

7. d. Amend Contract/Award – Technology Equipment and Peripherals

Rationale

On December 17, 2019, the Board of Education (Board) awarded Bid No. 19/20-01 IT Technology Equipment and Peripherals to CDW Government, LLC (CDWG). Bid No. 19/20-01 IT Technology Equipment and Peripherals was a unit-cost bid that included equipment and services the Irvine Unified School District (District) anticipated were necessary to meet the District's technology needs.

The initial term of the contract was January 1, 2020 through December 31, 2021 with the option to extend for three (3) additional one (1) year terms, for a maximum term of five (5) years, in accordance with provisions contained in Education Code section 17596.

Section 19.C of Bid No. 19/20-01 IT Technology Equipment and Peripherals allows the successful Bidder to "delete Equipment removed from the market by the manufacturer and/or add Equipment introduced to the market by the manufacturer under the following conditions: a. Deleted Equipment has been discontinued and are no longer available from the manufacturer; b. Added Equipment is a direct replacement for original Equipment listed in the bid, Contractor's bid, the resulting Agreement and/or any Purchase Agreements." On January 19, 2021, the Board approved an amendment to the contract to incorporate additional and substituted products. On February 16, 2021, the Board approved a second amendment to the contract to incorporate additional and substituted products.

The Bid Form Pricing Sheet submitted by CDWG allows for a catalog discount of software purchases. The District desires to purchase hosted software that involves cloud services.

IUSD/Fogarty/Ford/Bennett
Board Agenda
June 8, 2021

Financial Impact

Project will remain within approved budgets.

Recommended Motion

Authorize the Assistant Superintendent of Business Services to amend the contract for Technology Equipment and Peripherals, resulting from Bid No. 19/20-01 IT, to include additional terms related to cloud services.

Quick Summary / Abstract

Authorize the Assistant Superintendent of Business Services to amend the contract for Technology Equipment and Peripherals, resulting from Bid No. 19/20-01 IT, to include additional terms related to cloud services.

Amendment No. 3
To the Agreement awarded pursuant to Bid No. 19/20-011T Technology Equipment and Peripherals
Dated as of June 9, 2021 (the “Agreement”)
Between CDW Government LLC (“CDWG”, “Consultant”, or “Provider”, or “Contractor”)
And Irvine Unified School District (“Customer” or “IUSD”)

The terms and conditions of this Amendment 3 shall be incorporated into the Agreement and supersedes any Agreement to the extent expressly provided herein. Each capitalized term used herein and not otherwise defined shall have the same meaning attributed to it in the Agreement.

The terms and conditions of the Agreement are hereby modified:

Exhibit A – Provisions Applicable To Cloud Services

A new **Exhibit A** is hereby added as follows:

EXHIBIT A
PROVISIONS APPLICABLE TO CLOUD SERVICES

1. IUSD acknowledges that it is receiving the Cloud Services directly from the applicable provider (“Cloud Service Provider”) pursuant to the Cloud Service Provider’s standard terms and conditions, or such other terms as agreed upon by IUSD and the Cloud Service Provider (“Cloud Services Terms and Conditions”). Accordingly, the Cloud Service Provider shall be the party responsible for providing (to include Provisioning and Implementation) the Cloud Services to the IUSD and IUSD will look solely to the Cloud Service Provider for any loss, claims or damages arising from or related to the provision of such Cloud Services.
2. IUSD acknowledges that Contractor is not the provider of the Cloud Services purchased by IUSD hereunder and the only warranties offered are those of the Cloud Service Provider, not Contractor or its Affiliates. In purchasing the Cloud Services, IUSD relies on the Cloud Service Provider’s service descriptions and the terms and conditions set forth in the Cloud Services Terms and Conditions only and not on any statements, specifications, service descriptions or other specifications representing the Cloud Services that may be provided by Contractor or its Affiliates. IUSD expressly waives any claim that it may have against Contractor or its Affiliates based on any product liability or infringement or alleged infringement of any patent, copyright, trade secret or other intellectual property rights with respect to the Cloud Services and also waives any right to indemnification from Contractor or its Affiliates against any such claim made against IUSD by a third party.
3. Contractor makes no warranties to IUSD and IUSD hereby acknowledges that Contractor makes no warranties in regard to the applicability of all laws affecting, without limitation the manufacture, performance, sale, packaging and labelling of the Cloud Services which are in force within IUSD’s territory or any part of it (“Local Regulations”). IUSD must satisfy itself that the Cloud Services comply with the Local Regulations in force from time to time.
4. IUSD further acknowledges and agrees that Contractor makes no representations, warranties or assurances that the Cloud Services are designed for or suitable for use in any high risk environment including but not limited to aircraft or automobile safety devices or navigation, life support systems or medical devices, nuclear facilities, or weapon systems, and IUSD shall indemnify, defend and hold Contractor, its Affiliates, and its and their directors, officers, employees and agents harmless from any loss (of any kind), cost, damage or expense (including, but not limited to, attorneys’ fees and expenses) arising from any such use of the Cloud Services. IUSD further agrees to review and comply with the Cloud Service Provider’s disclaimers and restrictions, if any, regarding the use of the Cloud Services. in high risk environments.

5. IUSD will pay all undisputed Fees (as defined herein) for the use of the Cloud Services and the Implementation Services as set forth in Contractor's invoice, within 30 days after the date of the invoice, or in accordance with such other payment terms that may have been negotiated in writing between IUSD and Contractor. In addition to the Service Fee for the Cloud Services and the Implementation Services, IUSD will also be responsible for all additional fees for any subscription renewals and extensions, metered usage components consumed by IUSD, and other subscriptions, features, products, services, or add-ons that IUSD uses within the Cloud Services as agreed upon in writing. Contractor will invoice IUSD in advance for the annually, monthly or prepaid charges due for the Cloud Services purchased. Contractor will invoice IUSD on a one-time basis, in advance for the Implementation Services. Contractor will invoice IUSD in arrears for any metered usage or overage components (e.g., capacity overages, third party content, etc.). The Service Fee for the Cloud Services and the Implementation Services and all additional fees due hereunder are collectively referred to as "Fees".
6. Any orders submitted by IUSD to Contractor for Cloud Services (and any associated Implementation Services) will be governed by the terms and conditions of this Amendment 3. All order(s) must include the name of the applicable Cloud Service, any associated Implementation Services, the licensed user Quantity and the length of the initial term (e.g., 1, 2, or 3 years). The Initial Subscription Term for any add-on order(s) will commence on the date listed in the Quote or Statement of Work.
7. The Cloud Services purchased under this Agreement are non-cancellable and all Fees paid to Contractor are non-refundable.
8. In addition to any other rights Contractor may have, Contractor may suspend or terminate the Cloud Services if IUSD fails to pay any Fees within the time period for payment. Contractor shall reinstate Cloud Services after such time payment is brought current.


Except as modified herein, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment 3 to be executed by their authorized representatives as June 9, 2021.

***Digital Signature Not Accepted**

CDW Government LLC
 By: 
 (Authorized Signature)

 Dario J. Bertocchi
 Printed Name
 Title: Director, Program Sales
 Date: May 25, 2021

Irvine Unified School District
 By: 
 (Authorized Signature)

 John Fogarty
 Printed Name
 Title: ASST Supt BUSINESS SERVICES
 Date: June 23, 2021
 IUSD Board Approved: June 8, 2021