



Washington State Department of
Enterprise Services

MASTER CONTRACT

Washington State Department of Enterprise Services ("DES")

and

Cellco Partnership dba Verizon Wireless ("Verizon")

01014 Wireless Pooled/Shared Minute Plans

For Purchases of Materials, Supplies, Services, and Equipment

Under the Authority of

Chapter 39.26.251 RCW

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1. SCOPE OF CONTRACT

This scope of this contract is to establish a statewide Master Contract for the as needed purchase of Wireless Pooled/Shared Minute Plan and/or Pay As You go Plan to provide a tool for Customers that will allow for increased proactive management of their Wireless phone use, which will achieve savings. The contract was made available to all awarded vendors who hold Western States Contract Association (WSCA) Master Contracts 1907 (the "Master Contracts") for wireless voice and data Services (see <http://des.wa.gov/services/IT/ITContracts/ITMasterContract/Pages/default.aspx>). DES has the ability to use its existing contracts to procure these services; however, the agency can achieve better pricing and/or service offerings through the implementation of this contract.

Vendors must meet all technical specifications and terms & conditions contained in the WSCA Master Contracts. DES assumes that vendors holding WSCA Master Contracts meet the specifications contained therein.

There are three (3) plans available; 1) Voice and options Data (100-200 minutes), 2) Voice and optional Data (300-400) minutes, and 3) Pay As You Go. Each plan was evaluated and awarded separately.

2. INCORPORATED DOCUMENTS AND ORDER OF PRECEDENCE

The documents listed below are, by this reference, incorporated into this contract. No other statements or representations, written or oral, are a part of the contract unless otherwise mutually agreed upon by both parties through an amendment.

- a. This Contract
- b. The Solicitation
- c. Awarded vendor's bid, which has been included within the language of this contract.
- d. All appendices
- e. Solicitation amendments (if any)
- f. Award letter

In the event of a conflict in such terms, or between the terms and any applicable statute or rule, the inconsistency will be resolved by giving precedence in the following order:

- a. Applicable federal and state of Washington statutes and regulations
- b. Mutually agreed written amendments to the resulting contract
- c. The contract, including all documents incorporated in the subsection immediately above.

Conflict: To the extent possible, the terms of the contract must be read consistently.

Conformity: If any provision of the contract violates any federal or state of Washington statute or rule of law, it is considered modified to conform to that statute or rule of law.

3. PURCHASERS

This contract will be available for use by all Washington state agencies and authorized parties to the Master Contracts Usage Agreement (MCUA), including institutions of higher education, cities and counties, other

political subdivisions or special districts, and nonprofit corporations. Their orders are subject to the same contract terms, conditions and pricing as state agencies.

MCUA members: <https://fortress.wa.gov/ga/apps/ContractSearch/MCUAListing.aspx>

4. TERM OF CONTRACT

Contract term shall be in accordance with RCW 39.26.251. This contract shall be effective **November 17, 2014 through November 15, 2016.**

Extensions will be exercised at the sole discretion of DES upon written mutual agreement. The total contract term, including the initial term and all extensions, will not exceed seven (7) years unless circumstances require a special extension. DES reserves the right to extend with all or some of the contractors.

The parties agree to meet, at a minimum, every 24 months to negotiate any modifications of any terms or conditions that may have concern to either party. If a concern over a term or condition arises prior to the regularly scheduled meeting, the parties will schedule a special meeting and negotiate in good faith over a modification of that term or condition.

If, during the course of the contract term, RCW 39.26.251 is amended to eliminate the mandatory element, this contract will automatically convert to a convenience use contract after 60 days, unless otherwise specifically stipulated by the legislature. In the event this contract converts to convenience use, the following will also become part of the convenience use contract: In the event of on-going non-performance of contractual requirements, DES may do one or more of the following: terminate this contract, or exercise any remedy provided by law. Parties agree that RCW 39.26.251 is not applicable to the provisioning of wireless products and services.

5. CONTRACT EXTENSION

DES reserves the right to extend this contract for additional contract terms or portions thereof. Contract extensions shall be subject to mutual agreement between DES, and Verizon. Verizon shall respond within fifteen (15) working days following receipt of a request for extension.

6. GENERAL REQUIREMENTS

6.1 Liens, Claims, and Encumbrances

All materials, equipment, supplies and/or services shall be free of all liens, claims, or encumbrances of any kind, and if DES or the purchaser requests, a formal release of same shall be delivered to the respective requestor.

6.2 Contract modifications

DES reserves the right to modify the resulting contract (including but not limited to adding or deleting products, services, or delivery locations) by mutual agreement between DES and the Contractor, so long as such modification is substantially within the scope of the original contract. Such modifications will be memorialized in a signed written document describing the agreed upon change including any terms and conditions required to support such change.

6.3 Contract administration

DES will appoint a single point of contact that will be the Contract Administrator for this contract and will provide contract oversight. The Contract Administrator will be the principal contact for the Contractor for business activities under this contract. DES will notify Contractor, in writing, when there is a new Contract Administrator assigned to this contract.

DES may maintain contract information and pricing and make it available on DES's web site. The contract prices are the maximum price Contractor can charge. The Contractor may also offer volume discounts to purchasers.

6.4 Contractor supervision and coordination

Contractor shall:

- a. Competently and efficiently supervise and coordinate the implementation and completion of all contract requirements specified herein.
- b. Identify the Contractor's Authorized Representative, who will be the principal point of contact for DES concerning Contractor's performance under this contract.
- c. Immediately notify the Contract Administrator in writing of any change of the designated Authorized Representative assigned to this contract.
- d. Be bound by all written communications given to or received through the Legal Notice provisions of this Agreement.

Violation of any provision of this section may be considered a material breach establishing grounds for contract termination.

6.5 Term contract management

Upon award of a term contract, the Contractor shall:

- a. Review the impact of the award and take the necessary steps needed to ensure that contractual obligations will be fulfilled.
- b. Promote and market the use of this contract to all authorized contract purchasers as determined to be useful in Contractor's discretion.
- c. Ensure that those who endeavor to utilize this contract are authorized purchasers under this contract.
- d. At no additional charge, upon request, assist purchasers in making the most cost effective, value based purchases which may include, but is not limited to:
 - i. Having representatives available to provide information regarding products and services, including visiting the purchaser site if needed and requested by a particular purchaser or state agency, and providing purchaser with materials/supplies/equipment recommendations in a manner to be mutually agreed to by Contractor and DES and/or the purchaser after contract award.
 - ii. Providing purchasers with a detailed list of contract items including current contract pricing and part numbers in a manner to be mutually agreed to by Contractor and DES and/or the purchaser after contract award.

The Contractor shall designate a customer service representative team who will be responsible for addressing purchaser issues including, but not limited to:

- Receiving requests for service. And to refer the state to the appropriate resources to resolve open issues.
- Providing purchasers with regular and timely status updates in the event of a delay in order fulfillment.
- Acting as the liaison between the manufacturer and purchaser in resolving warranty claims for contract items purchased.

6.6 Changes

Alterations to any of the terms, conditions, or requirements of this contract shall only be effective upon written issuance of a mutually agreed contract amendment by DES that is signed by both DES and Contractor. However, changes to point of contact information may be updated without the issuance of a mutually agreed contract amendment.

6.7 Price Adjustments

The language in this Section 6.7 supersedes and takes the place of the language in Section 5.8 of the Solicitation. Firm and fixed period: Pricing will remain firm and fixed for (one year) from date of award of the contract, as clarified below in this Section 6.7.

Price protection: The contract prices are the maximum prices the Contractor may charge for custom price plan monthly access fees.

Access fees and non-promotional allowances of minutes and/or kilobytes or megabytes for calling plans will not change throughout a subscriber's line term as long as the subscriber remains on that calling plan. We may change or discontinue generally available calling plans without notice after which your new subscribers may select our then-current calling plan rates, terms and conditions.

Equipment availability is subject to change periodically and is subject to the terms and conditions of the Verizon Wireless Pricing and Equipment Proposal.

Although we do not offer Most Favored Nations (MFN) pricing, your organization may take advantage of standard lower priced Verizon wireless plans that may become generally available for government customers during the term of your agreement. Upon written request, your organization would have the option of transferring your government lines to the new plans as long as the State meets any terms and conditions of the new plans. Special benefits incorporated in your agreement may not be applicable under the new plans, and extension of the initial agreement term may be required.

Contract extensions and price adjustments: Contractors may not make contract extensions contingent on price adjustments.

6.8 Equipment Pricing

Verizon Wireless may make certain equipment available at no charge; however, Verizon Wireless does not guarantee that we will always be able to offer equipment at no charge through the term of the resulting standalone agreement. Please refer to the attached Equipment Pricing Matrix for details.

6.9 Management fee

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Contractor will pay a management fee of 0.75 percent to DES on all state contract sales. The management fee must be rolled into the Contractor's current pricing, and not shown as a separate line item on an invoice.

DES may increase, reduce or eliminate the management fee, and reserves the right to negotiate contract pricing with the Contractor when adjustment of the management fee (which would require Contractor consent) that might justify an increase in pricing. Written notifications of the management fee by DES become effective for new purchases or new change orders to existing purchases 30 calendar days after notification unless DES grants additional time. Increases or decreases in contracts management fee may be reflected in Contractor's pricing. If Contractor cannot accept the management fee change, then Contractor has the right to terminate this contract upon 30 calendar days written notice; provided, however, contractor will use good faith efforts to agree to any such change requested by DES.

The state reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced and all management fees have been paid. Failure to accurately report total net sales, to submit a timely usage report, or remit timely payment of the management fee, may be cause for contract termination, the charging of interest or penalties, or the exercise of other remedies provided by law.

The management fee does not include or supersede fee terms owed to other entities under other contracts such as the Western States Contracting Alliance (WSCA), National Association of State Procurement Officials (NASPO) or governmental entities other than the state of Washington. No fees will be owed to the listed entities as this contract is not tied to any other agreement.

Management fee payment must reference the contract number, work request number (if applicable), the year and quarter for which the management fee is being remitted, and the Contractor's name as it is known to DES, if not already included on the face of the check. All payments are sent to:

Washington State Department of Enterprise Services
Finance Department
1500 Jefferson St. S.E.
PO Box 41460
Olympia, WA 98504-1460

6.10 Contract usage report

The management fee will be based on total contract usage (sales), which must be reported quarterly by the Contractor in the Contract Sales Reporting System. DES will provide a login password and a vendor number.

For each report, Contractor must identify every purchaser who has made purchases during the reporting period. The "Miscellaneous" option may be used only with prior approval by DES, and use of this option without prior approval by DES may be cause for contract termination. Refer sales reporting questions to the Contract Administrator.

Due date: Reports must be submitted electronically within 30 days after the end of the calendar quarter: no later than April 30, July 31, October 31 and January 31.

Failure to provide reports in accordance with the schedule above may be cause for contract termination.

6.11 Other required term contract reports

DES may require the Contractor to provide a detailed annual contract sales history report. This report, if requested, will include at a minimum, but is not limited to: product description, part number or other product identifier, per device quantities sold, and contract price and other items as mutually agreed to in writing. This report must be provided to DES in an electronic format that can be read by MS Excel. Unless the solicitation specifies otherwise, all other required reports will be designed and approved by the parties by mutual written agreement. All entities using this contract agree to allow DES to collect data for this report on their behalf.

6.12 Common vendor-registration and bid-notification system

Contractor shall be registered in the state's common vendor registration and bid notification system, RCW 39.29.006, known as Washington's Electronic Business Solution (WEBS), at www.ga.wa.gov/webs. Contractors already registered need not re-register. It is the sole responsibility of Contractor to properly register and maintain an accurate vendor profile.

6.13 Contractor qualifications and requirements

DES reserves the right to require receipt of proof of compliance with any of the requirements in this section within ten (10) calendar days from the date of request, and to terminate this contract as a material breach for noncompliance with any requirement of this paragraph. Contractor shall maintain compliance with these requirements throughout the life of this contract.

a. Qualified and established business

Prior to performance, or prior to that time if required by DES, law or regulation, Contractor must be an established business with all required licenses, fees, bonding, facilities, equipment, and trained personnel necessary to meet all requirements and perform the work as specified in the solicitation.

b. Authorized Service Provider and Product Reseller certifications

Upon request, Contractor must provide evidence of its status as an authorized service provider or product reseller. Contractor shall maintain its authorized service provider or product reseller status for the initial term and any extensions of the resulting contract. If this status is discontinued, this contract may be terminated.

c. Assignment

Contractor shall not assign or otherwise transfer its obligations or any claim arising under this contract without the prior written consent of DES. Such consent will not be unreasonably withheld. Contractor shall provide a minimum of 30 calendar days advance notification of intent to assign or otherwise transfer its obligations under this contract. Violation of this provision may be considered a material breach and be grounds for contract termination. Assignment or transfer of contract shall not relieve the Contractor from its responsibilities and obligations under the contract.

d. Contractor authority and infringement

Under this contract, Contractor is authorized to sell only those materials, supplies, services and/or equipment as stated herein and allowed for by the contract provisions. Contractor shall not misrepresent to purchasers that they have the contract authority to sell any other materials, supplies, services and/or equipment. Further, Contractor may not intentionally infringe on other established state contracts.

e. Hours of labor

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In compliance with RCW 49.28, Contractor agrees that no worker, laborer, or mechanic in the employ of the Contractor or subcontractor shall be permitted or required to work more than eight (8) hours in any one calendar day, or forty (40) hours in any one calendar week. However, in cases of extraordinary emergency such as danger to life or property, the hours of work may be extended but in such cases the rate of pay for time employed in excess of the above shall be at the prevailing overtime rate of pay. Except, contracts will not require the payment of overtime rates for the first two hours worked in excess of eight (8) hours per day when the employer has obtained the employee's agreement (as defined in WAC 296-127-022) to work a four-day, ten-hour work week.

f. Labeling

To the extent practicable given Contractor's standard processes, individual shipping cartons shall be labeled with the name of the purchaser, order number, contract number, Contractor, state stock numbers. Where applicable, date of manufacture, batch number, storage requirements, conditions, and recommended shelf life shall also be included.

g. Hazardous materials

Parties agree that this section is not applicable to the provisioning of wireless products and services.

Consistent with WAC 296-839, all manufacturers and distributors of hazardous substances, including any of the items listed in this contract, must include a complete material safety data sheet (MSDS) for each hazardous material. Additionally, each container of hazardous materials must be appropriately labeled with:

- The identity of the hazardous material,
- Appropriate hazard warnings, and
- Name and address of the chemical manufacturer, importer, or other responsible party

The Department of Labor and Industries may levy appropriate fines for noncompliance and agencies may withhold payment-pending receipt of a legible copy of MSDS. It should be noted that OSHA Form 20 is not acceptable in lieu of this requirement unless it is modified to include appropriate information relative to "carcinogenic ingredients" and "routes of entry" of the product(s) in question.

6.14 Treatment of assets

Title to all property furnished by DES and/or purchaser shall remain with DES and/or purchaser, as applicable. Any property of DES and/or purchaser furnished to the Contractor shall, unless otherwise provided herein or approved by DES and/or purchaser, be used only for the performance of this contract.

The Contractor shall be responsible for damages as a result of any loss or damage to property of DES and/or purchaser which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain, administer and protect that property in a reasonable manner and to the extent practicable in all instances.

If any DES and/or purchaser property is lost, destroyed, or damaged, the Contractor shall immediately notify DES and/or purchaser and shall take all reasonable steps to protect the property from further damage.

The Contractor shall surrender to DES and/or purchaser all property of DES and/or purchaser prior to settlement upon completion, termination, or cancellation of this contract.

Title to all property furnished by the Contractor, the cost for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the purchaser upon delivery of such property by the Contractor and Acceptance by the purchaser. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the purchaser upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the purchaser in whole or in part, whichever first occurs.

All reference to the Contractor under this clause shall also include Contractor's employees, agents or subcontractors.

6.15 Shipping and Risk of Loss

Contractor shall ship all Products purchased pursuant to this Contract, freight prepaid, FOB Purchaser's destination. The method of shipment shall be consistent with the nature of the Products and hazards of transportation. Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of the Products ordered hereunder that occurs prior to Acceptance Date, except loss or damage attributable to Purchaser's fault or negligence; and such loss, damage, or destruction shall not release Contractor from an obligation hereunder. After the Acceptance Date, the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Contractor's fault or negligence.

6.16 Delivery

Equipment orders placed through My Business Account are shipped within 48 hours and delivered using standard 2-day shipping free of charge. Special shipping instructions - such as priority overnight mail or next day shipping - may incur a charge. Your Account Manager will handle urgent requests on a case-by-case basis. Title and risk of loss pass to you and acceptance occurs upon receipt of equipment at the address designated on the order.

6.17 Payment

a. Advance payment prohibited:

No advance payment shall be made for the products and Services furnished by Contractor under this contract.

b. Payment:

Payment is the sole responsibility of, and will be made by, the purchaser.

Under Chapter 39.76 RCW, if purchaser fails to make timely payment(s), Contractor may invoice for 1 percent per month on the amount overdue or a minimum of \$1. Payment will not be considered late if a check or warrant is mailed within the time specified. If no terms are specified otherwise in the solicitation, net 30 days will automatically apply.

Payment(s) made in accordance with contract terms shall fully compensate the Contractor for all risk, loss, damages or expense of whatever nature with respect to payment for the item for which payment was made and acceptance of payment shall constitute a waiver of all claims submitted by Contractor with respect to payment for the item for which payment was made.

Payment for materials, supplies and/or equipment received and for services rendered shall be made by purchaser and be redeemable in U.S. dollars. Unless otherwise specified, the purchaser's sole responsibility shall be to issue this payment. Any bank or transaction fees or similar costs associated with currency exchange procedures or the use of purchasing/credit cards shall be fully assumed by the Contractor.

Note: when the state has been overcharged or otherwise reimbursed, the purchaser may elect to have either direct payments or written credit memos issued. If the Contractor fails to make timely payment(s) or issuance of credit memos, the purchaser may impose a 1% per month on the amount overdue 30 days after notice to the Contractor.

c. Invoicing and discounts

Contractor must provide a properly completed invoice to purchaser. All invoices are delivered via the MyBusiness Account portal.

To the extent practicable given Contractor's standard processes, each invoice must be identified by the associated contract number; the Contractor's statewide vendor registration number assigned by the Washington State Office of Financial Management (OFM), the applicable purchaser's order number, and must be in U.S. dollars. Invoices must be prominently annotated by the Contractor with all applicable prompt payment and/or volume discount(s) and shipping charges unless otherwise specified in the solicitation.

Invoices for payment will accurately reflect all discounts due the purchaser. Invoices will not be processed for payment, nor will the period of prompt payment discount commence, until receipt of a properly completed invoice denominated in U.S. dollars and until all invoiced items are received and satisfactory performance of Contractor has been accepted by the purchaser. If an adjustment in payment is necessary due to damage or dispute, any prompt payment discount period shall commence on the date final approval for payment is authorized.

6.18 Taxes, fees and licenses

a. Taxes

Where required by statute or regulation, the Contractor shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless otherwise indicated, the purchaser agrees to pay State of Washington taxes on all applicable materials, supplies, services and/or equipment purchased. No charge by the Contractor shall be made for federal excise taxes and the purchaser agrees to furnish Contractor with an exemption certificate where appropriate.

In addition to required taxes and fees and the agreed upon charges for service and equipment, Contractor intends to collect the following carrier imposed cost recovery charges:

- Regulatory Charge – misc FCC related costs
- Federal Universal Service Charge – to recover the costs of FCC universal service fees imposed on the carrier.
- Effect of City Tax – to recover the cost of city utility taxes imposed by WA cities.

b. Collection of retail sales and use taxes

In general, Contractors engaged in retail sales activities within the State of Washington are required to collect and remit sales tax to Department of Revenue (DOR). In general, out-of-state Contractors must collect and remit "use tax" to Department of Revenue if the activity carried on by the seller in the State of Washington is significantly associated with Contractor's ability to establish or maintain a market for its products in Washington. Examples of such activity include where the Contractor either directly or by an agent or other representative:

- Maintains an in-state office, distribution house, sales house, warehouse, service enterprise, or any other in-state place of business;
- Maintains an in-state inventory or stock of goods for sale;
- Regularly solicits orders from purchasers located within the State of Washington via sales representatives entering the State of Washington;
- Sends other staff into the State of Washington (e.g. product safety engineers, etc.) to interact with purchasers in an attempt to establish or maintain market(s); or
- Other factors identified in WAC 458-20.

c. Tax Exemption

If your organization believes that it enjoys an exemption from taxes normally billed by Verizon on our wireless invoices, you must provide evidence of your exemption in a legally acceptable form, such as the exemption certificate. Exemptions do not apply to expenses necessary to comply with law (surcharges). Surcharges are assessed to recover or help defray costs of taxes and governmental surcharges and fees imposed on us, and costs associated with governmental regulations and mandates on our business. These charges are Verizon charges, not taxes, and are subject to change. Because these charges are not taxes, your tax exemptions, if any, will not apply to these charges.

d. Department of Revenue registration for out-of-state Contractors

Out-of-state Contractors meeting any of the above criteria must register and establish an account with the Department of Revenue. Refer to WAC 458-20-193, and call the Department of Revenue at 800-647-7706 for additional information. When out-of-state Contractors are not required to collect and remit "use tax," purchasers located in the State of Washington are responsible for paying this tax, if applicable, directly to the Department of Revenue.

e. Federal Universal Service Charge

The FCC collects a fee from all carriers for the Federal Universal Service Fund (FUSF). The FCC uses the FUSF monies to promote universally affordable telecommunications and information services to all Americans, including low-income consumers, eligible schools, libraries and rural healthcare providers. The FCC allows carriers to pass through this fee to customers. The Federal Universal Service Charge (FUSC) collected by Verizon is a percentage of the customer's monthly bill and is used to defray the costs of the FUSF. The FUSC is collected on most items on the bill, other than data charges for wireless broadband Internet access, equipment charges and taxes. As of July 1, 2014, the basic FUSC rate is 15.7% and changes quarterly. The FUSC rate for bundled minute plans is 3.91% if the customer does not exceed the included number of minutes. The 15.7% rate applies to long distance interstate calls that exceed the

customer's included bundle of minutes. Other services, such as VOIP, are charged a lower FUSC rate. We also impose state universal service charges. These charges vary by jurisdiction and are subject to change.

f. Regulatory Charge

The Regulatory Charge is an assessment that helps defray our ongoing costs of complying with various governmental mandates and assessments.

Examples include:

- The cost of the license fees assessed by the FCC.
- Costs assessed by the FCC to administer local number portability requirements.

This charge is subject to change over time upon notice and is taxable in most jurisdictions. The Regulatory Charge is \$0.02 per line for wireless Mobile Broadband Internet access and Machine to Machine devices and is \$0.21 per line for all other services. The FUSC and Regulatory Charge are included in the "Verizon Wireless Surcharges" section of the bill. For a summary list of the nationwide and state-specific surcharges included under the "Verizon Wireless Surcharges" section of the bill.

g. Fees/Licenses

After award of contract, and prior to commencing performance under the contract, the Contractor shall pay for and maintain in a current status any licenses, fees, assessments, permit charges, etc., which are necessary for contract performance. It is the Contractor's sole responsibility to maintain licenses and to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments, or charges and to immediately comply with said changes or regulations during the entire term of this contract.

h. Customs/Brokerage Fees

Contractor shall take all necessary actions, including, but not limited to, paying all customs, duties, brokerage, and/or import fees, to ensure that materials, supplies, and/or equipment purchased under the contract are expedited through customs. Failure to do so may subject Contractor to damages as identified herein and/or to other remedies available by law or contract. Neither DES nor the purchaser will incur additional costs related to Contractor's payment of such fees.

i. Taxes on invoice

Contractor shall calculate and enter the appropriate state and local sales tax on all invoices. Tax is to be computed on new items after deduction of any trade-in in accordance with WAC 458-20-247.

If Contractor is required by law to collect a tax, fee or other charge from Purchaser, then Contractor may bill and Purchase shall pay such amounts. The taxes, fees and other charges required by law to be collected from Purchaser may change from time to time, and currently include State, County and City Sales Taxes, and State and County Emergency 911 Fees.

If serving carrier charges tax on a roaming call, Contractor may bill and Purchaser shall pay such tax.

If Contractor incurs a tax (other than a net income tax or the Washington Business and Occupation Tax) or to their expense to comply with legal or governmental requirements, and Contractor bills a surcharge to recover or offset the cost of such expense ("Surcharge"), then Purchaser shall pay such Surcharge. Contractor's surcharges may change from time to time, and currently include the Federal Universal Service Fee, Regulatory Fee, Administrative Fee and Effect city Tax.

With respect to any tax, fee or other charge other than a tax charged by a servicing carrier on a roaming call, if Purchaser provides Contractor with an exemption certificate in the form provided by law, or with other evidence of exemption acceptable to Contractor, then that specific tax, fee, or charge will not be collected from Purchaser. If an exemption applied by Contractor at Purchaser's request is found not to apply, then Purchaser shall upon demand pay Contractor the uncollected tax, fee, or other charge and all related interest, penalties and additions. Contractor shall not issue credits for a tax, fee or other charge that is billed prior to Contractor's receipt of evidence of exemption.

j. Minority and Women's Business Enterprise (MWBE) participation

The parties agree that this section is not applicable.

With each invoice for payment and within 30 days of purchaser's request, Contractor shall provide purchaser an Affidavit of Amounts Paid. The Affidavit of Amounts Paid shall either state that Contractor still maintains its MWBE certification, or state that its Subcontractor(s) still maintain(s) its/their MWBE certification(s) and specify the amounts paid to each certified MWBE subcontractor under this contract. Contractor shall maintain records supporting the Affidavit of Amounts Paid in accordance with this contract's **Retention of Records** section.

k. Overpayments to Contractor

Contractor shall refund to purchaser the full amount of any erroneous payment or overpayment under this contract within 30 days' written notice. If Contractor fails to make timely refund, purchaser may charge Contractor 1 percent per month on the amount due, until paid in full.

l. Audits

The state reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing may be considered complete cause for contract termination.

6.19 Quality assurance

a. Right of inspection

Not applicable to the provisioning of wireless products and services.

b. Contractor commitments, warranties and representations

Any written commitment by Contractor within the scope of this contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its bid or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its bid or used to effect the sale to purchaser. In the event of any ambiguities or inconsistencies between the information provided to DES in written communications outside of this Contract, the terms of this Contract shall prevail.

c. Warranties

Contractor is not the manufacturer of the Products and makes no representations or warranties whatsoever, directly or indirectly, express or implied, as to the suitability, durability, fitness for use, merchantability, condition, quality, performance or non-infringement of the Products. With respect to Contractor, purchases purchase the Products "as is". Product shall be subject to any warranties provided to purchaser by the Product manufacturer. Modifications may void or otherwise limit any warranty applicable to the Products.

d. Date warranty

Contractor provides no date warranty..

e. Cost of remedy

See return policy, section [3.14b].

We will accept returns or make exchanges on all cellular merchandise purchased from us by your government-liable end users provided the equipment is returned within 30 days of purchase; if service is also terminated within 30 days, MTA remains responsible for the cost of any airtime and features used prior to the termination date. We will accept returns or make exchanges on all cellular merchandise purchased from us by your employee-liable end users provided the equipment is returned within 14 days of purchase; if service is also terminated within 14 days, your employee remains responsible for the cost of any airtime and features used prior to the termination date.

To return a product your employee would:

- Contact the Customer Care team to advise it of the return.
- Repackage the product in the original box it came in.
- Attach the provided return label to the package.
- Provide an original sales receipt.
- Call the shipping company and make suitable arrangements to have the package picked

up at no additional charge.

Our Return and Exchange Policy is designed to provide a process to return unwanted purchases and provide an in-store exchange option for eligible defective handsets (in/out of warranty). Your employees may return or exchange one wireless phone per new line of service.

6.20 Information and communications

a. Advertising

Contractor shall not publish or use any information concerning this contract in any format or media for advertising or publicity without prior written consent from DES.

b. Retention of records

Upon reasonable notice to Contractor, personnel so authorized by the DES Contract Administrator and/or of the office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, shall have the right to audit photocopies of Contractor's billing records that pertain directly to DES's account to verify the accuracy of the information contained in Contractors' invoices or the correctness of these invoices, such as usage, recurring monthly charges, taxes, surcharges or other charges. Such records shall be provided to DES within a reasonable timeframe to be mutually agreed upon

by the parties. In the event that the records cannot be copied (or reproduced in any manner), or DES disputes the authenticity of such records, DES shall be permitted reasonable access to Contractor's regional office, located in Bellevue, WA, unless otherwise agreed by the parties, to review DES's relevant billing records at a time convenient to Contractor. If DES uses a third party auditor, the parties shall agree upon a mutually acceptable auditor, which approval shall not be unreasonably withheld, delayed or conditioned. Such information shall be maintained by Contractor for a period of six (6) years from the date of final payment. DES shall be responsible for the costs of any audit. Contractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to Minority and Women's Business Enterprise participation, protection and use of Purchaser's Confidential Information in accordance with Washington general accounting practices and procedures. Contractor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Contractor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from Purchaser's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

c. Proprietary or confidential information

To the extent consistent with Chapter 42.56 RCW, the Public Disclosure Act, DES shall maintain the confidentiality of Contractor's information marked confidential or proprietary. If a request is made to view Contractor's proprietary information, DES will notify Contractor of the request and of the date that the records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, DES will release the requested information on the date specified.

The state's sole responsibility shall be limited to maintaining the above data in a secure area and to notify Contractor of any request(s) for disclosure for so long as DES retains Contractor's information in DES records. Failure to so label such materials or failure to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such materials are exempt from disclosure.

d. Non-endorsement and publicity

Neither DES nor the purchasers are endorsing the Contractor's products or Services, nor suggesting that they are the best or only solution to their needs. Contractor agrees to make no reference to DES, any purchaser or the State of Washington in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without the prior review and express written consent of DES.

e. Ownership/rights in data

Purchaser and Contractor agree that this contract does not contemplate the creation of any "work product" as this contract is simply for the provision of wireless services and equipment. Any project which may result in work product under this agreement must be issued by purchaser and agreed to in writing by Contractor.

Purchaser and Contractor agree that all data and work products (collectively called "work product") produced pursuant to this contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and shall be owned by purchaser. Work product includes, but is not limited to, discoveries, formulas, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such work product.

If for any reason the work product would not be considered a work made for hire under applicable law, Contractor assigns and transfers to purchaser the entire right, title and interest in and to all rights in the work product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

Contractor shall execute all documents and perform such other proper acts as purchaser may deem necessary to secure for purchaser the rights pursuant to this section.

Contractor shall not use or in any manner disseminate any work product to any third party, or represent in any way Contractor ownership in any work product, without the prior written permission of purchaser. Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

Material that is delivered under this contract in connection with any work product, but that does not originate there from ("preexisting material"), shall be transferred to purchaser with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such preexisting material, and to authorize others to do so except that such license shall be limited to the extent to which Contractor has a right to grant such a license. Contractor shall exert all reasonable effort to advise purchaser at the time of delivery of preexisting material furnished under this contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this contract. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of preexisting material. Purchaser shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any preexisting material delivered under this contract. purchaser shall have the right to modify or remove any restrictive markings placed upon the preexisting material by Contractor.

f. Protection of confidential and personal information

Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either Chapter 42.17 RCW or other state or federal statutes ("confidential information"). Confidential information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, etc or information identifiable to an individual that relates to

any of these types of information. Contractor agrees to hold confidential information in strictest confidence and not to make use of confidential information for any purpose other than the performance of this contract, to release it only to authorized employees or subcontractors requiring such information for the purposes of carrying out this contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or subcontractors who have signed a non-disclosure agreement or by the terms of their employment or contract are bound by confidentiality obligations sufficient to enable Contractor to comply with this section. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

"Personal information" including, but not limited to, "protected health information" (PHI) under the Health Insurance Portability and Accountability Act (HIPAA), individuals' names, addresses, phone numbers, birth dates, and social security numbers collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss.

HIPAA establishes national minimum standards for the use and disclosure of certain health information. The Contractor must comply with all HIPAA requirements and rules when determined applicable by Contractor. Purchaser agrees that Contractor is not a "covered entity" under HIPAA, and (2) Contractor will not perform "business associate" services and activities covered under HIPAA, and thus does not need to execute purchaser's business associate contract in compliance with HIPAA.

Contractor shall ensure its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as otherwise required by law.

Any breach of this provision may result in termination of the contract and demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the State of Washington and the purchaser for any damages related to both: (1) the Contractor's unauthorized use of personal information and (2) the unauthorized use of personal information by unauthorized persons as a result of Contractor's failure to sufficiently protect against unauthorized use, disclosure, modification, or loss.

Contractor's records shall be subject to reasonable inspection, review or audit in accordance with records-retention law.

Purchaser reserves the right to reasonably monitor, audit, or investigate the use of confidential information collected, used, or acquired by Contractor through this contract.

Violation of this section by Contractor or its subcontractors may result in termination of this contract and demand for return of all confidential information, monetary damages, or penalties.

6.21 General Provisions

a. Governing law and venue

This contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

b. Severability

Severability: If any provision of this contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this contract that can be given effect without the invalid provision, and to this end the provisions of this contract are declared to be severable.

c. Survivorship

All transactions executed for products and Services provided pursuant to the authority of this contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this contract or any extension thereof. Further, the terms, conditions and warranties contained in this contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this contract shall so survive. In addition, the terms of the sections titled Overpayments to Contractor; Ownership/Rights in Data; Contractor's Commitments, Warranties and Representations; Protection of purchaser's Confidential Information; Section Headings, Publicity; Retention of Records; Patent and Copyright Indemnification; Contractor's Proprietary Information; Disputes; and Limitation of Liability shall survive the termination of this contract.

d. Independent status of Contractor

In the performance of this contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent Contractor relationship will be created by this contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under [Chapter 41.06 RCW](#) or [Title 51 RCW](#).

e. Gifts and gratuities

Contractor shall comply with all state laws regarding gifts and gratuities, including but not limited to: [RCW 39.26](#), [RCW 42.52.150](#), [RCW 42.52.160](#), and [RCW 42.52.170](#) under which it is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with state business or contract activities.

Under [RCW 39.26](#) and the Ethics in Public Service Law, [Chapter 42.52 RCW](#), state officers and employees are prohibited from receiving, accepting, taking or seeking gifts (except as permitted by [RCW 42.52.150](#)) if the officer or employee participates in contractual matters relating to the purchase of goods or services.

f. Immunity and hold harmless

Patent and Copyright Indemnification. Contractor shall defend, indemnify and hold harmless Purchaser from and against any and all losses and damages claimed by a third party in any action or proceeding against Purchaser alleging that Purchaser's use of the services provided by Contractor (Services) as contemplated by this Contract infringes a valid United States patent, trademark or copyright issued as of the date of execution of this Contract ("IP Claim"), including any final monetary judgments, settlements, reasonable costs and reasonable attorneys' fees awarded therein. Contractor shall have no liability for and no obligation to indemnify against IP Claims or any portion thereof if such infringement arises out of or results from any of the following: (a) any illegal or unauthorized use of the Service; (b) modifications; (c)

any instruction, information, design or other materials furnished by or on behalf of Purchaser; (d) Purchaser's continuance of an allegedly infringing activity after being notified thereof; (e) any negligent or willful act or omission by or attributable to Purchaser; and (f) the combination of Services with services and/or equipment not provided or owned directly by Contractor. If a temporary or permanent injunction issues as the result of an IP Claim that would limit Contractor's performance under this Contract, Contractor may, at its option and to the extent necessary: (a) procure for Purchaser the right to continue using the Services; (b) modify or replace the Services so it becomes non-infringing and performs in a substantially similar manner; or (c) discontinue the Services to the infringing Lines. The terms of this section shall constitute Purchaser's sole and exclusive right and remedy against Contractor and Contractor's sole obligation to Purchaser with respect to any actual or alleged intellectual property infringement.

g. Personal liability

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the State of Washington when executing their official duties in good faith, be in any way personally liable or responsible for any agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this agreement

6.22 Insurance

The following are general insurance provisions for the State of Washington. Additional requirements specific to a good/service may be detailed elsewhere in a solicitation or its appendices.

a. General requirements

Contractor shall, at its own expense, obtain and keep in force insurance as follows until completion of the contract. Upon request, Contractor shall furnish evidence in the form of a certificate of insurance satisfactory to the State of Washington that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, will result in contract cancellation.

Contractor shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.

b. Specific requirements

Employer's Liability (Stop Gap): The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable and will maintain Employers Liability insurance with a limit of no less than \$1,000,000.00. The State of Washington will not be held responsible in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

Commercial General Liability Insurance: The Contractor shall at all times during the term of this contract, carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of services provided under this contract. This insurance

shall cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or servants.

The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising out of the Contractor's premises/operations, independent Contractors, products/completed operations, personal injury and advertising injury, and contractual liability (including the tort liability of another assumed in a business contract), and contain separation of insured's (cross liability) conditions.

Contractor waives all rights against the State of Washington for the recovery of damages to the extent they are covered by general liability or umbrella insurance.

The limits of liability insurance shall not be less than as follows:

| | |
|---|-------------|
| General aggregate limits (other than products-completed operations) | \$2,000,000 |
| Products-completed operations aggregate | \$2,000,000 |
| Personal and advertising injury aggregate | \$1,000,000 |
| Each occurrence (applies to all of the above) | \$1,000,000 |
| Fire damage limit (per occurrence) | \$50,000 |
| Medical expense limit (any one person) | \$5,000 |

c. Business Auto Policy (BAP)

In the event that services delivered pursuant to this contract involve the use of vehicles, or the transportation of clients, automobile liability insurance shall be required. The coverage provided shall protect against claims for bodily injury, including illness, disease, and death; and property damage caused by an occurrence arising out of or in consequence of the performance of this service by the Contractor, subcontractor, or anyone employed by either.

Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a combined single limit not less than \$1,000,000 per occurrence. The business auto liability shall include Hired and Non-Owned coverage.

Contractor waives all rights against the State of Washington for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

d. Additional insurance provisions

All above insurance policies shall include, but not be limited to, the following provisions:

Additional insured:

The State of Washington and all authorized purchasers shall be named as an additional insured on all general liability, and automobile liability insurance policies. All policies shall be primary over any other valid and collectable insurance.

Notice of policy cancellation/Non-renewal:

For insurers subject to [Chapter 48.18 RCW](#) (admitted and regulated by the Washington State Insurance Commissioner) a written notice shall be given to the director of purchasing or designee 45 calendar days prior to cancellation or any material change to the policy as it relates to this contract. Written notice shall include the affected contract reference number.

e. Surplus lines

For insurers subject to [Chapter 48.15 RCW](#) (Surplus Lines) a written notice shall be given to the director of purchasing or designee 20 calendar days prior to cancellation or any material change to the policy(ies) as it relates to this contract. Written notice shall include the affected contract reference number.

Cancellation for non-payment of premium:

If cancellation on any policy is due to non-payment of premium, a written notice shall be given the director of purchasing or designee ten (10) calendar days prior to cancellation. Written notice shall include the affected contract reference number.

Identification:

Certificates of insurance shall include the affected contract reference number.

f. Insurance carrier rating

The insurance required above shall be issued by an insurance company authorized to do business within the State of Washington. Insurance is to be placed with a carrier that has a rating of A- Class VII or better in the most recently published edition of Best's Reports. Any exception must be reviewed and approved by the Risk Manager for the State of Washington, by submitting a copy of the contract and evidence of insurance before contract commencement. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with [Chapter 48.15 RCW](#) and [Chapter 284-15 WAC](#).

g. Excess coverage

The limits of all insurance required to be provided by the Contractor shall be no less than the minimum amounts specified. However, coverage in the amounts of these minimum limits shall not be construed to relieve the Contractor from liability in excess of such limits.

h. Limit adjustments

The state reserves the right to increase or decrease limits as appropriate.

6.23 Industrial Insurance Coverage

The Contractor shall comply with the provisions of [Title 51 RCW](#) Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, DES may terminate this contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from the Contractor.

6.24 Nondiscrimination

During the performance of this contract, the Contractor shall comply with all applicable federal and state nondiscrimination laws, regulations and policies, including, but not limited to, Title VII of the Civil Rights

Act, 42 U.S.C. section 12101 et. seq.; the Americans with Disabilities Act (ADA); and, Chapter 49.60 RCW, Discrimination – Human Rights Commission.

6.25 OSHA and WISHA requirements

Contractor agrees to comply with conditions of the federal Occupational Safety and Health Administration (OSHA) and, if manufactured or stored in the State of Washington, the Washington Industrial Safety and Health Act (WISHA) and the standards and regulations issued thereunder, and certifies that all items furnished and purchased will conform to and comply with said laws, standards and regulations. Contractor further agrees to indemnify and hold harmless DES and purchaser from all damages assessed against purchaser as a result of Contractor's failure to comply with those laws, standards and regulations, and for the failure of the items furnished under the contract to so comply.

6.26 Antitrust

The state maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, the Contractor hereby assigns to the State of Washington any and all of the Contractor's claims for such price fixing or overcharges which arise under federal or state antitrust laws, directly relating to the materials, supplies, services and/or equipment purchased under this contract.

6.27 Waiver

Failure or delay of DES or purchaser or Contractor to insist upon the strict performance of any term or condition of the contract or to exercise any right or remedy provided in the contract or by law; or DES's or purchaser's acceptance of or payment for materials, supplies, services and/or equipment, shall not release the party from whom performance is sought from any responsibilities or obligations imposed by this contract or by law, and shall not be deemed a waiver of any right of the party seeking performance to insist upon the strict performance of the entire agreement by the party from whom performance is sought. In the event of any claim for breach of contract, no provision of this contract shall be construed, expressly or by implication, as a waiver by the party seeking performance of any existing or future right and/or remedy available by law.

6.28 Disputes and remedies

a. Problem resolution and disputes

Problems arising out of the performance of this contract shall be resolved in a timely manner at the lowest possible level with authority to resolve such problem. If a problem persists and cannot be resolved, it may be escalated within each organization.

In the event a bona fide dispute concerning a question of fact arises between DES or the purchaser and Contractor and it cannot be resolved between the parties through the normal escalation processes, either party may initiate the dispute resolution procedure provided herein.

The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three business days. The initiating party shall have three business days to review the bid. If after this review a resolution cannot be reached, both parties shall have three business days to negotiate in good faith to resolve the dispute.

If the dispute cannot be resolved after three business days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three business days of

receiving the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three business days.

The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.

Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

Both parties agree to be bound by the determination of the Dispute Resolution Panel.

Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible.

DES, the purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this contract that are not affected by the dispute.

If the subject of the dispute is the amount due and payable by purchaser for materials, supplies, services and/or equipment being provided by Contractor, Contractor shall continue providing materials, supplies, services and/or equipment pending resolution of the dispute provided purchaser pays Contractor the amount purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

b. Administrative suspension

When it is in the best interest of the state, DES may at any time, and without cause, suspend the contract or any portion thereof for a period of not more than 30 calendar days per event by written notice from DES to the Contractor's Representative. Contractor shall resume performance on the next business day following the 30th day of suspension unless an earlier resumption date is specified in the notice of suspension. If no resumption date was specified in the notice of suspension, the Contractor can be demanded and required to resume performance within the 30-day suspension period by DES providing the Contractor's Representative with written notice of such demand.

c. Force majeure

The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of war, riots, strikes, fire, floods, windstorms, epidemics or other similar occurrences.

Exceptions: Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this contract if, and to the extent that, such party's performance of this contract is prevented by reason of force majeure.

Notification: If either party is delayed by force majeure, said party shall provide written notification within 48 hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the Rights Reserved below, the time of completion shall be extended by contract amendment for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this contract.

Rights reserved: DES reserves the right to authorize an amendment to this contract (which will be binding upon Contractor only upon written acceptance), terminate the contract, and/or purchase materials, supplies, equipment and/or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the state.

d. Alternative dispute resolution fees and costs

In the event that the parties agree to engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, at such time the parties shall discuss if they wish to shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

e. Non-exclusive remedies

The remedies provided for in this contract shall not be exclusive but are in addition to all other remedies available under law.

6.29 Damages

a. Limitation of liability

The parties agree that neither Contractor, DES nor purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this contract. This section does not modify any sections or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled Termination for Default and Retention of Records are not consequential, incidental, indirect, or special damages as that term is used in this section.

The Contractor, DES and purchaser are not liable for damages arising from causes beyond their reasonable control and without their fault or negligence. Such causes may include, but are not restricted to, acts of the public enemy, acts of a governmental body other than DES or the purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Contractor, DES or the purchaser, or their respective subcontractors.

If delays are caused by a subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.

Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

b. Federal funding

In the event that a federally funded acquisition results from this procurement, the Contractor may be required to provide additional information (free of charge) at the request of DES or purchaser. Further, the Contractor may be subject to those federal requirements specific to the commodity.

c. Federal restrictions on lobbying

Contractor certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

d. Federal debarment and suspension

The Contractor certifies, that neither it nor its "principals" (as defined in 49 CFR. 29.105 (p)) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

6.30 Contract termination

a. Material breach

A Contractor may be terminated for cause by DES, at the sole discretion of DES, for failing to perform a contractual requirement or for a material breach of any term or condition. Material breach of a term or condition of the contract may include but is not limited to:

- Contractor failure to perform services or deliver materials, supplies, or equipment by the date required or by an alternate date as mutually agreed in a written amendment to the contract;
- Contractor failure to carry out any warranty or fails to perform or comply with any mandatory provision of the contract;
- Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;
- Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors that endangers the Contractor's proper performance hereunder;
- Appointment of any receiver, trustee, or similar official for Contractor or any of the Contractor's property and such appointment endangers the Contractor's proper performance hereunder;
- A determination that the Contractor is in violation of federal, state, or local laws or regulations and that such determination renders the Contractor unable to perform any aspect of the contract.

b. Opportunity to cure

In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, DES may issue a written cure notice. The Contractor may have a period of time in which to cure. DES is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as determined solely within the discretion of DES. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, or otherwise affect any other remedies available against Contractor under the contract or by law.

If the breach remains after Contractor has been provided the opportunity to cure, DES may do any one or more of the following:

- Exercise any remedy provided by law;
- Terminate this contract and any related contracts or portions thereof;
- Procure replacements and impose damages as set forth elsewhere in this contract;
- Suspend or bar Contractor from receiving future solicitations or other opportunities;
- Request contract damages.

c. Termination for cause

In the event DES, in its sole discretion, determines that the Contractor has failed to comply with the conditions of this contract in a timely manner or is in material breach, DES has the right to suspend or terminate this contract, in part or in whole. DES shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days or as otherwise specified by DES, or if such corrective action is deemed by DES to be insufficient, the contract may be terminated. DES reserves the right to suspend all or part of the contract, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the Contractor or a decision by DES to terminate the contract.

In the event of termination, DES shall have the right to procure for all purchasers any replacement materials, supplies, services and/or equipment that are the subject of this contract on the open market. In addition, the Contractor shall be liable for damages as authorized by law as may awarded under the dispute resolution procedures provided for under this contract.

If it is determined that: (1) the Contractor was not in material breach; or (2) failure to perform was outside of Contractor's or its subcontractor's control, fault or negligence, the termination shall be deemed to be a "termination for convenience." The rights and remedies of DES and/or the purchaser provided in this contract are not exclusive and are in addition to any other rights and remedies provided by law.

d. Termination for convenience

Except as otherwise provided in this contract, DES, at the sole discretion of DES, may terminate this contract, in whole or in part by giving 30 calendar days or other appropriate time period written notice beginning on the second day after mailing to the Contractor. If this contract is so terminated, purchasers shall be liable only for payment required under this contract for properly authorized services rendered, or materials, supplies and/or equipment delivered to and accepted by the purchaser prior to the effective date of contract termination. Neither DES nor the purchaser shall have any other obligation whatsoever to the Contractor for such termination. This Termination for Convenience clause may be invoked by DES when it is in the best interest of the State of Washington.

e. Termination for withdrawal of authority

In the event that DES and/or purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this contract and prior to normal completion, DES may terminate this contract, in whole or in part, by seven calendar days written notice, or other appropriate time period, to Contractor.

f. Termination for non-allocation of funds

If funds are not allocated to purchaser(s) to continue this contract in any future period, DES may terminate this contract with seven calendar days written notice, or other appropriate time period, to Contractor, or work with Contractor to arrive at a mutually acceptable resolution of the situation. Purchaser will not be obligated to pay any further charges for materials, supplies, services and/or equipment including the net remainder of agreed-to consecutive periodic payments remaining unpaid beyond the end of the then-current period. DES and/or purchaser agree to notify Contractor in writing of such non-allocation at the earliest possible time.

No penalty shall accrue to the purchaser in the event this section shall be exercised. This section shall not be construed to permit DES to terminate this contract in order to acquire similar materials, supplies, services and/or equipment from a third party.

g. Termination for conflict of interest

DES may terminate this contract by written notice to Contractor if it is determined, after due notice and examination, that any party to this contract has violated Chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this contract is so terminated, DES and/or purchaser shall be entitled to pursue the same remedies against Contractor as it could pursue in the event that the Contractor breaches this contract.

h. Termination by mutual agreement

DES and the Contractor may terminate this contract in whole or in part, at any time, by mutual agreement.

i. Termination procedure

In addition to the procedures set forth below, if DES terminates this contract, Contractor shall reasonably cooperate with DES in concluding this contract.

Upon termination of this contract and in addition to any other rights provided in this contract, DES may require the Contractor to deliver to the purchaser any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The purchaser shall pay to the Contractor the agreed upon price, if separately stated, for completed work and service(s) Accepted by the purchaser, and the amount agreed upon by the Contractor and the purchaser for (i) completed materials, supplies, services rendered and/or equipment for which no separate price is stated, (ii) partially completed materials, supplies, services rendered and/or equipment, (iii) other materials, supplies, services rendered and/or equipment which are Accepted by the purchaser, and (iv) the protection and preservation of property, unless the termination is for cause, in which case DES and the purchaser shall determine the extent of the liability of the purchaser. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The purchaser may withhold from any amounts due the Contractor such sum as DES and purchaser determine to be necessary to protect the purchaser against potential loss or liability.

The rights and remedies of DES and/or the purchaser provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a termination notice, and except as otherwise expressly directed in writing by DES, the Contractor shall:

- Stop all work, order fulfillment, shipments, and deliveries under the contract on the date, and to the extent specified, in the notice;
- Place no further orders or subcontracts for materials, services, supplies, equipment and/or facilities in relation to the contract except as is necessary to complete or fulfill such portion of the contract that is not terminated;
- Complete or fulfill such portion of the contract that is not terminated in compliance with all contractual requirements;
- Transfer title to the purchaser and deliver in the manner, at the times, and to the extent directed by DES on behalf of the purchaser any property which, if the contract had been completed, would have been required to be furnished to the purchaser, provided payment is properly made for such property;
- Take such action as may be necessary, or as DES and/or the purchaser may direct which is agreed to by Contractor in writing, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which DES and/or the purchaser has or may acquire an interest.

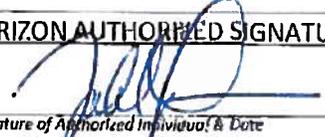
APPENDICES

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| APPENDIX A: PRODUCTS AND PRICING |  Plan Pricing |
| APPENDIX B: BIDDER PROFILE |  Verizon Bidder Profile |
| VERIZON EQUIPMENT PRICING MATRIX (SUBJECT TO CHANGE) |  Verizon Equipment Pricing |
| SUPPLIER DIVERSITY PLAN |  Verizon Diveristy Plan |

CONTRACT SIGNATURE PAGE

Authorized Signatory below has authority to bind and acknowledges having read and understood the entire Contract and agrees to comply with and fulfill the terms and conditions of this Contract.

Effective the 17th day of October, 2014, a contract is hereby entered into between Washington State Department of Enterprise Services (DES) and Verizon.

| | |
|---|--|
| VERIZON AUTHORIZED SIGNATURE | |
|  | 11/12/14 |
| <i>Signature of Authorized Individual & Date</i> | |
| Todd Loccisano | |
| <i>Typed or Printed Name</i> | |
| Executive Director | |
| Enterprise and Government Contracts | |
| <i>Title</i> | |
| VERIZON'S LEGAL NOTICE | |
| Company Name: | <u>Cellco Partnership d/b/a Verizon Wireless</u> |
| Address: | <u>15505 Sand Canyon Ave Building C Irvine, CA 92618</u> |
| Contact: | <u>Jill Kalliomaa</u> |
| Title: | <u>Area Counsel</u> |
| Phone: | <u>949-286-7178</u> |
| Fax: | <u>949-286-7010</u> |
| Email: | <u>Jill.Kalliomaa@VZW.com</u> |

| | |
|--|--------------------------------|
| DES AUTHORIZED SIGNATURES | |
|  | 11/12/14 |
| <i>Procurement Coordinator Signature & Date</i> | |
| Neva Peckham, Contracts Specialist | |
| <i>Typed or Printed Name</i> | |
|  | 11/12/14 |
| <i>Manager Signature & Date (if applicable)</i> | |
| Becci Riley, Acting IT Contracts Manager | |
| <i>Typed or Printed Name</i> | |
| DES LEGAL NOTICE | |
| WA State DES Contracts & Legal Services Division Master Contracts & Consulting Unit 1500 Jefferson St. SE Olympia, WA 98501 | |
| Contact: | Neva Peckham |
| Title: | Contracts Specialist |
| Phone: | 360-407-9411 |
| Fax: | 360-586-2426 |
| Email: | <u>neva.peckham@des.wa.gov</u> |

