

Amendment Number 1
to
Contract Number DIR-SDD-1778
between
State of Texas, acting by and through the Department of Information Resources
and
T-MOBILE USA, INC.

This Amendment Number 1 to Contract Number DIR-SDD-1778 ("Contract") is between the Department of Information Resources ("DIR") and T-Mobile USA, Inc. ("Vendor"). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 1, Introduction, C. Order of Precedence**, is hereby restated in its entirety as follows:

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Exhibit 1 Vendor's Response to RFO DIR-SDD-TMP-169, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-169, including all addenda; 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, then Appendix C, then Exhibit 1, then Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. **Contract, Section 2, Term of Contract**, is hereby restated in its entirety as follows:

The term of this Contract is extended through March 21, 2014. Prior to the expiration date of the term, DIR and Vendor may extend the Contract upon mutual agreement, for up to two (2) additional one-year terms.

3. **Contract, Section 3, Products and Services Offerings**, is hereby restated in its entirety as follows:

A. Products

Wireless Voice and Data Products and Services available under this Contract are all published T-Mobile USA Voice and Data Service Plans and Related Products as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of Products and Services awarded based on the posting described in Section 1.B above.

B. Services

Services available under this Contract are limited to Wireless Voice & Data Services as specified in Appendix C, Pricing Index. Vendor may incorporate

changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. **Contract, Section 4, Pricing, subsection B. Customer Discount**, is hereby restated as follows:

B. Customer Discount

The minimum Customer discount for all products and services will be the percentage off MSRP as specified in Appendix C, Pricing Index.

5. **Contract, Section 6, Notification**, is hereby restated in its entirety as follows:

If sent to the State:

Joan Scott, CTPM, CTCM
Contract Manager
Enterprise Contract Management
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Phone: (512) 475-3290
Facsimile: (512) 475-4759

If sent to the Vendor:

Douglas Cook
T-Mobile USA, Inc.
2 Greenway Plz. Ste 1100
Houston, TX 77046
Phone: (713) 305-9522
Facsimile: (800) 375-1126
Email: douglas.cook24@t-mobile.com

6. **Appendix A, Section 4, General Provision, subsection B. Modification of Contract Terms and/ or Amendments**, is hereby updated in its entirety as follows:

B. Modification of Contract Terms and/or Amendments

1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.

2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.

3) Customers and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract with Vendors.

7. **Appendix A, Section 4, General Provisions, F. Choice of Law**, is hereby restated in its entirety as follows:

F. Choice of Law

The laws of the State of Texas shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in state court, Travis County, Texas. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

8. **Appendix A, Section 8, Contract Administration, subsection B. Reporting and Administrative Fees, 2) Detailed Monthly Report**, is hereby restated in its entirety as follows:

2) Detailed Monthly Report

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous month period, broken out by telecommunications sales and ICT sales. Reports for each type of sale shall be submitted to the DIR ICT Cooperative Contracts E-Mail Box at ict.sales@dir.texas.gov. Reports are due on the fifteenth (15th) calendar day after the close of the previous month period. It is the responsibility of Vendor to collect and compile all sales under the Contract from participating Order Fulfillers and submit one (1) monthly report, broken out by telecommunications and ICT sales. The monthly report, per category of telecommunications and ICT, shall include, per transaction: the detailed sales for the period, the Order Filler's company name, if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, suggested retail price, unit price, applicable CRF/administrative fee assessed, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section.

9. **Appendix A, Section 8, Contract Administration, subsection B. Reporting and Administrative Fees, 5) Accurate and Timely Submission of Reports, c)**, is hereby added to the Contract as follows:

c) Failure to timely submit three (3) reports within any rolling twelve (12) month period may, at DIR's discretion, result in termination of Vendor's Contract.

10. **Appendix A, Section 9, Vendor Responsibilities, subsection C. Vendor Certifications**, is hereby restated in its entirety as follows:

C. Vendor Certifications

Vendor certifies on behalf of Vendor and its designated Order Fulfillers that they:

(i) have not given, offered to give, and do not intend to give at any time hereafter

any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;

(ii) are not currently delinquent in the payment of any franchise tax owed the State of Texas and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;

(iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;

(iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract;

(v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;

(vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;

(vii) are not suspended or debarred from doing business with the federal government as listed in the Excluded Parties List System (EPLS) maintained by the General Services Administration;

(viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control; (ix) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;

(ix) agree that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;

(x) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;

(xi) have identified all current or former, within the last five years, employees of the State of Texas assigned to work on the DIR Contract 20% or more of their time and have disclosed them to DIR and have disclosed or do not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, certify they shall disclose the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;

(xii) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of

impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;

(xiii) represent and warrant that the Customer's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code;

(xiv) under Section 2155.006, Government Code, are not ineligible to receive the specified contract and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate; and

(xv) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, they acknowledge the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

During the term of the Contract, Vendor shall, for itself and on behalf of its Order Fulfillers, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Vendor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

In addition, Vendor understands and agrees that Vendor may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g, privacy and security requirements).

11. Appendix A, Section 9, Vendor Responsibilities, D. Ability to Conduct Business in Texas, is hereby restated in its entirety as follows:

D. Ability to Conduct Business in Texas

Vendor and its Order Fulfiller shall be authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas.

12. Appendix A, Section 9, Vendor Responsibilities, P. Immigration, is hereby restated in its entirety as follows:

P. Immigration

Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of the 1996 Act who will perform any labor or services under this Contract. Nothing herein is intended to exclude compliance by Vendor with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

13. **Appendix A, Section 9, Vendor Responsibilities, T. Drug Free Workplace Policy**, is hereby added to the Contract as follows:

T. Drug Free Workplace Policy

The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

14. **Appendix A, Section 10, Contract Enforcement, subsection B. Termination, 3) Termination for Convenience**, is hereby restated in its entirety as follows:

3) Termination for Convenience

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiler will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

15. **Appendix A, Section 10, Contract Enforcement, subsection B. Termination, 4) Termination for Cause, b), Purchase Order**, is hereby restated in its entirety as follows:

b) Purchase Order

Customer or Order Fulfiler may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 10.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order.

16. **Appendix C, Pricing Index**, is hereby added to the Contract.

17. All other terms and conditions of the Contract as amended, not specifically modified herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be Amendment Number 1 and then the Contract.

IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last party to sign.

T-MOBILE USA, INC.

Authorized By: signature on file

Name: Matt Millen

Title: Vice President, Business Sales

Date: 3/12/2013

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

Authorized By: signature on file

Name: Carl Marsh

Title: Chief Operating Officer

Date: 3/15/13

Office of General Counsel: 3/15/13