



Oregon

Kate Brown, Governor

Department of Administrative Services

Procurement Services
1225 Ferry Street SE
Salem, OR 97301-3972

August 16, 2016

To: Kelly Mix,
Procurement Services Manager

From: Kaliska King, CPPB, OPBC,
Procurement Analyst

Re: Southwest airlines: Reinstatement of Expired Participating Addendum#3389 and Retroactive Amendment Request

Kelly,

Pursuant to Oregon Administrative Rule 125-246-0570, Reinstatement of Expired Contract, I request approval of the attached retroactive Contract Amendment Request, based upon the findings identified therein.

A. Background

State of Oregon acting by and through its Department of Administrative Services, Enterprise Goods and Services Division, Procurement Services ("State" or "DAS PS"), and Southwest Airlines ("Contractor") entered into Participating Addendum #3389 for Discounted Air Fares by State, State Agencies, and ORCPP members.

Amendment No. 2 was drafted to extend Participating Addendum No. 3389 for another term, update Exhibit A and reflect the name change for the Primary Contact for the Lead State. This Amendment is currently with the Contractor for signature.

B. Reason for Retroactive Contract Amendment

To extend the term of Participating Addendum No. 3389 through January 31, 2017, and reflect name and date changes. This PA expired April 30, 2016 and needs to be reinstated to reflect, the same expire date as the Master Agreement #2624.

C. Recommendation:

The term of the reinstated Contract will be retroactive from April 30, 2016 and expiring January 31, 2017.

Attached for your review are:

1. The proposed retroactive Contract Amendment #2 that is currently with the Contractor for signature.

This request for retroactive action is in the best interest of the State and the Agency. I recommend approval based on the findings of fact and conclusions of law, which substantially support the request for retroactive Contract Amendment in accordance with Oregon Administrative Rule.

Approval

Whereas DAS PS had authority to enter into the Contract; and

Whereas the Department of Justice granted legal sufficiency approval of the initial contract; and

Whereas a critical need exists to reinstate the contract and authorize the contractor to immediately resume work under the terms and conditions originally approved contract (as amended); and

Whereas the Chief Procurement Officer or designee of the Dept of Administrative Services or designee has authority to approve requests for retroactive actions; now

Therefore Chief Procurement Officer or designee of the Dept of Administrative Services hereby approves this Request in accordance with OAR 125-246-0570.

By:  Date: 8/16/16
Kelly Mix, Procurement Services Manager
Dept of Administrative Services, Procurement Services

Oregon Administrative Rule 125-246-0570

Reinstatement of Expired Contract; Retroactive Approval of Existing Contract

(1) Application. This Rule applies to the reinstatement of expired or terminated Contracts (expired Contracts) and the retroactive approval of existing Contracts procured by Authorized Agencies for Supplies and Services and for Architectural, Engineering and Land Surveying Services or Related Services ("Contracts"). This Rule does not apply to mistakes that may occur in the solicitation process (see OAR 125-247-0470).

(2) Requirements to Reinstate an Expired Contract.

(a) Before expiration, the Contract was properly signed by all parties;

(b) Then the signed Contract expired;

(c) The Agency reinstates the Contract:

(A) To fulfill its term, up to the maximum time period provided in the Contract; or

(B) To complete one or more deliverable(s) included within the Contract's Scope at the time of its expiration;

(d) The Agency documents in the Procurement File the deliverable(s) to be completed at the time of the expired Contract's reinstatement; and

(e) If the Contractor has performed work under the Contract, the reinstatement does not apply to payments made for work performed between the expiration of the Contract and the date of any reinstatement.

(3) Requirements to Retroactively Approve an Existing Contract.

(a) The Contract exists and has not expired;

(b) The Contract was signed by all parties except that the required approval of the DPO or CPO was lacking;

(c) If the Contractor has performed work under the Contract, the retroactive approval does not apply to payments made for work performed between the start of the Contract and the date of any retroactive approval.

(4) Process. For either a reinstatement of an expired Contract or retroactive approval of an existing Contract, the requesting Agency must meet the following conditions:

(a) The Agency must submit a Written request to the Agency's Designated Procurement Officer (DPO) if the Agency is authorized under OAR 125-246-0170, or if not, to the Chief Procurement Officer (CPO) with authority under OAR 125-246-0170 (Request). If the Request is submitted to the DPO, the Agency must also follow its internal procedures.

(b) The Request must explain the following:

(A) The proposed reinstatement of the expired Contract or retroactive approval of the existing Contract.

(B) The background facts that led to the Request;

(C) The good faith basis for making the Request;

(D) The need for reinstatement of an expired Contract or retroactive approval of an existing Contract due to unforeseen or unavoidable conditions;

(E) The steps to prevent a reoccurrence. For examples:

(i) Improvement of Agency's internal policies and procedures; and

(ii) Provision of new training or retraining; and

(F) Acknowledgement that the Request is in the best interest of the Agency.

(c) Obtain all other approvals required for the Contract, including but not limited to: Attorney General's approval of legal sufficiency under ORS 291.047 or ratification under ORS 291.049. The Authorized Agency must obtain all other approvals required for the Contract before any reinstatement, extension of time under Subsection (6), or retroactive approval becomes binding.

(d) The DPO or CPO, as described in Subsection (3)(a), must approve the Request.

(5) Effect of Approval.

(a) An approved reinstatement of an expired Contract makes the Contract in full force and effect, as if it had not expired.

(b) An approved retroactive approval of an existing Contract makes the Contract in full force and effect, as if it had been approved by the DPO or CPO when the Contract was formed.

(c) The DPO or CPO, as appropriate, may create any related Contract documents to implement the reinstatement or retroactive approval.

(d) The Agency may make an approved payment after any related Contract documents are signed by the necessary parties.

(6) Amendments of a Reinstated Contract.

(a) If the Agency requests reinstatement of an expired Contract, the Request of the Agency may also include a request to amend the reinstated Contract for time only. The DPO or CPO, as appropriate, may approve this Request, including the amendment.

(b) The Agency may amend a reinstated or retroactively approved Contract for purposes other than time in accordance with OAR 125-246-0560.

(7) An Authorized Agency may combine in one document a Reinstatement of a Contract in accordance with this Rule, Retroactive Approvals of that Contract in accordance with OAR 125-246-0575, and its Amendment in accordance with OAR 125-246-0560, as needed.

