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### M/A-COM LAWSUIT: NY SYSTEM WORKED AS CONTRACTED

Mar 31, 2009 12:10 PM, By Donny Jackson

New York state terminated a \$2 billion contract with Tyco Electronics M/A-COM for a statewide wireless network (SWN) because the state was seeking financial relief during a time of unprecedented budgetary deficits, not because the land mobile radio, or LMR, system failed to operate as contracted, M/A-COM claims in a lawsuit against the state.

Made available to Urgent Communications last Friday, the litigation — filed in the New York State Court of Claims on Feb. 13 — also alleges that testing of the initial buildout phase of the SWN project was executed poorly and was largely inappropriate, because the tests targeted portable-radio functionality on a system that was only contracted to provide mobile-radio coverage. In addition, M/A-COM claims that the state ignored its independent consultant's findings that the system worked properly in three of the 19 areas cited by the state as being deficient.

Other aspects of the lawsuit reiterate M/A-COM claims that the company has made public previously: that the New York state Office for Technology (OFT) hindered its ability to build out the SWN in a timely manner, that state officials defamed M/A-COM with statements claiming that the company's technology did not work and that the state inappropriately drew down \$50 million from the standby letter of credit that M/A-COM had established for the project. [» more](#)

"Facing a potential \$2 billion expenditure for the SWN, termination of the master agreement presented the state with a convenient opportunity not only to avoid future billions of dollars in payments but also to seek a \$50 million windfall by drawing down on a standby letter of credit issued in connection with the master agreement," the M/A-COM lawsuit states.

According to the lawsuit, the OFT indicated its expectation to accept the initial phase of the SWN — covering Erie County and Chautauqua County — as late as April 10, 2008. On April 25, 2008, Chautauqua County Sheriff Joseph Gerace sent a letter to a trade association stating that he was "very impressed with the system" and planned to use it "as soon as OFT gives the green light."

But the relationship between the state and the vendor seemed to change during the following months. As the New York state budget office projected a \$21.5 billion shortfall for the next three years in early May, OFT announced the hiring of Federal Engineering as an independent consultant to verify and validate the performance of the SWN, the lawsuit states.

In a July 2008 test of the initial buildout phase of SWN that the state would use to determine whether to accept the network and begin to pay M/A-COM, the state cited 19 deficiencies. November 2008 tests demonstrated that M/A-COM fixed four of these items, but the state terminated the SWN contract with the vendor in January because of the other deficiencies.

According to M/A-COM's lawsuit, Federal Engineering said the system fully complied in three key areas — vehicular repeaters, emergency calls and gateways — but the OFT deemed these tests as failures. Seven of the cited deficiencies were not part of the contract, the lawsuit states.

"Indeed, virtually all of the technical deficiencies cited by OFT as a basis for termination of the master agreement relate to limitations of a portable radio used on a mobile system, which is the system OFT knowingly purchased," according to the litigation.

In addition, M/A-COM contends that some of the tests were not executed appropriately, claiming that "some testers intentionally misused the equipment in order to ensure that it would not work properly." In particular, the vendor claims some testers held down the push-to-talk button for several minutes as they traveled through the initial buildout phase.

"By intentionally keeping the push-to-talk button depressed over long periods of time (which is in no manner representative of the regular use of the system), the system could not be expected to transition optimally between sites," the lawsuit states.

Urgent Communications spoke with an OFT spokesman on Friday and Monday, but the state did not provide any comments in time to be included in this article.

Tyco Electronics M/A-COM also declined interview requests from Urgent Communications but provided the following prepared statement from spokeswoman Victoria Dillon.

"It is not Tyco Electronics' practice or preference to take legal action against our customers, but the N.Y. Office for Technology left us no alternative," Dillon said. "Despite repeated attempts on our part to resolve this contract dispute amicably, we have received no response from the state. Our complaint, filed with the N.Y. State Court of Claims, accurately represents Tyco Electronics' position in this dispute and our firm belief that we have delivered on all our obligations under our contract with the N.Y. Office for Technology."

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