

State of Washington DEPARTMENT OF GENERAL ADMINISTRATION Office of State Procurement Rm. 201 General Administration Building, P.O. Box 41017 • Olympia, Washington 98504-1017 • (360) 902-7400 http://www.ga.wa.gov	CONTRACT AMENDMENT	
	Contract Number: 02702	Date Issued: March 24, 2009
	Amendment Number: 20	Date Effective: March, 29, 2009

This Contract Amendment is issued under the provisions of the State Contract identified above. The changes authorized are within the scope of the original contract. All rights and obligations of the parties shall be subject to and governed by the terms of the original contract including any subsequent amendments, which are hereby incorporated by reference.

Purpose of Amendment

Purpose:

Motorola agrees to extend the current contract term until October 29, 2009. This contract extension incorporates by reference the negotiated terms referenced in Attachment A. All other terms and conditions under the Public Safety Communication Equipment, WSCA Contract #02702 remain the same for the remainder of the term extension.

Authorizing Signatures

This contract amendment, consisting of 1 page and no attachments is executed by the persons signing below who warrant that they have the authority to execute this contract amendment.

For Contractor:		For State:	
			
(Contractor Authorized Representative Signature)		Keith Armstrong, Contract Consultant	
(Date) 3/26/09		(Date) 3/27/09	
Print name	Kelly Kirwan	Keith Armstrong	
Telephone No.	425-896-2356	Telephone No.	(360) 902-7420
Email Contact:	Luis.Alba@Motorola.com	Email:	karmstr@ga.wa.gov
GA Approval: Unit Manager  (initials)			
OSP Authorizing Manager:	Christine Warnock, Purchasing Agent	Date:	4/3/09
Signature:	 Christine Warnock purchasing agent		



WSCA Contract #02702

Amendment Number: 20

Attachment A

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<p>Most Favored Pricing Clause</p> <p>During the term of this contract, should the contractor enter into pricing agreements with other customers providing greater benefits or lower pricing, contractor shall immediately amend the state contract to provide similar pricing to the state if the contract with other customers offers similar usage quantities, and similar conditions impacting pricing. Contractor shall immediately notify the state of any such contracts entered into by contractor. When the state is comparing different lower contract pricing the management fee will be deducted from the WSCA contract.</p> <p><i>This provision applies only within WSCA</i></p>	<p>During the term of this contract, should the contractor enter into pricing agreements with other customers providing greater benefits or lower pricing, contractor shall immediately amend the state contract to provide similar pricing to the state if the contract with other customers offers similar usage quantities, and similar conditions impacting pricing.</p> <p><i>Example: A contractor provides California a price for 3,000 units at \$500 for each unit with a 2 yr warranty. If Tacoma, WA wants to purchase 30 units with the standard 1 yr warranty, their price would be 700 per unit. Tacoma cannot get the same discount as the State of CA unless it purchases similar usage, quantities or conditions impacting the price of each unit.</i></p> <p>This provision applies only within WSCA PARTICIPATING</p>

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<p><i>PARTICIPATING STATES (as defined in this document, above) and shall not apply to existing contracts, system packages, or one time equipment purchases, services, or international sales.</i> For purposes of this section, the definition of 'customers' shall not include Contractor's dealers, distributors and resellers, or sales to federal government.</p>	<p>STATES (as defined in this document, above) and shall not apply to existing contracts, system packages, or one time <u>equipment purchases, services, or international sales, or parts or accessories.</u> For purposes of this section, the definition of customers' shall not include Contractor's dealers, distributors and resellers, or sales to federal government. Contractor shall immediately notify the state of any such contracts entered into by contractor. When the state is comparing different lower contract pricing the management fee will be deducted from the WSCA contract.</p>
<p>NEW SYSTEM SOFTWARE AND FIRMWARE UPDATE</p> <p>Provide Required Firmware, Software updates at no cost for 5 years after last unit being purchased from this RFP. . Required firmware and software updates are all updates that are required to keep the equipment operating and functioning as intended at the time of purchase. Manufacturers are not responsible for update installation costs. Proposers shall submit a copy of their software licensing agreement with their proposal. This does not</p>	<p>Provision merged into Warranty section</p>

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including periodic software releases which are intended to offer new features or enhancements not available at the time of original purchase.	
<p>RFP 11. TECHNICAL ADVANCES/UPGRADES</p> <p>During the service life of the equipment, the contractor agrees to install, at no additional cost to the end user, all manufacturers' required retrofit upgrades within 90 days of the date the upgrade is introduced by the manufacturer. Required retrofits are all retrofits that are required to keep the equipment operating and functioning as intended at the time of purchase.</p>	Merged into Warranty section
<p>WARRANTY (IES)</p> <p>Proposer(s) will submit a copy of every warranty as an attachment to bid and items delivered under this contract will also be accompanied by a copy of the applicable warranties. Unless otherwise specified, the full parts and labor warranty period shall be for a minimum period of one (1) year after receipt and acceptance of materials or equipment by the Purchaser. All warranties supplied by the manufacturer shall be consistent with the provisions of the UCC, chapter 62A RCW unless otherwise specified in part 3, equipment Specifications. All materials or equipment provided shall be new or refurbished and manufacturer certified, of the latest model or design and of recent manufacture. All tower parts must be new and of the latest design.</p> <p>Successful contractor(s) shall provide product support (required to keep equipment operating and functioning as</p>	<p>EQUIPMENT WARRANTY. During the warranty period, which shall be one year, Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship.</p> <p>MOTOROLA SOFTWARE WARRANTY. Unless otherwise stated in the Software License Agreement, during the warranty period, Motorola warrants the Motorola Software in accordance with the terms of the Software License Agreement and the provisions of this Section that are applicable to the Motorola Software.</p> <p>EXCLUSIONS TO EQUIPMENT AND MOTOROLA SOFTWARE WARRANTIES. These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Motorola Software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration,</p>

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<p>intended at the time of purchase) for 5 years after last unit being purchased from this RFP.</p> <p>RFP 19. If problems arise, the contractor will repair or replace (at no charge to the Purchasing Entity) the product whose noncompliance is discovered and made known to the contractor in writing. Nothing in this warranty will be construed to limit any rights or remedies the Purchasing Entity may otherwise have under this contract with respect to defects.</p>	<p>modification, or adjustment not provided or authorized in writing by Motorola; Customer's failure to comply with all applicable industry and OSHA standards; (ii) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (iii) Equipment that has had the serial number removed or made illegible; (iv) batteries (because they carry their own separate limited warranty) or consumables; (v) freight costs to ship Equipment to the repair depot; (vi) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (vii) normal or customary wear and tear.</p> <p>WARRANTY CLAIMS. To assert a warranty claim, Customer must notify Motorola in writing of the claim before the expiration of the Warranty Period. Upon receipt of this notice, Motorola will investigate the warranty claim. If this investigation confirms a valid warranty claim, Motorola will (at its option and at no additional charge to Customer) repair the defective Equipment or Motorola Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or Motorola Software. That action will be the full extent of Motorola's liability for the warranty claim. Repaired or replaced product is warranted for the balance of the original applicable Warranty Period. All replaced products or parts will become the property of Motorola.</p> <p>CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.</p> <p>For 5 years after the sale of the equipment, contractor agrees to provide and install, at no additional cost to the end user, retrofits that are required to keep the equipment operating and</p>

functioning as intended at the time of purchase. The parties agree that this provision applies only to announced nation-wide recalls, bug fixes, and defect fixes that are made available at no charge by Motorola to all customers and this provision does not affect the term or provisions of the warranty or grant any additional warranty rights.

For 5 years after the sale or license of firmware or software, contractor agrees to provide at no charge required firmware and software fixes that are required to keep the equipment operating and functioning as intended at the time of purchase. Manufacturers are not responsible for update installation costs and shall not be required to provide periodic software releases which are intended to offer new features or enhancements not available at the time of original purchase. The parties agree that this provision applies only to announced nation-wide recalls, bug fixes, and defect fixes that are made available at no charge by Motorola to all customers and this provision does not affect the term or provisions of the warranty or grant any additional warranty rights.

Proposers shall submit a copy of their software licensing agreement with their proposal, and this agreement shall be incorporated into the vendor's WSCA contract.

1. DELIVERY:

The prices offered shall be the delivered price to any WSCA state agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until the first of the following events occurs: (1) final inspection and acceptance; (2) Placing live telecommunications traffic on the system or subparts thereof; (3) The passage of thirty (30) days after FOB delivery to WSCA's designated site or warehouse, as the case may be except as to latent defects, fraud and Contractor's warranty obligations. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order that is back ordered shall be shipped without charge.

1. DELIVERY:

The prices offered shall be the delivered price to any WSCA state agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Title to the Equipment will pass to Customer upon delivery. Title to Software will not pass to Customer at any time. Risk of loss will pass to Customer upon delivery of the Equipment to the Customer. Motorola will pack and ship all Equipment in accordance with good commercial practices.

The customer has no duty to accept non-conforming goods or goods damaged in transit; therefore, if upon verification by customer, within 30 days of delivery, the goods are found to be non-conforming or damaged in transit, Motorola agrees to replace those goods with conforming, undamaged goods at no cost to the customer. This provision does not diminish any of customer's warranties.

RFP 8. PATENTS, COPYRIGHTS, ETC:

The Contractor shall release, defend, indemnify, and hold harmless WSCA, the Participating States, and the Purchasing Entities, as well as the officers, agents and employees of WSCA, the Participating States and the Purchasing Entities, from liability of any kind or nature, including the Contractor's use of any copyrighted or uncopyrighted composition,

Intellectual Property

Indemnification - IP: The contractor shall indemnify, defend and hold harmless, at the contractor's sole expense, WSCA, the Lead State, and Participating States (the "Indemnitees"), together with their respective officers, agencies, employees, an any other persons or entities for which an Indemnitee may be liable from and against claims, damages or cause of action, including reasonable attorney's fees and related costs, arising out of the claim that the Product or its use, infringes any Intellectual Property rights. The contractor's obligation under this clause shall not extend to a combination of the

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<p>process, patented or unpatented invention, article or appliance furnished or used in performance of this contract.</p>	<p>Product with any other product, system or method, unless:</p> <p>(1) the other product, system or method is:</p> <p>(a) provided by the contractor or any of the contractor's subsidiaries or affiliates;</p> <p>(b) specified by the contractor to work with the Product; or</p> <p>(c) reasonably required to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or</p> <p>(2) an Indemnitee reasonably would be expected to use the Product in combination with such other product, system or method.</p> <p>The Indemnitee shall notify the contractor within a reasonable time after receiving notice of a claim. If the Indemnitee fails to provide notice within a reasonable time, the contractor shall not be relieved from its indemnification obligations unless the contractor can demonstrate that such delay prejudiced the defense of the claim, resulting in increased expenses or loss to the contractor. If the contractor promptly and reasonably investigates and defends a claim, it shall have control over the defense and settlement; provided, however, that any settlement shall be for money damages only unless the Indemnitee provides written consent to the contrary. The contractor shall consult with the Indemnitee regarding such defense and the Indemnitee, in its discretion and at its expense, participate in any defense. Should the Indemnitee choose not to participate, the contractor shall keep the Indemnitee advised of any settlement or defense. The Indemnitee shall furnish, at the contractor's reasonable request and expense, information and assistance necessary for such defense. If the contractor fails to vigorously pursue the defense or settlement of the claim, the Indemnitee may assume such defense or settlement, and the contractor shall be liable for all costs and expenses incurred by the Indemnitee in the pursuit of such defense or settlement. In the event of such a claim, and if (i) the Product is held to be infringing, (ii) the contractor reasonably believes the Product</p>

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	<p>will be held to infringing, or (iii) where the contractor's use is restricted as a result of a claim of infringement, the contractor, at its sole expense, either shall obtain the right for the Indemnitee to continue using the Product, or any part thereof, or replace or modify the Product, or part thereof, to be non-infringing and of equivalent functionality. If neither of the foregoing alternatives are practicable, the contractor shall refund a pro-rata portion of the amounts paid hereunder (based on the expected life of the Product) and reimburse the State for all reasonable expenses for removal and replacement of the Product.</p> <p>"Product" means any equipment, software, documentation, or deliverable supplied or created by the contractor.</p> <p>"Intellectual Property" means any and all patents, copyrights, service marks, trademarks, or other similar proprietary rights, in tangible or intangible form.</p>
<p>Dealers</p> <p>Bids that are submitted from manufacturers that require service through dealer outlets must include a letter signed by each dealer certifying full understanding and compliance with bid and servicing requirements. It is the Proposer(s) responsibility to identify the process that will be used to repair any items purchase from the WSCA contract.</p>	<p>Motorola will not be adding any dealers to this contract at this time, as we cannot agree to assume responsibility for actions of the dealers.</p>
<p>Final WSCA Terms for Motorola</p> <p>March 25, 2009</p>	