

ITEM # 29₍₃₎

ADDITIONAL MATERIAL

10:00 a.m. Regular Meeting

FEBRUARY 7, 2017


SUBMITTED AT THE REQUEST OF

**OFFICE OF THE COUNTY
ATTORNEY**

954-357-7600 · FAX 954-357-7641

MEMORANDUM

TO: Board of County Commissioners

FROM: René D. Harrod, Assistant County Attorney 

THRU: Joni Armstrong Coffey, County Attorney

DATE: February 6, 2017

RE: **Public Safety Radio Project 25 700 MHz Communication System**
February 7, 2017 Regular Meeting, Agenda Item 29
CAO Files: 16-099.03

In connection with the disclosure of material litigation by the two proposing vendors, Harris Corporation and Motorola Solutions, Inc., each vendor noted that they are multi-billion dollar companies and, typical of companies of similar size, are routinely engaged in litigation including claims ranging from product liability, personal injury, intellectual property, commercial contract disputes, and more.

Harris disclosed one case as "material" in its RFP response. Motorola did not disclose any cases as "material" in its RFP response. Harris contends that three cases should have been disclosed by Motorola as material. While the Broward County Attorney's Office does not typically undertake an analysis of the litigation (disclosed or undisclosed), following is a brief summary of the allegations and status of the four (4) cases that have been identified as or alleged to be material in connection with this solicitation:

1. ***Las Vegas Metropolitan Police Department v. Harris Corporation***, Case No. 2:13-CV-01780-GMN-VCF (D.C. Nev.)
 - Disclosed by Harris as "material" in response to the RFP.
 - Action originally filed on May 24, 2013 in Nevada state court; removed on September 27, 2013 to federal court.
 - The Third Amended Complaint (filed March 17, 2015) asserted claims against Defendants Harris Corporation, M/A COM, Inc., TE Connectivity (multiple related entities), and Tyco Electronics (multiple related entities).
 - Complaint summary: Las Vegas police department had competitively solicited a new radio system in 2005, which was awarded to proposing vendor M/A COM by contract. In 2009, the M/A COM contract with Las Vegas police department was assigned to

Harris Corporation. The complaint asserts that although Las Vegas police department has spent more than \$40 million for the system, Harris failed to provide a fully functioning system and the system suffers multiple defects that preclude final acceptance.

- Legal claims asserted in Third Amended Complaint: fraud, breach of contract, and breach of implied covenant of good faith and fair dealing
- Status: Multiple motions to dismiss; Scheduling order in July of 2014 set for pretrial in July of 2016; Settled in June 2015 and case dismissed pursuant to settlement in November 2015. Terms of settlement are not publicly available.

2. ***Erika Smith v. Motorola Solutions***, Case No. 37 2015 CA 002884 (Leon County, Florida)

- Not disclosed or identified by Motorola as “material” in response to the RFP.
- Action originally filed on December 4, 2015.
- The original Complaint asserted claims against Tallahassee-Leon County Consolidated Dispatch Agency and Motorola Solutions, Inc.
- Complaint summary: Leon County upgraded from the Motorola’s Premiere CAD system (a computer-aided dispatch system for dispatch operators) to Motorola’s PremierOne CAD system. The upgraded system went live on September 13, 2013. On November 8, 2014, officer safety hazard information was entered into the PremierOne CAD system regarding a hostile person at a specific location, but that information was not relayed by the call taker nor viewed by the first responders in response to a structure fire at that location on November 22, 2014. The first responders were ambushed and injured or killed by the hostile person.
- Legal claims asserted in original Complaint: Negligence against Leon County; Product Liability and Negligence against Motorola for CAD system. (A subsequent complaint was filed on January 25, 2016, but is not currently available.)
- Status: Trial is scheduled for May 22, 2017.

3. ***Sabina Bebee v. Motorola Solutions***, Case No. 4:16-CV-00763 (S.D. Tex.)

- Not disclosed or identified by Motorola as “material” in response to the RFP, but identified as “undisclosed” by Broward County Attorney’s Office in the September 15, 2016 litigation memo and addressed by Motorola in its written response dated September 26, 2016.
- Action originally filed on February 8, 2016 in Texas state court; removed on March 23, 2016 to federal court.
- The Amended Complaint (filed March 10, 2016) asserted claims against Motorola Solutions, Inc. (multiple affiliated entities), Scott Safety, Inc. (multiple affiliated entities), Access Data Supply, Inc., and CTS Consolidated Telecom Services, Inc.
- Complaint summary: First responders entered a burning building (the Southwest Inn fire) on May 31, 2013, in response to an emergency call. The equipment utilized by the first responders included Motorola APX 7000 radios provided by Scott E-Z Radio System.

The Scott E-Z Radio System components had a casing that allegedly melted in the fire and triggered the “quick key” activation of the radio, and the first responders responded to the false activation of the radio. The complaint alleges that the radio failures required the first responders to communicate in person and thus caused the injuries and deaths of the first responders who were unaware of the need to vacate the building.

- Legal claims asserted in Amended Complaint: Defective product and design of radios, negligence, agency and respondeat superior, gross negligence, breach of warranty, and deceptive trade practices.
- Status: Dispositive motions due January 2018; trial September 10, 2018.

4. ***Anthony Treg Livesay, et al. v. Motorola Solutions***, Case No. 2015-31080 (Harris County, Texas)

- Not disclosed or identified by Motorola as “material” in response to the RFP.
- Action filed May 29, 2015 in Texas state court.
- Fourth Amended Complaint (filed September 6, 2016) asserted claims against Motorola Solutions, Inc., Scott Safety, Inc. (multiple affiliated entities), Southwest Inn, Harendra Mathuria, Bhojan Indian Restaurant, Shri Siddhivinayaka, LLC, and Roger Chen.
- Complaint summary: Same incident at issue as the *Bebee* lawsuit (the Southwest Inn fire). This action was filed on behalf of one of the first responders, and joined by additional first responders.
- Legal claims asserted in Fourth Amended Complaint: negligence, misrepresentation, design and product defect of radios, breach of warranty, negligent undertaking, the “malfunction doctrine,” declaratory relief, agency (multiple iterations), respondeat superior, gross negligence, and conspiracy.
- Status: Trial was scheduled for August 2016, but subject to motion for continuance and apparent appeal of interlocutory orders.