

## **MOTOROLA CONTRACTUAL PROVISIONS SECTION**

Motorola Solutions, Inc. (Motorola) accepts the terms and conditions of Request for Proposal Number 2017036109, as amended, subject to the additional terms, conditions, and clarifications specified in this section. To facilitate acceptance, any such contract or orders(s) should include a statement that incorporates this proposal by reference thereby indicating the Government's acceptance of these additional terms, conditions and clarifications.

- 1) **RFP Section C.3, New Equipment and Software Release:** Please note that consistent with Motorola's commercial practices, some parts, modules, and components used in the manufacturing process may be used or contain used or reconditioned materials. Motorola warrants that any end products, and any parts, modules, and components contained in these products will perform as if new, and Motorola will replace any defective materials or parts, whether new or used, within the stated warranty period. No parts, modules or components are of an age or condition as to impair their performance, usefulness, and safety
- 2) **RFP Section C.6, Warranty Requirements, and C.18.4, Start of Warranty Period:** Motorola's standard commercial warranty for Equipment applies to the contract. The standard warranty period under this commercial equipment warranty is one (1) year from date of shipment. Warranties will become effective upon system acceptance, sector or region acceptance or beneficial use of the system by the Government, whichever occurs first. Regardless, the warranty period will begin no later than six months after shipment of the item from the factory. For equipment-only ("box") transactions, acceptance will be deemed to have occurred upon delivery of the supplies at the initial FOB destination designated by the Government. The Government's rights to inspect and test the equipment, and the associated accessories not included as part of the base radio product, the Limited Warranty from the Customer Care and Services Division ("CCSD") applies; this commercial warranty provides a warranty against defects in material and workmanship for a period of one (1) year from date of shipment. Motorola's standard commercial Warranty of Service would apply to the TC2 service efforts, under which Motorola warrants that its services will be free of defects in materials and workmanship for a period of ninety (90) days following completion of the services. The aforementioned standard commercial warranties for equipment, parts/accessories, and services are attached hereto and can be found at <http://www.motorolasolutions.com/fedgov/omterms>.
- 3) **RFP Section C.28, Labor Categories ("O&M"):** Motorola has provided labor rates for its services (e.g. engineering, design, installation, etc.); however, note that much of Motorola's operations and maintenance (O&M) services are performed on a flat rate/fixed priced basis in accordance with pricing in our commercial catalog, and these services are not convertible to a rates and hours offering. Where a service is available on a flat rate/fixed priced basis, it will be performed on that basis and will not be performed on an hourly rate basis under the proposed labor categories.
- 4) **RFP Section C.29, DHS Enterprise Architecture Compliance:** The Motorola Land Mobile Radio (LMR) equipment and system are based upon privately-developed architecture that has already been designed and fielded for commercial and Government agencies, including DHS component agencies. The proposed equipment is "built-to-print" based upon this existing design and proven architecture. The design was primarily driven by the P25 standard, NTIA

telecommunications requirements and Federal Government Information Assurance (IA) standards, such as: P25 Common Air Interface, v.24 Telecommunication Interface standards, applicable NIST SP 800-53 and DHS 4300A requirements and appropriate NIAP/Common Criteria and FIPS certified components.

The Motorola LMR equipment and systems are built on Enterprise Architecture foundational principals following industry standard software development and engineering practices. These standards include the use of: ISO9000 quality systems, software development utilizing the Capability Maturity Model Integration (CMMI) program, Six Sigma best practices, and system implementation managed by Project Management Professional (PMP) certified personnel. As such, the IT subsystem of the Motorola LMR infrastructure is well suited to be incorporated into the DHS EA framework.

The proposed system components are modern, state-of-the-art technology equipment with an anticipated industry-based life cycle. Motorola LMR products are supported and maintained through Motorola-based repair and service depots and the Motorola System Support Center (SSC). Motorola has supported legacy DHS LMR systems, enabling DHS to achieve product life-cycle and beneficial use of these systems in excess of 10 years. Motorola's service support model is intended to provide comprehensive repair and maintenance support long term to the DHS enterprise.

The proposed components utilized for the DHS IDIQ effort have a proven history of supporting mission focused operability and DHS level interoperability. Motorola will provide information on the features and design parameters of the equipment and system and will assist DHS in defining and understanding the parameters and interface requirements of the equipment/system as they relate to EA requirements. F) Item C.31,

- 5) **RFP Section C.30, DHS Geospatial Information System Compliance:** Motorola believes that the LMR equipment and systems that will be delivered under this contract will *generally have limited or no interface with the DHS Geospatial Information System, and* therefore this requirement will in most cases be not applicable, however if it appears that it will apply to a specific Task Order, we will address it as part of that particular Delivery/Task Order requirement.
- 6) **RFP Section D.6, Software and Magnetic Media Markings:** Motorola will use its standard commercial shipping procedures in fulfillment of this contract.
- 7) **RFP Section E.3, Inspection and Acceptance:** As Motorola is proposing commercial items, please see Motorola's response to FAR 52.212-4(a) for inspection and acceptance terms.
- 8) **RFP Section E.4, Partial Delivery and Acceptance:** Please be advised that Motorola's standard commercial packing, packaging and marking will be used in the fulfillment of this contract.
- 9) **RFP Section E.7, Basis of Acceptance:** Please see Motorola's response to FAR 52.212-4(a), and its Alternate I, for acceptance terms.

- 10) RFP Section F.1, FAR 52.211-11, Liquidated Damages – Supplies, Services or Research and Development:** Motorola requests the following parameters:
- a) A 15 day grace period before the LD assessment period begins
  - b) A daily LD amount not to exceed .5% of the value of delayed item
  - c) A LD cap of not greater than 5% of the value of the delayed item.
  - d). a 30 day cure period before a Termination for Default
  - e) Specific language that the excusable delays clause of FAR 52.212(f) applies and would preclude a LD assessment
- 11) RFP Section F3, Delivery Schedules:** Generally, Motorola can supply ordered equipment within 30 days of an acceptable order, however in some instances there could be items that require longer lead times that may require more extended delivery periods. Motorola will advise of these situations in specific Delivery/Task Order proposals, where applicable.
- 12) RFP Section H.1, FAR 52.215-22, Limitations on Pass-Through Charges—Identification of Subcontract Effort:** Motorola Solution's United States Federal Government Markets Division ("USFGMD") is primarily a distribution organization for commercial item products and services. As such, USFGMD: (i) does not perform under Cost Accounting Standards ("CAS") covered contracts; (ii) does not accept contracts where cost or pricing data is required to be provided; (iii) does not need to have and maintain an estimating system such as described in DFARS 252.215-7002; (iv) does not generate labor hour estimates from an estimating system; v) does not provide cost information; and (vi) does not calculate or submit cost-based indirect or labor rates.
- 13) RFP Section H.1, FAR 52.227-15, Representation of Limited Rights Data and Restricted Computer Software:** Motorola is the manufacturer and supplier of the radio equipment that will be provided under this contract. Motorola radio products contain embedded software that enables and facilitates the operation of the radios. As such, the end user of this radio equipment requires a Software License Agreement from Motorola to license to them the rights to use the software contained in these radios products. Please note that per the guidance of FAR 12.212 -- Computer Software. "Commercial computer software or commercial computer software documentation shall be acquired under licenses customarily provided to the public (highlight added) to the extent such licenses are consistent with Federal law and otherwise satisfy the Government's needs". All software and technical data to be supplied under this program was developed at private expense and no development of software or technical data is contemplated under this contract. Rights in all software/technical data provided under the contract will be governed by Motorola's standard commercial Software License Agreement (SLA) which provides a nonexclusive, royalty-free, license of use. This SLA agreement can be found on Motorola's DHS TacCom Contract portal or at <http://www.motorolasolutions.com/fedgov/dhstacom>. All Delivery/Task order proposals for

these radio products will be subject to this SLA, and will be considered incorporated into the resultant Delivery/Task Order. Note that under the Motorola Software License Agreement, the Government end user will have non-exclusive royalty-free license of use, subject to the Restricted License Rights set forth in subparagraphs (b)(1) and (b)(2) of FAR 52.227-19 as required by 52.227-19(a), however, the software/firmware and documentation may or may not include a Restricted Rights notice.

- 14) **RFP H.11, Government Property:** As a commercial company, Motorola does not have the formal Government Property administration system required by FAR 52-245-1 and instead relies on commercial systems to meet commercial, State and Local and Federal requirements for property tracking requirements, based upon “sound industrial practices.”
- 15) **RFP H.13, Electronic and Information Technology Accessibility (Section 508):** With regard to the SOW, no specific accessibility standards have been identified as applicable to this requirement and therefore Motorola is not making any commitment or representation relating to such standards or section 508 for an order. However, Motorola has done an independent assessment of 508 requirements for our primary radio product lines for the most commonly applicable subparts of 508. As part of this assessment we have reviewed the features that impact the following limitation areas: Hearing, Speech, Cognition, Vision, Manual dexterity, reach, strength, and Photosensitive epilepsy. Motorola has made available information on accessibility features for some of its two-way radio products at <http://www.motorolasolutions.com/fedgov/omterms>.

That web site will be updated with additional information regarding accessibility features as such information becomes available.

- 16) **RFP H.14, Internet Protocol Version 6 (IPv6):** Motorola ASTRO 25 voice critical communications systems use IP for all system traffic including system control commands and voice and data traffic. The policies of many Public Safety and U.S. Federal Government users require LMR systems be built to the APCO P25 standard. The current version of the P25 standard does not specify the use of IPv6 protocols. In addition, it specifies the use of IPv4 for wireline interfaces. Consequently, Motorola is using a phased approach to transition to IPv6. The external interfaces of the proposed P25 system have the capability to connect to and transport ASTRO radio network traffic across IPv6 backbones. Motorola will continue to monitor the evolution of the P25 and IPv6 standards and incorporate them in our system designs based on their ability to meet our customer requirements.
- 17) **RFP H.19, Travel:** Motorola understands FAR 52.212-4 Alternate I, as clarified in this proposal, will apply to all travel reimbursed on a T&M order to Motorola. Motorola will add to a travel invoice 15% to cover handling expenses associated with the booking and the administration of the travel.
- 18) **RFP Section I, FAR 52.212-4, Contract Terms and Conditions – Commercial Items:** The terms of FAR 52.212-4 (Jan 2017) are hereby accepted subject to the following:

(a) Inspection and Acceptance:

**For Equipment:** Before shipping any unit of Motorola equipment to the Government, Motorola will perform its standard factory inspection and acceptance tests on the unit. Acceptance of equipment items will be deemed to have occurred upon delivery of the supplies at the initial destination designated by the Government. The Government will have the right to conduct its own incoming inspection and test of the equipment for up to thirty (30) days from the date of shipment to determine if the equipment conforms to the contract requirements. Upon notification by the Government and verification by Motorola that the item(s) do not conform to the contract, Motorola shall correct the non-conformance of said item(s) in accordance with Motorola's standard warranty and return of equipment practices. In addition, when an entire system is purchased, system level testing may be performed during implementation in accordance with a mutually agreed upon Acceptance Test Procedure (ATP). If specified in the Motorola system proposal, the warranty period for equipment items that are part of an ordered system will commence upon final system acceptance per the ATP, or six months after shipment of equipment items, whichever is earlier.

**For Services:** Government acceptance of the services shall be deemed to have occurred upon their completion. The Government will have the right to conduct its own inspection of the performed services for up to seven (7) days from the date of completion to determine if the services performed conform to the contract requirements. Upon notification by the Government and verification by Motorola that the service(s) did not conform to the contract, the remedies provided under the Warranty section in the Service Agreement terms apply.

(h) Patent Indemnity: Motorola shall indemnify the Government and its officers, employees and agents against liability, including costs, for direct infringement of any United States patent arising out of the performance of this contract, provided that Motorola is reasonably notified of such claims and proceedings. The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of the resultant contract or any subcontract at any tier.

**Note:** If the Government would prefer to address the subject of patent indemnity using existing FAR language, Motorola will be willing to accept the inclusion of FAR 52.227-1 and FAR 52.227-3 instead of the FAR 52.212-4(h) provision.

(j) Risk of Loss -- and -- (n) Title: Risk of loss of or damage to the supplies shall remain with Motorola until, and shall pass to the Government upon, delivery of the supplies to the initial FOB point designated by the Government, and title will pass to the Government at that time. Motorola agrees to be responsible for shipment arrangements and shipping expenses to the initial FOB destination point.

(o) Warranty: In lieu of the warranties specified in FAR 52.212-4 paragraph (o), the commercial warranties provided as attachments to this proposal (or cited on our website terms) apply. This is in accordance with the guidance provided in FAR 12.404 for the Government to use standard commercial warranties when acquiring "commercial items": When an entire system is purchased, the warranty period for equipment items that are part of an ordered system will commence upon final system acceptance per the ATP, or six months after shipment of equipment items, whichever is earlier.

- 19) **FAR 52.212-4, Alternate 1 (Applicable to Commercial Time and Material Services CLINs)**: The provisions of FAR 52.212-4 Alternate 1 (Jan 2017) shall apply subject to the following, as applicable:

**Motorola Clarification to paragraph (a) 1; Inspection/Acceptance:**

Government acceptance of the services shall be deemed to have occurred upon their completion. The Government will have the right to conduct its own inspection of the performed services for up to seven (7) days from the date of completion, to determine if the performed services conform to the contract requirements. Upon notification by the Government, and verification by Motorola, that the service(s) do not conform to the contract, the remedies provided under Motorola's Warranty of Services shall apply.

**Motorola Clarification to paragraph (a) 4:**

Under Motorola's commercial practices, a warranty for defects in material and workmanship is provided for a specified period from the date of shipment for all Motorola manufactured items as part of the acquisition of those items, and this warranty includes related labor incurred in the replacement or correction. We therefore will not charge an hourly rate for labor hours incurred in the replacement or correction of materials or services, and therefore there is no need to identify a reduced labor rate reflecting reduced profit. Warranties will become effective upon system acceptance, sector or region acceptance or beneficial use of the system by the Government, whichever occurs first.

**Motorola Clarification to paragraph (i) –Payments; (ii) Materials; A “Purchased Commercial items”:**

Motorola intends to invoice commercial item vendor items based upon Motorola's equipment prices for these items and not as materials under section B below.

**Motorola Clarification to paragraph (i) –Payments; (ii) Materials; B “Purchased Materials”:**

Motorola will add to the invoice of these materials a 15% handling charge as compensation for the administrative processing and handling of these material(s).

**Motorola Clarification to paragraph (i) –Payments; (ii) Materials; D “Other Costs”:**

Motorola will add to the invoice of the Section D (1) Other Direct Costs, and Section D (2) Indirect Costs, a 15% handling charge as compensation for the administrative processing and handling of these expenditures.

- 20) **Section I, FAR 52.215-8, Order of Precedence – Uniform Contract Format**: Motorola understands FAR 52.212-4(s), Order of Precedence, applies in lieu of this clause.

- 21) **Section I, FAR 52.227-19, Commercial Computer Software License**: The subject contract is under the provisions of FAR Part 12 for the supply of commercial item equipment, software

and technical data. No development of equipment, software or technical data, is contemplated under this contract, and all software (including source code), software documentation, and technical data to be supplied under this program was developed at private expense.

Therefore ownership and title to all Motorola software, including all rights in patents, copyrights, trade secrets, and other intellectual properties, remains vested exclusively in Motorola. HOWEVER Motorola does offer the Government licensed rights to use the hardware, software and software documentation under Motorola's standard commercial Software License Agreement, which should be incorporated into the resultant contract. This license is applicable pursuant to the guidance under FAR 12.212 that provides that “Commercial computer software or commercial computer software documentation shall be acquired **under licenses customarily provided to the public (highlight added)** ...” This commercial Software License Agreement provides the Government with commercial license rights.

- 22) **Section I, FAR 52.232-23, Assignment of Claims, and its Alternate I:** Motorola understands FAR 52.212-4(b) applies in lieu of this clause.
- 23) **Section I, FAR 52.232-25, Prompt Payment Alternate I:** Motorola understands Alternate I to the Prompt Payment clause does not apply as a cost-reimbursement contract is not contemplated.
- 24) **Section I, FAR 52.233-1, Disputes, and its Alternate I:** Under the subject order, Motorola will be providing equipment and/or services that are considered commercial items as defined in FAR 2.101. The provisions of FAR 52.212-4 (d) apply for all Disputes and therefore inclusion of FAR 52.233-1 is not necessary Note that FAR 52.212-4 (d), specifically incorporates the Contract Disputes Act of 1978 and FAR 52.233-1.
- 25) **Section I, FAR 52.242-3, Penalties for Unallowable Costs:** Motorola understands this clause does not apply to commercial item procurements.
- 26) **Section I, FAR 52.242-4, Certification of Final Indirect Costs:** Motorola understands this clause does not apply as indirect costs rates are not applicable to this procurement.
- 27) **Section I, FAR 52.243-1, Changes – Fixed Price, and its Alternates I, II, III, and FAR 52.243-3, Changes – Time-And-Materials or Labor-Hours:** Under the subject order, Motorola will be providing equipment and/or services that are considered commercial items as defined in FAR 2.101. The provisions of FAR 52.212-4 (c) apply for all changes. This paragraph provides that “Changes in the terms and conditions of this contract may be made only by written agreement of the parties”

Changes to the radio products can be made with regard to the schedule and delivery location, the quantity ordered, the model(s) ordered, and the option(s) ordered, however Changes to the specification or performance characteristics of the commercial radio products are not subject to these change provisions.

For the pricing of proposed changes, Motorola will be submitting fixed prices for any changed or additional services and it is understood that Motorola is not required to comply with the cost accounting standards or contract cost principles when submitting proposals for contract changes.

- 28) **Section I, FAR 52.245-1, Government Property, and its Alternates I and II:** As a commercial company, Motorola does not have the formal Government Property administration system required by FAR 52-245-1 and instead relies on commercial systems to meet commercial, State and Local and Federal requirements for property tracking requirements, based upon “sound industrial practices.” Accordingly, we request that any resultant contract be modified to delete FAR 52.245-1.
- 29) **Section I, FAR 52.245-9, Use and Charges:** Motorola would request the **deletion** of FAR 52.245-1, Government Property, as FAR Part 12 does **not** include or contemplate such a requirement for suppliers of commercial products and services. Consequently, Motorola would request the deletion of FAR 52.245-9, because as a commercial company, Motorola does not have the formal Government Property administration system required by FAR 52-245-1.
- 30) **Section I, FAR 52.251-1, Government Supply Sources:** Motorola requests deletion of a Government Property administration requirement in its entirety, as FAR Part 12 does not include or contemplate such a requirement for suppliers of commercial products and services. As a commercial company, Motorola does not have the formal Government Property administration system required by FAR 52-245-1.
- 31) **Section I, FAR 52.212-5(b)(7) -- FAR 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Oct 2016)** Motorola Solutions, Inc. is a commercial company and does not perform Cost Accounting Standards (“CAS”) covered contracts, nor does it track time using a Government-approved time-keeping system. Consequently, to comply with the labor hour reporting requirements of this contract Motorola will rely upon an internal methodology (available upon Government request) to derive the requisite estimate of hours.
- 32) **Section I, FAR 52.212-5(b)(38) – FAR 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons:** Motorola, as a corporation, complies with 40 CFR Part 82 and in general does not use ozone depleting substances (ODSs) in our manufacturing processes or products. Should ODSs be used in Motorola’s manufacturing processes or products, the products would be labeled in accordance with statutory requirements. In addition Motorola has a published corporate policy that requires us to eliminate components by our suppliers that contain, or that are manufactured with processes that use any ODCs. .
- 33) **Section I, FAR 52.212-5 (b)(42), FAR 52.223-15, Energy Efficiency in Energy-Consuming Products (DEC 2007) (42 U.S.C. 8259b):** Motorola has not determined if its products that can be categorized as “Energy-Consuming Products” comply with these regulation requirements and therefore, the clause is **not acceptable**. The clause should be **deleted** if an order does not include ‘Energy-Consuming Products’.

- 34) **Section I, FAR 52.212-5 (b)(45), FAR 52.223-20, Aerosols (JUN 2016)(E.O.13693):**  
Motorola understands this clause is not applicable to this procurement and should not be checked.
- 35) **Section I, FAR 52.212-5 (b)(46), FAR 52.223-21, Foams (JUN 2016) (E.O. 13693):**  
Motorola understands this clause is not applicable to this procurement and should not be checked.
- 36) **Section I, FAR 52.212-5(b)(50) – FAR 52.225-5, Trade Agreements Act:** See Motorola's response to FAR 52.212-3(g)(5).
- 37) **Section I, FAR 52.212-5(b)(51) – FAR 52.225-13, Restrictions on Certain Foreign Purchases:** Motorola represents that none of the Motorola branded and manufactured products included on the equipment list in its proposal are manufactured in Cuba, Iran, Sudan or North Korea. Motorola is not making any representations as to any third party supplier equipment that is included in its proposal.
- 38) **Section I, FAR 52.223-7, Notice of Radioactive Materials (JAN 1997):** Motorola understands this clause is not applicable to this procurement.
- 39) **Section I, Part 4, HSAR 3052.209-73, Limitation of Future Contracting:** Motorola warrants that to the best of our knowledge and belief there are no relevant facts or circumstances which could give rise to an OCI. The issuance of a contract or order in response to this proposal will evidence your agency's determination that Motorola's performance of such contract or order will not constitute an organizational conflict of interest nor otherwise limit Motorola's ability to accept any future orders or contracts (or subcontracts) whatsoever. As a condition of acceptance of certain order(s), Motorola may require specific assurances from the Government regarding this issue.

**Additional Proposal Terms The following additional terms apply:**

- (a) Motorola will not provide cost or pricing data in conjunction with this proposal, and you agree that there is no requirement to do so. Note, the value of this proposal exceeds the threshold specified in FAR 15.403-4(a)(1). Motorola is submitting this proposal based upon the expectation of adequate price competition and therefore requests that your activity grant an exception from the requirement to submit cost or pricing data under FAR part 15.403(1)(c)(1). By issuance of a contract award, Motorola understands that your activity has granted Motorola an Adequate Price Competition exception under FAR part 15.403(1)(c)(1).
- (b) Motorola may provide product replacements for ordered parts and accessories for currently manufactured products as long as the replaced item is the same or better technology and

sold at the same price. The invoice will reflect either the actual product shipped or the product ordered and no order modification is required. When replacement parts and accessories are needed for products no longer being manufactured, Motorola cannot guarantee that an equivalent or better part or accessory will always be available or that the replacement item found can be sold at the same price. Motorola reserves the right to cancel the ordered item without penalty if the ordered item is no longer available or if Motorola offers the item at a higher price and mutual agreement on price cannot be reached. To affect administrative savings to the Government, Finance Offices are instructed to make payments in accordance with this paragraph without requiring an order modification for replacement products sold at the same price.

- (c) Unless otherwise agreed in writing, all documentation or information provided by Motorola, regardless of any markings, is Motorola Proprietary Information and shall remain Motorola's exclusive property. You agree not to improperly disclose and to protect the confidentiality of such information.

**Contractual Provision Attachments:**

- Attachment 1: Limited Warranty Motorola Communications Products**
- Attachment 2: Limited Warranty for Customer Care and Services Division**
- Attachment 3: Warranty for Service**
- Attachment 4: Software License Agreement**
- Attachment 5: Motorola's Electronic Funds Transfer Information**