Washington State Department of
Enterprise Services
Contracts and Legal Services

Contract number – 10314

Contract 10314 Microsoft Surface Pros (MN CVP)

Date Issued: 12/3/14
Effective Date: Upon DES Signature
Contractor Name: Microsoft #10314

This Contract (#10314) (the "Agreement") is issued under the Revised Code of Washington (RCW) 39.26 et. seq. between the Washington State Department of Enterprise Services ("DES") and Microsoft Corporation ("Microsoft") and (collectively "the Parties").

Purpose of Agreement
The Parties wish to enter into an Agreement upon the terms and conditions set forth below. Except as set forth herein, it is the Parties' intent to be bound by the terms and conditions of the agreement between Microsoft and the Minnesota Cooperative Purchasing Venture (MN CPV) under contract C-1084(5) which is attached hereto and incorporated herein by this reference. All rights and obligations of the Parties are set forth by the terms of the MN CPV #C-1084(5) contract ("CPV Contract"), except as described below. For purposes of clarity, Microsoft shall be considered the "Contract Vendor" under the CPV Contract and DES shall be considered "the State".

1. TERM & SURVIVORSHIP:
The initial term of the Agreement begins upon DES final signature below and ends June 1, 2015 unless extended by mutual agreement between the Parties. Should the CPV Contract terminate or expire prior to the end of this Agreement, this Agreement shall nonetheless survive until it expires or is terminated. If the CPV Contract terminates or expires prior to June 1, 2015, this Agreement may not be extended beyond said date.

2. AUTHORIZED PURCHASERS AND CONTRACTOR'S DUTY TO VERIFY:
Washington's state-level governmental agencies, consisting of agencies, commissions, state institutions of higher education, etc., ARE REQUIRED to use MCC master contracts (#10314 contract for Microsoft Surface Pros and accessories). Non state-level governmental entities, cities, counties, ports, school districts, water districts, etc., MAY use this Agreement if they are a Master Contracts User Agreement (MCUA) member. For any purchase appearing to be from any form of Washington governmental entity, Microsoft shall verify that the governmental entity is authorized to purchase devices from Microsoft using this Agreement by searching the MCUA membership list below (see link). When in doubt Microsoft shall contact the Washington DES Contract administrator for guidance (see signature page below). If Microsoft determines that the governmental entity is not authorized to purchase using this Agreement, it will not sell to such entity unless and until a new agreement with that entity is in place.

This Agreement 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.

Should other Washington state entities use this Agreement for their purchases, DES accepts no responsibility for orders or payment by Washington State Purchasing Cooperative members. Each such entity shall be solely responsible for its performance of its obligations under this Agreement should it elect to utilize same.

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

3. PRICING:

The pricing for all devices or services purchased under this Agreement shall not exceed the current pricing for devices and services under the current CVP Contract plus the current Washington Management Fee. *See* Management Fee (Washington #10314 Purchases) section below. Regardless of the pricing under the CVP Contract, Microsoft may charge DES a lower price than reflected therein or provide any other available discount to DES in its sole discretion. The pricing available to DES under this Agreement shall remain available only until the CVP Contract expires or is terminated. In the event the CVP Contract expires or terminates, the Parties will negotiate new prices irrespective of any prices available to any other public entity prior to completing any additional sales.

The current MN CPV pricing is attached and/or embedded as a PDF document immediately below.

4. CONTRACT USAGE REPORT (REPORTING SALES FOR WASHINGTON #10314 PURCHASERS)

The management fee will be based on total #10314 contract usage (sales), which must be reported quarterly by Microsoft in the Contract Sales Reporting System. DES will provide a login password and a vendor number.

For each report, Microsoft 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.

5. MANAGEMENT FEE (WASHINGTON #10314 PURCHASES)

Microsoft will pay a management fee of 0.74 percent to DES on all state contract sales. The management fee must be rolled into Microsoft's current pricing, and not shown as a separate line item on an invoice.

DES may, at its sole discretion, increase, decrease, or eliminate the Management Fee upon thirty (30) days written notice to Microsoft. For purposes of the management fee, the parties agree that the initial management fee was included in the pricing. Therefore, any increase or decrease of the Management Fee, shall be reflected in contract pricing commensurate with the adjustment.

Microsoft will provide DES with a Usage report detailing all Net Collected Amounts for the preceding quarter according to the table listed below, in accordance with the Contract Usage Report (Reporting Sales for Washington #10314 Purchasers) Report section of the contract. DES will send an invoice each

quarter, based on such report within 30 days after receipt. Payment of the DES Management Fee is due one month following Microsoft's receipt of the invoice from DES. See Usage, Invoice, and Remittance Table below.

Taxability (if applicable): In 2013, the WA Department of Revenue announced that if the underlying transaction requires sales tax then the DES Management Fee portion of the transaction is also subject to a sales tax. However, when the DES Management Fee that is held in trust by Microsoft is remitted to DES, it is not taxed a second time.

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 DES Management Fees have been paid. Failure to accurately report Usage, to submit a timely Usage report, or remit timely payment of the DES Management Fee may be cause for contract termination, the charging of interest or penalties, or the exercise of other remedies provided by law.

DES Management Fee payment from Microsoft to DES must reference the Contract number, work request number (if applicable), the name of the contractor as known to DES, the year and quarter for which the DES Management Fee is being remitted, **and the DES invoice number**.

All payments must be sent to:

Washington State Dept. Enterprise Services
Finance Department
1500 Jefferson
P. O. Box 41460
Olympia, WA 98501

Usage, Invoice, and Remittance Table			
Quarter Ends	Usage Report due from Contractor within one month following the end of the quarter	DES invoices the Contractor within one month following Usage reporting	Contractor remits the Management Fee to DES within one month following DES invoice.
March 31st	April 30th	May 31st	June 30th
June 30th	July 31st	August31st	September 30th
September 30th	October 31st	November 30th	December 31st
December 31st	January 31st	February 28	March 31st

6. WASHINGTON STATEWIDE PAYEE DESK REGISTRATION

Contractors must register with the Statewide Payee Desk, maintained by DES, in order to be paid for contract sales from Washington agencies. Washington state agencies cannot make payments to a contractor until it is registered. Registration materials are available here: Receiving Payment from the State.

7. CONTRACT MODIFICATIONS

The Parties may modify this Agreement (including but not limited to adding or deleting products, services, or delivery locations) by mutual agreement, so long as such modification is substantially within the scope of the CPV 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.

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

8. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this contract, DES may terminate this contract at its sole discretion, in whole or in part by giving 30 calendar days written notice beginning on the second day after mailing to Microsoft. If this Agreement is so terminated, purchasers shall be liable only for payment required under this Agreement 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 Party shall have any other obligation whatsoever to the other after such termination. This Termination for Convenience clause may be invoked by DES when it is in the best interest of the State of Washington.

9. INCORPORATED DOCUMENTS AND ORDER OF PRECEDENCE

The documents listed below are, by this reference, incorporated into contract #10314. No other statements or representations, written or oral, are a part of the contract.

a. The Minnesota Cooperative Purchasing Venture #1084(5) contract including its subsequent amendments

b. The State of Washington #10314 contract including its subsequent amendments

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. Washington #10314 contract.
c. Minnesota #1084(5) contract.

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.

Authorizing Signatures

For Contractor:

Todd Minor,
Microsoft Corporation
(425) 421-0494
One Microsoft Way
Redmond, WA 98052
toddmin@microsoft.com

Signature Todd Minor

Date December 17, 2014

For State of Washington:

CONTRACT ADMINISTRATOR

Momi Friedlander,
DES Master Contracts and Consulting (MCC)
(360) 407-8505
PO Box 41411
Olympia WA 98504-1411
momi.friedlander@des.wa.gov

Signature Momi C Friedlander

Date 12/18/2014

MCC Authorizing Manager:

Signature/Date Michael Maurich

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