall be incorporated into the contract by reference.

a. The State of Missouri shall not sign or execute any additional contract, license, support services, or other agreements containing contractual terms and conditions as a result of this procurement.

- 3.1.2 A notice of award issued by the State of Missouri does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services for the State of Missouri, the contractor must receive a properly authorized purchase order unless the purchase is equal to or less than \$3,000. State purchases equal to or less than \$3,000 may be processed with a purchase order or other form of authorization given to the contractor at the discretion of the state agency.

- 3.1.3 The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein.

- 3.1.4 Any change to the contract, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the Division of Purchasing and Materials Management or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.

### **3.2 Contract Period:**

3.2.1 The original contract period shall be June 26, 2009 through June 25, 2010. The contract shall not bind, nor purport to bind, the State for any contractual commitment in excess of the original contract period.

### **3.3 Renewal Options:**

3.3.1 The Division of Purchasing and Materials Management shall have the right, at its sole option, to renew the contract for three (3) additional one-year periods, or any portion thereof. In the event the Division of Purchasing and Materials Management exercises such right, all terms and conditions, requirements and specifications of the contract shall remain the same and apply during the renewal period, pursuant to applicable option clauses of this document.

3.3.2 The Division of Purchasing and Materials Management does not automatically exercise its option for renewal based upon the maximum percent of increase and reserves the right to offer or to request renewal of the contract at a price less than the maximum percent of increase stated.

### **3.4 Price:**

3.4.1 All prices shall be firm, fixed and as indicated in Exhibit A (Pricing Pages). The state shall not pay nor be liable for any other additional costs including but not limited to taxes, shipping charges, insurance, interest, penalties, termination payments, attorney fees, liquidated damages, etc.

### **3.5 Payments:**

3.5.1 The State of Missouri may make advance deposits/payment for software maintenance (upgrades/new releases/technical support-type agreements) payments only.

### **3.6 Liabilities:**

3.6.1 The contractor shall agree that the State of Missouri shall not be responsible for any liability incurred by the contractor or the contractor's employees arising out of the ownership, selection, possession, leasing, rental, operation, control, use, maintenance, delivery, return, and/or installation of equipment and products provided by the contractor, except as otherwise provided in the contract.

3.6.2 The contractor shall be responsible for any and all personal injury (including death) or property damage as a result of the contractor's negligence involving any equipment or service provided under the terms and conditions, requirements and specifications of the contract. In addition, the contractor assumes the obligation to save the State of Missouri, including its agencies, employees, and assignees, from every expense, liability, or payment arising out of such negligent act. The contractor also agrees to hold the State of Missouri, including its agencies, employees, and assignees, harmless for any negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the contractor under the terms of the contract.

3.6.3 The contractor shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the State of Missouri, including its agencies, employees, and assignees.

3.6.4 Under no circumstances shall the contractor be liable for any of the following: (1) third party claims against the state for losses or damages (other than those listed above); (2) loss of, or damage to, the state's records or data; or (3) economic consequential damages (including lost profits or savings) or incidental damages, even if the contractor is informed of their possibility.

3.6.5 Circumstances may arise where, because of a default on the contractor's part or other liability, the State is entitled to recover damages from the contractor. In each such instance, regardless of the basis on which the State is entitled to claim damages from the contractor, the contractor is liable only for:

- a. payments referred to in intellectual property rights and patent and copyright terms;

- b. bodily injury (including death) and damage to real property and tangible personal property;
- c. product license fees paid (the product license fees paid also applies to any subcontractors and program developers).

### **3.7 Insurance:**

3.7.1 The contractor shall understand and agree that the State of Missouri cannot save and hold harmless and/or indemnify the contractor or employees against any liability incurred or arising as a result of any activity of the contractor or any activity of the contractor's employees related to the contractor's performance under the contract. Therefore, the contractor must acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect the State of Missouri, its agencies, its employees, its clients, and the general public against any such loss, damage and/or expense related to his/her performance under the contract. The insurance shall include an endorsement that adds the State of Missouri as an additional insured.

### **3.8 Termination:**

3.8.1 The Division of Purchasing and Materials Management reserves the right to terminate the contract at any time, for the convenience of the State of Missouri, without penalty or recourse, by giving written notice to the contractor at least thirty (30) calendar days prior to the effective date of such termination. The contractor shall be entitled to receive just and equitable compensation for services and/or supplies delivered to and accepted by the State of Missouri pursuant to the contract prior to the effective date of termination.

### **3.9 Assignment:**

3.9.1 The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the Division of Purchasing and Materials Management.

### **3.10 Contractor's Personnel:**

- 3.10.1 The contractor understands and agrees that by signing the (IFB B2E09057 document), they certify the following:
- a. The contractor shall only utilize personnel authorized to work in the United States in accordance with applicable federal and state laws. This includes but is not limited to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and INA Section 274A.
  - b. If the contractor is found to be in violation of this requirement or the applicable state, federal and local laws and regulations, and if the State of Missouri has reasonable cause to believe that the contractor has knowingly employed individuals who are not eligible to work in the United States, the state shall have the right to cancel the contract immediately without penalty or recourse and suspend or debar the contractor from doing business with the state. The state may also withhold up to twenty-five percent of the total amount due to the contractor.
  - c. The contractor agrees to fully cooperate with any audit or investigation from federal, state, or local law enforcement agencies.
- 3.10.2 In addition, if the contractor meets the definition of a business entity as defined in RSMo 285.525 pertaining to RSMo 285.530, the contractor shall maintain enrollment and participation in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the contracted services included herein. If the contractor's business status changes during the life of the contract to become a business entity as defined in RSMo 285.525 pertaining to RSMo 285.530, then the contractor shall, prior to the performance of any services as a business entity under the contract:
- a. Enroll and participate in the E-Verify (see below for E-Verify contact information) federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services required herein; AND

- b. Provide to the Division of Purchasing and Materials Management the documentation required in Exhibit D, Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization affirming said company's/individual's enrollment and participation in the E-Verify federal work authorization program; AND
- c. Submit to the Division of Purchasing and Materials Management a completed, notarized Affidavit of Work Authorization provided in Exhibit D, Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization.

**3.11 Substitution of Personnel:**

- 3.11.1 The contractor agrees and understands that the State of Missouri's agreement to the contract is predicated in part on the utilization of the specific key individual(s) and/or personnel qualifications identified in the bid. Therefore, the contractor agrees that no substitution of such specific key individual(s) and/or personnel qualifications shall be made without the prior written approval of the state agency. The contractor further agrees that any substitution made pursuant to this paragraph must be equal or better than originally proposed and that the state agency's approval of a substitution shall not be construed as an acceptance of the substitution's performance potential. The State of Missouri agrees that an approval of a substitution will not be unreasonably withheld.
- 3.11.2 At the agency's request and with reasonable justification, the contractor shall provide immediate replacement of any of the contractor's staff providing services under the contract if deemed to be in the best interests of the agency.

**3.12 Prohibitive Hiring:**

- 3.12.1 The contractor shall not hire any current information technology employee of the State of Missouri, or any individual who is an information technology employee of any agency of the State of Missouri, including the University of Missouri or the regional colleges, for work on the project identified in the IFB for a period of not less than six (6) months prior to their date of employment with the contractor (unless the individual has retired in accordance with the State of Missouri's retirement program or has experienced a cessation of employment due to layoff from their State of Missouri department, or otherwise dismissed), without the prior written approval of the Director of the Information Systems Division of the MSHP or other designated official. It is agreed between the parties that the contractor shall obtain the required approval before contacting any described information technology employee for the purposes of possible employment.

## **4. PERFORMANCE REQUIREMENTS**

### **4.1 General Requirements:**

- 4.1.1 The contractor must provide BMC Service Desk Express Suite Software maintenance support services, which meets or exceeds the specifications contained in this document and in the IFB Exhibits.
- 4.1.2 The State of Missouri shall not guarantee any minimum or maximum amount of the contractor's products/services that may be required under the contract. The contractor shall provide products/services on an as needed, if needed basis. The State of Missouri does not guarantee any usage of the contract whatsoever.
- 4.1.3 The State of Missouri reserves the right to add maintenance support services for other BMC products that were acquired under contract C202035002 to this contract via a contract amendment in accordance with the requirements and provisions stated herein.

### **4.2 Maintenance/Technical Support Requirements:**

- 4.2.1 **Technical Support:** The contractor must provide to the agency a contact phone number which the agency can use to report technical system problems. This phone, if not a direct contact line to the contractor support structure, must provide a maximum of a two (2) business hour call back response by contractor personnel. It is highly desirable that the contractor provides a toll free telephone number for support.
- 4.2.2 **Maintenance Support Services:** The contractor must provide software maintenance (e.g. upgrades, enhancements, new releases, etc.) and technical support for all products/services described in Exhibit A in accordance with the Maintenance Support Plan provided in Exhibit D including ongoing unlimited telephone technical support problem determination and resolution. So long as the State of Missouri pays the maintenance fees as specified within Exhibit A, the contractor shall provide to the State of Missouri all generally publicly available improvements and additions to the functionality, as well as new functions, of the Licensed product and provide the maintenance services as specified herein.
  - a. Maintenance services shall include, at a minimum, the detection and correction of software errors according to the software manufacturer's software documentation and published specifications and the provision of all program changes, system configuration, new releases/updates, upgrades, and enhancements. In addition, Maintenance support shall be in accordance with the contractor's Maintenance plan specified in Exhibit D. The contractor agrees to respond to the State of Missouri's inquiries regarding the use and functionality of the solution as issues are encountered by the software application end users.

**NOTE:** Refer to BMC's web site at [www.bmc.com/support/standard-support-offerings.html](http://www.bmc.com/support/standard-support-offerings.html) for further description of support services.

- 4.2.3 The contractor must provide technical/help desk support Monday through Friday, eight hours per day. It is desirable that the support coverage period be between the hours of 8:00 a.m. and 5:00 p.m. central time.
- 4.2.4 The help desk/technical support personnel should be knowledgeable and technically trained to answer/resolve system technical support problems. The help desk staff should be able to answer "how to" type questions about the system as well as questions about hardware and configurations.
- 4.2.5 The contractor shall keep a log of all maintenance/technical support calls made to the help desk/technical support personnel and document the complaints and problems reported to the help desk system whether made by the agency or by the agency vendors utilizing the website. The log shall be made available to the agency upon request by the agency. This report(s) shall be delivered to or made available to the agency within five (5) business days upon request. The log must at a minimum contain the following information:
  - a. Time of call;
  - b. Name of Caller;
  - c. Caller's telephone number and/or email address;

- d. Description of Reported Problem/Complaint;
- e. Indication of whether the problem/complaint was resolved at time of call;
- f. Description of any follow up investigation/resolution plans;
- g. Assigned Case number if resolution not provided during call; and
- h. Date of and Description of Final Resolution.

4.2.6 The contractor shall agree and understand that the State of Missouri reserves the right to cancel maintenance on any or all of the item(s) with 30 calendar days prior written notice to the contractor.

**4.3 Other:**

4.3.1 **Single Point of Contact:** The contractor must function as the single point of contact for the state, regardless of any subcontract arrangements for all products and services. This shall include assuming responsibility and liabilities for all problems relating to all hardware, software and services provided by the contractor.

4.3.2 **Travel Expenses:** If services are requested to be provided on-site at the agency's facility, the contractor shall be reimbursed for actual and reasonable expenses in accordance with the Office of Administration's travel regulations (<http://www.sos.mo.gov/adrules/csr/current/1csr/1c10-11.pdf>). The State of Missouri reserves the right to assess the reasonableness of the contractor's travel expenses in accordance with the Maximum Per Diem Rates for lodging, [http://www.gsa.gov/Portal/gsa/ep/contentView.do?queryYear=2009&contentType=GSA\\_BASIC&contentId=17943&queryState=Missouri&noc=T](http://www.gsa.gov/Portal/gsa/ep/contentView.do?queryYear=2009&contentType=GSA_BASIC&contentId=17943&queryState=Missouri&noc=T) . At the request of the agency, the contractor shall submit copies of the original receipts for lodging, meals, airfare, mileage etc., to the agency. In the event the contractor's travel expenses for lodging and meals are determined by the State of Missouri to be unreasonable, the State of Missouri reserves the right to reimburse the contractor in accordance with the maximum rates specified for Missouri on the GSA web site.

- a. The contractor shall not be reimbursed for any expenses if the contractor's programmer/technical support/training staff resides within a forty-five (45) mile radius of the state agency's location where services are being provided or if services are being provided at the contractor's facility or consultant's residence.
- b. Travel time from the contractor's /technical support/training staff's office or residence to the state agency facility and travel time from the state agency facility to the contractor's/technical support/training staff's office or residence shall not be considered billable time.
- c. Other than the payments and reimbursements specified above, no other payments or reimbursements shall be made to the contractor.

**EXHIBIT A**  
**Cost (Pricing Pages)**

**A.1 REQUIRED PRICING**

The bidder shall complete the following required cost pricing tables (or in a form similar to the pricing tables) and provide firm, fixed pricing necessary to meet the requirements of the IFB.

<b>Line Item</b>	<b>DESCRIPTION</b>	<b>UNIT OF MEASURE</b>	<b>UNIT PRICE</b>
001	BMC Service Desk Express Suite Software Maintenance  The contractor must provide technical/help desk support Monday through Friday (5 days a week, 8 hours per day).	Each License	<b>\$518.50</b>
002	BMC Service Desk Express Suite Software Maintenance – Continuous Support (24 hrs x 7 days).	Each License	<b>\$693.00</b>
003	BMC Service Desk Express Client Services – Licensed Add-On – Software Maintenance with Continuous Support (24 x7)	Each License	<b>\$2.00</b>

**RENEWAL OPTIONS FOR ALL PRICING**

The Division of Purchasing and Materials Management shall have the sole option to renew the contract in one-year increments, or a portion thereof, for a maximum total of three (3) additional years.

<b>Description</b>	<b>Renewal Percentage</b> <i>(calculated against the ORIGINAL contract price)</i>
<i>Service Desk Express Suite Software Maintenance</i> 1 <sup>st</sup> Renewal Period (06/26/10 to 06/25/11)	0%
<i>Service Desk Express Suite Software Maintenance</i> 2 <sup>nd</sup> Renewal Period (06/26/11 to 06/25/12)	0%
<i>Service Desk Express Suite Software Maintenance</i> 3 <sup>rd</sup> Renewal Period (06/26/12 to 06/25/13)	0%