

PUBLIC SAFETY VIDEO SYSTEMS (2023-2028)
between
State of South Dakota – Contract 17828
and
AXON ENTERPRISE, INC.

This Participating Addendum is entered into by State of South Dakota (“Participating Entity”) and the following Contractor (each a “Party” and collectively the “Parties”) for the purpose of participating in NASPO ValuePoint Master Agreement Number OK-MA-145-21-400, executed by Contractor and the State of Oklahoma (“Lead State”) for Public Safety Video Systems (2023-2028) (“Master Agreement”):

AXON Enterprise, Inc. (“Contractor”)
17800 N 85th Street
Scottsdale, AZ 85255

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor’s contact for this Participating Addendum is:

Sean Lake
slake@axon.com
623 225 9909

Participating Entity’s contact for this Participating Addendum is:

Lisa Hubbard
Assistant Director, OPM
lisa.hubbard@state.sd.us
605-773-4580

- II. TERM.** This Participating Addendum is effective as of the date of the last signature below, and will terminate upon termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein. For avoidance of doubt, notwithstanding anything to the contrary, if an order issued prior to expiration or cancellation of this Participating Addendum and extends beyond the expiration or termination of this Participating Addendum, the terms of the Participating Addendum in addition to those in the Master Agreement shall govern that order and continue until all obligations by both the Contractor, Participating Entity or Purchasing Entity are completed.

- III. PARTICIPATION AND USAGE.** This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law (“Participating Agency”). Participating Entity has sole authority to determine which entities are eligible to use this Participating Addendum. If Contractor becomes aware that an entity’s use of this Participating Addendum is not authorized, Contractor will notify NASPO ValuePoint to initiate outreach to the appropriate parties.

The Contractor may, at the Contractor’s discretion, extend pricing from this agreement to Indian tribal governments and non-profit organizations in **South Dakota**. Any sales made to Indian tribes and non-profit organizations from this agreement shall be included in any required reports and shall be subject to the NASPO VALUEPOINT administrative fee.

- IV. GOVERNING LAW.** The construction and effect of this Participating Addendum and any Orders placed hereunder will be governed by, and construed in accordance with Participating Entity’s laws.
- V. SCOPE.** Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, terms, and conditions of the Master Agreement and the rights and obligations set forth therein as applied to Contractor and Participating Entity and Purchasing Entities.
- a. Products.** All products available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities.
 - b. Services.** All services available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities.

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- c. Contractor Partners.** All subcontractors, dealers, distributors, resellers, and other partners identified on Contractor's NASPO ValuePoint webpage as authorized to provide Products and Services to Participating Entity may provide Products and Services to users of this Participating Addendum. Contractor will ensure that the participation of Contractor's subcontractors, dealers, distributors, resellers, and other partners is in accordance with the terms and conditions set forth in the Master Agreement and in this Participating Addendum.

Any amendment to the Master Agreement shall be deemed incorporated into this Participating Addendum unless the amendment is rejected by Participating Entity in writing to Contractor within ten (10) calendar days of the amendment's effective date and is documented thereafter via written amendment hereto.

Any conflict between this Participating Addendum and the Master Agreement will be resolved in favor of the Participating Addendum. The terms of this Participating Addendum, including those modifying or adding to the terms of the Master Agreement, apply only to the Parties and shall have no effect on Contractor's participating addenda with other participating entities or Contractor's Master Agreement with the Lead State.

- VI. ORDERS.** Purchasing Entities may place orders under this Participating Addendum by referencing the Participating Addendum Number on an Order. Each Order placed under this Participating Addendum is subject to the pricing and terms set forth herein and in the Master Agreement, including applicable discounts, reporting requirements, and payment of administrative fees to NASPO ValuePoint and Participating Entity, if applicable.
- VII. PARTICIPATING ENTITY REPORTING REQUIREMENTS AND ADMINISTRATIVE FEE.** Axon Enterprise, Inc. agrees to provide quarterly utilization reports, developed by the lead State, reflecting net sales for the period by the last day of the next month following quarter end. The State may request additional reports as mutually agreed by both parties.
- VIII. FEDERAL FUNDING REQUIREMENTS.** Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. When applicable, a Purchasing Entity will identify any alternative or additional requirements related to the use of federal funds prior to placing the Order. By accepting the Order, Contractor agrees to comply with the requirements set forth therein.
- IX. ATTACHMENTS.** This Participating Addendum includes the following attachments:
- a.** Attachment A State of South Dakota Terms and Conditions.
- X. NOTICE.** Any notice required herein shall be sent to the following:
- | | |
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| <p>For Contractor:</p> <p>Sean Lake
slake@axon.com
623 225 9909</p> | <p>For Participating Entity:</p> <p>Lisa Hubbard
Assistant Director, OPM
lisa.hubbard@state.sd.us
605-773-4580</p> |
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- XI. SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT.** Upon execution, Contractor shall promptly email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at pa@naspovaluepoint.org. The Parties acknowledge and agree that the Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

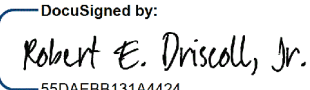
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Between State of South Dakota and AXON Enterprise, Inc.**

SIGNATURE

The undersigned for each Party represents and warrants that this Participating Addendum is a valid and legal agreement binding on the Party and enforceable in accordance with the Participating Addendum's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Participating Addendum and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

CONTRACTOR:

DocuSigned by:

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Signature

Robert E. Driscoll, Jr.

Printed Name

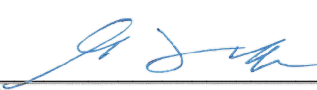
Deputy General Counsel

Title

8/2/2024 | 7:09 PM MST

Date

PARTICIPATING ENTITY:


Signature

Steven L. Berg

Printed Name

Director, Office of Procurement Management

Title

08/05/2024

Date

ATTACHMENT A
STATE OF SOUTH DAKOTA
CONTRACTUAL PROVISIONS

1. It is expressly agreed that the terms of each and every provision in this Attachment A shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of this Participating Addendum into which this Attachment A is incorporated.
2. 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 Participating Addendum shall be brought and maintained in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
3. 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 be null and void and shall expire at the end of the last fiscal year in which funding shall be available for this Participating Addendum to the State and/or the Participating State Agency involved. 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, so long as the State or the Participating Agency return the purchased products to Contractor within 30 days, in accordance with Section 17.3 – Effects of Termination of Contractor's MSPA under the Master Agreement
4. Neither the State of South Dakota, nor any State agency, agent, officer, or employee shall hold harmless or indemnify any vendor/Contractor for any loss or damage beyond the amounts provided for tort claims against the State by South Dakota law. 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 of South Dakota.
5. Contractor agrees to comply with all federal, state, and local laws, regulations, ordinances, guidelines, permits, and requirements applicable to providing goods or services pursuant to this Participating Addendum, and Contractor will be solely responsible for obtaining current information about such requirements.
6. Notwithstanding any language to the contrary, no interpretation shall be allowed that would find the State of South Dakota 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 of South Dakota 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. This Participating Addendum shall not require the State of South Dakota to purchase any insurance, nor shall the State of South Dakota 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 Agreement, or adequate to cover all risks of performance under this Participating Addendum.

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8. Contractor hereby agrees to indemnify and hold the State of South Dakota, and its agents, agencies, officers, and employees, harmless from and against third-party actions, suits, damages, liability, or other proceedings that may arise as the result of any negligent act, error, or omission of the Contractor in performing services or providing goods under this Participating Addendum, as set forth in the Master Agreement. This provision does not require Contractor to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its agents, agencies, officers, or employees.
9. Contractor hereby agrees to defend the State of South Dakota and save the State of South Dakota, its agents, agencies, officers and employees, harmless from third party claims alleging infringement of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article, or appliance furnished or used by Contractor in the performance of this Participating Addendum, as set forth in the Master Agreement.

10. Compliance with SDCL Ch 5-18A. Contractor certifies and agrees that the following information is correct:

The bidder or offeror is not an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled, directly or indirectly, by a foreign parent entity from, or the government of, the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela.

It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the purchasing agency to reject the bid or response submitted by the bidder or offeror on this project and terminate any contract awarded based on the bid or response, and further would be cause to suspend and debar a business under SDCL § 5-18D-12.

The successful bidder or offeror further agrees to provide immediate written notice to the purchasing agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination and would be cause to suspend and debar a business under SDCL § 5-18D-12.

11. 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 of South Dakota that involves the expenditure of one hundred thousand dollars (\$100,000.00) or more, by signing this Agreement vendor/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 Agreement, 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 Agreement. Vendor/contractor further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such

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noncompliance may be grounds for termination of this Agreement.

12. Contractor (i) understands that neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek independent legal advice on the applicability of that provision to any Agreement entered into as a result of this RFP. By signing an Agreement pursuant to this RFP, offeror hereby certifies that the Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.
13. Vendor/contractor will not provide to the State any computer or telecommunication hardware or video surveillance hardware, or any components thereof, or any software that was manufactured, provided, or developed by a covered entity. As used in this paragraph, "covered entity" means the following entities and any subsidiary, affiliate, or successor entity and any entity that controls, is controlled by, or is under common control with such entity: Kaspersky Lab, Huwaei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, Dahua Technology Company, or any entity that has been identified as owned or controlled by, or otherwise connected to, People's Republic of China. Vendor/contractor will immediately notify the State if vendor/contractor becomes aware of credible information that any hardware, component, or software was manufactured, provided, or developed by a covered entity.