# CALIFORNIA PARTICIPATING ADDENDUM
# WESTERN STATES CONTRACTING ALLIANCE
## PUBLIC SAFETY COMMUNICATION EQUIPMENT
## PHASE II
## HARRIS CORPORATION
## MASTER PRICE AGREEMENT

**02702**

1. **Scope:** This Participating Addendum covers the purchase of Public Safety Communication Equipment for all State Agencies and will include all California political subdivisions. Depending on the contractor's award, as identified in the Master Price Agreement, the following equipment may be covered: Public Safety Communications Equipment. A political subdivision is defined as any entity that derives its funding from federal, state and/or local government sources. These political subdivisions include: public school districts, state colleges and universities, cities, counties, water conservancy districts, sewer districts, mosquito abatement, etc.

2. **Changes**: Changes to the terms and conditions of the signed Master Price Agreement are as follows:

   a. The California General Provisions (CAGP), dated 9/1/2004 for Western States Contracting Alliance, Harris Corporation, become a part of this Participating Addendum.

   b. The California General Provisions (CAGP) shall prevail if there is a conflict between the terms and conditions of the contractor's WSCA State of Washington, Statewide Contract, packaging, invoices, catalogs, brochures and technical data sheets.

   c. State of Washington, Statewide Contract cover page, is hereby modified as follows: "Original Award Date" changed to "Effective Date September 27, 2004".

3. **Reports & Administrative Fee:** A report shall be submitted to the California Contract Administrator for all California purchases providing the following information:

   Agency Name, Purchase Order Number, Purchase Order Date, Total Purchase Order Amount, WSCA Administrative Fee Dollar Amount, Agency Contact Name, Agency Address, Agency Telephone Number, Total Dollars for the quarter.

   The Contractor shall submit a check, in addition to the report, payable to the State of California, Contract Administrator for the calculated administrative fee for an amount equal to one percent (0.01) of the sales for the quarterly period. Reports and fee delivery will be in accordance with the following schedule.

| | |
|---|---|
| Calendar Quarter 1 (JAN 1 to MAR 31) | **Due APR 30** |
| Calendar Quarter 2 (APR 1 to JUN 30) | **Due JUL 31** |
| Calendar Quarter 3 (JUL 1 to SEP 30) | **Due OCT 31** |
| Calendar Quarter 4 (OCT 1 to DEC 31) | **Due JAN 31** |

   The administrative fee check and report should be submitted to the following address:

   Theresa LeClaire
   Department of General Services
   Procurement Division
   Multiple Award Program
   707 Third Street, 2nd Floor, West Sacramento, CA 95605

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4. **The primary state government contact for this Participating Addendum is as follows:**

   **Department of General Services**
   **Procurement Division**
   **Multiple Award Program**
   **707 Third Street, 2nd Floor, West Sacramento, CA 95605**
   **Contact: Steve Lower**
   **E-mail: steve.lower@dgs.ca.gov**
   **Phone: (916) 375-4539**
   **Fax: (916) 375-4663**

5. **The primary Harris Corporation customer contact for this Participating Addendum is as follows:**

   **Harris Corporation**

   **Address:** 350 TWIN DOLPHIN DRIVE
   Redwood Shores, CA 94065
   **Contact:** JOHN KERRIGAN
   **E-Mail:** JOHN.KERRIGAN@HARRIS.COM
   **Phone:** 650-594-3290
   **Fax:** 240-220-5523

6. **Price Agreement Number:** The price agreement number for the Participating State is 02702. This Participating Addendum and the WSCA Master Price Agreement, Number 02702, (administered by the State of Washington) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the Master Price Agreement, together with its exhibits, shall not be added to or incorporated into this Participating Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

7. **Effective Dates:** This Participating Addendum shall be effective upon approval by the Department of General Services and will continue until the Termination Date of the Master Price Agreement, unless terminated early in accordance with the terms and conditions of the Master Price Agreement or this Participating Addendum.

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**02702**

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

| State of California: GENERAL SERVICES LEGAL SERVICES h.w. | Harris Corporation: |
|---|---|
| By: Rita Hamilton | By: SDudash |
| Name: Rita Hamilton | Name: SALLY DUDASH |
| Title: Deputy Director | Title: DIVISION CONTROLLER |
| Date: 9-27-04 | Date: 9/13/04 |

# CALIFORNIA GENERAL PROVISIONS – INFORMATION TECHNOLOGY

## 1. APPLICABLE LAW

This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

## 2. COMPLIANCE WITH STATUTES AND REGULATIONS

a) Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
b) If this Contract is in excess of $500,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
c) To the extent that this contract falls within the scope of Government Code Section 11135, Contractor hereby agrees to respond to and resolve any complaint brought to its attention, regarding accessibility of its products or services.

## 3. CONTRACTOR'S POWER AND AUTHORITY

The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.

## 4. ASSIGNMENT

This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.

## 5. ORDER OF PRECEDENCE

In the event of any inconsistency between this Participating Addendum and Master Price Agreement, the following order of precedence shall apply:

a) executed participating addendum(s);
b) the terms and conditions of the Master Price Agreement;
c) exhibits to the Master Price Agreement;
d) the list of products and services contained in the purchase order;
e) the Request for Information (or similar) document; and
f) Contractor's Response to the Request for Information (or similar document).

## 6. PACKING AND SHIPMENT

a) All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
   i) show the number of the container and the total number of containers in the shipment; and
   ii) the number of the container in which the packing sheet has been enclosed.
b) All shipments by Contractor or its subcontractors must include packing sheets identifying: the State's Contract number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.
c) Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.

## 7. TERMINATION FOR NON-APPROPRIATION OF FUNDS

a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefor.
b) STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, DELIVERABLES SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.

## 8. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY

a) The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.
b) Contractor shall not be liable for damages arising out of or caused by an alteration or an Attachment not made or installed by the Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by the Contractor during the Contract.

## 9. INVOICES:

Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

## 10. REQUIRED PAYMENT DATE

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices

# CALIFORNIA GENERAL PROVISIONS – INFORMATION TECHNOLOGY

not more than 45 days after (i) the date of acceptance of Deliverables or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

**11. TAXES**

Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.

**12. NEWLY MANUFACTURED GOODS**

All Goods furnished under this Contract shall be newly manufactured Goods; used or reconditioned Goods are prohibited, unless otherwise specified.

**13. CONFIDENTIALITY OF DATA**

All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.

**14. EXAMINATION AND AUDIT**

Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting Documentation pertaining to performance of this Contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract.

**15. DISPUTES**

a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the State is liable. If the Contractor is not satisfied with the decision of the Department Director or designee, the Contractor may appeal the decision to the Department of General Services, Deputy Director, Procurement Division. In the event that this Contract is for Information Technology Goods and/or services, the decision may be appealed to an Executive Committee of State and Contractor personnel.

b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the State's instructions. Contractor's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of this Contract.

c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Department Director or designee or Deputy Director, Procurement Division if an appeal was made. If the State fails to render a final decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

**16. PRIORITY HIRING CONSIDERATIONS**

If this Contract includes services in excess of $200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

**17. COVENANT AGAINST GRATUITIES**

The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

**18. NONDISCRIMINATION CLAUSE**

a) During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment

of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

b) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

**19. NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

**20. ASSIGNMENT OF ANTITRUST ACTIONS**

Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

a) In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.

b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
   (i) the assignee has not been injured thereby, or
   (ii) the assignee declines to file a court action for the cause of action.

**21. DRUG-FREE WORKPLACE CERTIFICATION**

The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).

b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
   (i) the dangers of drug abuse in the workplace;
   (ii) the person's or organization's policy of maintaining a drug-free workplace;
   (iii) any available counseling, rehabilitation and employee assistance programs; and,
   (iv) penalties that may be imposed upon employees for drug abuse violations.

c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
   (i) will receive a copy of the company's drug-free policy statement; and,
   (ii) will agree to abide by the terms of the company's statement as a condition of employment on the Contract.

**22. FOUR-DIGIT DATE COMPLIANCE**

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

**23. SWEATFREE CODE CONDUCT**

a) Contractor declares under penalty of perjury that no equipment, materials, or supplies furnished to the State pursuant to the contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b) Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).

**24. RECYCLING**

Contractor hereby certifies under penalty of perjury that a percentage (0% to 100%) of the materials, Goods, supplies offered, or products used in the performance of this Contract meet or exceed the minimum percentage of recycled material as defined in PCC Sections 12161 and 12200.

**25 CHILD SUPPORT COMPLIANCE ACT**

# CALIFORNIA GENERAL PROVISIONS – INFORMATION TECHNOLOGY

For any Contract in excess of $100,000, the Contractor acknowledges in accordance with PCC Section 7110, that:

a) The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and

b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

**26. AMERICANS WITH DISABILITIES ACT**

Contractor assures the State that Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq).

**27. UNION ACTIVITIES**

For all contracts, , except fixed price contracts of $50,000 or less, the Contractor acknowledges that: by signing this agreement, Contractor hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement and agrees to the following:

a) Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.

b) No state funds received under this agreement will be used to assist, promote or deter union organizing.

c) Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.

d) If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

**28. PURCHASE ORDERS FUNDED IN WHOLE OR PART BY THE FEDERAL GOVERNMENT**

All contracts (including individual orders), except for State construction projects, which are funded in whole or in part by the federal government may be canceled with 30 days notice, and are subject to the following:

a) It is mutually understood between the parties that this contract (order) may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the contract (order) were executed after that determination was made.

b) This contract (order) is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal year during which the order was generated for the purposes of this program. In addition, this contract (order) is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this contract (order) in any manner.

c) It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this contract (order) shall be amended to reflect any reduction in funds. The department has the option to void the contract (order) under the 30-day cancellation clause or to amend the contract to reflect any reduction of funds.

**29. DEBARMENT CERTIFICATION (FEDERALLY FUNDED SERVICE CONTRACTS OVER $10,000)**

The prospective recipient of Federal assistance funds is required to certify that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The contractor is required to complete the Debarment Certification before entering into a contract.

**30. WORLD TRADE ORGANIZATION GOVERNMENT PROCUREMENT AGREEMENT**

If this Contract is in excess of $500,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).

**31. INDEMNIFICATION**

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:

a. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and

b. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

**32. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY**

a) Contractor will indemnify, defend, and save harmless the State, its officers, agents, and employees, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. Intellectual Property Right by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such

indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section 39a). The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State.

Unless a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this Section 39a) will be conditional upon the following:

i) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and

ii) **Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.**

b) Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.

c) Should the Deliverables or Software, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using the Deliverables or Software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables or Software by the State shall be prevented by injunction, the Contractor agrees to take back such Deliverables or Software and make every reasonable effort to assist the State in procuring substitute Deliverables or Software. If, in the sole opinion of the State, the return of such infringing Deliverables or Software makes the retention of other Deliverables or Software acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables or Software and refund any sums the State has paid Contractor less any reasonable amount for use or damage.

d) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:

(i) The combination or utilization of Deliverables furnished hereunder with Equipment or devices not made or furnished by the Contractor; or,

(ii) The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or

(iii) The modification by the State of the Equipment furnished hereunder or of the Software; or

(iv) The combination or utilization of Software furnished hereunder with non-contractor supplied Software.

e) Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

**33. INDEPENDENT CONTRACTOR**

Contractor and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.

**34. FORCE MAJEURE**

Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:

a) Acts of God or of the public enemy, and

b) Acts of the federal or State government in either its sovereign or contractual capacity.

If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted Deliverables or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

**35. ELECTRONIC WASTE RECYCLEING ACT OF 2003**

The Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

**36. USE TAX COLLECTION**

In accordance with PCC Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.

**37. EXPATRIATE CORPORATION**

Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Sections 10286 and 10286.1, and is eligible to contract with the State.

**38 DOMESTIC PARTNERS**

Commencing on July 1, 2004, Contractor certifies that it is in compliance with the applicable provisions of PCC Section 10295.3 with regard to benefits for domestic partners.

# CALIFORNIA GENERAL PROVISIONS – INFORMATION TECHNOLOGY

Public Safety Radio Goods Special Provisions (TD-947 Rev. 05/04)

**1. TECHNICAL STANDARDS**

a) Goods shall meet or exceed all applicable performance standards listed in TIA/EIA-603, "Land Mobile FM and PM Communications Equipment Measurement and Performance Standards".

i) The State will consider goods tested under comparable performance standards listed in documents EIA-152-C, "Minimum Standards for Land Mobile Communication FM or PM Transmitters, 25-866 MHz", EIA/TIA-204-D, "Minimum Standards for Land Mobile Communication FM or PM Receivers, 25-866 MHz", and EIA-220-B, "Minimum Standards for Land Mobile Communication Continuous Tone-Controlled Squelch Systems (CTCSS)", which were superseded by TIA/EIA-603. Specification compliance testing conducted by the State, however, will be conducted in accordance with the methods, procedures, and requirements of TIA/EIA-603.

ii) The performance requirements contained within the technical specifications further define and, in some cases, exceed the requirements contained in TIA/EIA-603. In the event of a conflict between performance requirements contained in TIA/EIA-603 and the performance requirements contained in the specification, the requirements contained in the specification shall prevail.

b) Where applicable, all goods delivered shall meet or exceed the requirements contained in Part 90 of the Federal Communications Commission Rules and Regulations (47 CFR 90).

c) Where applicable, all goods delivered shall meet or exceed the requirements contained in Part 15 of the Federal Communications Commission Rules and Regulations (47 CFR 15).

d) All goods delivered shall meet or exceed the requirements contained in any other applicable part of the Federal Communications Commission Rules and Regulations.

**2. SPECIAL ORDERING PROVISIONS**

During the thirty-calendar day period immediately following purchase order issuance, the State reserves the right to increase the quantity ordered by up to twenty-five percent, or as otherwise specified, at rates not to exceed those contained herein.

**3. SPECIFICATION COMPLIANCE TESTING**

a) Goods may be inspected before acceptance for workmanship, appearance, and conformance to all other requirements of the specifications. The State may reject any shipment or item of a shipment that is not in compliance with specification requirements or is otherwise defective in any manner.

b) Within forty-five calendar days following delivery of any shipment, or of any item previously rejected, the State will either reject or accept said shipment or item. If the shipment or item of a shipment is not rejected, it will be deemed accepted.

c) Upon rejection, the State will notify contractor of such rejection, and the grounds for such rejection. For the purpose of this provision, contractor shall provide the State with the name, address, and telephone number of the office to which such notice of rejection shall be given.

d) Within fifteen calendar days after contractor first receives notice of rejection, contractor shall, if requested by the State, remove rejected goods from the State's facilities. Upon failure of contractor to remove such goods from the State's facilities within the specified period, the State may forward such goods to contractor by common carrier, at contractor's expense and risk.

e) Unless otherwise specified, and at no cost to the State, all rejected goods shall be repaired or replaced by contractor and shall be returned to the State within thirty calendar days from the date the goods are made available on, or removed from, the State's facilities, whichever occurs first.

f) Unless otherwise specified, if contractor does not deliver goods meeting specifications within sixty calendar days from the date the goods are made available on, or removed from, State's facilities, whichever occurs first, contractor shall be deemed to be in default, and the State will terminate the purchase order in whole or in part in accordance with the Termination for Default provision contained in the General Provisions.

g) At the State's option, contractor may be permitted to make repairs of rejected goods at the State's facilities.

h) Paragraph 17.a) and Paragraph 17.c) of the General Provisions effective 04/26/04 are hereby deleted in their entirety.

**4. MINIMUM GUARANTEES AND WARRANTIES**

a) Contractor is responsible for all guarantees and warranties required herein. Any guarantee/warranty offered by the original goods manufacturer shall not relieve contractor of this responsibility.

b) If contractor is other than the manufacturer of goods delivered, contractor warrants that the manufacturer has authorized contractor to sell goods delivered. At the request of the State, written verification by manufacturer of such authorization shall be immediately provided.

c) All goods delivered shall be guaranteed by contractor against defects for eighteen months from date of delivery.

d) During the guarantee period, contractor shall repair or replace, at its option and expense, all defective goods, or refund the purchase price thereof.

e) Unless otherwise specified, if contractor has not completed guarantee repair within thirty calendar days after notification of a malfunction, the State may effect such repairs and bill contractor for material cost and labor cost at the State technician current hourly rate.

f) Workmanship and materials provided by contractor in the performance of any installation work required shall be guaranteed for ninety calendar days after installation. Workmanship or materials which are found to be defective during this period shall be promptly corrected at contractor's expense.

g) During the Warranty Period, Contractor shall manage the individual warranties and maintenance services (if any) of the third–party Goods. If the third-party Goods do not

# CALIFORNIA GENERAL PROVISIONS – INFORMATION TECHNOLOGY

Public Safety Radio Goods Special Provisions (TD-947 Rev. 05/04)

function as warranted during the Warranty Period, Contractor will correct the deficiency

5. **DESIGN DEFECT**

   a) A design defect shall be defined as identical failures occurring within five years after delivery in at least five units or five percent, whichever is larger, of identical assemblies, subassemblies, or parts supplied.

   b) Delivered goods shall be guaranteed by contractor against design defects for five years from date of delivery. Upon written notification to and confirmation by contractor of design defects evidenced within the five-year guarantee period, contractor shall take prompt corrective action, at no cost to the State.

   c) Whenever it is necessary for contractor to take corrective action of design defects, contractor shall take the same corrective action in all identical goods supplied.

   d) All parts and materials used in corrective action for design defects shall be guaranteed by contractor against defects for one year from date of such corrective action.

6. **SERVICE PROVISIONS**

   a) Contractor shall provide the following services that will repair or exchange, in the times indicated, all defective goods returned by the State for repair.

      i) Emergency no-charge warranty service within five calendar days, excluding shipping time, for defective goods returned within the guarantee period.

      ii) Non-emergency no-charge warranty service within twenty calendar days, excluding shipping time, for defective goods returned within the guarantee period.

      iii) Emergency full-charge nonwarranty service within five calendar days, excluding shipping time, for defective goods returned after expiration of the guarantee period.

7. **AVAILABILITY OF REPAIR PARTS**

   a) Contractor shall notify State of the date of last manufacture for all goods delivered.

   b) For a period of seven years from the notice of last manufacture, contractor shall make available to the State exact replacement parts for use in the delivered goods.

   c) If exact replacement parts are not available, contractor may substitute equal or similar parts which do not deteriorate performance and which will continue to meet all specifications in effect at the time of purchase.

8. **SOFTWARE USAGE/LICENSE REQUIREMENT**

   a) The Department of General Services, Telecommunications Division, and/or the purchasing agency shall be permitted to make unlimited copies of any software required for installation and maintenance of goods supplied. Such copies shall be for the sole and exclusive use of the State designated maintenance and engineering personnel in the installation, maintenance, and operation of the delivered goods.

   b) Any need for a separate software license agreement to reflect the scope and/or limitations of this usage shall be negotiated to the mutual agreement of the parties, including Department of General Services, Procurement Division and Telecommunications Division.

9. **DEFINITIONS**

   "Goods" means all types of tangible personal property including but not limited to equipment (commodoties), accessories and information and telecommunications technology.