

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES
IMMIXTECHNOLOGY, INC.

1. Introduction

A. Parties

This Contract for Products and Related Services is entered into between the State of Texas, acting by and through the Department of Information Resources (“DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Immixtechnology, Inc. (hereinafter “Vendor”), with its principal place of business at 8444 Westpark Drive, Ste. 200, McLean, Virginia 22102.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-221, on February 28, 2014, for Enterprise Resource Planning (ERP) Products, Supplemental Modules, and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-221 shall be posted by DIR on the Electronic State Business Daily.

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; Appendix D, Kronos Terms and Conditions for Public Agencies; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-221, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-221, 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 Appendix D, then Exhibit 1 and finally 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substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.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. Term of Contract

The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR may extend the Contract, by amendment for up to three (3) optional one-year terms. Protracted contract negotiations may, in DIR’s sole discretion, result in fewer optional renewal terms.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to the products as specified in the Immixtechnology GSA Contract GS-35F-0265X for Kronos products. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

B. Services

Services available under this Contract are limited to services as specified in the Immixtechnology GSA Contract GS-35F-0265X for Kronos services. 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. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index which represent the then-current GSA Contract Price, and shall include the DIR Administrative Fee.

5. DIR Administrative Fee

A) 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 insert number percent (0.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated by Vendor in the price to the Customer.

6. Notification

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

If sent to the State:

Dana L. Collins, CTPM, CTCM
Manager, Contract and Vendor Management
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 936-2233
Facsimile: (512) 475-4759

Email: dana.collins@dir.texas.gov

If sent to the Vendor:

Lyn Witt
Immixtechnology, Inc.
8444 Westpark Drive, #200
McLean, VA 22102
Phone: (703) 663-1920
Facsimile: (703) 752-0611
Email: lyn_witt@immixgroup.com

7. Software and Support Agreements

A. Software License Agreement

1) Customers acquiring software licenses under the Contract shall hold use and operate such software subject to compliance with the Kronos Terms and Conditions for Public Agencies set forth in Appendix D of this Contract. No changes to the Kronos Terms and Conditions for Public Agencies may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D. Order Fulfiller shall make Kronos Terms and Conditions for Public Agencies available to all Customers at all times.

2) Compliance with the Kronos Terms and Conditions for Public Agencies is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Kronos Terms and Conditions for Public Agencies. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the Kronos Terms and Conditions for Public Agencies

B. Shrink/Click-wrap License Agreement

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

C. Support Agreement

Services provided under this Contract shall be in accordance with the Kronos Terms and Conditions for Public Agencies as set forth in Appendix D of this Contract. No changes to the Kronos Terms and Conditions for Public Agencies may be made unless previously agreed to by Vendor and DIR.

D. Conflicting or Additional Terms

In the event that conflicting or additional terms in Vendor Software License Agreements, Shrink/Click Wrap License Agreements, Customer Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

8. Authorized Exceptions to Contract or any Appendices.

A. Appendix A, Section 5, Intellectual Property, is hereby deleted and replaced in its entirety as follows:

This contract does not contemplate, authorize or support acquisition of custom software products or services. If Vendor and Customer seek to contract for such product or service, they must use a separate contract or seek amendment with DIR of this contract. If DIR and Vendor decide to authorize customized software or hardware products; then the intellectual property language will be negotiated and applied.

B. Appendix A, Section 6, Product Terms and Conditions, B. Purchase of Commodity Items (Applicable to State Agency Purchases Only) 4) is hereby added in its entirety as follows:

4) Kronos can assist State or local contracting officials and other buyers in making preliminary assessments regarding the availability of commercial “Electronic and Information Technology” products and services with features that support accessibility. The Vendor can warrant that it will perform the services in compliance with the applicable legislation. When using and applying the information generated by the Vendor’s products, Customer is responsible for ensuring that Customer complies with the applicable requirements of federal and state law. Kronos can assist in providing VPAT the product ordered, when available or the associated information.

C. Appendix A, Section 8, Pricing, Purchase Orders, Invoices, and Payments, A. Manufacturer’s Suggested Retail Price (MSRP) or List Price is hereby amended as follows:

MSRP is defined as the product sales price suggested by the manufacturer or publisher of a product. “GSA Contract Price” is defined as the product sales price available to customers pursuant to GSA Contract GS-35F-0265X held by Vendor.

D. Appendix A, Section 8, Pricing, Purchase Orders, Invoices, and Payments, B. Customer Discount is hereby amended as follows:

The minimum Customer discount for all products will be the then prevailing GSA Contract Price for products and services available under the GSA Contract GS-35F-0265X based on a quantity of one in effect at the time of the order. Customer Discount includes the DIR Administrative fee as specified in Section 5 herein.

E. Appendix A, Section 8, Pricing, Purchase Orders, Invoices, and Payments, C. Customer Price is hereby amended as follows:

- 1) The price to the Customer shall be the then-current GSA Contract Price. Vendor shall provide updates to Texas DIR of any changes to the GSA Contract Price.
- 2) Customers purchasing products and services under this 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.
- 3) If pricing for products or services available under this Contract is provided by the Vendor at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) to any other customer under the same terms and conditions provided for the State for the same commodities and services under this contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. Vendor shall notify DIR within ten (10) days and this Contract shall be amended to reflect the lower price.

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

IMMIXTECHNOLOGY, INC.

Authorized By: Signature on File

Name: David Stewart

Title: Vice President of Sales

Date: 2/27/15

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

Authorized By: Signature on File

Name: Dale Richardson

Title: Chief Operations Officer

Date: 3/18/15

Office of General Counsel: drb 3/16/15