

City of Fayetteville Staff Review Form

2018-0669

Legistar File ID

12/18/2018

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Chief Greg Tabor

11/27/2018

CENTRAL DISPATCH (260)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of an ordinance waiving the requirements of formal competitive bidding and award a five year contract with Motorola Inc. for radio maintenance in the amount of \$102,597.12 plus tax. Motorola Inc. agrees the contract price will remain fixed for the initial term and for four one year subsequent renewals.

Budget Impact:

Various Radio Maintenance Accounts

Various Funds

Account Number

Fund

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 112,600.34

Funds Obligated \$

Current Balance **\$ 112,600.34**

Does item have a cost? Yes

Item Cost

Budget Adjustment Attached? No

Budget Adjustment

Remaining Budget **\$ 112,600.34**

V20180321

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF DECEMBER 18, 2018

TO: Mayor and City Council

THRU: Greg Tabor, Chief of Police 

FROM: Natisha Claypool, Assistant Dispatch Manager 

DATE: November 28, 2018

SUBJECT: Approve Radio Maintenance Contract from Motorola Inc.

RECOMMENDATION:

Staff recommends approval of an ordinance waiving the requirements of formal competitive bidding and approve a one-year contract with Motorola Inc. in the amount of \$102,597.12 plus applicable taxes with automatic renewal for four additional years for maintenance of the City's Motorola simulcast radio system. Additional equipment can be added to the contract at the same rates after the warranty period expires.

BACKGROUND:

The City of Fayetteville upgraded to the Arkansas Wireless Information Network (AWIN) system in 2012. The radio maintenance in this contract includes all dispatch radio equipment, portable, mobile and control stations that are no longer covered under warranty.

DISCUSSION:

Motorola Inc. offers factory authorized training, field technical representation services (engineers) and other technical support to provide maintenance on the Motorola Simulcast system. They have a field technician assigned to this area who provides on-site service to the City. Due to the complexity of this type of system, Motorola's unique knowledge of the technical aspects of our system; and how it connects to the Arkansas Wireless Network is necessary for them to provide the maintenance for this system. Motorola as part of the contract also provides network monitoring.

BUDGET/STAFF IMPACT:

Funding was approved in the 2019 proposed budget. A check request will be prepared for this item in January of 2019.

Attachments:

Staff Review Form
Motorola Contract



MOTOROLA SOLUTIONS

SERVICE AGREEMENT

1299 E Algonquin Road
Schaumburg, IL 60196
(800) 247-2346

Contract Number: USC000006611

Date: 12-NOV-2018

<p>Company Name: Fayetteville, City Of</p> <p>Attn.:</p> <p>Billing Address: 113 W Mountain St</p> <p>City, State, Zip Code: Fayetteville, AR 72701</p> <p>Customer Contact: Kathy Stocker</p> <p>Phone:</p>

P.O.#: N/A
Customer #: 1011442374
Bill to Tag#: 0001
Contract Start Date: 01-JAN-2019
Contract End Date: 31-DEC-2019
Payment Cycle: ANNUALLY
Currency: USD

QTY	MODEL/OPTION	SERVICES DESCRIPTION	MONTHLY EXT	EXTENDED AMT
		***** Recurring Services *****		
225	LSV00S00156A	LOCAL DEVICE COMBO SVC	\$6,348.28	\$76,179.36
119		APX 6000		
6		APX 6500		
43		APX 7500		
11		XTS 2500		
80		XTS 5000		
15		XTS 1500 - PORT		
27		XTL 5000 - MOBILE		
144		XTL 2500		
		XTL 1500		
	SVC01SVC0033A	NETWORK SECURITY MONITORING	\$251.33	\$3,015.96
	SVC01SVC1101C	ASTRO INFRASTRUCTURE REPAIR W/ADV REPL	\$626.36	\$7,516.32
	SVC01SVC1102C	ASTRO DISPATCH SERVICE	\$29.04	\$348.48
	SVC01SVC1103C	ASTRO NETWORK MONITORING	\$207.07	\$2,484.84
	SVC01SVC1104C	ASTRO TECHNICAL SUPPORT	\$74.20	\$890.40
	SVC01SVC1405C	NETWORK PREVENTATIVE MAINTENANCE - LEGACY	\$95.87	\$1,150.44
	SVC01SVC1413C	ONSITE INFRASTRUCTURE RESPONSE-PREMIER	\$917.61	\$11,011.32
			Sub Total	\$8,549.76
			Taxes	Calculated on Invoice
			Grand Total	\$102,597.12
<p>Motorola Solutions, Inc. agrees the contract price will remain fixed for the 2019 year term and for four one year subsequent renewals. The only service that will not remain constant is LSV00S00156A - Local Device Combo Service. This service hinges on radio count which could vary from year to year. Cost per unit per year is \$113.70.</p> <p>Motorola Solutions, Inc. will not subcontract any services included in this service contract to any local service or repair centers.</p> <p>Support for all XTL/XTS radios ends 12/31/2019.</p>			<p>THIS SERVICE AMOUNT IS SUBJECT TO STATE AND LOCAL TAXING JURISDICTIONS WHERE APPLICABLE, TO BE VERIFIED BY MOTOROLA SOLUTIONS</p>	

I received Statements of Work that describe the services provided on this Agreement. Motorola's Service Terms and Conditions, a copy of which is attached to this Service Agreement, is incorporated herein by this reference.

AUTHORIZED CUSTOMER SIGNATURE

TITLE

DATE

CUSTOMER (PRINT NAME)

Phillip Jackson

MOTOROLA REPRESENTATIVE (SIGNATURE)

CSM

TITLE

11/12/2018

DATE

PHILLIP JACKSON

MOTOROLA REPRESENTATIVE (PRINT NAME)

(870) 329-9509

PHONE

Company Name : Fayetteville, City Of
Contract Number : USC000006611

Contract Start Date : 01-JAN-2019
Contract End Date : 31-DEC-2019

Service Terms and Conditions

Motorola Solutions Inc. ("Motorola") and the City of Fayetteville, Arkansas hereby agrees as follows:

Section 1. APPLICABILITY

These Maintenance Service Terms and Conditions apply to service contracts whereby Motorola will provide the City of Fayetteville, Arkansas either (1) maintenance, support, or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

Section 2. DEFINITIONS AND INTERPRETATION

2.1. "Agreement" means these Maintenance Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Maintenance Service Terms and Conditions take precedence over any cover page, and the cover page takes precedence over any attachments, unless the cover page or attachment states otherwise.

2.2. "Equipment" means the equipment that is specified in the attachments or is subsequently added to this Agreement.

2.3. "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

Section 3. ACCEPTANCE

The City of Fayetteville, Arkansas accepts these Maintenance Service Terms and Conditions and agrees to pay the prices set forth in the Agreement. This Agreement becomes binding only when accepted in writing by Motorola. The term of this Agreement begins on the "Start Date" indicated in this Agreement.

Section 4. SCOPE OF SERVICES

4.1. Motorola will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to this Agreement. At The City of Fayetteville, Arkansas's request, Motorola may also provide additional services at Motorola's then-applicable rates for the services.

4.2. If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be serviced at levels set forth in the manufacturer's product manuals; and routine service procedures that are prescribed by Motorola will be followed.

4.3. If The City of Fayetteville, Arkansas purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed at the applicable rates after the warranty for that additional equipment expires.

4.4. All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, The City of Fayetteville, Arkansas will provide a complete serial and model number list of the Equipment. The City of Fayetteville, Arkansas must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. The City of Fayetteville, Arkansas's obligation to pay Service fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice.

4.5. The City of Fayetteville, Arkansas must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

4.6. If equipment cannot, in Motorola's reasonable opinion, be properly or economically serviced for any reason, Motorola may modify the scope of Services related to that Equipment; remove that Equipment from the Agreement; or increase the price to Service that Equipment.

4.7. The City of Fayetteville, Arkansas must promptly notify Motorola of any Equipment failure. Motorola will respond to The City of Fayetteville, Arkansas's notification in a manner consistent with the level of Service purchased as indicated in this agreement

Section 5. EXCLUDED SERVICES

5.1. Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other

than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

5.2. Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or For Equipment malfunction caused by the transmission medium.

Section 6. TIME AND PLACE OF SERVICE

Service will be provided at the location specified in this Agreement. When Motorola performs service at The City of Fayetteville, Arkansas's location as related to infrastructure repair activities, The City of Fayetteville, Arkansas will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. The City of Fayetteville, Arkansas will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, The City of Fayetteville, Arkansas agrees to reimburse Motorola for those charges and expenses.

Section 7. THE CITY OF FAYETTEVILLE, ARKANSAS CONTACT

The City of Fayetteville, Arkansas will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable The City of Fayetteville, Arkansas's personnel to maintain contact, as needed, with Motorola.

Section 8. PAYMENT

Unless alternative payment terms are stated in this Agreement, Motorola will invoice The City of Fayetteville, Arkansas in advance for each payment period. All other charges will be billed monthly, and The City of Fayetteville, Arkansas must pay each invoice in U.S. dollars within twenty (20) days of the invoice date. The City of Fayetteville, Arkansas will reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity.

Section 9. WARRANTY

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, The City of Fayetteville, Arkansas's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 10. DEFAULT/TERMINATION

10.1. If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty (30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

10.2. Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by The City of Fayetteville, Arkansas to Motorola will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Motorola will have no further obligation to provide Services.

Section 11. LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Service provided under this Agreement. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY

OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account. This limitation of liability will survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

Section 12. EXCLUSIVE TERMS AND CONDITIONS

12.1. This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.

12.2. The City of Fayetteville, Arkansas agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement will not affect its applicability. In no event will either party be bound by any terms contained in a The City of Fayetteville, Arkansas purchase order, acknowledgement, or other writings unless: the purchase order, acknowledgement, or other writing specifically refers to this Agreement; clearly indicate the intention of both parties to override and modify this Agreement; and the purchase order, acknowledgement, or other writing is signed by authorized representatives of both parties.

Section 13. PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS

13.1. Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to The City of Fayetteville, Arkansas under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Motorola's request. The City of Fayetteville, Arkansas may not disclose, without Motorola's written permission or as required by law, any confidential information or data to any person, or use confidential information or data for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section survive the expiration or termination of this Agreement. Notwithstanding anything herein to the contrary, Motorola acknowledges that The City of Fayetteville, Arkansas, contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If A Freedom of Information Act request is presented to the City of Fayetteville, Arkansas, Motorola will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information act (A.C.A 25-19-101 et. seq). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

13.2. Unless otherwise agreed in writing, no commercial or technical information disclosed in any manner or at any time by The City of Fayetteville, Arkansas to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide The City of Fayetteville, Arkansas with access to its confidential and proprietary information, including cost and pricing data.

13.3. This Agreement does not grant directly or by implication, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property, including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

Section 14. FCC LICENS ES AND OTHER AUT HORIZATIONS

The City of Fayetteville, Arkansas is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by governmental agencies. Neither Motorola nor any of its employees is an agent or representative of The City of Fayetteville, Arkansas in any governmental matters.

Section 15. COVENANT NOT TO EMPLOY

During the term of this Agreement and continuing for a period of two (2) years thereafter, The City of Fayetteville, Arkansas will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law.

Section 16. MATERIALS, TOOLS AND EQUIPMENT

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. The City of Fayetteville, Arkansas will safeguard all such property while it is in The City of Fayetteville, Arkansas's custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by The City of Fayetteville, Arkansas for Motorola's use without charge and may be removed from The City of Fayetteville, Arkansas's premises by Motorola at any time without restriction.

Section 17. GENERAL TERMS

17.1. If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

17.2. This Agreement and the rights and duties of the parties will be interpreted in accordance with the laws of the State in which the Services are performed.

17.3. Failure to exercise any right will not operate as a waiver of that right, power, or privilege.

17.4. Neither party is liable for delays or lack of performance resulting from any causes that are beyond that party's reasonable control, such as strikes, material shortages, or acts of God.

17.5. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

17.6. Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of The City of Fayetteville, Arkansas. In addition, in the event Motorola separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event.

17.7. THIS AGREEMENT WILL RENEW, FOR AN ADDITIONAL ONE (1) YEAR TERM, ON EVERY ANNIVERSARY OF THE START DATE UNLESS EITHER THE COVER PAGE SPECIFICALLY STATES A TERMINATION DATE OR ONE PARTY NOTIFIES THE OTHER IN WRITING OF ITS INTENTION TO DISCONTINUE THE AGREEMENT NOT LESS THAN THIRTY (30) DAYS OF THAT ANNIVERSARY DATE.

17.8. If Motorola provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and The City of Fayetteville, Arkansas agrees to pay for those services on a time and materials basis at Motorola's then effective hourly rates.

17.9 This Agreement may be executed in one or more counterparts, all of which shall be considered part of the Agreement. The parties may execute this Agreement in writing, or by electronic signature, and any such electronic signature shall have the same legal effect as a handwritten signature for the purposes of validity, enforceability and admissibility. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.