

Standard Terms–U.S. Federal Government Orders (6/01/15)

The provisions of FAR 52.212-4 (May 2015) shall apply to purchase and license of Motorola USFGMD products and purchase of services, subject to the following, as applicable:

(a) Inspection and Acceptance:

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

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

(g) Invoice: Because our organization has an automated invoicing system based on shipment of equipment, and our administrative office and place of shipment are not at the same location, we will be unable to ensure inclusion of the contract line item numbers and a point of contact's title on the invoices. Motorola will utilize commercial invoicing in lieu of form DD250.

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

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

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

In addition, the following FAR clauses specified in FAR 52.212-5 (Oct 2014) shall apply, in lieu of any others, subject to the following:

Paragraph (a)(1), 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations

Paragraph (a)(2), 52.222-50, Combating Trafficking in Persons

Paragraph (a)(3), 52.233-3, Protest after Award,

Paragraph (a)(4) 52.233-4, Applicable Law for Breach of Contract Claim

Paragraph (b)(1), 52.203-6, Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402)

Paragraph (b)(16), 52.219-8, Utilization of Small Business Concerns

Paragraph (b)(25), 52.222-3, Convict Labor (E.O. 11755)

Paragraph (b)(26), 52.222-19, Child Labor – Cooperation with Authorities and Remedies

Paragraph (b)(27), 52.222-21, Prohibition of Segregated Facilities

Paragraph (b)(28), 52.222-26, Equal Opportunity (E.O. 11246)

Paragraph (b)(29), 52.222-35, Equal Opportunity for Veterans,

Paragraph (b)(30), 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793)

Paragraph (b)(31), 52.222-37, Employment Reports on Veterans,

Paragraph (b)(32), 52.222-40, Notification of Employee Rights Under the National Labor Relations Act)

As regards Buy American Act provisions -- Motorola is representing that the equipment proposed under this solicitation meets the definitions of a commercial item and information technology as defined in FAR 2.101. Consistent with FAR rule FAR 25.103(e), acquisitions of information technology meeting the commercial item definition, and using fiscal year 2004 or subsequent funds are exempt from the Buy American Act and Balance of Payments. For services, including installation services, maintenance services, repair services, training services, and other services, Motorola believes this clause is inapplicable as any incidental parts which may be used in conjunction with these services are not end products.

As regards Trade Agreements provisions -- Motorola makes the following general representations regarding Trade Agreement Act (“TAA”) compliance:

Motorola main models (“Main Models”) including subscriber radios (APX4000/6000/7000/7500) and infrastructure (GTR8000 base stations, Consollettes, controllers, comparators, KVLs) are compliant with the requirements of the TAA.

There are also numerous options and accessories for Motorola Main Models, which when purchased and used in conjunction with the Main Models, do not change the TAA compliant status of the overall offering. However, Motorola makes no representation that such options and accessories are compliant with the TAA when sold separately from the Main Models.

Additionally, there may be equipment offered and manufactured by third parties which is not an option or accessory as described above. Motorola makes no representation that any such third party equipment is compliant with the TAA. However, in most cases, such third-party equipment has been designed to specifically operate within the Motorola architecture, and accordingly, the Government could make a non-availability determination for third-party items when applicable, as it is unlikely alternate items could function with the proposed TAA compliant Motorola items.

To the extent that Motorola is offering radio communications infrastructure equipment, any such equipment will generally be integrated into a single communications system in Motorola’s facility in Illinois. The integration process may involve software loading, racking and integration of system components, interconnecting cabling, programming of routers and other essential IT equipment, and extensive system-level testing. Consequently, this staging process constitutes “substantial transformation” as defined under TAA thereby making the overall communications system TAA compliant

For services, including installation services, maintenance services, repair services, training services, and other services, this clause is considered inapplicable.

The issuance of a contract or order(s) in response to a Motorola quote or proposal will evidence your determination that you have no basis to believe that Motorola’s performance would constitute an organizational conflict of interest or otherwise limit Motorola’s ability to accept any future orders or contracts (or subcontracts). As a condition of acceptance of certain order(s), Motorola may require specific assurances from the Government regarding this issue.

No other FAR or FAR Supplement provisions are accepted by Motorola unless agreed upon in writing by Motorola’s Contracts Department prior to order acceptance or initiation of performance. Unless agreed otherwise in a contract executed by both parties, Motorola will not provide certificates of conformance, and does not commit to meet any specifications or standards except as stated in published specifications.

Buyer represents that there is no requirement for certified cost or pricing data or price support information from Motorola. If the value of a quote or proposal exceeds the threshold specified in FAR 15.403-4(a)(1), please be aware that before Motorola could accept an order exceeding that amount, Motorola would need to request and receive from the Government contracting activity a exception to, and/or a waiver of, the requirement for certified cost or pricing data (under the provisions of FAR 15.403-1).

Motorola does not represent that any ordered items necessarily meet new material requirements.

Pricing provided in a Motorola quote or proposal is subject to change if all proposed products and/or services are not ordered. Order(s) should reflect separate line items for equipment, integration services, and post-acceptance services (as applicable) as specified in the pricing section of the quote or proposal. Partial shipments, and payments for partial shipments, are authorized.

If goods are being procured for use in the European Union (EU), the following statement is a part of any order: All goods to be shipped by the Motorola Federal Division under this agreement are intended for the sole and direct use by the US military, US Dept of State or other US Federal agencies, OR by military agencies of the EU country under a US Government FMS purchase, and no commercial or business usage of these products are intended; as such, the requirements of the EU RHHS regulations do not apply. Additionally, it is intended that the goods will not be resold within the EU, and any non-RoHS items will not be disposed of within the EU.

All software and firmware made available by Motorola to the Government will be subject to the terms and conditions of Motorola's standard Software License Agreement (SLA), which is deemed to be incorporated in each of the Government's orders and will be executed as required by Motorola.

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