MEMORANDUM FOR THE RECORD

SUBJECT: SUPPORTING DOCUMENTATION FOR SECTION 508 EXEPTION

REFERENCE: CONTRACTS AWARDED PURSUANT TO REQUEST FOR PROPOSAL TIRNO-02-R-00021

PURPOSE OF THIS MEMORANDUM

This memorandum provides support for the class-action waiver of contracts for subscriber unit Land Mobile Radio (LMR) equipment from the requirements of Section 508 of the Rehabilitation Act Amendments of 1998 (25 U.S.C. paragraph 794 (d)).

BACKGROUND

The above-cited contracts are for the acquisition of subscriber unit LMR hardware and software, including hand-held, vehicle-installed and portable support equipment. Although this radio-communication hardware and accompanying software is commercial in nature, the acquisition was conducted pursuant to Part 15 of the Federal Acquisition Regulation (FAR) due to extensive testing which may be necessary for newly-introduced equipment. These will be Indefinite-Delivery-Indefinite-Quantity (IDIQ) multi-agency contracts (MACs). Although deemed excepted from Section 508 conformance, all technically acceptable proposals stated that they offered no level of product conformance to Section 508 standards and technical provisions, evidencing commercial non-availability at this time.

The contracts included in this class-action waiver are as follows:

TIRNO-02-D-00013 with Motorola
TIRNO-02-D-00014 with Daniels Electronics, LTD
TIRNO-02-D-00015 with Datron World Communications
TRINO-02-D-00016 with E.F. Johnson Company
TIRNO-02-D-00017 with M/A-COM Private Radio Systems
TIRNO-02-D-00018 with THALES Communications, Incorporated

The bulk of the equipment purchased under the above-listed contracts will be used on the Integrated Wireless Network (IWN), an LMR network supporting the law enforcement components within the United States Department of the Treasury (Treasury) and the United States Department of Justice (Justice).

DESCRIPTION OF LMR SUBSCRIBER UNIT EQUIPMENT

Portable, hand-held LMR equipment is light-weight and compact, with specific size, weight and emission limitations. Mobile LMR equipment will be installed in motor

vehicles, occasionally in a disguised manner such that a suspect will not be able to detect the law enforcement nature of a transaction. Support equipment includes portable base stations and repeaters, all designed for temporary field deployment to forward the radio signal from point to point. All of the equipment is capable of generating and/or carrying encrypted voice and data traffic to prohibit unauthorized radio users from intercepting intelligence data. All of the equipment to be purchased under the MACs is Project 25 (P 25) compliant, meaning that it is interoperable with federal, state and local P 25 LMR public safety users.

INTENDED USERS OF LMR SUBSCRIBER UNIT EQUIPMENT

Subscriber unit LMR equipment will be used in support of the intelligence, investigative and protective missions of Treasury, Justice, and other authorized users of the MACs such as the United States Department of State, Health and Human Services, General Services Administration, Department of Commerce, National Park Service, White House Communications Agency and the contemplated Department of Homeland Security (DHS). It is noted that two of the major Treasury bureaus, United States Secret Service (USSS) and United States Customs Service (USCS), as well as several Justice components, including Immigration and Naturalization Service, will transfer to DHS as soon as it is formally established.

Although it is understood that the nature of a user target group does not generically affect Section 508 applicability to a product, users of subscriber units are public safety personnel, overwhelmingly federal special agents with missions such as collecting intelligence, guarding our nations' borders and protecting such federal personnel as the president, cabinet members, and designated foreign dignitaries.

Special agents are among the most physically able of US citizens. Taking the USSS as an example, quoting from its recruitment website, very few accommodations are allowed to bring the special agent to excellent physical condition:

"Requirements

- Must be at least 21 years of age and younger than 37 at time of appointment.
- Vision uncorrected no worse than 20/60 in each eye; correctable to 20/20 in each eye.
  (Note: The Department of the Treasury has deemed Lasik, ALK, RK and PRK corrective eye surgeries as acceptable eye surgeries for special agent applicants provided specific visual tests are passed one year after surgery. Applicants who have undergone Lasik surgery may have visual tests three months after the surgery.)
- Excellent health and physical condition.
- Complete background investigation to include in-depth interviews, drug screening, medical examination, and polygraph examination. "

Customers of these contracts are not expected to need any accommodation in hardware, software or any alternative means of access to use LMR subscriber unit equipment.

LEGISLATIVE SUPPORT FOR WAIVER

Under certain exceptions, the Rehabilitation Act permits federal agencies to acquire electronic information technology (EIT) that does not conform to the provisions of the 508 standard. The applicable exception in this instance is that for National Security Systems.

Several considerations are critical in reaching the determination that subscriber unit LMR equipment may properly be excluded under the national security intelligence exception from the requirements of Section 508

As referenced in Section 508, and as defined in Section 5142 of the Clinger-Cohen Act of 1996:

"...'national security system' means any telecommunications or information system operated by the United States Government, the function, operation, or use of which--

(1) involves intelligence activities;

(2) involves cryptologic activities related to national security;

(3) involves command and control of military forces;

(4) involves equipment that is an integral part of a weapon or weapons system; or

(5) subject to subsection (b), is critical to the direct fulfillment of military or intelligence missions.

(b) LIMITATION- Subsection (a)(5) does not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications)."

As described below, the IWN and subscriber unit LMR equipment purchased under these contracts qualify as a national security system under three prongs of the definition. The LMR equipment:

(1) involves intelligence activities;
(2) involves cryptologic activities related to national security;
(3) is critical to the direct fulfillment of military or intelligence missions.

Another source relevant to this discussion is the USA Patriot Act of 2001, Public Law 107-56, Title I—Enhancing Domestic Security Against Terrorism. Section 203 contains relevant definitions, here quoted in pertinent part:

"(b) AUTHORITY TO SHARE ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION-

(1) LAW ENFORCEMENT- Section 2517 of title 18, United States Code, is amended by inserting at the end the following:

`(6) Any investigative or law enforcement officer, or attorney for the Government, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents to any other Federal law enforcement, intelligence, protective, immigration, national defense, or national security official to the extent that such contents include foreign intelligence or counterintelligence...

`foreign intelligence information' means--

`(A) information, whether or not concerning a United States person, that relates to the ability of the United States to protect against--

`(i) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

`(ii) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

`(iii) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

`(B) information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to--

`(i) the national defense or the security of the United States; or

`(ii) the conduct of the foreign affairs of the United States'..."

The IWN and subscriber device equipment from the above-cited contracts will be used by the Federal Bureau of Investigation (FBI)'s National Security Division and possibly other users in direct support of foreign intelligence and counterintelligence activities. The Project 25 standard, mandatory for all equipment on this contract, applies to encryption levels, up to and including Type 1 encryption.

The IWN and subscriber device equipment from this contract will be used by a variety of federal government law enforcement personnel in support of a multitude of law enforcement missions. Many of these missions are, of necessity, tied to intelligence activities. Thus, the missions of the intended users of the above-cited contracts reside within the meaning of Section 203 of the Patriot Act, which makes federal law

enforcement officers active participants in the network of intelligence gathering relating to terrorism.

CONCLUSION

Relying upon the definitions and intentions of the above-cited legislation, it is clear that the subscriber unit LMR equipment to be acquired via the above-cited contracts rests within these definitions and may be appropriately excepted from the requirements of Section 508 of the Rehabilitation Act Amendments of 1998 (25 U.S.C. paragraph 794 (d)).

/s/
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September 12, 2002

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