

WESTERN STATES CONTRACTING ALLIANCE
PARTICIPATING ADDENDUM *Master Agreement 01/6/11*
FOR POLICE RADAR, LIDAR, PARTS AND ACCESSORIES

Between
The State of North Dakota and Kustom Signals, Inc.

This Participating Addendum will add the State of North Dakota as a Participating State to purchase from the WSCA Price Agreement, Number MA w42-2011, with Kustom Signals, Inc.

1. **Scope:** Unless otherwise defined, all capitalized terms in this Participating Addendum shall have the meanings ascribed to them in the Western States Contracting Alliance, Wireless Communication Services and Equipment Master Price Agreement, # w42-2011 (the "WSCA Master Agreement").
2. **Participation:** This contract is a cooperative purchasing contract established pursuant to North Dakota Century Code sections 54-44.4-13, 15.1-09-34(1)(k) and 54-59-18. This is an open-ended contract that is made available to other government entities. "Government entities" means counties, cities, townships, institutions under the jurisdiction of the State Board of Higher Education, public primary and secondary educational entities, governmental boards and commissions, and nonprofit entities established on behalf of public entities for the purpose of purchasing. "Open-ended" means that other government entities may participate in this contract, but participation by other governmental entities is not mandated or guaranteed; therefore, the estimated volume of this contract is not known.
3. **Changes:**
 - A. **Product Offering**
The products offered under this contract will only consist of Lidar and Lidar Parts / Accessories. CONTRACTOR will only sell these products to the PARTICIPATING STATE.
 - B. **Record of Sales**
The CONTRACTOR must maintain records of sales under the contract and furnish volume of sales information to the PARTICIPATING STATE's Purchasing Agency or Entity within 15 business days upon written request of the Purchasing Agency or Entity.
 - C. **Spoilation – Notice of Potential Claim**
CONTRACTOR shall promptly notify PARTICIPATING STATE of all potential claims that arise or result from this contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to PARTICIPATING STATE the opportunity to review and inspect the evidence, including the scene of an accident.
 - D. **Indemnification**
CONTRACTOR agrees to defend, indemnify, and hold harmless the State of North Dakota, its agencies, officers and employees, from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by CONTRACTOR to the State under this provision must be free of

any conflicts of interest, even if retention of separate legal counsel for the State is necessary. CONTRACTOR also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against CONTRACTOR in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

E. Insurance

CONTRACTOR shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- i. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- ii. Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- iii. Workers compensation coverage meeting all statutory requirements.

The insurance coverages listed above must meet the following additional requirements:

- i. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the CONTRACTOR.
- ii. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the PARTICIPATING STATE.
- iii. The insurance required in this agreement, through a policy or endorsement, shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to Tricia Opp, Procurement Officer II, as the undersigned PARTICIPATING STATE representative stated in Section 6 of this document.
- iv. The CONTRACTOR shall furnish a certificate of insurance to Tricia Opp, as the undersigned PARTICIPATING STATE representative stated in Section 6 of this document, prior to commencement of this agreement.
- v. Failure to provide insurance as required in this agreement is a material breach of contract entitling PARTICIPATING STATE to terminate this agreement immediately.

F. Attorney Fees

In the event a lawsuit is instituted by PARTICIPATING STATE to obtain performance due under this contract, and PARTICIPATING STATE is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay PARTICIPATING STATE'S reasonable attorney fees and costs in connection with the lawsuit.

G. Alternative Dispute Resolution – Jury Trial

PARTICIPATING STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their

rights and remedies in judicial proceedings. PARTICIPATING STATE does not waive any right to a jury trial.

H. Confidentiality

CONTRACTOR shall not use or disclose any information it receives from PARTICIPATING STATE under this contract that PARTICIPATING STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by PARTICIPATING STATE.

PARTICIPATING STATE shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that PARTICIPATING STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. chapter 44-04. The duty of PARTICIPATING STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract.

I. Compliance with Public Records Law

CONTRACTOR understands that, except for disclosures prohibited in this contract, PARTICIPATING STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this contract, except for records that are confidential under this contract, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact PARTICIPATING STATE immediately upon receiving a request for information under the open records law and to comply with PARTICIPATING STATE'S instructions on how to respond to the request.

J. Applicable Law and Venue

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be adjudicated exclusively in the State District Court of Burleigh County, North Dakota.

K. Payment

Section 6.3 is amended with the following: Interest on late payments made by the State of North Dakota is governed by N.D.C.C. § 13-01.1-02.

L. State audit

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this contract are subject to examination by the North Dakota State Auditor or the Auditor's designee. CONTRACTOR shall maintain all such records for at least three years following completion of this contract.

M. Taxpayer Id

CONTRACTOR'S federal employer ID number is: ~~13-3429115~~ 43-1757730.

N. Payment of Taxes by State

PARTICIPATING STATE is not responsible for and will not pay local, state, or federal taxes. State sales tax exemption number is E-2001, and certificates will be furnished upon request by the purchasing agency.

O. In the event of a conflict between the terms and conditions of the CONTRACTOR's WSCA Police Radar, Lidar, Parts and Accessories Model Contract and the terms stated in this Participating Addendum, the State of North Dakota's terms contained herein shall control.

4. **Continuation of Participation:** The term of this Participating Addendum must be coterminous with the WSCA Master Agreement Number MA W42-2011, to include all contract extensions and renewals.
5. **Lease Agreements:** None.
6. **Primary Contact:** Participating Entity's primary contact for this Participating Addendum is:

Lead State

Name: Steve Jenkins
Address: 1500 Jefferson St SE
Olympia, WA 98501
Telephone: 360-407-9415
Fax: 360-586-2426
E-mail: steve.jenkins@des.wa.gov

CONTRACTOR

Name: Mary Beiriger
Address: 9652 Loiret Boulevard
Lenexa, KS 66219
Telephone: 800-852-1270, ext. 3107
Fax: 913-492-1703
E-mail: mbeiriger@kustomsignals.com

Participating State

Name: Tricia Opp, Procurement Officer II
Address: 14th Floor Capitol Tower
600 East Boulevard Avenue Dept. 012
Bismarck, ND 58505-0310
Telephone: 701-328-1721
Fax: 701-328-1615
E-mail: topp@nd.gov

7. **Subcontractors:** No subcontractor(s) are authorized to perform services.
8. **Price Agreement Number:** All Purchase Orders issued by Purchasing Entities within the jurisdiction of this Participating Addendum shall include WSCA Master Agreement number: w42-2011.
9. **Purchase Orders:** All Purchasing Entities issuing valid Purchase Orders will be bound by the terms and conditions of the WSCA Master Agreement including, without limitation, the obligation to pay CONTRACTOR for Service and Equipment provided. The parties acknowledge and agree that orders submitted to CONTRACTOR from a Purchasing Entity through the Purchasing Entity's Business Procurement Card are authorized Purchase Orders under the WSCA Master Agreement.
10. **Order of Precedence:** The parties acknowledge and agree that:
(a) In the event of a conflict between the terms contained in the WSCA Master Agreement and this Participating Addendum, the terms and conditions of this Participating Addendum will control as between CONTRACTOR and the Participating Entity.

This Participating Addendum and the WSCA Master Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the WSCA Master Agreement, together with its exhibits, shall not be added to or incorporated into this Participating Addendum or the WSCA Master Agreement and its exhibits, by any subsequent Purchase Order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum and the WSCA Master Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

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

Participating State: ND
By: Tricia Opp
Name: Tricia Opp
Title: Procurement Officer
Date: 3/12/12

CONTRACTOR: Kustom Signals, Inc.
By: Sarah Derley
Name: Sarah Derley
Title: Bids and Proposals Manager
Date: 3/12/12