

Amendment Number 3
to
Contract Number DIR-SDD-532
between
State of Texas, acting by and through the Department of Information Resources
and
Business Access, LLC

This Amendment Number 3 to Contract Number DIR-SDD-532 (“Contract”) is between the Department of Information Resources (“DIR”) and Business Access, LLC (“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 as follows:

The term of this Contract is extended through June 20, 2011. This is the final extension on this Contract. Contract expires June 20, 2011.

2. **Contract, Section 3, Service Offerings**, is hereby restated in its entirety as follows:

Service Offerings

Training services available under this Contract are limited to In-Home Learning System as specified below. Vendor may incorporate changes to their training services offering; however, any changes must be within the scope of training services awarded based on the posting described in Section 1.B above. Vendor may not add training services which was not included in the Vendor’s response to the solicitation described in Section 1.B above

- A. Vendor will use the following student profile for in-home learning system:

1. Reads at or below the eighth grade level;
2. Is, or has been, a welfare recipient and therefore has children, likely of school age;
3. Is most likely a woman, between the ages of 21 to 34 years;
4. 50% of the population is most likely of Hispanic origin; and
5. Approximately 40% of the population has a high school diploma, has attended some college, or has graduated from a 4-year college.

- B. Vendor will develop, implement, and support an Internet-based System/Internet Service Provider (ISP) with the following functions or features:

1. Internet access through a pre-defined portal, using Internet Explorer 6.x or higher;
2. Local workforce development board or other purchasing entity home page;
3. Training modules that reside on central site; no fee-based proprietary software needed on client level;
4. User accounts with identifications and passwords, including the ability to sign-on other users to the system who are family members and reside within the household;
5. Capacity to serve an anticipated maximum of 1,000 users in each of 28 local areas of the Texas Workforce Network and additional local units of government;

6. User communication system to provide for email messages to the user regarding events sponsored by local Texas Workforce Centers, in-home learning system product, or other materials including internet sites that have relevance to user's occupational/learning goal;
 7. Help aides such as "bots" to guide user through the functionality of the software as well as verbalization of written text;
 8. Ability to block out access to undesirable web sites such as those displaying pornography and gambling;
 9. Customized home page for each local workforce development area;
 10. Security feature to render the computer inoperable if lost or stolen.
- C. Vendor will provide core curriculum which includes but is not limited to, courses that assist students (as described above) in preparing to enter or advance in the work force, with the following three required elements, which do not have to be specially developed for this contract:
1. Adult Basic Education (ABE)
 2. English as a Second Language
 3. Computer Literacy
- D. Vendor will provide the ability to target specific occupations.
- E. Vendor will provide curriculum which must include content that will help students enter into targeted occupations.
- F. The In-Home Learning System provided by the Vendor must include the following features:
1. An internal occupational interest/aptitude test, which correlates test outcomes to training courses available on the system.
 2. Individual curriculum planning feature for identifying specific goals or outcomes that support employability, and for tracking progress toward those goals.
 3. Internet-based training modules that are written at an 8th grade level or lower that are relevant to the targeted occupations in the workforce area. If the area of instruction requires a final test or classroom demonstration of skill to result in certification, locally appropriate information must be available upon successful training program completion for obtaining the certification.
 4. Modules or pages specifically targeted to Youth, to promote careers in technology, technology industry updates that would help youth understand the promise of careers in this area, and the education requirements they must accomplish to enter these fields.
- G. Vendor will provide a Spanish language version of any or all elements of the course content.
- H. Vendor will provide the following management tracking and reporting capabilities in the System:
1. Individual user tracking to determine level of utilization of training modules and other grant supported features of the system
 2. Access to and information on occupations in demand in the local workforce development area in which the student resides, and other appropriate labor market information

3. Individual and group reporting based on pre-defined criteria and ad hoc query of student data base.

- I. Vendor will provide the following additional functionality options upon request of Customer:
 1. Home page for children with activities and materials appropriate for school age children.
 2. Any hardware and software required to support the In-Home Learning System.
 3. Home installation services including set-up, configuration, and basic orientation to the hardware and software package and system sign-on.
 4. Maintenance support for technical problems with the hardware.
 5. Tagging and registering of equipment with local police departments.

3. **Contract, Section 4, Pricing, subsection A. Customer Price, 1) table – Standard System**, is hereby restated in its entirety as follows:

Standard System	Customer Price
Standard System Price per Seat (includes the following): - Required Functionality - System Development and Integration - Host of System / Internet Service Provider (ISP) - Content of Instruction - Management Tracking and Reporting	\$2,264.40
Additional Functionality Options (the following options are in addition to the standard system price listed above)	Customer Price
Computer related services with dial-up	\$1,132.20
Computer related services with wireless high speed	\$1,698.30
Home installation and orientation	\$202.50
Extra Security Features (including LoJack SW)	\$364.50
Server-based training for prisons	Price provided upon request of Customer
Prison transition program	Price provided upon request of Customer
Employer customized training	Price provided upon request of Customer
Employer portal for custom curriculum development	Price provided upon request of Customer
Health Care professional training	Price provided upon request of Customer
Customized ESL training	Price provided upon request of Customer
Virtual High School	Price provided upon request of Customer
Customization	Price provided upon request of Customer

4. **Contract, Section 4, Pricing, subsection D. Travel Expense Reimbursement**, is hereby restated in its entirety as follows:

D. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

5. **Contract, Section 5, DIR Administrative Fee**, is hereby restated in its entirety as follows:

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 one and one quarter percent (1.25%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$1,250.00.

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. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. **Contract, Section 8, Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts**, is hereby revised to include the following:

C. All references to DIR Go DIRECT are hereby revised and replaced with DIR ICT Cooperative Contracts.

7. **Appendix A, Section 3, Definitions, new subsection G. Compliance Check**, is hereby added to the Contract as follows:

G. Compliance Check – an audit of Vendor’s compliance with the Contract performed either by a third party auditor or DIR contract management staff.

8. **Appendix A, Section 5, Purchase Orders, Invoices, Payments, subsection C Payments**, is hereby restated in its entirety as follows:

C. Payments

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. The statute states that payments for goods and services are due thirty (30) days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

9. **Appendix A. Section 7, Vendor Responsibilities, subsection B. Vendor Certifications,** is hereby restated in its entirety as follows:

B. Vendor Certifications

Vendor certifies that it and its designated Order Fulfillers: (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; (x) Vendor agrees 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; (xi) Vendor certifies that they are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency; (xii) Vendor certifies for itself and its subcontractors that it has disclosed or does not employ any current or former employees of the State of Texas and has disclosed or does 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, Vendor certifies it shall disclose for itself and on behalf of subcontractors the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity; (xiii) Vendor represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, Vendor certifies it shall disclose for itself and on behalf of subcontractors the actual or potential conflict of interest and any circumstances which create the appearance of impropriety; (xiv) Vendor represents and warrants that the Customer's payment to Vendor and Vendor's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; and (xv)

under Section 2155.006, Government Code, Vendor certifies that the individual or business entity in this 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. In addition, Vendor acknowledges 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 subcontractors, 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.

10. **Appendix A, Section 7, Vendor Responsibilities, subsection F. Responsibility for Actions**, is hereby restated in its entirety as follows:

F. Responsibility for Actions

1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.

2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under Item 18 of Appendix A to the RFO and/or Section 9.C. (xii) and (xiii), Vendor Certifications of this Appendix A to the Contract change and 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.

11. **Appendix A, Section 7, Vendor Responsibilities, subsection G. Confidentiality**, is hereby restated in its entirety as follows:

G. Confidentiality

1) Vendor acknowledges that DIR and Customers that are state agencies are government agencies subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

12. **Appendix A Section 7, Vendor Responsibilities, subsection H. Security of Premises, Equipment, Data and Personnel**, is hereby restated in its entirety as follows:

H. Security of Premises, Equipment, Data and Personnel

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor

and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

13. **Appendix A. Section 7, Vendor Responsibilities, subsection Q. Immigration**, is hereby restated in its entirety as follows:

Q. Immigration

Vendor shall comply with the requirements of 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 1996 Act., who will perform any labor or services under this Contract.

14. **Appendix A. Section 7, Vendor Responsibilities, new subsection R. Public Disclosure**, is hereby added to the Contract as follows:

R. Public Disclosure

No public disclosures or news releases pertaining to this contract shall be made without prior written approval of DIR.

15. **Appendix A, Section 7, Vendor Responsibilities, new subsection S. Product and/or Services Substitutions**, is hereby added to the Contract as follows:

S. Product and/or Services Substitutions

Substitutions are not permitted without the written permission of DIR or Customer.

16. 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 3, Amendment Number 2, Amendment Number 1 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 party to sign, but in all events no later than June 20, 2010.

Business Access, LLC

Authorized By: signature on file

Name: Kimberly Bunting

Title: CEO

Date: 18 June 2010

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

Authorized By: signature on file

Name: Cindy Reed

Title: Deputy Executive Director
Operations & Statewide Technology Sourcing

Date: 21 June 2010

Legal: 21 June 2010