

* RUSH *

EXECUTIVE DOCUMENT SUMMARY

State Form 41221 (R10/4-06)



Instructions for completing the EDS and the Contract process.

1. Please read the guidelines on the back of this form.
2. Please type all information.
3. Check all boxes that apply.
4. For amendments / renewals, attach original contract.
5. Attach additional pages if necessary.

Received
MAY 26 2011
IDOA Contracts

5319

7/18

1. EDS Number: D12-1-090	2. Date prepared: 3/21/2011
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3. CONTRACTS & LEASES

<input checked="" type="checkbox"/> Professional/Personal Services	<input type="checkbox"/> Contract for procured Services
<input type="checkbox"/> Grant	<input type="checkbox"/> Maintenance
<input type="checkbox"/> Lease	<input type="checkbox"/> License Agreement
<input type="checkbox"/> Attorney	<input type="checkbox"/> Amendment# _____
<input type="checkbox"/> MOU	<input type="checkbox"/> Renewal # _____
<input type="checkbox"/> QPA	<input type="checkbox"/> Other _____

FISCAL INFORMATION

4. Account Number: 46040-19000.	5. Account Name: DOIT PAYPHONE PROCEEDS
6. Total amount this action: \$0.00	7. New contract total: \$0.00
8. Revenue generated this action: \$22,523,799.36	9. Revenue generated total contract: \$22523799.36
10. New total amount for each fiscal year:	
Year 2012	\$0.00
Year 2013	\$0.00
Year 2014	\$0.00
Year 2015	\$0.00

TIME PERIOD COVERED IN THIS EDS

11. From (month, day, year): 7/1/2011	12. To (month, day, year): 6/30/2015
13. Method of source selection:	
<input type="checkbox"/> Bid/Quotation	<input type="checkbox"/> Emergency
<input checked="" type="checkbox"/> RFP# 10-55	<input type="checkbox"/> Other (specify) _____
<input type="checkbox"/> Negotiated	<input type="checkbox"/> Special Procurement

AGENCY INFORMATION

14. Name of agency: Dept. of Office of Technology Correction	15. Requisition Number:
16. Address: Indiana Office of Technology Attn: Sandy Jones, Procurement 100 N SENATE AVE RM 551 INDIANAPOLIS, IN 46204	

AGENCY CONTACT INFORMATION

17. Name: Aaron Garner	18. Telephone #: 317/232-1757
19. E-mail address: agarner@idoc.in.gov	

COURIER INFORMATION

20. Name: Nicholas Law	21. Telephone #: 317-232-5672
22. E-mail address: Nlaw@doc.in.gov	

VENDOR INFORMATION

23. Vendor ID # 0000050522	24. Name: PUBLIC COMMUNICATION SERVICES	25. Telephone #: 916-624-2979
26. Address: 11859 WILSHIRE BLVD 6TH FLOOR LOS ANGELES, CA 90025		
27. E-mail address: Andrew.Merrill@gtl.net		
28. Is the vendor registered with the Secretary of State? (Out of State Corporations, must be registered) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
29. Primary Vendor: M/WBE	30. If yes, list the %:	
Minority: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Minority: _____ %	
Women: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Women: _____ %	
31. Sub Vendor: M/WBE	32. If yes, list the %:	
Minority: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Minority: 23.4 %	
Women: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Women: 22.9 %	
33. Is there Renewal Language in the document? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	34. Is there a "Termination for Convenience" clause in the document? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

35. Will the attached document involve data processing or telecommunications systems(s)? Yes: IOT or Delegate has signed off on contract

36. Statutory Authority (Cite applicable Indiana or Federal Codes):
IC 11-8-2-5 ET SEQ.

37. Description of work and justification for spending money. (Please give a brief description of the scope of work included in this agreement.)
This is a contract for the provision of offender pay phone service for offenders at all Indiana Department of Correction facilities. The contract is to be at no cost to the State, and be a revenue generating to the State with the commissions paid out of revenue generated by phone calls.

38. Justification of vendor selection and determination of price reasonableness:
The contract was entered into after being duly procured through the State's formal RFP process (10-55) in which competitive bids were solicited. The vendor was selected through this process.

RECEIVED

JUN 03 2011

OAG-ADVISORY

39. If this contract is submitted late, please explain why: (Required if more than 30 days late.)

40. Agency fiscal officer or representative approval <i>[Signature]</i>	41. Date Approved 5-29-11	42. Budget agency approval <i>[Signature]</i>	43. Date Approved 6-2-11
44. Attorney General's Office approval <i>[Signature]</i>	45. Date Approved 6-8-11	46. Agency representative receiving from AG <i>[Signature]</i>	47. Date Approved



PROFESSIONAL SERVICES CONTRACT

EDS# D12-1-090

This Contract, entered into by and between the Indiana Department of Correction (The "State") and Public Communications Services-Indiana, LLC (the "Contractor" or "PCS"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Duties of Contractor

The Contractor shall provide the following services relative to this Contract:

Contractor shall provide correctional facility communication services at Indiana Department of Correction facilities as set forth in "Exhibit B" (RFP 10-55) attached hereto and incorporated herein, and in "Exhibit C" (Contractor's Response to RFP 10-55) attached hereto and incorporated herein. These services shall be further modified by "Exhibit A" attached hereto and incorporated herein, and the terms of "Exhibit A" shall supersede and take precedence over any conflicting terms set forth in "Exhibit B" and "Exhibit C. The services set forth in "Exhibit A", "Exhibit B", and "Exhibit C" shall be known in the collective as the "Services").

2. Consideration

This is a no cost, revenue generating contract for the State. Contractor is to generate revenues through the provision of the services as set forth herein, and from those revenues pay certain commissions to the State as further described in "Exhibit A" which is attached hereto and incorporated herein.

Total remuneration to be paid by the State under this Contract is \$0.00.

3. Term

This Contract shall be effective for a period of 48 months. It shall commence on or date of final State approval, and shall terminate 48 months after date of final State approval.

At the State's option, the Contract may be renewed for up to two (2) additional terms extending two years each.

4. Access to Records

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

5. Assignment

The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent, which shall not be unreasonably withheld or conditioned; except the Contractor has the right to assign this Contract to Global Tel*Link Corporation, a Delaware corporation, without the prior written consent of the State, provided that Contractor gives the State prior written notice of the assignment and so long as Global Tel*Link Corporation is then properly registered to conduct business in the State of Indiana and agrees to execute any and all documents required by the State to effectuate such assignment. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that Contractor gives

written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

6. Audits

Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1 and audit guidelines specified by the State.

Following the expiration of this Contract, the Contractor shall arrange for a financial and compliance audit of funds provided by State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The Contractor is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the Contractor's fiscal year. Contractor agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the Contractor, and not of a parent, member, or subsidiary corporation of the Contractor, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this Contract and that the Contractor is not out of compliance with the financial aspects of this Contract.

7. Authority to Bind Contractor

The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and certifies that this Contract is not subject to further acceptance by Contractor when accepted by the State of Indiana.

8. Changes in Work

In the event the State requires a material change in the scope, character or complexity of the work after the work has begun, adjustments in compensation to the Contractor shall be determined by the State and the Contractor in the exercise of their honest and reasonable judgment. The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

9. Compliance with Laws.

A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 et seq., the regulations promulgated there under, and Executive Order 04-08, dated April 27, 2004. If the contractor is not familiar with these ethical requirements, the contractor should refer any questions to the Indiana State

Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the contractor. In addition, the Contractor may be subject to penalties under Indiana Code § 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.

C. The Contractor certifies by entering into this Contract, that neither it nor its principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, the Contractor agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current or pending or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending, and agrees that it will immediately notify the State of any such actions. During the term of such actions, Contractor agrees that the State may delay, withhold, or deny work under any Supplement or contractual device issued pursuant to this Contract and any supplements or amendments.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State of Indiana or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties.

F. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

G. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for termination of the Agreement pursuant to its termination provisions and denial of further work with the State.

H. The Contractor hereby affirms that it is properly registered and owes no outstanding reports with the Indiana Secretary of State.

I. As required by IC 5-22-3-7:

(1) the Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor: (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if

IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

10. Condition of Payment

All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of and federal, state, or local statute, ordinance, rule or regulation.

11. Confidentiality of State Information

The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that except as otherwise provided in this Agreement (for data, material, and information other than Social Security Numbers) or as may be required by law or legal process, data, material and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this contract may require or allow access to data, materials, and information containing Social Security numbers or other personal information maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) or personal information (as defined in IC 4-1-11-3) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

Contractor agrees to comply with Contractor's internal privacy/confidential information policy with regard to any data, materials, and information disclosed or otherwise provided to Contractor by the State under the terms of this contract. In addition to the foregoing, contractor shall keep confidential any data, materials, and information disclosed or otherwise provided to Contractor by the State under the terms of this contract. Contractor may make disclosures to employees, shareholders, agents, attorneys and accountants (collectively, "Agents") as required to perform their obligations hereunder, provided, however, that the Contractor shall cause all Agents to honor the provisions of this Section. Contractor may also make disclosures as required by law or legal process.

12. Continuity of Services

- A. The Contractor recognizes that the services under this contract are vital to the State and must be continued without interruption and that, upon contract expiration, a successor, either the State or another Contractor, may continue them. The Contractor agrees to:
1. Furnish phase-in training, and
 2. Exercise its commercially reasonable efforts and cooperation to effect an orderly and efficient transition to a successor.
- B. The Contractor shall, upon the State's written notice:
1. Furnish phase-in, phase-out services for up to sixty (60) days after this contract expires, and
 2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required.

The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

13. Debarment and Suspension

A. The Contractor certifies that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B. The Contractor also further certifies that it has verified the suspension and debarment status for all sub-contractors receiving funds under this Contract and shall be solely responsible for any recoupments, paybacks and or penalties that might arise from non-compliance. Contractor shall immediately notify the State if any sub-contractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the sub-contractor for work to be performed under this Contract.

14. Default by State

If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, then the Contractor may cancel and terminate this Contract and institute the appropriate measures to collect all monies due up to and including the date of termination.

15. Disputes

- A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs. If the State and the Contractor cannot resolve a dispute within ten (10) working days

following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:

1. The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.
2. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

16. Drug-Free Workplace Certification

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in the State of Indiana has been convicted of a criminal drug violation occurring in the Contractor's workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, Contractor hereby further agrees that this contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts and grants from the State of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform it's employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any

available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

17. Reserved

18. Force Majeure

In the event that either party is unable to perform any of its obligations under this contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this contract.

19. Funding Cancellation

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

20. Governing Laws

This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

21. Indemnification

The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officers, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State shall **not** provide such indemnification to the Contractor.

22. Independent Contractor

Both parties hereto, in the performance of this contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. 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 purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The parties stipulate that Contractor has no responsibility to advise the State with respect to any applicable law, regulation, or guideline that may govern or control telephone call recordation or monitoring by the State, or compliance therewith. The Contractor provides the State with the capability to monitor and record telephone calls, but the State has its own legal counsel to advise it concerning any and all laws, regulations, or guidelines that apply to telephone call recordation and monitoring, and compliance therewith. Contractor disclaims any responsibility to provide, and in fact, has not provided the State any legal advice concerning such applicable laws, regulations, or guidelines, or compliance therewith. The State will be solely responsible for any liability arising out of the failure of the State (or the Contractor at the direction of the State) to comply with such applicable laws, regulations or guidelines. All call detail records (CDRs) and call recordings contained in the inmate telephone system equipment made available by Contractor to the State are the exclusive property of the State for the term of this Agreement and any resulting extensions of this Agreement; provided, however, that Contractor shall have the right to use the CDRs and recordings to respond to legal requests, and to provide the services under the Contract and for other lawful business purposes.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees

23. Information Technology Enterprise Architecture Requirements.

If Contractor provides any information technology related products or services to the State, Contractor shall comply with all Indiana Office of Technology (IOT) standards, policies, and guidelines, which are online at <http://iot.in.gov/architecture/>. Contractor specifically agrees that all hardware, software, and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate this Contract for default if Contractor fails to cure a breach of this provision within a reasonable time.

24. Insurance

A. The Contractor shall secure and keep in force during the term of this Contract, the following insurance coverage, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from this Contract:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$5,000,000 per occurrence and \$5,000,000 in the aggregate annually, unless additional coverage is required by the State. The State is to be named as a additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract. The required limits for commercial general liability insurance may be achieved using primary and/or umbrella liability policies.
2. Automobile liability with minimum liability limits of \$5,000,000 per occurrence and \$5,000,000 in the aggregate annually. The State is to be named as an additional insured on a primary, non-contributory basis. The required limits for automobile liability insurance may be achieved using primary and/or umbrella liability policies.

3. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of Workers compensation coverage meeting all statutory requirements of IC 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

B. The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority issued by the Indiana Department of Insurance.

2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.

3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.

4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or materially modified without thirty (30) days' prior written notice to the undersigned State agency.

5. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract if the breach remains uncured after ten (10) business days following written notice by the State.

The Contractor shall furnish a certificate of insurance and all endorsements to the undersigned State agency prior to the commencement of this Contract.

25. Key Person(s) REMOVED BY AGREEMENT OF THE PARTIES

26. Licensing Standards

The Contractor and its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The State shall not be required to pay the Contractor for any services performed when the Contractor or its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked, or if disciplinary action is taken against the applicable licensure, certification, or accreditation, the Contractor agrees to notify State immediately thereof and the State, at its option, may immediately terminate this Contract.

27. Material Incorporated or Referred to in Contract

The Contractor has supplied herewith all written materials, documents, or instruments mentioned or referred to in the contract except, where applicable, user manuals which will be included with the equipment upon delivery and which do not alter the terms of this agreement.

28. Merger & Modification

This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary parties.

29. Minority and Women’s Business Enterprises Compliance. The Contractor agrees to comply fully with the provisions of 25 IAC 5 and any participation plan that may have been submitted to the State.

The following MBE’s and WBE’s listed on the Minority and Women’s Business Enterprises Division directory of certified firms will be participating in this Contract.

<u>MBE/WBE</u>	<u>PHONE</u>	<u>COMPANY NAME</u>	<u>SCOPE OF PRODUCTS and/or SERVICES</u>	<u>UTILIZATION DATE</u>	<u>AMOUNT</u>
MBE,	317-493-2017,	BC Forward,	Information Technology Services,	utilization expected upon contract award,	\$5,270,569.05 over four years
WBE,	317-757-8764,	CSCI Consulting,	Information Technology Services,	utilization expected upon contract award,	\$5,157,950.05 over four years

The Contractor agrees to submit a copy of the agreement entered into between the Contractor and each MBE/WBE subcontractor where the State took the selection of the MBE/WBE by the Contractor into consideration when issuing the procurement award. The copy of the agreement must be submitted to the MWBE Division in IDOA within ninety (90) days of the execution of the contract between the Contractor and the State. The Contractor also agrees to send all amendments, changes, and terminations to these agreements to the MWBE Division in IDOA within ninety (90) days of their execution. Failure to provide a copy of the agreement or subsequent amendment, change, and termination may result in exclusion from future State procurements. If the Contractor is not excluded from future procurements, the actions or inactions of the Contractor with regard to the above will be taken into account in all phases and scoring in future procurements. In addition, the Contractor must obtain the approval of the Division before changing any MBE/WBE participation plan submitted in connection with this Contract.

30. Nondiscrimination

Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant’s: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law (“Protected Characteristics”). Furthermore, Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

31. Notices to Parties

Whenever any notice, statement or other communication is to be sent to the State or to the Contractor, it shall be sent to the following addresses unless otherwise specifically advised:

Notice to the Agency shall be sent to:

**Bruce Lemmon, Commissioner
Indiana Department of Correction
302 W. Washington St., Room E334
Indianapolis, Indiana 46204**

Brian Arrowood, Chief Technology Officer
Indiana Office of Technology
100 N. Senate Avenue, Room N 551
Indianapolis, Indiana 46204

Notice to the Contractor shall be sent to:

Jeffrey B. Haidinger
Public Communications Services-Indiana, LLC
12021 Sunset Hills Road, Suite 100
Reston, Virginia 20190
EIN # - 27-2905378

Payment to the Contractor shall be sent to:

As required by IC 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by Contractor with the Auditor of State.

32. Order of Precedence

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract, (2) attachments prepared by the State, (3) RFP 10-55, (4) Contractor's response to RFP 10-55, and (5) attachments prepared by the Contractor. In the event of any conflict between the terms and conditions of this Contract and the provisions of any of the other documents identified in items (2), (3), (4) or (5) of the immediately preceding sentence, the terms and conditions of this Contract shall supersede and control.

33. Ownership of Documents and Materials

All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior to execution of this Contract, or that is not developed or licensed pursuant to another contract or to Contractors ongoing efforts to add features and make improvements to its offerings, but specifically developed under this Contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State and all such materials will be the property of the State. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide the State full, immediate, and unrestricted access to the work product during the term of this Contract.

34. Payments

- A. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.
- B. If Contractor is being paid in advance for the maintenance of equipment and/or software, pursuant to IC 4-13-2-20(b)(14), Contractor agrees that if it fails to perform the maintenance required under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

35. Penalties/Interest/Attorney's Fees

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, the Parties stipulate and agree that any liability resulting from the State of Indiana's failure to make prompt payment shall be based solely on the amount of funding originating from the State of Indiana and shall not be based on funding from federal or other sources.

36. Progress Reports

The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

37. Renewal Option

This contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract. Any provision for automatic renewal is void.

38. Security and Privacy of Health Information

The Contractor agrees to comply with all requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in all activities related to this Contract, to maintain compliance throughout the life of this Contract, to operate any systems used to fulfill the requirements of this Contract in full compliance with HIPAA and to take no action which adversely affects the State's HIPAA compliance

The parties acknowledge that the Department of Health and Human Services has issued the Final Rule, as amended from time to time, on the Standards for Privacy of Individually Identifiable Health Information, as required by HIPAA. To the extent required by the provisions of HIPAA and regulations promulgated thereunder, the Contractor covenants that it will appropriately safeguard Protected Health Information (PHI), as defined by the regulations, which is made available to or obtained by the Contractor in the course of its work under this Contract. The Contractor agrees to comply with applicable requirements of law relating to PHI with respect to any task or other activity it performs for the State as required by the final regulations.

39. Severability

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provision of this contract.

40. Substantial Performance

This contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.

41. Taxes

The State of Indiana is exempt from state, many federal and local taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this contract.

42. Termination for Convenience

This contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

43. Termination for Default

- A. With the provision of thirty (30) days notice to the Contractor, the State may terminate this contract in whole or in part, provided Contractor has not cured the deficiency during the notice period, if the Contractor **fails to**:
1. Correct or cure any breach of this contract;
 2. Deliver the supplies or perform the services within the time specified in this contract or any extension;
 3. Make progress so as to endanger performance of this contract; or
 4. Perform any of the other provisions of this contract.
- B. If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

44. Travel.

No expenses for travel will be reimbursed unless specifically permitted under the scope of the services or consideration provision. Expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-State travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines. (Financial management Circular (2003-1)).

45. Waiver of Rights

No right conferred on either party under this contract shall be deemed waived and no breach of this contract excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

46. Work Standards

The Contractor agrees to execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this contract, the State may request in writing the replacement of any or all such individuals and Contractor shall grant such request to the extent permitted by law.

47. State Boilerplate Affirmation Clause

I swear or affirm under the penalties of perjury that I have not altered, modified or changed the State's Boilerplate contract clauses in any way except for the following clauses which are identified by name below:

- #5 Assignment
- #8 Changes in Work
- #9 Compliance with the Laws (Section G)
- #11 Confidentiality of State Information
- #12 Continuity of Services
- #17 Employment Option
- #22 Independent Contractor
- #24 Insurance (A1., A2., B4., and B5.)
- #25 Key Persons
- #33 Ownership of Documents and Materials
- #43 Termination for Default
- #46 Work Standards (last sentence)

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NON-COLLUSION AND ACCEPTANCE

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

In Witness Whereof, Contractor and the State of Indiana have, through duly authorized representatives, entered into this agreement. The parties having read and understand the foregoing terms of the contract do by their respective signatures dated below hereby agree to the terms thereof.

Public Communications Services-Indiana LLC

By: Public Communications Services, Inc. its sole member

By: [Signature]
Printed Name: Jeffrey D. Handinger
Title: President/owner
Date: 5/20/11

Attested By: [Signature] Lisa Furr
Executive Assistant

Indiana Department of Correction:

By: [Signature] (for)
Bruce C. Lemmon, Commissioner
Date: 5/24/2011

If an IOT signature is necessary but the signature block is left blank, a statement must be inserted that authority has been delegated to this agency per a letter from IOT dated ***.

Indiana Office of Technology:

By: [Signature]
Brian S. Arrowood, Chief Information Officer
Date: 5/26/11

Department of Administration:

[Signature] (for)
Robert D. Wynkoop, Commissioner
Date: 5/27/11

State Budget Agency

[Signature] (for)
Adam M. Horst, Director
Date: 6-2-11

APPROVED as to Form and Legality:

Office of the Attorney General
[Signature] (for)
Gregory F. Zoeller, Attorney General
Date: 6-8-11

EXHIBIT A

OFFENDER PHONE RATES AND COMMISSIONS		
CALL TYPE	PER MINUTE RATE	COMMISSION %
Offender – Domestic Call	\$0.24	43.5%
Offender – International Call	\$0.75	43.5%
The above rates do not include any applicable federal, state or local surcharges, taxes or regulatory fees.		

- This Contract excludes all services other than those services that pertain to the provision of services in Indiana Department of Correction facilities, or the provision of offender phone services in Indiana Department of Correction facilities. Services excluded from this Contract include those for public payphones at all other State locations and services provided to other State agencies, unless such services are expressly required by local, state or federal law in connection with the services being provided to the Indiana Department of Correction. This Contract is not intended to create, nor should its terms be construed to create, an obligation of any other State agency other than the Indiana Department of Correction, the Indiana Department of Administration, or the Indiana Office of Technology.
- This Contract excludes public payphones, and the optional Wi-Fi Services proposed by the Contractor.
- This is a “no cost” revenue generating contract for the State. The State will receive commissions on a monthly basis from the Contractor based on every completed inmate call for the previous month that is accepted by an end user and billed via a local exchange carrier or prepaid to the Contractor. These commissions shall reflect a percentage of revenue generated from every completed inmate call for the previous month (exclusive of taxes and tax related surcharges, credits, and any amounts the Contractor collects for, or pays to, third parties, including payments in support of statutory or regulatory programs mandated by governmental or quasi-governmental authorities, such as the Federal Universal Service Fee) that is accepted by an end user and billed via a local exchange carrier or prepaid to the Contractor.
- To maximize the benefits of offender training for re-education and re-entry, the State has requested that offender labor will be used to maintain the offender telephones and any other equipment and infrastructure as specified by the State (except to the extent reasonably objected to by Contractor on the basis of concerns over system security and potential harm to Contractor property, including compromise of intellectual property). The State will remain solely responsible for any security matters relating to offender labor. The Contractor shall reimburse the State for the IDOC’s cost in providing offender labor to maintain the telephone and any other equipment and infrastructure as specified by the State at a maximum rate of eighty five cents (\$0.85) per labor hour. The Contractor will train offenders in how to complete such repairs, and shall provide all necessary equipment and support. The training provided will be at a sufficient level to enable offenders to achieve professional telecommunications certifications such as BISI or RCDD. This provision of offender labor does not relieve Contractor of any obligation by Contractor to ensure that its systems and equipment are maintained, repaired, and upgraded as needed.

EXHIBIT A

- The number of site administrators to be provided by Contractor will be no less than ten (10).
- The State agrees to allow the Contractor to reuse any currently installed hardware and infrastructure that is in good working condition, as long as the hardware and infrastructure to be re-used meets all the standards set forth in the RFP. Any hardware or infrastructure not meeting these standards shall be replaced or repaired.
- The following individuals shall be the initial points of contact for their respective organizations with regard to the implementation of the Contractor's duties under the contract:
 - Andrew Merrill and Chris Moore for Contractor.
 - Amanda Copeland for the State.

The individuals listed above are not key persons to the Contract and may be changed by at any time by agreement of the Parties. In the event any individual listed in the preceding paragraph is no longer designated by his or her respective organization as a point of contact, this change in status shall be immediately communicated to the other party, and a new point of contact designated.

- Contractor shall utilize at least one of its call centers located within the United States in providing the services under this Contract.
- The cost, commissions, and rates set forth herein represents the result of the Contractor's original proposed cost, commissions, and rates after being subjected to "Best and Final Offer" rounds of negotiation by the Indiana Department of Administration. The result of each round of negotiation is documented in the remaining pages of this Exhibit A.

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EXHIBIT A

Offender Calls	Target Price/Percentage		Best and Final Offer
	PCS		
Average Per Minute Rate -	0.2917	\$ 0.25	\$ 0.2700
Average Proposal Commission -	\$ 0.35	43%	40%

BEST AND FINAL OFFER ROUND 1

EXHIBIT A

Offender Calls	Current Price/% PCS	Target Price/%	PCS BAFO Price/%
Average Per Minute Rate - 15 PTS Baseline <u>.325</u>	0.27	0.24	\$ 0.24
Average Proposal Commission - 11 PTS Baseline <u>35%</u>	40%	43.5%	43.5%

BEST AND FINAL OFFER ROUND 2

**DELEGATION OF SIGNATURE AUTHORITY
BY COMMISSIONER OF
INDIANA DEPARTMENT OF CORRECTION
FOR CONTRACTS NOT EXCEEDING
ONE MILLION DOLLARS**

Pursuant to the authority conferred upon me by Indiana Code 11-8-2-5 to administer, according to law, the money or other property of the Department of Correction, and to delegate powers and duties conferred upon me as Commissioner of the Department of Correction to other employees of the department, Bruce C. Lemmon, hereby delegate signature authority to Amanda Copeland, Chief of Staff for the Indiana Department of Correction, to sign all contractual documents that obligate the Department of Correction up to a total amount of One Million Dollars (\$1,000,000) for each contract.

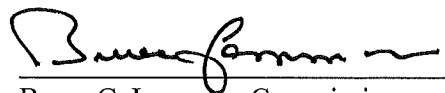
This authority shall apply irrespective of the title or designation of the document being signed and shall apply to renewals and amendments of existing contracts.

In conferring this authority, I request the Indiana Attorney General and all State agencies with reviewing authority over State contracts to honor this delegation of authority and to accordingly accept the signature of Amanda Copeland on Indiana Department of Correction contracts as having the same force and effect as my own.

This delegation of authority shall remain in effect until revoked by me in writing, or until the time Amanda Copeland no longer is acting in capacity as Chief of Staff for the Indiana Department of Correction.

If the amount of this delegation for each contract is, or becomes, in excess of any statutory limit, I delegate signature authority to Amanda Copeland to sign contracts up to that statutory limit as permitted by law.

By my signature below, I hereby delegate to Amanda Copeland, the aforesaid signature authority on this 16th Day of May, 2011.



Bruce C. Lemmon, Commissioner
Indiana Department of Correction