

PARTICIPATING ADDENDUM



**PUBLIC SAFETY COMMUNICATIONS
PRODUCTS, SERVICE AND SOLUTIONS**

Lead by the State of Washington

Master Agreement #: 00318

Contractor: Motorola Solutions, Inc.

Participating Entity: **STATE OF SOUTH DAKOTA – CONTRACT 17669**

The following products or services are included in this contract portfolio:

Motorola Solutions, Inc. has been awarded the following categories/sub-category/solutions. Detail regarding available services, warranty, software options along with products and pricing are available on the NASPO ValuePoint webpage.

- 1.1 Radio: Single-Band Portable Radio (P25)
- 1.2 Radio: Single-Band Mobile Radio (P25)
- 1.3 Radio: Single-Band Desktop Radio (P25)
- 1.4 Radio: Multi-Band Portable Radio (P25)
- 1.5 Radio: Multi-Band Mobile Radio (P25)
- 1.6 Radio: Multi-Band Desktop Radio (P25)
- 1.7 Radio: Base Station/Repeater (P25)
- 2.1 Radio: Conventional Analog Portable (Non-P25)
- 2.2 Radio: Conventional Analog Mobile (Non-P25)
- 2.3 Radio: Conventional Analog Desktop (Non-P25)
- 2.4 Radio: Conventional Analogy Base Station/Repeater (Non-P25)
- 4 Dispatch Consoles
- Radio Solution

Master Agreement Terms and Conditions:

1. Scope: This addendum covers the *Public Safety Communications Products, Services and Solutions* led by the State of Washington for use by state agencies and other entities located in the Participating **State of South Dakota** authorized by the State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State **of South Dakota** ("State"). Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. For internal use by the State: Political subdivisions (cities, counties, public schools, state universities, etc.) of the State may purchase directly from the Contractor according to their own procurement procedures. Any IT related purchase by state executive branch agencies is subject to the authority and prior approval of the Bureau of Information and Telecommunications. The Contractor will not be responsible to ensure compliance of this requirement.

The Contractor may, at the Contractor's discretion, extend pricing from this Master Agreement to Indian tribal governments and non-profit organizations in the State. Any sales made to Indian tribes and non-profit organizations shall be governed by this Participating Addendum and Master

Agreement and shall be included in any required reports and shall be subject to the NASPO VALUEPOINT administrative fee.

4. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Frank Jarman
Address:	585 Lincoln Avenue SW Hutchinson, MN 55350
Telephone:	320-583-3995
Email:	frank.jarman@motorolasolutions.com

Participating Entity

Name:	Lisa Hubbard
Address:	Office of Procurement Management 523 East Capitol Avenue Pierre, SD 57501
Telephone:	605-773-4580
Fax:	605-773-4840
Email:	lisa.hubbard@state.sd.us

5. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

[XX] The following changes set forth in this Participating Addendum are modifying or supplementing the Master Agreement terms and conditions and are an integral to and, when signed, shall become part of the Master Agreement as it relates to the subject matter hereof. All capitalized terms not otherwise defined herein shall have the same meaning as defined in the Master Agreement.

South Dakota's state specific contract terms set forth in Attachment B are incorporated by reference into this Participating Addendum, subject to the Order of Precedence set forth in Section 9 below.

6. SUBCONTRACTORS: All contactors, dealers, and resellers authorized in the State, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The Contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
7. ORDERS: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Participating Addendum shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

In additional, orders issued by the State or Purchasing Entity within the jurisdiction of this Participating Addendum shall include the following information:

(1) The Cooperative Purchasing Master Agreement #00318 and the Participating Addendum #17669;

(2) Purchasing Entity Name, Address, Contact, and Phone Number;

(3) Place of Delivery ; and

(4) Invoicing Address

8. ATTACHMENTS: The attachments listed below relate to the purchase and sale of product and services and the license of software hereunder. These attachments are incorporated into and made a part of this Participating Addendum:

Attachment A – State of South Dakota Terms and Conditions

9. ORDER OF PRECEDENCE. To the extent there is a conflict between the terms and conditions of the Master Agreement and the terms and conditions of this Participating Addendum, the Participating Addendum shall prevail as to the inconsistency only. In interpreting this Participating Addendum and resolving any ambiguities or conflicts with the Attachments identified above: 1) the main body of this of this Participating Addendum takes precedence over the attachments (unless otherwise specified in an attachment), and any inconsistency between Attachments A and B will be resolved in their listed order.
10. ENTIRE AGREEMENT. This Participating Addendum, together with its attachments, and the Master Agreement number 00318, are the entire agreement between the parties with respect to the subject matter hereof, and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. The preprinted terms and conditions found on any Participating Entity or Purchasing Entity order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each party signs that document.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by both parties below.

Participating Entity: State of South Dakota	Contractor: Motorola Solutions, Inc.
Signature: 	Signature: 
Name: Steven L. Berg	Name: Robert J. Rummel
Title: Director of Procurement Management	Title: Vice President MSSSI
Date: 09/20/2022	Date: 9/21/2022

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Ted Fosket
Telephone:	(907) 723-3360
Email:	tfosket@naspovaluepoint.org

Please email fully executed PDF copy of this document to PA@naspovaluepoint.org.

ATTACHMENT A
STATE OF SOUTH DAKOTA TERMS AND CONDITIONS

1. DEFINITIONS.

Capitalized terms used in this Participating Addendum have the following meanings:

- 1.1 "Confidential Information" means any information that is disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, or identified at the time of disclosure as being confidential or its equivalent; or if the information is in verbal form, it is identified as confidential at the time of disclosure and is confirmed in writing within thirty (30) days of the disclosure. Confidential Information does not include any information that: is or becomes publicly known through no wrongful act of the receiving Party; is already known to the receiving Party without restriction when it is disclosed; is or becomes, rightfully and without breach of this Participating Addendum, in the receiving Party's possession without any obligation restricting disclosure; is independently developed by the receiving Party without breach of this Participating Addendum; or is explicitly approved for release by written authorization of the disclosing Party.
- 1.2 "Equipment" means the equipment listed in this Participating Addendum available for purchase hereunder.
- 1.3 "Force Majeure" means an event, circumstance, or act of a third party that is beyond a Party's reasonable control (e.g., an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, pandemics, embargoes, war, and riots.).
- 1.4 "Motorola Software" means Software that Motorola or its affiliated company owns as defined in the Software License Agreement.
- 1.5 "Non-Motorola Software" means Software that another party owns.
- 1.6 "Proprietary Rights" means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by Motorola under this Participating Addendum and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola or another party.

- 2. **GOVERNING LAW/VENUE.** All contractual agreements are subject to, governed by, and construed in accordance with the laws of the State of South Dakota. Any action, suit, or other proceeding under, pursuant to, or governed by this contract shall be brought and maintained in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

- 3. **TERMINATION FOR NON-APPROPRIATION OF FUNDS.** The Contractor agrees that the continuation of this Participating Addendum is dependent on receipt of an appropriation from the South Dakota Legislature. In the event that the Legislature

does not provide an appropriation of funds for any fiscal year, or if funds become unavailable because of federal funds reduction, then and in that event, this Participating Addendum shall terminate at the end of the last fiscal year in which funding was available for this Participating Addendum to the State and the State agency involved. Vendor/contractor agrees that a termination for lack of funds pursuant to this paragraph shall not result in a claim against the State, nor against any State agency, agent, officer, or employee. Notwithstanding the foregoing, to the extent Participating Addendum is terminated for non-appropriation of funds, the Purchasing Entity agrees to pay for all equipment and software delivered and services performed up to the effective date of termination for the applicable fiscal year.

4. **INDEMNIFICATION BY STATE.** Neither the State nor any State agency, agent, officer, or employee shall hold harmless or indemnify Contractor for any loss or damage beyond the amounts provided for tort claims against the State by South Dakota. Neither the State, nor any State agency, agent, officer, or employee shall assume liability to any third person by means of a contract or agreement. The State has not, and shall not, waive or give up any immunity or protection afforded to the State of South Dakota by the Eleventh Amendment to the Constitution of the United States, and no provision of this Participating Addendum shall be interpreted as, or be deemed as, a waiver of such Amendment, nor of any immunity afforded by it to the State.
5. **COMPLIANCE WITH LAWS.** Each party agrees to comply with all applicable federal, state, and local laws, rules, regulations and ordinances applicable to its performance or use of the goods or services pursuant to this Participating Addendum. In addition, Purchasing Entity will obtain and comply with all Federal Communications Commission ("FCC") licenses and authorizations required for the installation, operation and use of the goods or services under this Participating Addendum.
6. Notwithstanding any language to the contrary, no interpretation shall be allowed that would find the State or any State agency has agreed to any binding arbitration, nor to the payment of damages or liquidated damages upon occurrence of a contingency. The State does not and shall not agree to pay any attorneys' fees or late charges in excess of those provided for in the South Dakota Prompt Payment Act, SDCL chapter 5-26.
7. **INSURANCE.** This Participating Addendum shall not require the State to purchase any insurance, nor shall the State be obligated to provide for any self-insurance beyond that required by South Dakota law relating to tort claims. Contractor shall be required to provide adequate insurance for: (1) Commercial General Liability; (2) Professional Liability; (3) Business Automobile Liability; and (4) Workers' Compensation, all as required by South Dakota Law, as otherwise set out in this Participating Addendum, or adequate to cover all risks of performance under this Participating Addendum.
8. **CLAIMS**
 - 8.1 **GENERAL INDEMNITY BY CONTRACTOR.** To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State and its Purchasing Entities and their respective employees and agents from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "claims") to the extent arising from any negligent act or omission of Contractor or its successors, agents, and

subcontractors under this Purchasing Addendum, except to the extent such claims are caused by the State's or a Purchasing Entity's negligence.

8.2 INDEMNIFICATION – INTELLECTUAL PROPERTY. Contractor will defend at its expense any suit brought against the State or Purchasing Entity ("Customer") to the extent it is based upon third party claim alleging Contractor manufactured equipment or Contractor's Software ("Contractor Product") directly infringes a United States patent or copyright ("Intellectual Property Claim") if Contractor receives reasonably prompt written notice of such claim or suit. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the indemnified party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense.

If an Intellectual Property Claim occurs, or in Contractor's opinion is likely to occur, Contractor may at its option and expense: (a) procure for Customer the right to continue using the Contractor Product; (b) replace or modify the Contractor Product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the Contractor Product and grant Customer a credit for the Contractor Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.

(1) The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

- (a) provided by the Contractor or the Contractor's subsidiaries or affiliates;
- (b) modified by a third party other than Contractor
- (c) specified by the Contractor to work with the Product; or
- (d) reasonably required, in order 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
- (e) it would be reasonably expected to use the Product in combination with such product, system or method.

This Section 8 provides Customer's sole and exclusive remedies and Contractor's entire liability in the event of an Infringement Claim. Customer has no right to recover and Contractor has no obligation to provide any other or further remedies, whether under another provision of this Participating Addendum or any other legal theory or principle, in connection with an Infringement Claim. In addition, the rights and remedies provided in this Section 8 are subject to and limited by the restrictions set forth in Section 14.4 of the Master Agreement.

9. STATE OF ISRAEL. Pursuant to Executive Order 2020-01, for contractors, vendors, suppliers, or subcontractors with five (5) or more employees who enter into a contract with the State that involves the expenditure of one hundred thousand dollars (\$100,000.00) or more, by signing this Participating Addendum. Contractor certifies and agrees that it has not refused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject matter of this Participating Addendum, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel

to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this Participating Addendum. Contractor further agrees to provide immediate written notice to the State if during the term of this Participating Addendum it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Participating Addendum or any related order.

10. NATIONAL DEFENSE AND AUTHORIZATION ACT ("NDAA"). Contractor hereby certifies, based on its reasonable inquiry, that the products provided to the State under this Participating Addendum are not prohibited video surveillance and telecommunications equipment produced by a Covered Entity, as defined in the applicable sections of the NDAA.
11. MOTOROLA SOFTWARE. Any Motorola Software, including subsequent releases, is licensed to Purchasing Entity solely in accordance with the Software License Agreement attached hereto as Attachment A and incorporated herein by reference. Purchasing Entity (and any Purchasing Entity purchasing from this Participating Addendum) hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.
12. NON-MOTOROLA SOFTWARE. Any Non-Motorola Software is licensed to Purchasing Entity in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor's rights and protections under the Software License Agreement. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software. Non-Motorola Software may include Open Source Software. All Open Source Software is licensed to Purchasing Entity in accordance with, and Purchasing Entity agrees to abide by, the provisions of the standard license of the copyright owner and no he Software License Agreement. Upon request by Purchasing Entity, Motorola will use commercially reasonable efforts to determine whether any Open Source Software will be provided under this Participating Addendum; and if so, identify the Open Source Software and provide to Purchasing Entity a copy of the applicable standard license (or specify where that license may be found); and provide to Purchasing Entity a copy of the Open Source Software source code if it is publicly available without charge (although a distribution fee or a charge for related services may be applicable.)
13. DELAYS. Neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure. Each Party will notify the other if it becomes aware of any Force Majeure that will significantly delay performance. The notifying Party will give the notice promptly (but in no event later than fifteen (15) days) after it discovers the Force Majeure. If a Force Majeure occurs, the Parties will execute a change order to extend the performance schedule for a time period that is reasonable under the circumstances.
14. CONFIDENTIAL INFORMATION. During the term of this Participating Addendum, the Parties may provide each other with Confidential Information. Each Party will: maintain the confidentiality of the other Party's Confidential Information and not disclose it to any third party, except as authorized by the disclosing Party in writing or as required by a court of competent jurisdiction; restrict disclosure of Confidential Information to its employees who have a "need to know" and not copy or reproduce the Confidential Information; take necessary and appropriate precautions to guard the confidentiality of Confidential Information, including

informing its employees who handle the Confidential Information that it is confidential and not to be disclosed to others, but those precautions will be at least the same degree of care that the receiving Party applies to its own confidential information and will not be less than reasonable care; and use the Confidential Information only in furtherance of the performance of this Participating Addendum. Confidential Information is and will at all times remain the property of the disclosing Party, and no grant of any proprietary rights in the Confidential Information is given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Participating Addendum. Notwithstanding the above, Motorola acknowledges that Purchasing Entity is a governmental entity that is required to comply with applicable state open records laws and that Purchasing Entity's compliance with these open records provisions does not constitute a breach or a default of this Participating Addendum.

15. **PRESERVATION OF MOTOROLA'S PROPRIETARY RIGHTS.** Motorola, the third party manufacturer of any Equipment, and the copyright owner of any Non-Motorola Software own and retain all of their respective Proprietary Rights in the Equipment and Software, and nothing in this Participating Addendum is intended to restrict their Proprietary Rights. All intellectual property developed, originated, or prepared by Motorola in connection with providing to Purchasing Entity the Equipment, Software, or related services remain vested exclusively in Motorola, and this Participating Addendum does not grant to Purchasing Entity any shared development rights of intellectual property. Except as explicitly provided in the Software License Agreement, Motorola does not grant to Purchasing Entity, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. Purchasing Entity will not modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, or export the Software, or permit or encourage any third party to do so. The preceding sentence does not apply to Open Source Software which is governed by the standard license of the copyright owner.
16. **INVOICING AND PAYMENT.** Motorola will submit invoices to Purchasing Entity in accordance with the Master Agreement Purchasing Entity will make payments to Motorola within forty-five (45) days after the date of each invoice. Purchasing Entity will make payments when due in the form of a wire transfer, check, or cashier's check from a U.S. financial institution. Overdue invoices will bear simple interest as provided in SDCL chapter 5-26.

17. GENERAL TERMS

- 17.1 **INDEPENDENT CONTRACTORS.** Each Party will perform its duties under this Participating Addendum only as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Participating Addendum will be interpreted as granting either Party the right or authority to make commitments for the other. This Participating Addendum will not constitute, create, or in any way be interpreted as a joint venture, partnership or formal business organization of any kind.
- 17.2 **SURVIVAL OF TERMS.** In addition to the survival requirements under Section 17.13 of the Master Agreement, the following terms shall survive termination or expiration of this Participating Addendum: Section 8 (Indemnification Obligations); Section 11 (Motorola Software), Section 12 (Non-Motorola Software); if any payment obligations exist, and Section 14 (Confidentiality); Section 15 (Proprietary Rights); and Section 16 (Invoicing and Payment).