

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

1. Introduction

A. Parties

This Contract for Products and Related Services (“Contract”) is entered into between the State of Texas (“State”), 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 Spillman Technologies, Inc. (“Vendor”), with its principal place of business at 4625 Lake Park Blvd., Salt Lake City, Utah 84120.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-225, on February 27, 2015, for Software, including Software as a Service, Products and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-225 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, Purchase and License Agreement; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-225, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-225, 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substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.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 Software, including Software as a Service (SaaS), Products and Related Services as specified in Appendix C, Pricing Index and does not include Cloud Infrastructure as a Service (IaaS), Cloud Platform as a Service (PaaS), Cloud Broker, Cloud Assessment, Custom Application development or Enterprise Resource Planning products. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of the RFO and 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 related to Software, including Software as a Service (SaaS), Products as specified in the RFO and Appendix C, Pricing Index. Vendor may incorporate changes to their Service offerings; 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, 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 three-quarter of one percent (.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:

Lance Clark, President/CEO
Spillman Technologies, Inc.
4625 West Lake Park Blvd.
Salt Lake City, Utah 84120
Phone: (800) 860 - 8026
Facsimile: (801) 902 - 1210
Email: lclark@spillman.com

7. Software License and Service 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 Software Purchase and License Agreement set forth in Appendix D of this Contract. No changes to the Software Purchase and License Agreement terms and conditions 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. Vendor and Order Fulfiller shall make the Software Purchase and License Agreement terms and conditions available to all Customers at all times.

2) Compliance with the Software Purchase and License Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Software License Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the Software Purchase and License Agreement terms and conditions.

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. Service Agreement

Services provided under this Contract shall be in accordance with the Service Agreement as set forth in Exhibit A to Appendix D of this Contract. No changes to the Service Agreement terms and conditions 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 Purchase and License Agreements, Shrink/Click Wrap License Agreements, Service 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 10. Vendor Responsibilities, Subsection K. Limitation of Liability, is hereby amended to read as follows:

K. Limitation of Liability

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement, for which Vendor shall indemnify the Customer as set forth in Section 10.A.3.

Vendor Contract No. _____

SPILLMAN TECHNOLOGIES, INC.

Authorized By: Signature on File

Name: Joe Lunt

Title: EVP

Date: 11-16-15

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

Authorized By: Signature of File

Name: Sally Ward for Dale Richardson

Title: Chief Operations Officer

Date: 11-19-15

Office of General Counsel: D. Brown, 11-18-15

Amendment Number 1
to
Contract Number DIR-TSO-3370
between
State of Texas, acting by and through the Department of Information Resources
and
Spillman Technologies, Inc.

This Amendment Number 1 to Contract Number DIR-TSO-3370 (“Contract”) is between the Department of Information Resources (“DIR”) and Spillman Technologies, Inc. (“Vendor”). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 2. Term of Contract** is hereby amended to read as follows:

DIR and Vendor hereby agree to extend the term of the Contract for one (1) year through November 19, 2017, or until terminated pursuant to the termination clauses contained in the Contract. Prior to expiration of the term, DIR and Vendor may extend the Contract, by mutual agreement, for up to two (2) additional one-year renewal terms.

2. **Contract, Section 7. D. Conflicting or Additional Terms** is hereby amended and replaced in its entirety as follows:

D. Conflicting or Additional Terms

In the event that conflicting or additional terms in Vendor Software License Agreements, Shrink/Click Wrap License Agreements, Service 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.

In the event of a conflict, any linked documents may not take precedence over the printed or referenced documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor’s initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.

In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall not be effective until reviewed and approved in writing by Customer’s authorized signatory.

Vendor shall not without prior written agreement from Customer’s authorized signatory, require any document that: 1) diminishes the rights, benefits, or

protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.

If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Vendor or Vendor and Customer, and Vendor will nonetheless be obligated to perform the contract without regard to the prohibited documents, unless Customer elects instead to terminate the contract, which in such case may be identified as a termination for cause against Vendor.

The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and a reseller who attempts to pass through documents and obligations from its Manufacturer or Publisher.

3. **Contract, Section 8. Authorized Exceptions to Contract or any Appendices** is hereby amended and replaced in its entirety as follows:

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 products or services, 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.

4. **Appendix A. Standard Terms and Conditions For Product and Related Services Contracts**, is hereby restated in its entirety and replaced with the attached **Appendix A. Standard Terms and Conditions For Product and Related Services Contracts** dated 06/21/2016.

All other terms and conditions of the Contract, 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 this Amendment Number 1 and then the Contract.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature, but in all events, no later than November 19, 2016.

SPILLMAN TECHNOLOGIES, INC.

Authorized By: Signature on File

Name: Joe Lunt

Title: MSSSI Vice President – Sales and Marketing

Date: 12/2/2016

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

Authorized By: Signature on File

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 12/2/2016

**Office of
General Counsel:** D.B., 12/2/2016

Amendment Number 2
to
Contract Number DIR-TSO-3370
between
State of Texas, acting by and through the Department of Information Resources
and
Spillman Technologies, Inc.

This Amendment Number 2 to Contract Number DIR-TSO-3370 ("Contract") is between the Department of Information Resources ("DIR") and Spillman Technologies, Inc. ("Vendor"). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 2. Term of Contract** is hereby amended to read as follows:

DIR and Vendor hereby agree to extend the term of the Contract for one (1) year through November 19, 2018, or until terminated pursuant to the termination clauses contained in the Contract. Prior to expiration of the term, the contract will renew automatically in one-year increments for one additional year under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew.

2. Contract, Section 6, Notifications is hereby restated in its entirety as follows:

6. Notification

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

If sent to the State:

Kelly Parker, CTPM, CTCM
Director, Cooperative Contracts
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-1647
Facsimile: (512) 475-4759
Email: kelly.parker@dir.texas.gov

If sent to the Vendor:

Lance Clark, President/CEO
Spillman Technologies, Inc.
4625 West Lake Park Blvd.
Salt Lake City, Utah 84120
Phone: (800) 860 - 8026
Facsimile: (801) 902 - 1210
Email: lclark@spillman.com

3. **Contract, Section 8. Authorized Exceptions to Contract or any Appendices** is hereby amended and replaced in its entirety as follows:

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 products or services, 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 10, N. Insurance is hereby deleted and replaced in its entirety as follows:

N. Required Insurance Coverage

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that have an A rating and a Financial Size Category Class of VII from A.M. Best and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on all required coverage, except the Workers' Compensation. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include \$1,000,000 per occurrence for Bodily Injury and Property Damage, with a separate aggregate limit of \$2,000,000; Medical Expense per person of \$5,000; Personal Injury and Advertising Liability of \$1,000,000; Products/Completed Operations Aggregate Limit of \$2,000,000; and Damage to Premises Rented: \$50,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed included as an additional insured under a blanket endorsement; and
- d) Waiver of Subrogation

2) **Workers' Compensation Insurance**

WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY COVERAGE MUST INCLUDE LIMITS CONSISTENT WITH STATUTORY BENEFITS OUTLINED IN THE TEXAS WORKERS' COMPENSATION ACT (ART. 8308-1.01 ET SEQ. TEX. REV. CIV. STAT) AND MINIMUM POLICY LIMITS FOR EMPLOYERS' LIABILITY OF \$1,000,000 BODILY INJURY PER ACCIDENT,\$1,000,000 BODILY INJURY DISEASE PER EMPLOYEE AND \$1,000,000 PER DISEASE POLICY LIMIT.

3) **Business Automobile Liability Insurance**

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation; and
- b) Additional Insured.

4. **Appendix A. Standard Terms and Conditions For Product and Related Services Contracts**, is hereby restated in its entirety and replaced with the attached **Appendix A. Standard Terms and Conditions For Product and Related Services Contracts** dated 09/29//2017.

All other terms and conditions of the Contract, 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 this Amendment 2, then Amendment Number 1 and then the Contract.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature, but in all events, no later than November 19, 2017.

SPILLMAN TECHNOLOGIES, INC.

Authorized By: Signature on File

Name: Joe Lunt

Title: MSSSI Vice President – Sales and Marketing

Date: 11/20/2017

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

Authorized By: Signature on File

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 11/28/2017

Office of General Counsel: Signature on File 11/27/2017

From: [Vania Ramaekers](#)
To: [Scott Kendall](#)
Cc: [Amy Stephens](#); [Bob Weakley](#)
Subject: RE: DIR-TSO-3370, Contract Detail
Date: Thursday, October 24, 2019 8:42:10 AM

This email originated from outside of the organization. Please review the sender information and email content for legitimacy before clicking links or opening attachments.

Good Morning Scott

Amendment 2 of this contract, added the autorenewal language, and DIR has conducted the necessary checks and have completed the 2019 autorenewal.

DIR Contract Number

DIR-TSO-3370

Contract Term End Date

11/19/2019

Contract Exp Date

11/19/2019

The RFO416 set to replace the RFO225 was posted last February 2018 and from my list of respondents this vendor did not responded to the new RFO.

I will be contacting the vendor to determine if an extension is necessary and work with him to respond to the upcoming augmentation Solicitation.

I hope this helps

Let me know if I can help you with anything else.

Vania Ramaekers, CTPM, CTCM

Contract Administrator Manager I

DIR Chief Procurement Office

Cooperative Contracts

512-475-4624

Vania.ramaekers@dir.texas.gov

From: Scott Kendall

Sent: Wednesday, October 23, 2019 4:28 PM

To: Vania Ramaekers

Cc: Amy Stephens ; Bob Weakley

Subject: DIR-TSO-3370, Contract Detail

Good Afternoon,

I was checking to see if you have a new Motorola/Spillman contract rolling out in November.

Thank you,

Scott Kendall, C.P.M.

Purchasing Manager – Purchasing Division

City of North Richland Hills

4301 City Point Drive

North Richland Hills, TX 76180

E-Mail: skendall@nrhtx.com

Phone: 817-427-6165

Fax: 817-427-6151