

Amendment Number 5
to
Contract Number DIR-TSO-4101
between
State of Texas, acting by and through the Department of Information
Resources
and
Motorola Solutions, Inc.

This Amendment Number 5 to Contract Number DIR-TSO-4101 ("**Contract**") is between the Department of Information Resources ("**DIR**") and Motorola Solutions, Inc. ("**Vendor**"). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

- 1. Contract, Section 1.C. Order of Precedence** is hereby amended and replaced in its entirety as follows:

C. Order of Precedence

For transactions under this Contract, the order of precedence shall be as follows:

- i. this Contract (DIR-TSO-4101), including all Amendments hereto in descending order;
- ii. Appendix A, Standard Terms and Conditions, dated December 2021;
- iii. Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan;
- iv. Appendix C, Pricing Index;
- v. Appendix D, Communications System Agreement;
- vi. Appendix E, Technical & Maintenance Service Terms and Conditions Agreement,
- vii. Appendix F, Subscription Services Agreement;
- viii. Appendix G, Software Products Addendum,
- ix. Appendix H, Mobile Video Addendum,
- x. Appendix I, Cyber Security Services Addendum;
- xi. Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-426, including all addenda; and
- xii. Exhibit 2, RFO DIR-TSO-TMP-426, including all addenda.

Each of the foregoing documents are incorporated by reference and together constitute the entire agreement between DIR and Vendor.

2. Contract, Section 2. Term of Contract is hereby amended as follows:

DIR and Vendor hereby agree to exercise the 90-day extension and then to extend the term of this Contract through July 22, 2024, or until terminated by either party pursuant to the termination clauses contained in this Contract.

3. Contract, Section 4. Pricing is hereby deleted and replaced in its entirety with the following:

4. Pricing

4.1 Pricing Index

Pricing to Customers shall be as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee (as defined below).

4.2 Customer Discount

- a) The minimum Customer discount for all products and services will be the percentage off List Price (as defined below) or MSRP (as defined below), as applicable, as specified in Appendix C, Pricing Index. Successful Respondent shall not establish a List Price or MSRP for a particular solicitation. For purposes of this Section, "List Price" is the price for a product or service published in Successful Respondent's price catalog (or similar document) before any discounts or price allowances are applied. For purposes of this Section, "MSRP," or manufacturer's suggested retail price, is the price list published by the manufacturer or publisher of a product and available to and recognized by the trade.
- b) Customers purchasing products or services under this Contract may negotiate additional discounts with Successful Respondent. Successful Respondent and Customer shall provide the details of such additional discounts to DIR upon request.
- c) If products or services available under this Contract are provided 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 products and services under this contract, then the price of such products and services under this Contract shall be adjusted to

that lower price. This requirement applies to products or services quoted by Successful Respondent for a quantity of one (1), but does not apply to volume or special pricing purchases. Successful Respondent shall notify DIR within ten (10) days of providing a lower price as described in this Section, and this Contract shall be amended within ten (10) days to reflect such lower price.

4.3 Changes to Prices

- a) Subject to the requirements of this section, Successful Respondent may change the price of any product or service upon changes to the List Price or MSRP, as applicable. Discount levels shall not be subject to such changes, and will remain consistent with the discount levels specified in this Contract.
- b) Successful Respondent may revise its pricing by publishing a revised pricing list, subject to review and approval by DIR. If DIR, in its sole discretion, finds that the price of a product or service has been increased unreasonably, DIR may request that Successful Respondent reduce the pricing for the product or service to the level published before such revision. Upon such request, Successful Respondent shall either reduce the pricing as requested, or shall remove the product or service from the pricing list for this Contract. Failure to do so will constitute an act of default by Successful Respondent.

4.4 Shipping and Handling

Prices to Customers shall include all shipping and handling fees. Shipments will be Free On Board Customer's Destination. No additional fees may be charged to Customers for standard shipping and handling. If a Customer requests expedited or special delivery, Customer will be responsible for any additional charges for expedited or special delivery.

4. Contract, Section 6. Notification is hereby amended as follows:

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

If sent to the State:

Hershel Becker or Successor of Office
Department of Information Resources

300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700

If sent to the Vendor:

Marty Saucedo
Motorola Solutions, Inc.
500 West Monroe Street
Chicago, Illinois 60661
Phone: (210) 237-2936
Email: marty.saucedo@motorolasolutions.com

5. Contract, Section 9. Internet Access to Contract and Pricing Information is hereby inserted immediately after Section 8 as follows:

9. Internet Access to Contract and Pricing Information

In addition to the requirements listed in Appendix A, Section 7.2, Internet Access to Contract and Pricing Information, Successful Respondent shall include the following with its webpage:

1. A current price list or mechanism to obtain specific contract pricing;
2. MSRP/list price or DIR Customer price;
3. Discount percentage (%) off MSRP or List Price;
4. Warranty policies; and
5. Return policies.

6. Appendix A. Standard Terms and Conditions for Product and Related Services Contracts dated 09/29/2017, is hereby replaced in its entirety with the attached **Appendix A. Standard Terms and Conditions** dated December 2021 (**per Amendment 5**), except where previous authorized exceptions to Appendix A were allowed and documented as part of the Contract, and all Amendments thereto. In such cases, the previously authorized exceptions shall be applied to the portions of the new Appendix A which are comparable to those in the earlier Appendix A for which they were written, and this without regard for the numbering or lettering associated with any of the documents. Applied in such manner, the exceptions shall remain in full force and effect until such time the Contract expires or is terminated.

7. In addition to the above-referenced authorized exceptions to Appendix A noted in Contract, Section 8, additional **Authorized Exceptions to Appendix A, Standard Terms and Conditions** dated December 2021 are as follows:

A. Section 4, General Provisions, Subsection 4.2, Modification of Contract Terms and/or Amendments, B., is hereby restated in its entirety as follows:

B. DIR may amend the Contract upon thirty (30) calendar days written notice to Successful Respondent: i) as necessary to satisfy a regulatory requirement imposed upon DIR by a governing body with the appropriate authority, or ii) as necessary to satisfy a procedural change due to DIR system upgrades or additions.

B. Section 4, General Provisions, Subsection 4.4, Assignment, is hereby restated in its entirety as follows:

A. DIR may assign the Contract without prior written approval to: i) a successor in interest (another state agency as designated by the Texas Legislature), or ii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority.

B. Customer may assign a Purchase Order issued under the Contract without prior written approval to: i) a successor in interest (another state agency as designated by the Texas Legislature), or ii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of a Purchase Order under the above terms shall require written notification by Customer. Any other assignment by a party shall require the written consent of the other party and a mutual written agreement.

C. Successful Respondent shall give DIR 90 days prior written notice before any assignment of its rights under the Contract or delegation of the performance of its duties under the Contract. If the Contract has not been amended to acknowledge the assignment by the end of this notice period, the Contract will be suspended until such amendment is executed.

C. Section 4, General Provisions, Subsection 4.5, Survival, is hereby restated in its entirety as follows:

All applicable Statements of Work that were entered into between Successful Respondent and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Successful Respondent shall survive expiration or termination of the Contract for the term of the Purchase Order, unless the Customer terminates the Purchase Order sooner. However, regardless of the term of the Purchase Order, no Purchase Order shall survive the expiration or termination of the Contract for more than five (5) years. In all instances of termination or expiration and no later than five (5) days after termination or expiration or upon DIR request, Successful Respondent shall provide a list, in accordance with the format requested by DIR (i.e., Excel, Word, etc.), of all surviving Statements of Work and Purchase Orders to the DIR Contract Manager and shall continue to report sales and pay the DIR Administrative Fees for the duration of all such surviving Statements of Work and Purchase Orders. Rights and obligations under the Contract which by their nature should survive, including, but not limited to the DIR Administrative Fee and any and all payment obligations invoiced prior to the termination or expiration hereof, obligations of confidentiality; and indemnification will remain in effect.

D. Section 10, Successful Respondent Responsibilities, Subsection 10.1.2 Infringements, is hereby restated in its entirety as follows:

- a. Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR

WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

- b. Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.
- c. If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

E. Section 10, Successful Respondent Responsibilities, Subsection 10.8 Responsibility for Actions, B., is hereby restated in its entirety as follows:

- B. Successful Respondent, for itself and on behalf of its subcontractors, shall report to the DIR Contract Manager within fifteen (15) business days any change to the information contained in the Certification Statement of **Exhibit A** of the RFO or Section 10.4, Successful Respondent Certifications of this Appendix A to the Contract. Successful Respondent covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of

interest.

F. Section 10, Successful Respondent Responsibilities, Subsection 10.12, Limitation of Liability, is hereby restated in its entirety as follows:

For any claims 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 claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

8. Appendix C, Pricing Index, is hereby replaced in its entirety with **Appendix C, Pricing Index (per Amendment 5)**.

9. Appendix D, Communications System Agreement, is hereby replaced in its entirety with **Appendix D, Communications System Agreement (per Amendment 5)**.

10. Appendix G, Software Products Addendum, is hereby added.

11. Appendix H, Mobile Video Addendum, is hereby added.

12. Appendix I, Cyber Security Services Addendum, is hereby added.

All other terms and conditions of the Contract, not expressly amended 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 5, then Amendment Number 4, then Amendment Number 3, then Amendment Number 2, then Amendment Number 2, and then the Contract.

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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 4/24/23.

Motorola Solutions, Inc.

Authorized By:  _____
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Name: _____ Scott Lees

Title: _____ VP Government Sales - West

Date: _____ 4/20/2023 | 9:49 AM CDT

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

Authorized By:  _____
7F04C0B913D547B...

Name: _____ Hershel Becker

Title: _____ Chief Procurement Officer

Date: _____ 4/24/2023 | 9:59 AM CDT

Office of General Counsel:  _____ 4/20/2023 | 1:03 PM CDT