



**KEY COMMERCIAL TERMS FOR CITY OF SAN ANTONIO
RADIO SYSTEMS UPGRADE AGREEMENT**

CONFIDENTIAL SUMMARY OF PRINCIPAL COMMERCIAL TERMS

This summary of Key Commercial Terms (“Term Sheet”) is between the parties identified below and is applicable to the Agreement entered relative to the “Request for Proposal for San Antonio Public Safety Radio System (SAPSRS),” RFP-016-035 (the “RFP”), as amended by the Changelog. All capitalized terms shall be defined in the Agreement so as to give full force and effect to the Key Commercial Terms identified in this Term Sheet.

Vendor:	[Name of Respondent] (“ Vendor ”)
Buyer:	The City of San Antonio and associated parties (“ Buyer ”)
Ownership of Anticipated Risks	
Vendor Guaranteed Risk:	Any Deliverable, Deadline, Milestone, or other Performance, for which Vendor shall indemnify and hold harmless the Buyer from and against all losses, damages, penalties, increased disbursements, costs or expenses incurred by Buyer, whether direct or indirect, as a result of any breach, nonperformance, or partial performance of Vendor.
Buyer Guaranteed Risk:	Any Deliverable, Deadline, Milestone, or other Performance, for which Buyer shall assume responsibility for any increased disbursements, costs or expenses incurred by Buyer, whether direct or indirect, as a result of any breach, nonperformance, or partial performance of Vendor.
Proportionally Allocated Risk:	Any Deliverable, Deadline, Milestone, or other Performance, for which Vendor and Buyer shall assume proportional responsibility for any increased disbursements, costs or expenses incurred by Buyer as a result of any breach, nonperformance, or partial performance of Vendor, with such proportion being specified on a percentage or total dollar basis relative to each contractual item being so identified.
Default Allocation of Risk:	If any Deliverable, Deadline, Milestone, or other Performance does not have an explicit Allocation of Risk, it shall be considered a Vendor Guaranteed Risk.
Budget Transparency	

No Block Discounts	All discounts incorporated into the pricing for the Agreement must be allocated to individual deliverables or work items. "Percentage off" or "Dollars off" the total Agreement price are not allowed. Offered percentage discounts off particular deliverables (e.g. radios) shall be specified in terms of the offered per-item discount and the resulting per-item cost.
Cost Recovery and Reallocation	If any element of the Agreement is a) deleted by Buyer post-award, or b) partial performance is unilaterally accepted by Buyer, c) or the actual performance of the obligation does not require the full anticipated scope of work, then the contract amounts associated with any avoided work shall be credited back to Buyer for reallocation or reimbursement at Buyer's discretion. Any work already performed that directly and uniquely related to the deleted or accepted element will still be payable to Vendor, but Vendor shall bear the responsibility of providing documentation of performance and the direct and unique correspondence between the performed work and the deleted element.
Fixed margin	Any additional work made necessary by a change order from Buyer shall be billed at the cost necessary to provide the additional work, and shall not be subject to an additional fee or profit margin.
Budget and Schedule Reporting	Vendor shall report monthly on progress. Any proposed change order and associated costs must be specifically justified as soon as Vendor becomes aware of the necessity for the change. Any anticipated item of work that ends up not being delivered, either in part or to any significant degree, must be reported and credited to Buyer.
Perfect Performance and Final Acceptance	
Perfect Performance:	Vendor is responsible for perfect performance of every term of the Agreement, including the standards for performance laid out in the RFP. The standards for performance laid out in the RFP supersede any representations by Vendor.
Unilateral Acceptance of Partial Performance	Buyer has the unilateral option to accept the partial performance of one or more terms of the Agreement. Buyer's acceptance of partial performance relative to one term of the Agreement does not constitute a waiver of Buyer's right to perfect performance of every other term. Penalties for nonconformance will still apply.
Final Acceptance:	Final Acceptance of the System will not be considered complete until <i>after</i> the System has passed a Fully Loaded Burn-In.
Fully Loaded Burn-In:	A Fully Loaded Burn-In is defined as a sixty (60) consecutive day test of a Fully Loaded System without a Major Interruption of Services or any Persistent Systemic Reductions in Service .

A **Fully Loaded System** is defined as a state in which all SAPSRS infrastructure subsystems, subscribers, and associated features are installed, optimized, integrated, configured, deployed, tested and operational per the performance standards in the RFP, with the following minimum usage levels:

- No more than 5% of portable devices are pending configuration and deployment
- No more than 15% of mobile devices are pending configuration and deployment

The following items may still be pending during a Fully Loaded Burn-In:

- Implementation of ISSI links and associated features to non-LCRA members
- Integration of *emerging* features associated with *ancillary third party* applications such as CAD and Fire Alerting systems. *Legacy or base capabilities shall have been integrated and tested.*
- Completion of system documentation and non-service affecting punch list items

Vendor should plan for the Fully Loaded System to include all tenant agencies that are currently using the EDACS network, but the Fully Loaded Burn-In will not be delayed more than five (5) calendar days to accommodate tenant agencies.

Major Interruption of Services is defined as follows:

- Reduction in coverage or capacity from levels established in the final system design or as validated during the coverage and functional testing stages
- Failure of any infrastructure components resulting in coverage reduction
- Any unintended, unexpected, or non-test-associated failure of any of the following:
 - Any network core/controller
 - Any Simulcast Trunking Controller
 - P25 core Site LAN/WAN/Audio Distribution Equipment
- Failure of any backup system, either as a result of a component failure or a deliberate test, including any failure of automated cutover to redundant systems
- Failure of more than 30 % of the System Manager/Alarm Terminals
- Loss of access to the NMS
- Loss or failure of more than 5% of the Dispatch consoles, or loss of one (1) Dispatch Console where only one (1) exists
- Loss or failure of full-featured Dispatch capability (i.e., any reversion to RF Dispatch control)
- Failure of backhaul system link resulting in a site outage (unless the network node is served by the City-provided fiber)

- Failure of any component or module failure which results in loss of 10% or more of trunked channel resources

Persistent Systemic Reductions in Service are design, equipment, or implementation defects as follows:

- Any defects that result in substantial slowdowns, persistent quality or capacity losses, or frequent minor interruptions of service across the SAPSRS as a whole or a full class of end user or dispatch Vendor-provided equipment
- Defects resulting in errant, misrouted, lost, or persistently bad quality audio, including but not limited to radios locking up, shutting down, changing talkgroups at random, or audio bleed-over
- Any defects, minor or not, that do not have an identified root cause within a week of being reported to Vendor
- Any defects that have triggered recalls or are identified to be prevalent among the Vendors' customer base

Any Major Interruption of Services or Persistent Systemic Reductions in Service will result in early termination of the Fully Loaded Burn-In and a resetting of the 60-day Burn In clock.

If the resolution of any issues resulting in early termination of the Fully Loaded Burn-In requires a software, firmware, or hardware fix to be applied to *end user equipment and the console subsystem*, then the proposed solution shall be applied to a subset of user equipment for a period of two weeks for evaluation. If the solution corrects the problem and does not introduce new problems, then the solution shall be rolled out to the rest of the end user radio equipment. When the software fix has been applied to all end user radios, a new Fully Loaded Burn In test can begin.

Beneficial Use and Warranty	
No Beneficial Use	Vendor agrees that it will not claim beneficial use of the System, or any part thereof, prior to Final Acceptance.
General Warranty:	<p>Any and all materials, equipment and systems provided under the Agreement, or any existing materials, equipment and systems incorporated by Vendor into the System Design, including all Expendables not enumerated on the Exclusion List, shall be free of defects and deficiencies in materials, assembly and workmanship when installed, suitable for use under the climatic and normal operating conditions extant at the site of the System and otherwise consistent with and in compliance with the proposed design of the System, as provided in the RFP and accepted by Buyer (the “System Design”) for at least the entire General Warranty Period.</p> <p>The construction, procurement and installation services included in the System shall be performed with the Vendor’s best skill and judgment, in a good and workmanlike manner and shall otherwise be consistent with and in compliance with the System Design. The completed Project shall perform its intended functions as a complete, integrated System as described in the RFC.</p> <p>If Buyer notifies the Vendor in writing during the General Warranty Period (as defined below), or no later than thirty (30) days after the expiration of the General Warranty Period, that a breach of the foregoing warranty has occurred during the General Warranty Period, the Vendor shall correct (or cause to be corrected) the defects and deficiencies promptly at no cost to Buyer. The Vendor's obligation to correct defects and deficiencies shall include labor, parts, transportation, factory repair and testing, dismantling, re-erecting, re-testing and commissioning.</p>
General Warranty Period	The “ General Warranty Period ” shall be two (2) years from Final Acceptance of the System. To the extent identified in the RFP, individual components or subsystems may have the terms of the General Warranty apply for longer than two years.
Expendables	Any portion of the System that is used up, reduces in quantity or availability, or degrades in performance with use, specifically including batteries, and only excluding: [EXCLUSIONS HERE] (the “ Exclusion List ”).
Support and Maintenance	<p>“Support and Maintenance” under the Agreement refers to patches, refreshes, maintenance, regularly scheduled upgrades, and all other long term support as specified in the RFP.</p> <p>Any and all materials, equipment and systems provided under the Agreement, or any existing materials, equipment and systems incorporated by Vendor into the System Design, including BDAs owned by Buyer and used to establish in-building coverage shall be included in the Support and Maintenance.</p> <p>An existing piece of equipment will be considered incorporated by Vendor into</p>

	<p>the System Design if the equipment is used to meet performance requirements under the RFP.</p> <p>Vendor shall arrange for (or enter into and assign to Buyer at the Closing) long-term service agreements with respect to any equipment not provided by Vendor on terms acceptable to Buyer.</p>
Support and Maintenance Period	<p>The “Support and Maintenance Period” for maintenance and support of the System as described in the RFP shall be fifteen (15) years from Final Acceptance of the System. The first two years of the Support and Maintenance Period will run concurrently with the General Warranty Period.</p>
Milestones and Payments	
Final Payments	<p>10% of the total value of the Agreement will be paid at Final System Acceptance, and 10% of the total value of the Agreement will be paid at Project Completion.</p> <p><i>Acceptance Criteria for Final System Acceptance:</i> Completion of Fully Loaded Burn-in</p> <p><i>Acceptance Criteria for Project Completion:</i> No proposed or punchlist items remain.</p>
Overall Payment Schedule	<p>The payment schedule provided by Vendor must allow for the 20% “Final Payments” term and every payment must correspond to a milestone wherein value has been received by Buyer. As examples, transfers, configuration, and use of equipment by Prime Contractor or subcontractors do not provide value to Buyer.</p>
Key Milestones	<p>The following shall be considered Key Milestones under this Agreement:</p> <ul style="list-style-type: none"> - Completion of all Civil Engineering elements of the System Design - Completion of Coverage Testing - Completion of Vendor staging of System - Beginning of 60-day Fully Loaded Burn-In
Penalties for Missed Key Milestones	<p>If an unexcused failure by Vendor to complete a Key Milestone occurs, the following Liquidated Damages will be assessed:</p> <ul style="list-style-type: none"> - For failure to complete the Key Milestone within 15 days of schedule: a penalty of one quarter of one percent (0.25%) of the total contract value. - For failure to complete the Key Milestone within 30 days of schedule: an additional three quarters of one percent (0.75%) of the total contract value. - For failure to complete the Key Milestone within 60 days of schedule: an additional one percent (1%) of the total contract value. <p>An unexcused failure to complete a Key Milestone within 60 days of schedule</p>

	will also be considered a Major Default.
Latent Defects	
Latent Defects	Vendor is responsible for the correction of any deficiencies relative to the RFP specifications identified during the General Warranty Period if it can be established that the failure was due to a flaw inherent in the proposed design or the implementation of the System. This item is a Vendor Guaranteed Risk.
Plan Deficiencies after Detailed Design Review	Any plan deficiencies identified after the Detailed Design Review must be corrected by Vendor. This is a Vendor Guaranteed Risk.
Dual OEM/Vendor Accountability (Deferred)	
Prime Vendor and Primary Subcontractor Accountability	<i>(Discussion related to this term has been temporarily deferred)</i> Prime Vendor and Primary Subcontractor shall both be signatories to the Agreement, and shall be jointly and severally obligated to perform all elements of the Agreement. In the event of a breach, Buyer may elect to enjoin performance or recover damages from the Prime Vendor, the Primary Subcontractor, or both, and Buyer may bring a separate action against any signatory with respect to any liability arising out of the Agreement. The joint and several obligation to perform does not relieve or supersede any applicable SBEDA, LPP, or VOSB standards or regulations associated with replying to the RFP or Vendor performance under this Agreement.
Upcoming/Identified Features/Capabilities	
Upcoming Capabilities	Any planned capabilities referenced by Vendor and relied upon for meeting RFC requirements shall be provided at no additional cost.
Staff Commitment and Training	
Minimum Contract Length for Initial Key Project Personnel	Key Project Personnel identified as part of the implementation team shall be engaged for the entire System Implementation and General Warranty Period.
Changes in Key Project Personnel Subject to Approval	Any replacements of Key Project Personnel are subject to approval by Buyer.
Maintenance of	Prime Vendor shall maintain at least the same level of certification relative to

Training	the Primary Subcontractor as exists on the Effective Date of the Agreement for the entire term of the Agreement, including the Support and Maintenance Period.
Most Favored Nation	
Pricing Guarantee	<p>a) Any equipment delivered as part of the original implementation of the Agreement shall be provided at the same pricing during the entire term of the Agreement, including the Support and Maintenance Period.</p> <p>b) Any equipment purchasable through Vendor during the term of the Agreement, including the Support and Maintenance Period, shall be subject to the same percentage discount as is applied to the equipment delivered as part of the original implementation of the Agreement. If there are different percentage discounts applied to different classes of equipment, then the percentage discount applicable to the closest purchased class of equipment will be applied.</p> <p>c) If Vendor provides a better price to any other purchaser, either in absolute dollars for the same equipment or in percentage discount applied, Buyer will have the benefit of the better price for any subsequent purchases.</p> <p>d) This pricing guarantee applies to Buyer or any entity with whom the Buyer has executed an intergovernmental agreement (a “Supplemental Buyer”).</p> <p>e) For purposes of stepped bulk discounts (e.g. 30% off 100, 45% off 500), all purchases made under the Agreement will be considered cumulatively, including any purchases made by Supplemental Buyers. If any particular purchase will move Buyer over a minimum number to achieve a bulk discount level, then the higher bulk discount level will apply to that purchase and all subsequent purchases.</p>
Maintenance of Relationship Between Prime Vendor and Primary Subcontractor	During the entire term of the Agreement, Primary Subcontractor shall provide pricing and responsiveness guarantees to Prime Vendor at the best terms available to any other commercial affiliate of Primary Subcontractor.
Relationship of City to Other Governmental Entities (Supplemental Buyers)	<p>Regardless of the application of other governmental agencies in the pricing guarantee and bulk purchasing arrangements, Buyer will not be considered a dealer, remarketer, agent or other representative of Vendor. Buyer will also not be considered an agent, partner or representative of any Supplemental Buyer making purchases hereunder, and shall not be obligated or liable for any such order.</p> <p>Supplemental Buyer purchase orders shall be submitted directly to Vendor by the Supplemental Buyer, and result in a separate contract between the Supplemental Buyer and Vendor. Buyer makes no representation or guarantee as to any minimum amount being purchased by any other Supplemental Buyer, any Supplemental Buyer’s participation and use of the System, or any</p>

	<p>Supplemental Buyer's participation in the bulk buying and pricing guarantees under this Agreement.</p> <p>Vendor shall authorize the Buyer's use of Vendor's name, trademarks and Vendor-provided materials in Buyer communications to other governmental organizations for purposes of soliciting and negotiating intergovernmental agreements.</p>
Project Continuation While Change Orders Pending	
Project Continuation While Change Orders Pending	<p>Vendor shall not stop work on any Deliverable that does not have a Change Order pending, even if a Change Order is pending on a different Deliverable.</p>
Defaults and Termination	
Major Defaults	<p>At least the following shall be considered Major Defaults under this Agreement:</p> <ul style="list-style-type: none"> - Vendor's unexcused failure to complete a Key Milestone within 60 days of schedule; - Vendor's unexcused failure to make any bona fide undisputed payment due to Buyer, including Liquidated Damages; - Vendor's incurring of Liquidated Damages more than three (3) times in any calendar year; - Vendor's unexcused and material failure to substantially perform in accordance with the warranties in this Agreement; - Vendor's failure to maintain training and certification levels relative to Primary Subcontractor; - Vendor's failure to provide any necessary financial assurances to Buyer (e.g. Bonding requirements); - Vendor's failure to pass the Fully Loaded Burn-In within 180 days of the first attempt; - Vendor's termination of any intellectual property licenses provided as part of the hardware or software provided with the System, unless the termination is a result of a breach of an applicable agreement by Buyer; - Vendor's unexcused and material making of any general assignment or general arrangement for the benefit of creditors; or the filing by or against Vendor of a petition to have Vendor adjudged a bankrupt, or a petition for reorganization or arrangement under any law relating to bankruptcy unless the same is dismissed within sixty (60) days; or the appointment of a trustee or a receiver to take possession of substantially all of Vendor's assets or Vendor's interest in this Agreement, where possession is not restored by Vendor within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Vendor's assets or of Vendor's interest in this Agreement,

	<p>where that seizure is not discharged within thirty (30) days; and</p> <p>- Any resolution of a claim for infringement of third party intellectual property that causes a major diminution in value of, or a substantial reduction in the functionality of, the System.</p>
Termination for Convenience	<p>Buyer shall have the right to stop work by Vendor and terminate the execution of this Agreement at any time upon 180 days' notice to Vendor (the "Notice Period").</p> <p>As an exception to the above, the Notice Period will be reduced to 15 days for the 30 days immediately following the termination of the Detailed Design Review.</p> <p>If Buyer provides notice to Vendor of termination of the Agreement, Vendor and Buyer will work together to wind down all ongoing work in the most efficient way possible. Buyer will be responsible for all work actually performed by Vendor prior to giving notice of termination, and shall be responsible for costs incurred by Vendor resulting from mutually agreed-upon winding-down activities.</p>
General	
Letter of Credit	<p>To guarantee the promises of Vendor, Vendor shall provide Buyer an unconditional and irrevocable letter of credit from a bank chartered for business in the United States that is reasonably acceptable to Buyer. The letter of credit shall be callable at the sole discretion of Buyer provided that Buyer has notified the Vendor of a default under the terms of this Agreement and Vendor has failed to cure such default within thirty (30) days after the receipt of written notice from Buyer or such longer cure period as permitted under the terms of this Agreement. The letter of credit shall be in the amount of Five Hundred Thousand Dollars (\$500,000.00). If at any time Buyer is required to draw upon the letter of credit, Vendor shall renew the letter of credit by providing a top-up letter of credit equal to the amount of the draw.</p>
Indemnities:	<p>Each of the Vendor and Buyer shall provide customary protections regarding its breach of representations, warranties and covenants made in the Agreement. In addition, the Vendor shall defend, indemnify and hold harmless Buyer against claims and liabilities relating to the System and the Vendor claims by third parties in respect of contract, tort and other liabilities, and liabilities arising under the Vendor's agreements with any subsidiary, agent, or subcontractor, including for any alleged infringement of third party Intellectual Property.</p>
Term Sheet Non-Inclusive	<p>This Term Sheet does not contain all matters upon which agreement must be reached in order for the Agreement.</p>

Responsibility for Proposal Errors	Vendor is responsible for the correction of any errors in its submission.
Force Majeure	<p>A “Force Majeure” event means a circumstance that: a) is not within the reasonable control of the Party affected; b) for which it would have been unreasonable for the affected Party to take precautions or to anticipate; c) cannot be prevented, avoided, removed, or mitigated by a Party despite the exercise of reasonable care; and d) materially and adversely affects the ability of the Party to perform its obligations under this Agreement, even after such Party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such circumstance and to mitigate the events thereof.</p> <p>Nonperformance will not be excused for failure or delay resulting from general economic conditions or other general market effects.</p> <p>If a Party wishes to claim that a Force Majeure event has occurred, it shall, as soon as possible following the occurrence of such event but no later than ten (10) days after the event, notify the other Party of the nature and expected duration of such event and shall thereafter keep the other Party informed until such time as it is able to perform its obligations. The Parties shall use best efforts to:</p> <ul style="list-style-type: none"> a) overcome the effects of the Force Majeure event; b) mitigate the effect of any delay occasioned by the Force Majeure event, including by recourse to alternative mutually acceptable sources of services, equipment and materials; and c) ensure resumption of normal performance of this Agreement as soon as reasonably practicable and shall perform their obligations to the maximum extent practicable. <p>If a Force Majeure occurs, the Parties will execute a Change Order to extend the Performance Schedule for a time period that is reasonable under the circumstances.</p> <p>Each Party shall bear its own costs associated with mitigating Force Majeure events, but a Force Majeure event will excuse any penalties associated with late delivery of a milestone or part thereof.</p> <p>If a single Force Majeure event occurs for more than twelve (12) months, Buyer shall have the option to terminate the Agreement or to engage with Vendor to renegotiate the scope of performance.</p>

Risk of Loss	Risk of Loss associated with any Deliverable will pass to Buyer upon acceptance of the Deliverable by Buyer.
Exhibits to the Agreement and Hierarchy of Interpretation	<p>The Agreement will consist of a master Contract and at least the following Exhibits, listed in priority order:</p> <ol style="list-style-type: none"> 1) The Executed Contract 2) This Term Sheet 3) A listing of Amendments to the RFP 4) The RFP 5) Vendor's BAFO <p>In the event of any inconsistencies between these documents, the document higher in the priority order will control (e.g., the Amendments to the RFP supplement and/or replace requirements in the RFP). This priority order supersedes any statement otherwise in any document.</p>
Other Performance-Related Terms	
Accessible Testing Location	An Accessible Testing Location is within 500 feet at no more than a 25% grade of a location reachable via either a Vendor-owned, commercially available 4x4 vehicle or an alternative motorized vehicle provided by Buyer.
Utility Power Integration	Vendor is responsible for the integration of sites into the utility power grid.
Break/Fix Costs	Vendor shall maintain set device break/fix costs for Depot repair, spare components, and other reasonably foreseeable equipment wear and tear over the Support and Maintenance Period.
Third Party Application Integration	Vendor shall integrate and guarantee subcontracted portions of the system, including FSA, 911, CAD, and other required functionality not natively provided by Vendor.
Pre-Cutover Costs	Vendor is responsible for all new and incremental costs associated with tower sites prior to delivery of the System Infrastructure to Buyer.
System Vetting	Vendor is required to perform preliminary acceptance tests on the System or any part thereof before migrating any "live" users onto the System.
Minimum Performance of Existing EDACS	Vendor's design and rollout plan will maintain a Buyer-defined minimum "floor" of functionality at all times.

Network	
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