



State of New Hampshire

DEPARTMENT OF SAFETY
OFFICE OF THE COMMISSIONER
33 HAZEN DR. CONCORD, NH 03305
603/271-2791

JOHN J. BARTHELMES
COMMISSIONER

September 7, 2016

Her Excellency, Governor Margaret Wood Hassan
And the Honorable Council
State House
Concord, NH 03301

Retroactive

Requested Action

Authorize the Department of Safety, Division of State Police to **retroactively** exercise an option to renew a contract with 2-Way Communications Service, Inc. (VC #154388-B001), 23 River Road, Newington, NH, in an amount not to exceed \$20,000.00 for the provision of repair and certification of Kustom radar units. The original contract was approved by Governor and Council on December 2, 2015, item #59. Effective upon Governor and Council approval for the period of July 1, 2016 through June 30, 2017. Funding source: 44% General, 33% Highway, 23% Turnpike.

Funds are available in the SFY 2017 operating budget as follows.

| | | |
|--------------------------|--|-----------------|
| 02-23-23-234015-40030000 | Dept. of Safety – Div. of State Police – Traffic Bureau | <u>SFY 2017</u> |
| 103-500737 | Contracts for Op Services – Contract Repairs; Machine, Equip | \$20,000.00 |

Explanation

This request is **retroactive** due to the position of State Police procurement technician having remained vacant for several months; however, this position has now been filled. This contract provides certification and repair of Kustom radar units utilized by State Police Communications Maintenance. Upon certification of each radar unit and each tuning fork, 2-Way Communications Service, Inc. will provide a certified calibration sheet for both the assigned trooper and state designee. These documents will be computer generated and will be able to be presented in a court of law as evidence of calibrations/repairs.

Respectfully submitted,


John J. Barthelmes
Commissioner of Safety

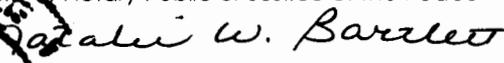
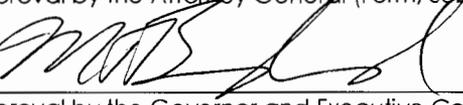
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

| | | | |
|---|--|---|---|
| 1.1 State Agency Name Department of Safety, Division of State Police | | 1.2 State Agency Address 33 Hazen Drive, Concord, NH 03305 | |
| 1.3 Contractor Name 2-Way Communications Service, Inc. | | 1.4 Contractor Address 23 River Road, Newington, NH 03801 | |
| 1.5 Contractor Phone Number 603-431-6288 | 1.6 Account Number Please See Exhibit B | 1.7 Completion Date June 30, 2017 | 1.8 Price Limitation Not to exceed \$20,000.00 |
| 1.9 Contracting Officer for State Agency Colonel Robert L. Quinn | | 1.10 State Agency Telephone Number 603-223-3863 | |
| 1.11 Contractor Signature  | | 1.12 Name and Title of Contractor Signatory William R. Bartlett, Vice President | |
| 1.13 Acknowledgement: State of <u>NH</u> , County of <u>Rockingham</u> On <u>August 16, 2016</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12. | | | |
| 1.13.1 Signature of Notary Public or Justice of the Peace  Comm Exp: <u>May 6, 2020</u> | | | |
| 1.13.2 Name and Title of Notary or Justice of the Peace Natalie W. Bartlett | | | |
| 1.14 State Agency Signature  Date: <u>9/2/16</u> | | 1.15 Name and Title of State Agency Signatory Steven R. Lavoie, Director of Administration | |
| 1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____ | | | |
| 1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: <u>9/14/16</u> | | | |
| 1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____ | | | |

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.
Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.
5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.
6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.
7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/ PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("Workers' Compensation").
15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

19. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

EXHIBIT A

2-Way Communications Service, Inc. (Contractor) of Newington, NH is being contracted by the Department of Safety, Division of State Police Communications Maintenance (State) to provide certification and repair of Kustom radar units. The location and times to complete the work will be scheduled between the vendor and the respective Troop Commanders or department designee.

Prior approval from the Support Services Bureau Commander or their department designee is required for all off site repairs to radar units.

Any repair and return to service which would be greater than two (2) weeks will be communicated to the Commander of Support Services or their department designee explaining the additional time required to complete the repair.

The contractor will be responsible for all costs regarding off-site repairs of equipment to include shipping and insurance costs. The state may provide delivery of the equipment to the contractor depending on the location of the repair.

The contractor will provide a new certification sheet for both the assigned Trooper and their Troop Commander or department designee upon certification of each radar unit and respective tuning fork. These documents must be computer generated and able to be presented in a court of law as evidence of certifications and repairs.

REPAIR WORK:

Repair work completed on site will not exceed (\$250.). On site repairs exceeding this amount require prior approval from the Support Services Bureau Commander or department designee.

Prior approval from the Support Services Bureau Commander or department designee is required for all off site repairs to radar units. Each repair will require a written quote describing the scope of work and the cost for the repair. Quotes should be emailed to the Support Services Bureau attention the purchasing assistant before the repair work begins.

The vendor will provide a list of repairs, replacement parts, and cost of labor per hour(s) for each radar unit serviced.

In the event any radar unit is deemed "non-repairable," due to the cost to repair vs. cost to replace, the Support Services Bureau will be notified.

Any "bench work" required on the radars while being certified will be documented.

The contract will be effective upon Governor and Council approval and shall end on June 30, 2017. The State shall have the right to terminate the contract at any time by giving the Contractor a thirty-(30) day written notice.

EXHIBIT B

The Contractor agrees to invoice the State of New Hampshire as work is completed at the rate of:

| | |
|--|----------|
| Certification per unit on-site: | \$60.00 |
| Certification per laser unit on site: | \$80.00 |
| Certification per tuning fork on-site: | \$ 5.00* |

*Note: Tuning forks (1Pair) are included with standard radar certification.

Hourly rate to repair, plus parts (including shipping), if any: \$100.00/hr.

Warranty on repairs: 30 days

The appropriate account number for the P-37 form, section 1.6 is:

FY 2017

02-23-23-234015-40030000 Dept. of Safety – Div. of State Police – Traffic Bureau
103-500737 \$20,000.00
Contracts for Operational Expenses – Contract Repairs; Machine and Equipment

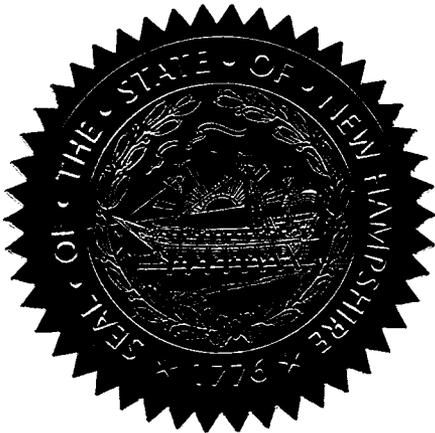
EXHIBIT C

No special provisions.

State of New Hampshire Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that 2-WAY COMMUNICATIONS SERVICES, INC. is a New Hampshire corporation duly incorporated under the laws of the State of New Hampshire on June 27, 1963. I further certify that all fees and annual reports required by the Secretary of State's office have been received and that articles of dissolution have not been filed.



In TESTIMONY WHEREOF, I hereto
set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 11th day of August, A.D. 2016

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State



CORPORATE RESOLUTION OF SIGNING AUTHORITY

RESOLUTION OF: 2-Way Communications Service, Inc.

RESOLVED that the execution of Deeds, powers of attorney, transfers, assignments, contracts, obligations, certificates, and other instruments of whatever nature entered into by the Company directly or through a transfer agent or registrar for any stock company, acting in its capacity as a corporate director or exercising any and all other powers conferred upon it by the letters Patent incorporating it or by the law pertaining to such matters, shall be signed by any one of the persons listed below:

| Name | Title | Specimen Signature |
|---------------------|----------------|----------------------------|
| Michael G. Bartlett | President | <i>Michael G. Bartlett</i> |
| William R. Bartlett | Vice President | <i>William R. Bartlett</i> |
| Natalie W. Bartlett | Secretary | <i>Natalie W. Bartlett</i> |

I, Natalie W. Bartlett, the undersigned Secretary of 2-Way Communications Service, Inc., **HEREBY CERTIFY** that the foregoing is a true and correct copy of a Resolution of the Board of Directors of said Company passed by a resolution of the said board dated on April 14, 2013 and that said Resolution is still in full force and effect.

Natalie W. Bartlett
Secretary

8.17.2016
Date



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/3/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | | | |
|---|--|---|--|
| PRODUCER Masiello Insurance Agency 234 Lafayette Road Hampton NH 03842 | | CONTACT NAME: Jamie DeStefano PHONE (A/C, No, Ext): (603) 601-1281 E-MAIL ADDRESS: jamied@masiello.com FAX (A/C, No): (603) 215-2857 | |
| INSURED 2-Way Communications Service, Inc. 23 River Road Newington NH 03801 | | INSURER(S) AFFORDING COVERAGE INSURER A: Acadia Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F: | |
| | | NAIC # 31325 | |

COVERAGES **CERTIFICATE NUMBER:** CL15122910508 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDITIONAL SUBR INSD WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|---|--------------------------|---------------|-------------------------|-------------------------|---|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER: | | CPA0358700-15 | 1/1/2016 | 1/1/2017 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Employee Benefits \$ 1,000,000 |
| A | AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS | | CAA0358701-15 | 1/1/2016 | 1/1/2017 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Uninsured motorist combined \$ 1,000,000 |
| A | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0 | | CVA0358703-15 | 1/1/2016 | 1/1/2017 | EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 |
| A | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | Y/N Y N/A | WCA0358702-15 | 1/1/2016 | 1/1/2017 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Excluded Officers: Michael Bartlett and William Bartlett

| | |
|---|---|
| CERTIFICATE HOLDER (603) 271-2527 Cynthia.Hagerty@dos.nh.gov NH State Police NH Department of Safety Division of State Police Support Services Bureau 33 Hazen Drive Concord, NH 03305 | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Jamie DeStefano/JAMIE <i>Jamie B. DeStefano</i> |
|---|---|

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State of New Hampshire

DEPARTMENT OF SAFETY
OFFICE OF THE COMMISSIONER

33 HAZEN DR. CONCORD, NH 03305
603/271-2791

RQ #160840

JOHN J. BARTHELMES
COMMISSIONER

GC#59

October 20, 2015 12-02-2015

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, NH 03301

Requested Action

Authorize the Department of Safety, Division of State Police to enter into a contract with 2-Way Communications Service, Inc. (VC #154388-B001), 23 River Road, Newington, NH, in an amount not to exceed \$20,000.00 for the provision of repair and certification of Kustom radar units. Effective upon Governor and Council approval through June 30, 2016, with the option to renew for one year through June 30, 2017 subject to Governor and Council approval. Funding source: 33% Highway, 44% General, 23% Turnpike.

Funds are available in the SFY 2016 operating budget as follows.

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| 103-500737 | Contracts for Op Services – Contract Repairs; Machin, Equip | \$20,000.00 |

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This contract will provide certification and repair of Kustom radar units utilized by State Police Communications Maintenance. Upon certification of each radar unit and each tuning fork, TMDE will provide a certified calibration sheet for both the assigned trooper and state designee. These documents will be computer generated and will be able to be presented in a court of law as evidence of calibrations/repairs.

An advertisement for requests for proposals was placed on the Administrative Services website from September 8 through September 22, 2015, as well as in the Manchester *Union Leader* on July 31, August 2 and August 3, 2015, pursuant to MOP 1600. 2-Way Communications Service, Inc. was the only vendor to respond with a proposal. The proposal was assessed by Captain Christopher J. Wagner, Commander of the State Police Support Services Bureau; James Kowalik, Communications Maintenance Supervisor; and Thomas Bardwell, Assistant Communications Maintenance Supervisor.

Respectfully submitted,

John J. Barthelmes
Commissioner of Safety

Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1: IDENTIFICATION.

| | | | |
|---|--|--|---|
| 1.1 State Agency Name Department of Safety, Division of State Police | | 1.2 State Agency Address 33 Hazen Drive, Concord, NH 03305 | |
| 1.3 Contractor Name 2-Way Communications Service, Inc. | | 1.4 Contractor Address 23 River Road, Newington, NH 03801 | |
| 1.5 Contractor Phone Number (603) 431-6288 | 1.6 Account Number Please see Exhibit B | 1.7 Completion Date June 30, 2016 | 1.8 Price Limitation Not to exceed \$20,000.00 |
| 1.9 Contracting Officer for State Agency Colonel Robert L. Quinn | | 1.10 State Agency Telephone Number (603) 223-3863 | |
| 1.11 Contractor Signature <i>William R. Bartlett</i> | | 1.12 Name and Title of Contractor Signatory William R. Bartlett, Vice President | |
| 1.13 Acknowledgement: State of <i>New Hampshire</i> , County of <i>Rockingham</i> On <i>October 14, 2015</i> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12. | | | |
| 1.13.1 Signature of Notary Public or Justice of the Peace <i>Natalie W. Bartlett</i> | | | |
| 1.13.2 Name and Title of Notary or Justice of the Peace <i>Natalie W. Bartlett, Treasurer</i> | | | |
| 1.14 State Agency Signature <i>[Signature]</i> Date: <i>10/27/15</i> | | 1.15 Name and Title of State Agency Signatory <i>Business Administrator IV</i> | |
| 1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____ | | | |
| 1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: <i>[Signature]</i> On: <i>11/5/15</i> | | | |
| 1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____ | | | |

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A. which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this

Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. **TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. **CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. **ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. **INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. **WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. **AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. **THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. **HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. **SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. **SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. **ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

EXHIBIT A

2-Way Communications Service, Inc. (Contractor) of Newington, NH is being contracted by the Department of Safety, Division of State Police Communications Maintenance (State) to provide certification and repair of Kustom radar units. The location and times to complete the work will be scheduled between the vendor and the respective Troop Commanders or department designee.

Prior approval from the Support Services Bureau Commander or their department designee is required for all off site repairs to radar units.

Any repair and return to service which would be greater than two (2) weeks will be communicated to the Commander of Support Services or their department designee explaining the additional time required to complete the repair.

The contractor will be responsible for all costs regarding off-site repairs of equipment to include shipping and insurance costs. The state may provide delivery of the equipment to the contractor depending on the location of the repair.

The contractor will provide a new certification sheet for both the assigned Trooper and their Troop Commander or department designee upon certification of each radar unit and respective tuning fork. These documents must be computer generated and able to be presented in a court of law as evidence of certifications and repairs.

REPAIR WORK:

Repair work completed on site will not exceed (\$250.). On site repairs exceeding this amount require prior approval from the Support Services Bureau Commander or department designee.

Prior approval from the Support Services Bureau Commander or department designee is required for all off site repairs to radar units. Each repair will require a written quote describing the scope of work and the cost for the repair. Quotes should be emailed to the Support Services Bureau attention the purchasing assistant before the repair work begins.

The vendor will provide a list of repairs, replacement parts, and cost of labor per hour(s) for each radar unit serviced.

In the event any radar unit is deemed "non-repairable," due to the cost to repair vs. cost to replace, the Support Services Bureau will be notified.

Any "bench work" required on the radars while being certified will be documented.

The contract will be effective upon Governor and Council approval and shall end on June 30, 2016, with the option to renew for one year (through June 30, 2017). The State shall have the right to terminate the contract at any time by giving the Contractor a thirty-(30) day written notice.

EXHIBIT B

The Contractor agrees to invoice the State of New Hampshire as work is completed at the rate of:

| | |
|--|----------|
| Certification per unit on-site: | \$60.00 |
| Certification per laser unit on-site | \$80.00 |
| Certification per tuning fork on site: | \$ 5.00* |

*Note: Tuning forks (1 pair) are included with standard radar certification.

Hourly rate to repair, plus parts (including shipping), if any: \$100.00/hr.

Warranty on repairs: 30 days

The appropriate account number for the P-37 form, section 1.6 is:

FY 2016

02-23-23-234015-40030000 Dept. of Safety – Div. of State Police – Traffic Bureau
103-500737 \$20,000.00
Contracts for Operational Expenses – Contract Repairs; Machine and Equipment

EXHIBIT C

Both parties agree that insurance currently in force meets section 14.1.1 of the P-37. The vendor's coverage currently in force of comprehensive general liability in the amount of \$1,000,000.00 each occurrence and excess/umbrella liability of \$2,000,000.00 each occurrence is deemed to be in compliance with 14.1.1. The vendor shall maintain the \$2,000,000.00 for the full time of this contract and if reduced, the amount shall not be lower than \$1,000,000.00 to maintain the required \$2,000,000.00 under section 14.1.1.