

#66756

DATE: December 17, 2018

TO: Honorable Members of the Board of Acquisition and Contract

FROM: Marguerite Beirne
Chief Information Officer, Department of Information and Technology

SUBJECT: Authority for the County of Westchester (the "County") to enter into an agreement (IT-1559) with Motorola Solutions, Inc. ("Motorola") pursuant to which Motorola will provide for the replacement, expansion and evolution of the County's Voice Radio Communication Systems in stages subject to appropriation.

Authority is requested for the County, acting by and through its Department of Information Technology (the "Department"), to enter into an agreement with Motorola pursuant to which Motorola will provide, among other things, for the replacement, expansion and evolution of the County's first responder and transit (Bee Line Bus) voice radio communication systems (the "Agreement"), which will occur in stages with each stage building upon the previous stage, and the County evaluating at the end of each stage whether to proceed with the next stage. Stage 1 calls for the immediate replacement of all end-of-life system (infrastructure) and end-user (subscriber) equipment to ensure continued reliable voice communications for police, fire, EMS, and Bee Line Bus System operations. Stage 2 expands the trunked fire/EMS/Bee Line voice system to provide reliable on-street coverage for portable (handheld) radios. For purposes of the Agreement, Stages 1 and 2 have been combined. Stage 3 expands trunked system in-building coverage.

For the replacement of equipment and expansion of on-street portable radio coverage during Stages 1 and 2, Motorola will be paid an amount not to exceed \$43,206,251.00, inclusive of a three (3) year warranty. Upon completion of Stages 1 and 2, the County may in its sole discretion require Motorola to proceed with post warranty maintenance and life cycle support services ("PWS") for Stage 1 and 2 for an amount not to exceed \$18,939,718.02, subject to the County receiving all necessary funding and legal approvals (the "PWS Stages 1 and 2 Right").

Also upon completion of Stages 1 and 2, the County may in its sole discretion require Motorola to proceed with Stage 3 for the expansion of in-building coverage for an amount not to exceed \$56,527,708.00 inclusive of a three (3) year warranty, subject to the County receiving all necessary funding and legal approvals (the "Stage 3 Right").

Upon completion of Stage 3, the County may in its sole discretion require Motorola to proceed with PWS for Stage 3 for an amount not to exceed \$9,546,289.80, subject to the County receiving all necessary funding and legal approvals (the "PWS Stage 3 Right").

The Agreement requires Motorola to indemnify the County in the areas of general indemnity, third party licenses, intellectual property, and mechanic's liens.

The Agreement requires the County to indemnify and hold harmless Motorola from any liability, expense, judgment, suit, cause of action, or demand for damage which may accrue against Motorola to the extent it is caused solely by the County's breach of the proprietary information section of the Agreement.

In addition, the Agreement requires the County to indemnify Motorola against any infringement claim that is brought against Motorola based upon the County's continued use of equipment and/or Motorola or Non-Motorola Third Party Software ("product") after the County has received written notice of a court order to cease using such product, provided Motorola uses its best efforts to (a) obtain a license for the County to continue to use or for Motorola to continue to sell the product purchased by the County; and/or (b) replace or modify the product so as to be substantially functionally equivalent but non-infringing in order for the system(s) to continue to operate in accordance with the Agreement. In the event (a) or (b) cannot be accomplished, then Motorola shall require the return of the infringing product and Motorola shall reimburse the total contract price paid by the County under the Agreement.

The County is also required to indemnify Motorola against any infringement claim that is brought against Motorola for certain excluded conduct, which consists of the following:

- (a) use of products in connection or in combination with equipment, devices or software not provided by Motorola;
- (b) use of products in a manner for which they were not designed;
- (c) any modification of products by anyone other than Motorola;
- (d) special products that are developed solely for the County, noting that no such special products are included in the scope of work for the Agreement, but should the parties determine that special products are required, in order for Motorola to have no obligation to defend or indemnify the County, the parties must enter into a change order which change order must include a written notation that expressly indicates that it is a special product.

The Agreement also provides that Motorola may not assign the Agreement without the consent of the County; however, no consent will be required with respect to an assignment by Motorola to Motorola's principal, affiliate, subsidiaries of its principal, or any entity which acquires all or substantially all of Motorola's assets, or any entity which is the successor to Motorola by reason of merger, acquisition, or other business reorganization.

In addition, Motorola seeks approval to use the following subcontractors to provide work for the following named purposes under the Agreement or any other named purposes that may be mutually agreed to by the parties:

Electronic Service Solutions, Inc. 250 Clearbrook Road Elmsford, NY 10523	Infrastructure and Console Installation Subscriber programming and installation Repairs, maintenance and support
Pyramid Network Services, LLC 6519 Towpath Road East Syracuse, NY 13057	Site development and microwave installation
Aviat U.S., Inc. 860 N. McCarthy Blvd Milpitas, CA, 95035	Microwave solution and services
METROCOM (Westchester County) 31 Plainfield Avenue Bedford Hills, NY 10507	Subscriber programming and installation
Goosetown Communications 58 N. Harrison Ave, Congers, NY 10920	Subscriber programming and installation

The term of the Agreement shall commence on the Effective Date, which is the date on which the Agreement is fully executed and approved by the Office of the County Attorney, and continue through the successful manufacture, installation, testing, acceptance, and systems transition, Stages 1 and 2, the warranty period for Stages 1 and 2, the PWS period for Stages 1 and 2, Stage 3, the warranty for Stage 3, the PWS period for Stage 3, and the Twenty Year Plan of Supportability (described below), whichever occurs last, unless terminated earlier pursuant to the provisions of the Agreement.

The Twenty Year Plan of Supportability means that if the County exercises all of its Rights under the Agreement, Motorola will provide the County with product support for all non-subscriber equipment for the systems beyond the expiration of the PWS period for Stage 3 for a minimum of five (5) years thereafter. In such an event, product support means that Motorola will support the parts and equipment utilized in the County systems for Stages 1 and 2 and Stage 3 by repairing or replacing said parts and equipment or providing functionally equivalent parts and equipment, at the request and expense of the County. The payment of the costs for such parts, equipment and repairs by the County beyond the expiration of the PWS period for Stage 3 shall be subject to the County obtaining all prior necessary legal approvals.

Pursuant to the Westchester County Procurement Policy, the County issued a Request for Proposals for Voice Radio Communications Systems Replacement, dated September 5, 2017 (the "RFP") seeking proposals from qualified firms to provide for, among other things, the replacement, expansion and evolution of the County's police, fire, EMS, and transit (Bee Line Bus) voice radio communication systems. The Department posted the RFP on the County's website and received two (2) proposals. An evaluation team comprised of six (6) members from the Department of Information Technology and one (1) member from the Department of Emergency Services for a total of seven (7) members evaluated each proposal in detail with

reference to evaluation criteria in the RFP. After careful consideration and evaluation of each proposal, the evaluation team ranked the proposers as follows:

1. Motorola Solution, Inc.
2. Harris Corporation

Based upon price, design, equipment and experience, Motorola was the first ranked proposer. The Department entered into negotiations with Motorola, and now recommends approval of the proposed Agreement to your Honorable Board.

The proposed Agreement will serve a vital public purpose because the County's first responder and transit voice radio communication systems are nearing the end of their useful lives, and these systems need to be replaced because they are relied upon to ensure safety of life and property and deliver vital services to the citizens of Westchester county.

The proposed Agreement is in the public's interest because it will provide replacement systems and solutions that best meet the County's needs.

Accordingly, I most respectfully recommend the adoption of the annexed proposed Resolution.

MB/ran
Encl.

APPROVED BOARD OF ACQUISITION & CONTRACT ADMINISTRATION - 2018 - JOHN SOCCIARDI, SECRETARY

RESOLUTION

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

RESOLVED, that the County of Westchester (the "County"), acting by and through its Department of Information Technology (the "Department"), is hereby authorized to enter into an agreement (IT-1559) with Motorola Solutions, Inc. (the "Contractor") pursuant to which the Contractor will provide, among other things, for the replacement, expansion and evolution of the County's first responder and transit (Bee Line Bus) voice radio communication systems (the "Agreement") which will occur in stages, with Stages 1 and 2 consisting of the replacement of system (infrastructure) and end-user ("subscriber") equipment and expansion of the trunked fire/EMS/Bee Line voice system to provide reliable on-street coverage for portable (handheld) radios, with a three (3) year warranty, in the amount not to exceed \$43,206,251.00, and be it further

RESOLVED, that, upon the completion of Stages 1 and 2, the County may in its sole discretion require the Contractor to proceed with post warranty maintenance and life cycle support services ("PWS") for Stage 1 and 2 for an amount not to exceed \$18,939,718.02, subject to the County receiving all necessary funding and legal approvals (the "PWS Stages 1 and 2 Right"); and, be it further

RESOLVED, that, upon completion of Stages 1 and 2, the County may in its sole discretion require the Contractor to proceed with Stage 3 for the expansion of in-building coverage for an amount not to exceed \$56,527,708.00 with a three (3) year warranty, subject to the County receiving all necessary funding and legal approvals (the "Stage 3 Right"); and, be it further

RESOLVED, that, upon the completion of Stage 3, the County may in its sole discretion require the contractor to proceed with the PWS for Stage 3 for an amount not to exceed \$9,546,289.80, subject to the County receiving all necessary funding and legal approvals (the "PWS Stage 3 Right"); and, be it further

RESOLVED, the Contractor may not assign the Agreement without the consent of the County; however, no consent shall be required with respect to an assignment by the Contractor to Contractor's principal, affiliate, subsidiaries of its principal, or any entity which acquires all or substantially all of Contractor's assets, or any entity which is the successor to the Contractor by reason of merger, acquisition, or other business reorganization; and, be it further

RESOLVED, the County is authorized to indemnify and hold harmless Contractor from any liability, expense, judgment, suit, cause of action, or demand for damage which may accrue against Contractor to the extent it is caused solely by the County's breach of the proprietary information section of the Agreement, which sets forth the procedure the County will follow with respect to not divulging proprietary information and the procedure the County will follow under the New York Freedom of Information Law (FOIL) with regard to proprietary information; and, be it further

RESOLVED, the County is authorized to indemnify the Contractor against any infringement claim that is brought against Contractor based upon the County's continued use of equipment and/or Motorola or Non-Motorola/Third Party Software ("product") after the County has received written notice of a court order to cease using such product, provided Contractor has complied with the following: (1) Contractor shall use its best efforts to (a) obtain a license for the County to continue to use or for Contractor to continue to sell the product purchased by the County; and/or (b) replace or modify the product so as to be substantially functionally equivalent but non-infringing in order for the system(s) to continue to operate in accordance with the Agreement, and (2) in the event (a) or (b) cannot be accomplished, then Contractor shall require the return of the infringing product and Contractor shall reimburse the total contract price paid by the County under the Agreement; and, be it further

RESOLVED, the County is authorized to indemnify the Contractor against any infringement claim that is brought against Contractor based upon certain excluded conduct, which consists of the following:

- (a) use of products in connection or in combination with equipment, devices or software not provided by Contractor;
- (b) use of products in a manner for which they were not designed;
- (c) any modification of products by anyone other than Contractor; and
- (d) special products that are developed solely for the County, noting that no such special products are included in the scope of work for the Agreement, but should the parties determine that special products are required, in order for Contractor to have no obligation to defend or indemnify the County as set forth in the section, the parties must enter into a change order which change order must include a written notation that expressly indicates that it is a special product, and, be it further

RESOLVED, the following subcontractors are hereby approved to provide work under the Agreement for the following named purposes or any other named purposes that may be mutually agreed to by the parties:

Electronic Service Solutions, Inc.
250 Clearbrook Road
Elmsford, NY 10523

Infrastructure and Console Installation
Subscriber programming and installation
Repairs, maintenance and support

Pyramid Network Services, LLC
6519 Towpath Road
East Syracuse, NY 13057

Site development and microwave installation

Aviat U.S., Inc.
860 N. McCarthy Blvd
Milpitas, CA 95035

Microwave solution and services

METROCOM (Westchester County)
31 Plainfield Avenue
Bedford Hills, NY 10507

Subscriber programming and installation

Goosetown Communications
58 N. Harrison Ave.
Congers, NY 10920

Subscriber programming and installation

and, be it further

RESOLVED, that the term of the Agreement shall commence on the Effective Date, which is the date on which the Agreement is fully executed and approved by the Office of the County Attorney, and continue through the successful manufacture, installation, testing, acceptance, and systems transition, Stages 1 and 2, the warranty period for Stages 1 and 2, the PWS period for Stages 1 and 2, Stage 3, the warranty period for Stage 3, the PWS period for Stage 3, and the Twenty Year Plan of Supportability (described below), whichever occurs last, unless terminated earlier pursuant to the provisions of the Agreement; and, be it further

RESOLVED, that the Twenty Year Plan of Supportability means that if the County exercises all of its Rights under the Agreement, Contractor will provide the County with product support for all non-subscriber equipment for the systems beyond the expiration of the PWS period for Stage 3 for a minimum of five (5) years thereafter. In such an event, product support means Contractor will support the parts and equipment utilized in the County systems for Stages 1 and 2 and Stage 3 by repairing or replacing said parts and equipment or providing functionally equivalent parts and equipment, at the request and expense of the County. The payment of the costs for such parts, equipment, and repairs by the County beyond the expiration of the PWS period for Stage 3 shall be subject to the County obtaining all prior necessary legal approvals; and, be it further

RESOLVED that the Agreement is subject to County appropriations; and be it further

RESOLVED, that the County Executive or his duly authorized designee is hereby authorized and empowered to execute and deliver any documents and take all actions necessary or appropriate to effectuate the purposes hereof

Account to be
Charged/Credited:
(KT-1559)

Year	Fund	Dept	Major Program, Program & Phase Or Unit	Object / Sub-Object	Trust Account or Bond Act	Dollars
2019	316	16	BIT3202S	6190	109-2018	\$5,861,007
2019	316	16	BIT3203S	6190	110-2018	\$7,010,862
2019	316	16	BIT3204S	6190	111-2018	\$9,067,315
2019	316	16	BIT3205S	6190	112-2018	\$8,762,489
2019	316	16	BIT3206S	6190	113-2018	\$2,557,926
2019	316	16	BIT3207S	6190	114-2018	\$4,443,346
2019	316	16	BIT3208S	6190	115-2018	\$5,503,306

Budget Funding Year(s): 2019 Start Date: Effective Date of the Contract End Date: December, 2023
(must match resolution)

Funding Source: Tax Dollars: 100%
State Aid: _____
\$43,206,251 Federal Aid: _____
(must match resolution) Other: _____