

28107

DATE: July 16, 2012

TO: Board of Acquisition and Contract

FROM: Marguerite C. Beirne
Chief Information Officer

RE: **AUTHORIZATION TO AMEND THE AGREEMENT (IT-604) WITH MOTOROLA, INC. IN ORDER TO INCREASE THE SCOPE OF THE DEFENSE AND INDEMNIFICATION PROVISIONS, EXTEND THE TERM OF THE AGREEMENT FROM DECEMBER 31, 2010 TO A NEW TERMINATION DATE OF OCTOBER 31, 2012, AND CHANGE THE NAME OF THE CONTRACTOR TO MOTOROLA SOLUTIONS, INC.**

BACKGROUND:

In 2003, the County of Westchester ("County") issued a bid specification for a UHF trunked analog two-way voice radio system (the "System"). The System was necessary to establish a reliable first responder and public transportation radio system. Further, the System was needed to enable communications between Fire, EMS, and Police agencies, as well as all hospitals in the County, and also provide channels to coordinate the operation of the County's Bee Line bus system. Motorola, Inc., ("Motorola") the successful bidder, agreed to furnish and install the System for an amount not to exceed \$11,997,000 ("Agreement"). The Agreement was subsequently amended and change orders were approved in order to accommodate additional work and equipment not originally contemplated, though the work and equipment were of the same nature. Through these amendments, the total amount payable to Motorola was increased to \$13,848,296 and the term extended through December 31, 2010.

While the System had been in service since the fall of 2007, it was not until May 2010 that the Department of Information Technology ("Department") determined that the System, as constructed, was not capable of transmitting Station ID's on all the channels in the System, but rather was only transmitting one Station ID that could be traced back to all other channels. After numerous on-site visits by Motorola, and phone calls between the parties, it became clear to the Department that the architecture of the System might not be fully compliant with the Federal Communications Commission ("FCC") rules and regulations (depending on how the FCC interprets the applicable rules and regulations).

In an effort to determine how best to address this compliance issue with Motorola, the Department met with the County Attorney's Office. After lengthy discussions between the

Department, the County Attorney's Office and Motorola, the parties have agreed in principle that Motorola should indemnify the County from any financial risk associated with potential non-compliance of the System with the FCC rules and regulations, in particular with 47 C. F. R. §90.425 ("FCC Station Identification Rule §90.425"). The benefit to the County could be very substantial as modifications to the System, and/or the replacement of the System, could be very costly. It should be noted that this indemnification is in addition to and not in limitation of the general indemnity provision contained in the Agreement.

The proposed amendment provides that Motorola will indemnify and hold the County harmless from liability, expense including, but not limited to, any expense incurred by the County that is related to the modification, upgrade or replacement of the System made necessary by an FCC finding of non-compliance with the Station Identification Rule §90.425. The Amendment will set forth the full extent of Motorola's indemnification of the County from liabilities by way of judgment, suit, cause of action or demand, financial or otherwise, that are in any way associated with the FCC Station Identification Rule §90.425. This indemnification obligation will only apply if the County gives Motorola prompt written notification of any claim or suit and complete control of the defense and/or settlement of any such matter to which such indemnification by Motorola applies. In addition, the County will need to fully cooperate with Motorola in its defense or settlement of any claim or suit.

During 2010 a number of additional punch list items were identified which have now all been completed. Accordingly, in order to make final payment to Motorola and expand the scope of the indemnification provisions as set forth above, it is necessary to extend the term of the agreement from December 31, 2010 to a new termination date of October 31, 2012. In addition, the County was notified that Motorola, Inc. recently separated into two independent companies with government and public safety two-way radio products now being handled by Motorola Solutions, Inc. Authority is thus also requested to change the name of the contractor to Motorola Solutions, Inc. Except as otherwise indicated, all other terms and conditions of the Agreement, as amended, will remain in full force and effect.

ACTION REQUESTED:

Authorization for the County to amend the Agreement with Motorola in order to increase the scope of the defense and indemnification provisions, extend the term of the Agreement from December 31, 2010 to a new termination date of October 31, 2012, and change the name of the contractor to Motorola Solutions, Inc. All other terms and conditions of the Agreement will remain unchanged and in full force and effect.

A resolution is submitted herewith for your consideration.

MCB/TSA
Attachment

RESOLUTION

Upon a communication from the Chief Information Officer, Department of Information Technology, be it hereby

RESOLVED, that the County of Westchester is hereby authorized to amend its agreement (IT-604) with Motorola, Inc., in order to increase the scope of the defense and indemnification provisions; extend the term of the agreement from December 31, 2010 to a new termination date of October 31, 2012; and change the name of the contractor to Motorola Solutions, Inc.; and, be it further

RESOLVED, that all other terms and conditions of the agreement shall remain the same and in full force and effect; and, be it further

RESOLVED, that the County Executive or his authorized designee is hereby authorized and empowered to execute any and all documents necessary and appropriate to effectuate the purpose hereof.

Original Agreement:	\$11,997,000
First Amendment:	\$ 169,236
Second Amendment:	\$ 267,931
Third Amendment:	\$ 250,000
Fourth Amendment:	\$ 260,245
Fifth Amendment:	\$ 105,400
Sixth Amendment:	\$ 122,994
Seventh Amendment:	\$ 35,400
Eighth Amendment:	\$ 59,920
Ninth Amendment:	\$ 32,250
Tenth Amendment:	\$ 19,920
Eleventh Amendment:	\$ 150,000
Twelfth Amendment:	\$ 325,000
Thirteenth Amendment:	\$ 53,000
Fourteenth Amendment:	\$ 0
Fifteenth Amendment:	\$ 0
This Amendment:	\$ 0

TOTAL \$13,848,296

Contract No. **IT-604**

Account to be Charged/Credited:

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
					N/A

Budget Funding Year(s): NA Start Date: December 31, 2010 End Date: October 31, 2012

Funding Source: Tax Dollars: \$N/A
 State Aid _____
\$N/A Federal Aid: _____
 (must match resolution) Other: _____