

CALLING ALL CARS?

Florida's Statewide Law Enforcement Radio System (SLERS-2) Underscores the Need for Procurement Reform

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Dear Fellow Taxpayer

Perhaps the most important function of state government is safeguarding its residents against crimes, disasters, and other threats and dangers. To ensure the adequate protection of the public, law enforcement officers, firefighters, and other first responders must be able to communicate quickly and effectively. Historically, the interoperability of first responder communications systems has been a persistent and pervasive problem. Incompatible and outdated communications equipment, limited funding, and poor planning and coordination have made it difficult for emergency personnel to communicate effectively during critical incidents.

The Statewide Law Enforcement Radio System (SLERS) is a single 800 MHz unified digital radio network that permits state law enforcement officers and other participating agencies across the state to communicate more effectively. The current contract between the Department of Management Services (DMS) and what is now L3Harris is set to expire in June 2021. In 2016, DMS initiated an Invitation to Negotiate (ITN) to replace the aging SLERS equipment, which is nearing end-of-life, with a new, non-proprietary, mission critical P25 (SLERS-2) network, which would improve and expand SLERS coverage, reliability, and audio clarity.

The ITN was unsuccessful. After a seven-month bid protest process and the 14-months of negotiations that followed without a contract, DMS is no closer to a contract for a successor P25 SLERS network than it was in 2016. Florida TaxWatch undertakes this independent analysis at the request of Senate Leadership to study the "benefit to the taxpayers of Florida and our first responders on the on the L3Harris equipment and the Motorola system."

Florida TaxWatch is pleased to present this report and its findings and looks forward to engaging policymakers in discussion during the next legislative session and beyond.

Sincerely,

Dominic M. Calabro
President & Chief Executive Officer

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Executive Summary

The State Law Enforcement Radio System (SLERS) is a single 800 MHz unified digital radio network that permits state law enforcement officers and other participating agencies across the state to communicate more effectively. The SLERS digital radio network consists of 200 microwave sites, radio frequency (RF) multi-sites, and RF simulcast sites, and provides coverage of more than 60,000 square miles (including 25 miles offshore) with 98% mobile coverage and portable coverage in selected areas.

The initial term of the contract with L3Harris is 20 years, terminating at the end of the fiscal year (June 30, 2021) 20 years after the effective date. In October 2016, DMS initiated an Invitation to Negotiate (ITN) to replace the SLERS network with a new, non-proprietary, mission critical P25 SLERS-2 network, which would improve and expand SLERS coverage, reliability, and audio clarity. The ITN was initiated almost five years before L3Harris' contract expires to give the P25 SLERS-2 vendor sufficient time to construct and make operational the new network and to ensure a seamless transition.

DMS determined that, based upon the selection criteria, Motorola offered the best value to the state and filed a Notice of Intent to Award the contract to Motorola. L3Harris timely filed a protest, contending that Motorola's Best and Final Offer (BAFO) consists of a service design that Motorola cannot deliver, and the matter was referred to the state's Division of Administrative Hearings (DOAH) for disposition. After hearing the evidence, the DOAH Administrative Law Judge (ALJ) entered a Recommended Order that recommended DMS dismiss the protest by L3Harris and award the SLERS-2 contract to Motorola.

Motorola and DMS then began negotiations to design and build the SLERS-2 P25 network. After months of negotiations, DMS and Motorola reached an impasse, leaving the state with essentially two options going forward: (1) extend the current agreement with L3Harris until the transition to SLERS-2 and the decommissioning of the current SLERS legacy system can be completed; or (2) allow the current agreement with L3Harris to expire, with DMS assuming responsibility for the operation and maintenance of SLERS until a new procurement can be completed. The decision was made to pursue a new procurement and DMS subsequently notified L3Harris of its intent to extend the current contract for several years as the state works through a new procurement.

The 2020 Florida Legislature appropriated \$2.46 million so DMS could extend the current agreement with L3Harris. In August 2020, DMS awarded a competitively procured contract to Federal Engineering, Inc. (FE) to develop the business case, assist with procurement, and provide ongoing project support. DMS has recently initiated a new Invitation to Negotiate for the replacement of the current SLERS contract (SLERS-2), which will be opened in mid-May 2021.

The clock is ticking and time is running out. June 30, 2021 is significant for two reasons: first, the \$3 fee per criminal offense and non-criminal moving traffic violations that helps fund SLERS will sunset unless renewed by the Legislature; and second, the SLERS contract with L3Harris expires. Unless an extension is reached by then, DMS will take over the operation and maintenance of SLERS and any discussions with either L3Harris or Motorola would be subject to a new procurement.

Florida TaxWatch believes it is in the best interest of all Floridians for DMS and L3Harris to extend the current SLERS agreement through the end of FY 2025-26, to permit the transition to SLERS-2 and the decommissioning of the current SLERS legacy system. It is doubtful that DMS will be prepared to assume full ownership of SLERS on July 1, 2021 and, in an abundance of caution, state law enforcement agencies are pursuing their own deals to secure new radios with the Legislature. The cost of the extension is likely to be

higher than the cost of the current agreement. The additional cost could be offset to some degree should the Legislature repeal the sunset of the \$3 fee per criminal offense and for all non-criminal moving traffic violations sunsets on June 30.

The importance of interoperability in emergency communications cannot be overstated. Interoperability permits first responders to communicate effectively with other public safety organizations during incidents that require the coordinated actions of first responders. Interoperability allows emergency personnel to share information seamlessly through voice and data channels, in real time. When first responders cannot communicate and coordinate effectively, it can literally cost lives --- not only of emergency responders, but of those emergency responders are trying to help.

Florida taxpayers have every reason to expect L3Harris to ensure that radios provided through an extension are dually compatible with both the existing SLERS network and any future P25 standards-based SLERS-2 radio system. For the SLERS (and its replacement SLERS-2) system to operate reliably and effectively, DMS must make sure that the communications capabilities of state law enforcement agencies are fully compatible with the capabilities of local law enforcement, fire and emergency medical responders, and other appropriate state and federal agencies.

The SLERS-2 procurement underscores the need to overhaul Florida's procurement system. Florida's history of poorly executed large technology-related projects is well documented and should give taxpayers cause for concern. Florida taxpayers must hold state government accountable for making smart business decisions and conducting the high-level planning and project management necessary to ensure success and minimize the risk to the state. Florida TaxWatch has joined with Associated Industries of Florida in calling for a complete overhaul of the state's procurement system, with a new focus on transparency, open competition, and a commitment to always focus on the best outcomes for Florida's taxpayers.

Florida's procurement system is flawed and Florida TaxWatch is calling on the Legislature to take necessary corrective actions to repair the bid protest process during the 2021 session, in time to guide the SLERS-2 procurement process.

Introduction

The State Law Enforcement Radio System (SLERS) is a single 800 MHz unified digital radio network that permits state law enforcement officers and other participating agencies across the state to communicate more effectively. The SLERS digital radio network consists of 200 microwave sites, radio frequency (RF) multi-sites, and RF simulcast sites, and provides coverage of more than 60,000 square miles (including 25 miles offshore) with 98% mobile coverage and portable coverage in selected areas. The current system serves more than 20,000 radios in patrol cars, boats, motorcycles and aircraft throughout the state.¹

The SLERS network is created in section 282.709, Florida Statutes. The Department of Management Services (DMS) is responsible for the “design, engineering, acquisition, and implementation of the statewide radio communications system and for ensuring the proper operation and maintenance of all common system equipment.” To advise DMS, a Joint Task Force on State Agency Law Enforcement Communications, was created.

From its initiation in 1988 until 2000, DMS managed the project using Motorola as the radio equipment vendor. Due to delays and cost overruns, however, the state decided to contract with a private company to take ownership of radio system infrastructure, complete its construction, and supervise future maintenance. In 1999, Governor Bush transferred management of the project to the State Technology Office (STO), which subsequently negotiated a contract with the vendor Com-Net Ericsson Critical Radio Systems, Inc., (Com-Net) in September 2000.²

The initial term of the contract between Com-Net and the state is 20 years, terminating at the end of the fiscal year (June 30, 2021) 20 years after the effective date. In an effort to keep costs down, the state negotiated with Com-Net a two-part vendor credit provision:

- The state transferred ownership of its radio tower assets to Com-Net in exchange for a \$25.5 million “tower conveyance credit,” which would then be apportioned by the joint task force to be used to purchase radio equipment and services from Com-Net; and
- Com-Net replaced Motorola radio equipment with equivalent Com-Net radio equipment. Beginning in 2002, Com-Net began giving law enforcement agencies vendor credits equal to the value of their Motorola radios (ostensibly to give participating law enforcement agencies more flexibility to purchase Com-Net equipment and services).

In 2001, Tyco acquired Com-Net and placed the company under the administration of M/A-COM, allowing M/A-COM to become the second largest two-way radio communications manufacturer in the United States.³ In May 2009, Harris acquired the M/A-COM business, including its interests in the SLERS Network, and assumed responsibility for the operation of SLERS.⁴ In 2018, Harris merged with L3 to form L3Harris, which became the sixth-largest aerospace and defense prime contractor, behind Lockheed Martin, Boeing, Raytheon, Northrop Grumman, and General Dynamics.⁵ Harris entered into “reseller” agreements with the following companies who are able to resell products and services offered by L3Harris: (1) Citation Communications, Inc. (West Palm Beach); (2) Communications International, Inc. (Vero Beach); (3) Cooper-General Corp. (Miami); and (4) Williams Communications (Tallahassee).

¹ Florida Department of Management Services, “Statewide Law Enforcement Radio System (SLERS),” retrieved from https://www.dms.myflorida.com/business_operations/telecommunications/public_safety_communications/radio_communications_services/statewide_law_enforcement_radio_system_slers, December 7, 2020.

² Office of Program Policy Analysis and Government Accountability, “An Altered Credit Allocation and a Combined Dispatch System Would Better Support State Law Enforcement Radio System,” Report No. 02-71, December 2002.

³ Don Bishop, “M/A-COM Wireless Systems Makes Changes as it Absorbs Com-Net Ericsson,” International Wireless Communications Expo, July 20, 2001, retrieved from <https://urgentcomm.com/2001/07/20/m-a-com-wireless-systems-makes-changes-as-it-absorbs-com-net-ericsson/>, December 8, 2020.

⁴ Amendment to Contract No. 725-001-01-1, Amendment No. 2, May 13, 2010.

⁵ Robert J. Terry, “L3, Harris to Merge in Deal Creating ‘Sixth Prime’ Defense Giant,” Washington Business Journal, October 14, 2008, retrieved from <https://www.bizjournals.com/washington/news/2018/10/14/l3-harris-to-merge-in-deal-creating-sixth-prime.html>, December 8, 2020.

Funds to support the operation and maintenance of SLERS come from two sources: (1) a \$1 surcharge collected on motor vehicle and vessel registrations as provided in section 320.0802, Florida Statutes; and (2) a \$3 fee per criminal offense and for all non-criminal moving traffic violations as provided in section 318.18(17), Florida Statutes.^{6,7} These funds are deposited into the State Law Enforcement Radio System Trust Fund, established within DMS pursuant to section 282.709(3), Florida Statutes. The SLERS is currently funded in the Fiscal Year 2020-21 General Appropriations Act at \$21.6 million.⁸

SLERS-2 Procurement

The SLERS network currently uses L3Harris' proprietary Enhanced Digital Access Communication System (EDACS) technology, which is approaching its end of life. In 2014, the Legislature appropriated \$1 million from the Law Enforcement Radio System Trust Fund for DMS to "contract with an independent third-party consulting firm to complete a study of the SLERS⁹ and provide a recommendation to upgrade the system on or before June 30, 2021."¹⁰ In January 2015, the SLERS business case, which recommended that the state contract for services to establish a P25 SLERS network, was issued. The business case included the expectation that the new SLERS network (SLERS-2) would provide 98 percent statewide coverage for mobile radios (i.e., in-vehicle or dashboard radios) and 95 percent statewide coverage for portable radios (i.e., handheld radios). The overall cost to the state was estimated at \$941.4 million over a 19-year term (four years of non-paid transition followed by 15 paid years).¹¹

In October 2016, DMS initiated an Invitation to Negotiate (ITN)¹² to replace the SLERS network with a new, non-proprietary, mission critical P25¹³ SLERS-2 network, which would improve and expand SLERS coverage, reliability, and audio clarity. The ITN was initiated almost five years before L3Harris' contract expires to give the P25 SLERS-2 vendor sufficient time to construct and make operational the new network and to ensure a seamless transition. Three companies (L3Harris, Motorola, and RELM Wireless) submitted Replies in response to the ITN.

DMS deemed the Replies by L3Harris and Motorola to be responsive and invited both vendors to negotiate. In March 2018, after negotiations and receipt of both vendors' best and final offer (BAFO), DMS determined that, based upon the selection criteria, Motorola offered the best value to the state and filed a Notice of Intent to Award the contract to Motorola. Harris timely filed a protest, contending that Motorola's BAFO consists of a service design that Motorola cannot deliver, and the matter was referred to the state's Division of Administrative Hearings (DOAH) for disposition.

The protest by L3Harris is based upon the following arguments:¹⁴

- DMS failed to select negotiators with the requisite expertise and knowledge, and negotiators failed to display the breadth or depth of knowledge expected for a procurement of this scale. L3Harris pointed out that none of the negotiation team was an engineer, and that certain members had no technical knowledge or background in law enforcement radio systems. Further, because the Subject Matter Experts did not conduct a technical evaluation of Motorola's network design to determine whether

6 Office of Economic and Demographic Research, "State of Florida Long-Range Financial Outlook Fiscal Years 2021-22 Through 2023-24," September 10, 2020.

7 The \$3 fee established in section 318.18(17), Florida Statutes, expires July 1, 2021.

8 Office of Economic and Demographic Research, "State of Florida Long-Range Financial Outlook Fiscal Years 2021-22 Through 2023-24," September 10, 2020.

9 Section 287.0571(4), Fla. Stat., requires that, before an agency proceeds with any outsourcing project that has an expected cost in excess of \$10 million within a single fiscal year, a business case must first be done and evaluated for feasibility, cost-effectiveness, and efficiency. § 287.0571(2), Fla. Stat.

10 Specific Appropriation 2904A, ch. 2014-51, Laws of Fla.

11 State of Florida Division of Administrative Hearings, Case No. 18-1781BID, Recommended Order, September 5, 2018.

12 An Invitation to Negotiate is a solicitation by an agency to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value (see, also §287.057(1)(c), Fla.Stat.

13 Developed by the Association of Public Safety Communications Officials, (APCO), P25 or Project 25 is a suite of digital radio communications standards for use by first responders during emergency situations. A P25 radio is any radio that conforms to the P25 standards in the way it functions or operates.

14 State of Florida Division of Administrative Hearings, Case No. 18-1781BID, Recommended Order, September 5, 2018.

Motorola could actually deliver the system proposed in its BAFO, DMS could not fairly and competently determine that Motorola offered the best value to the state.

- Motorola cannot deliver the service design presented in its BAFO. As such, DMS' selection of Motorola is "clearly erroneous, contrary to competition, arbitrary, or capricious." L3Harris argues that Motorola cannot use a number of the Radio Frequency (RF) tower sites listed in its BAFO, including 21 towers that were conveyed to Harris as part of the original contract. As a result, Motorola's network design does not meet the mandatory coverage, capacity, or reliability requirements specified in the ITN.
- Because Motorola submitted a flawed service design, Motorola's contract price is incomplete and will cost the state substantially more than the price reflected in the BAFO. Because Motorola cannot use the 21 conveyed RF tower sites it identified, DMS cannot accurately evaluate the price of the network solution Motorola proposes to deliver. L3Harris also asserts that certain other costs (e.g., security fences) were excluded from Motorola's pricing summary.

After hearing the evidence, the DOAH Administrative Law Judge (ALJ) entered a Recommended Order that recommended DMS dismiss the protest by L3Harris and award the SLERS-2 contract to Motorola. Based upon the Findings of Fact and Conclusions of Law, the ALJ found that:¹⁵

- Those persons assigned to the negotiation team by DMS "collectively" had the requisite experience and knowledge to conduct negotiations for the SLERS-2 service and to evaluate, negotiate, and score the vendor's replies.
- The ITN called for a preliminary design, with the ultimate delivery system to be developed by the winning vendor after execution of the contract. The ITN did not require the vendors to present a final, fixed tower network.
- Motorola demonstrated that it is fully capable and prepared to develop, then produce, a telecommunications system that will meet the ITN's coverage and capacity objectives.
- Motorola attested that it is fully aware that it bears all costs necessary to ensure that its SLERS-2 service meets the ITN's coverage and capacity objectives. Even if the individual component prices of Motorola's system increase prior to the start of the SLERS-2 contract, the ultimate price Motorola quoted in its Reply remains the same.
- DMS' decision to award the SLERS-2 contract to Motorola is not clearly erroneous, contrary to competition, or arbitrary or capricious, and should not be set aside.

In October 2018, DMS entered a Final Order adopting the ALJ's Recommended Order and dismissing L3Harris' protest.

¹⁵ State of Florida Division of Administrative Hearings, Case No. 18-1781BID, Recommended Order, September 5, 2018.

SLERS-2 Contract Negotiations

Motorola and DMS then began negotiations to design and build the SLERS-2 P25 network. After months of negotiations, DMS and Motorola reached an impasse, ostensibly over terms negotiated during the competitive procurement and agreed to by all respondents, including Motorola in its BAFO. Included in the ITN's Special Conditions are provisions for "termination for convenience," which permit DMS, after providing no less than 180 calendar days' prior written notice to the Contractor, to:

"...terminate the Contract in whole or in part when the Department determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product or service after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits."¹⁶

The termination for convenience requirement is included in the state's general purchasing contract conditions.¹⁷ The termination for convenience provisions would permit the state to terminate the remaining work on the Agreement in the event the financial means to pay for the project are no longer available; in the event the state no longer wanted to operate a statewide law enforcement radio system; or in the event new technology becomes available that makes the SLERS-2 equipment obsolete.

In December 2019, DMS forwarded to Motorola a contract that included the termination for convenience language. In addition to the termination for convenience language, other stumbling blocks include the compressed timeframe to build the SLERS-2 network (less than 18 months, instead of the 48 months reflected in the ITN process), questions whether the legislature would appropriate the additional funding needed to support the SLERS-2 P25 upgrade, and uncertainty surrounding the use of the 21 existing SLERS tower sites currently owned by L3Harris.¹⁸ When Motorola opted not to execute the contract, DMS advised Motorola that the state would "move forward with the evaluation of other options to procure a next-generation system."¹⁹

The "other options" included commencing negotiations with L3Harris, although the total price included in L3Harris' BAFO (\$980 million) was about \$292 million more than Motorola's total price (\$687.8 million),²⁰ or extending the current contract with L3Harris until a new procurement could be completed. The decision was made to pursue a new procurement and DMS subsequently notified L3Harris of its intent to extend the current contract for several years as the state works through a new procurement.

The 2020 Florida Legislature appropriated \$2.46 million²¹ so DMS could renew the existing SLERS contract with L3Harris and pursue the resolution of the dispute involving the non-proprietary use of the conveyed tower sites. The money from this appropriation is also to be used to procure a business case to evaluate public safety communication solutions in collaboration with the Joint Task Force on State Agency Law Enforcement Communications, and to identify and procure solutions that will expand interoperability, improve coverage, enhance audio clarity, identify emerging technology features, and advance public safety collaboration opportunities. In August 2020, DMS awarded a competitively procured contract to Federal Engineering, Inc. (FE) to develop the business case, assist with procurement, and provide ongoing project support.

¹⁶ Department of Management Services, ITN No. DMS-15/16-018.

¹⁷ State of Florida PUR 1000 General Contract Conditions.

¹⁸ Donny Jackson, "Florida Ends Talks With Motorola Solutions on P25 Contract, Will Seek 'Next-Generation' System," International Wireless Communications Expo, Urgent Communications, July 20, 2001, retrieved from <https://urgentcomm.com/2020/01/10/florida-ends-talks-with-motorola-solutions-on-p25-contract-will-see-next-generation-system/>, December 15, 2020.

¹⁹ December 12, 2019 letter from DMS Secretary Jonathan Satter to Motorola Solutions Chairman and CEO Greg Brown.

²⁰ State of Florida Division of Administrative Hearings, Case No. 18-1781BID, Recommended Order, September 5, 2018.

²¹ Specific Appropriation 2920, 2020-21 General Appropriations Act.

The SLERS-2 Business Case

In preparation of the SLERS-2 business case, dated December 11, 2020, FE analyzed the technology and industry trends for standards-based public safety radio systems, as well as the potential applicability of each technology to SLERS-2. FE looked at advancements in emerging technologies such as Mission-Critical-Push-to-Talk and concluded that “the lack of direct interoperability between these next-generation technologies, combined with concerns about off-network communications, prevent them from consideration as a wholesale replacement option for public safety radio systems.”²² FE concluded that the P25-based technology would best meet the public safety requirements for mission-critical radio systems. The FE business case looked at three SLERS-2 business models: insourced, outsourced, and hybrid.

Insourced Business Model

Under the Insourced Business Model, DMS would be responsible for purchasing, owning, operating, and maintaining the SLERS-2 system, using in-house staff. DMS would be responsible for SLERS-2 availability, capacity, and coverage. Once SLERS-2 goes out of warranty, DMS would assume all risks associated with SLERS-2 operation. Maintaining the SLERS-2 system would require the establishment of multiple service facilities throughout the state to promptly address service requests and system outages. These facilities must be equipped with trained support personnel, tools, vehicles, and equipment necessary to respond to outages and emergencies on an around-the-clock basis. FE concluded that this business model added significant complexity and risk and was discounted in favor of the outsourced and hybrid models.

Outsourced Business Model

Under the Outsourced Business Model, a vendor or contractor would deploy the system and charge recurring fees for system access. DMS would retain responsibility for managing the vendor contract. The vendor would assume much of the risk and would retain most of the control of the system. This is similar to how SLERS operates at present. Successful Outsourced business models require well-defined service level agreements and practical and measurable benchmarks. The mutual expectations for system performance, responding to service requests, outage notification, preventive maintenance, and response and repair times must be expressly clear and understood. DMS would be responsible for inspecting and overseeing the work of the contractor and for ensuring compliance with established service level agreements.

Hybrid Business Model

The Hybrid model represents a “blend” of the insourced and outsourced business models. DMS would purchase and own the SLERS-2 system but agency and vendor staff would share management, support, and maintenance functions. FE looked at two hybrids --- Mostly Outsourced and Mostly Insourced:²³

- Mostly Outsourced --- the vendor would monitor, maintain, support and manage the tower sites, radios and associated equipment, and system control infrastructure. DMS would retain ownership of SLERS-2, administer all support contracts, and perform overall system management (including monitoring the performance of the vendor and the system).
- Mostly Insourced --- the vendor would provide depot-level repair for fixed network equipment, system upgrades, lifecycle refreshment, and maintenance that exceeds local capabilities. DMS would retain ownership of SLERS-2, administer all support contracts, and perform overall system management (including monitoring the performance of the vendor and the system). DMS would also be responsible for system maintenance, including the operation of a Network Operations and Security Operations Center.

²² Federal Engineering, Inc., “Florida Statewide Law Enforcement Radio System (SLERS-2) Business Case,” Deliverable 6, December 11, 2020.

²³ Federal Engineering, Inc., “Florida Statewide Law Enforcement Radio System (SLERS-2) Business Case,” Deliverable 6, December 11, 2020.

FE points out that completely insourced models are rare, and that most statewide public safety radio systems operate using one of the hybrid models. FE evaluated what it considers to be the most viable enterprise business models --- Outsourced and Hybrid - mostly outsourced. Each model was evaluated assuming the same overall conceptual design. It was also assumed that SLERS-2 would not require any new microwave or radio tower not part of the current SLERS system. The cost estimates included in FE’s evaluation assume the reuse of existing tower sites and that the tower sites are in good working condition (no significant remediation required).

Implementation Costs and Funding

FE developed capital and operational cost estimates for the Outsourced and Hybrid - Mostly Outsourced business models. The cost estimates developed by FE are “high level” and intentionally conservative, so vendor proposal pricing is unlikely to exceed these estimates. FE points out that the actual system costs are highly dependent upon the final system design and market conditions during the system procurement phase.

Table 1 provides total capital cost estimates for each of the evaluated business models, broken down by equipment, services, and contingency costs (estimated at 10 percent). As shown in Table 1, the total capital costs for the Hybrid – Mostly Outsourced model are estimated at more than \$200 million more than the total capital costs for the Outsourced model.

Table 1. Total Capital Cost Estimates

MODEL	EQUIPMENT	SERVICES	CONTINGENCY	TOTAL
Outsourced	\$174,081,000	\$39,627,000	\$21,373,000	\$235,081,000
Hybrid - Mostly Outsourced	\$295,232,000	\$100,411,000	\$39,568,000	\$435,211,000

Source: Federal Engineering, Inc., “Florida Statewide Law Enforcement Radio System (SLERS-2) Business Case,” Deliverable 6, December 11, 2020.

Table 2 provides ten-year total operational cost estimates for each of the evaluated business models, broken down by year. As shown in Table 2, the ten-year total operational costs for the Hybrid – Mostly Outsourced model are more than \$77 million more than the total capital costs for the Outsourced model.

Table 2. Total 10-Year Operational Cost Estimates

YEAR	OUTSOURCED MODEL	HYBRID - MOSTLY OUTSOURCED MODEL
1	\$25,379,000	\$25,379,000
2	\$32,874,000	\$38,420,000
3	\$44,012,000	\$39,524,000
4	\$30,968,000	\$26,788,000
5	\$18,809,000	\$30,399,000
6	\$29,799,000	\$42,072,000
7	\$29,933,000	\$42,908,000
8	\$30,068,000	\$43,767,000
9	\$30,207,000	\$44,652,000
10	\$30,351,000	\$45,565,000
Total	\$302,400,000	\$379,474,000

Source: Federal Engineering, Inc., “Florida Statewide Law Enforcement Radio System (SLERS-2) Business Case,” Deliverable 6, December 11, 2020.

As shown in Table 3, the ten-year total cost to own estimates for the for the Hybrid – Mostly Outsourced model are \$277 million more than the ten-year total cost to own estimates for the for the Outsourced model. As stated previously, these cost estimates assume that DMS can successfully resolve the status of towers previously conveyed to L3Harris. Failure to successfully resolve this issue could significantly increase the costs of tower replacement for either business model.

Table 3. 10-Year Total Cost-to-Own Estimates

MODEL	TOTAL CAPITAL COSTS	TOTAL OPERATIONAL COSTS	TOTAL COSTS
Outsourced	\$235,081,000	\$302,400,000	\$537,481,000
Hybrid - Mostly Outsourced	\$435,211,000	\$379,474,000	\$814,685,000

Source: Federal Engineering, Inc., "Florida Statewide Law Enforcement Radio System (SLERS-2) Business Case," Deliverable 6, December 11, 2020.

Funding to support SLERS-2 is expected to continue to come from the \$1 surcharge on automobile and vessel licenses and the \$3 ticket surcharge. DMS estimates that these sources will generate \$308,170,407 over the ten-year period from 2020-21 to 2030-31.²⁴ The \$3 ticket surcharge, however, is scheduled to sunset on June 30, 2021. Unless the Legislature acts to prevent this surcharge from sunseting, an estimated \$42.3 million in annual revenue would be lost.²⁵

As shown in Table 4, the expected revenue would not be sufficient to cover the outsourced model's operational costs in years 2-4, which would need to be addressed with \$20.3 in additional funding. The hybrid – mostly outsourced model would experience revenue deficits in years 2-3 and 6-10, which would need to be addressed with \$77.0 million in additional funding.

²⁴ Federal Engineering, Inc., "Florida Statewide Law Enforcement Radio System (SLERS-2) Business Case," Deliverable 6, December 11, 2020.

²⁵ Federal Engineering, Inc., "Florida Statewide Law Enforcement Radio System (SLERS-2) Business Case," Deliverable 6, December 11, 2020.

Table 4. Estimated Funding and Annual Operating Costs

Years 1 – 5					
	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
Total Estimated Revenue	\$28,007,636	\$28,591,953	\$29,190,631	\$29,804,025	\$30,432,495
Outsourced Model Operational Costs	\$25,379,000	\$32,874,000	\$44,012,000	\$30,968,000	\$18,809,000
Hybrid - Mostly Outsourced Model Operational Costs	\$25,379,000	\$38,420,000	\$39,524,000	\$26,788,000	\$30,399,000
Outsourced Model Difference (+/-)	\$2,628,636	(\$4,282,047)	(\$14,821,369)	(\$1,163,975)	\$11,623,495
Hybrid - Mostly Outsourced Model Difference (+/-)	\$2,628,636	(\$9,828,047)	(\$10,333,369)	\$3,016,025	\$33,495
Years 6 – 10					
	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
Total Estimated Revenue	\$31,076,412	\$31,736,157	\$32,412,117	\$33,104,692	\$33,814,290
Outsourced Model Operational Costs	\$29,799,000	\$29,933,000	\$30,068,000	\$30,207,000	\$30,351,000
Hybrid - Mostly Outsourced Model Operational Costs	\$42,072,000	\$42,908,000	\$43,767,000	\$44,652,000	\$45,565,000
Outsourced Model Difference (+/-)	\$1,277,412	\$1,803,157	\$2,344,117	\$2,897,692	\$3,463,290
Hybrid - Mostly Outsourced Model Difference (+/-)	(\$10,995,588)	(\$11,171,843)	(\$11,354,883)	(\$11,547,308)	(\$11,750,710)

Source: Federal Engineering, Inc., "Florida Statewide Law Enforcement Radio System (SLERS-2) Business Case," Deliverable 6, December 11, 2020.

Implementation Timeframes

FE proposes a four-phase implementation schedule for SLERS-2:

- Phases 1 & 2 (Planning) --- June 2020 through December 2020 (includes the SLERS-2 business case, needs assessment, market research, and initial solicitation documents).
- Phase 3 (Acquisition) --- January 2021 through March 2023 (includes all activities related to the procurement of a vendor, contract negotiations and award, initial system design, and site assessments).
- Phase 4 (Implementation) --- March 2023 through December 2026 (includes equipment ordering and installation, testing, final acceptance, and the decommissioning of the legacy SLERS).

Risk

FE's assessment of the substantial risks associated with the migration to SLERS-2 is summarized in Table 5. A "High" probability level reflects a 75 to 100 percent probability of occurrence. If DMS is to achieve the implementation timeframe discussed above, then these risks must be effectively managed, and any threat must be swiftly mitigated.

Table 5. SLERS-2 Risk Assessment

RISK AREA	PROBABILITY	IMPACT
Procurement delays	High	High
Siting delays	High	High
Agency migration delays	High	High
Legacy SLERS equipment failure	High	High
SLERS and SLERS-2 migration & integration failure	High	High
Stakeholder management	High	High
Political & legislative support	High	High
Stakeholder buy-in & support	High	High
Public interest, visibility, & scrutiny	High	High
Vendor rivalry	High	High
Weather events	High	High
Technology obsolescence	High	High

Source: Federal Engineering, Inc., "Florida Statewide Law Enforcement Radio System (SLERS-2) Business Case," Deliverable 6, December 11, 2020.

Business Case Summary

Based upon FE's business case, we now know that:

- The Outsourced model appears to provide the best option going forward for the state. The ten-year total cost-to-own SLERS-2 (reference Table 3) under a properly procured Outsourced vendor could save the state more than \$277 million over the ten years, as compared the Hybrid – Mostly Outsourced model;
- Based upon available funding sources, the Outsourced model will experience a funding deficit of \$20.3 million in years 2-4, and the Hybrid – Mostly Outsourced model will experience a funding deficit of \$77 million in years 2-3 and 6-10. If the \$3 ticket surcharge sunsets in June 2021, these deficits will increase;
- The transition to SLERS-2 and the decommissioning of the current SLERS legacy system is not likely to occur before the summer of 2026; and
- The implementation schedule is subject to significant risks, which must be effectively managed, and any threat must be swiftly mitigated.

Looking Ahead

Florida TaxWatch understands that during contract negotiations, such as the negotiations between DMS and Motorola, both sides are presumably trying to get the most favorable deal they can. It is unknown whether Motorola intentionally misrepresented its intent to agree to the termination for convenience language, as represented in its Reply to the ITN, or whether the termination for convenience language, coupled with the compressed timeframe to build the SLERS-2 network, questions whether the Legislature would appropriate the additional funding needed to support the SLERS-2 P25 upgrade, and uncertainty surrounding the use of the 21 existing SLERS tower sites currently owned by L3Harris, created an unfavorable deal for Motorola. Florida TaxWatch views Motorola's objection to the termination for convenience language after agreeing to abide by it in its Reply to the ITN to be a breach of trust and good faith and arguably contributed to setting the SLERS-2 negotiations back 14 months. Nonetheless, the parties were wise to walk away from the negotiations when reaching an agreement seemed improbable.

That left the state with essentially two options going forward: (1) extend the current agreement with L3Harris until the transition to SLERS-2 and the decommissioning of the current SLERS legacy system can be completed; or (2) allow the current agreement with L3Harris to expire, with DMS assuming responsibility for the operation and maintenance of SLERS until a new procurement can be completed.

Extending the current agreement is more complicated than just extending the timeframe three-to-five years. In its long-range financial outlook for fiscal years 2021-22 through 2023-24,²⁶ the Legislature's Office of Economic and Demographic Research concluded that the annual cost to extend the existing contract for the SLERS system is unknown, and that the replacement of the SLERS system will likely require a multi-year transition period. It is reasonable to expect the compensation paid to L3Harris during the extension to be more than what is in the current agreement.

As the SLERS radio equipment approaches its end-of-life, the costs of maintaining the equipment increase. Many of the parts are no longer produced and those that are become more and more scarce with time. As the radio equipment ages, it is more likely to fail, which increases the number of service and repairs calls. New radio equipment, which is compatible with any P25 system as well as the existing SLERS system, would help to maintain coverage and interoperability during the transition, but would likely increase the costs. How much additional compensation should be paid to L3Harris will depend on the extent to which the parties can compromise. A good compromise will be one where the state pays more than it wants and L3Harris receives less than it wants.

DMS has begun the next step in the procurement of a P25 SLERS-2 network. In mid-February, DMS initiated a new Invitation to Negotiate for the replacement of the current SLERS contract, which will be opened in mid-May 2021.

A second option would be for DMS to assume responsibility for the operation and maintenance of a SLERS network made up of more than 200 tower sites and 20,000 radios, providing coverage to an area of more than 60,000 square miles. DMS would be required to deploy several hundred trained technicians and/or contractors throughout the state to be able to provide 24x7x365 support for system failures and malfunctions. Spare radios and parts would also have to be stockpiled at locations throughout the state. It is doubtful that DMS is prepared to assume these responsibilities on July 1, 2020.

Given the uncertain future of SLERS, several state law enforcement agencies have asked the Legislature for General Revenue funding as part of their FY 2021-22 Legislative Budget Request (LBR):

- The Department of Agriculture & Consumer Services has requested \$351,650 in General Revenue to lease 256 portable radios, 172 mobile radios. These radios are hybrids, which would be compatible with any P25 system, regardless of the vendor. They would also be compatible with the existing SLERS system.
- The Department of Highway Safety & Motor Vehicles has requested \$6 million in General Revenue to enter into a lease agreement for the procurement of P25 capable portable and mobile radios which will be dually compatible with both the existing State Law Enforcement Radio System Enhanced (SLERS) Emergency Digital Access Communications System (EDACS) and any future P25 standards-based SLERS radio system.
- The Department of Law Enforcement has requested \$952,208 in General Revenue (\$881,161 recurring) to enter into a seven-year lease-purchase agreement for 522 hand-held portable and 492 vehicle-mounted mobile radios (including warranty and maintenance for the term of the lease).

In addition, House Bill 5501 and Senate Bill 2510 would, if enacted, extend the expiration date for the \$3 surcharge to July 1, 2026. This money would be deposited into the State Agency Law Enforcement Radio System Trust Fund to be used by DMS for payment of recurring maintenance costs of SLERS.

²⁶ Office of Economic and Demographic Research, "State of Florida Long-Range Financial Outlook, Fiscal Years 2021-22 Through 2023-24," September 10, 2020.

Conclusions and Recommendations

The clock is ticking and time is running out. June 30, 2021 is significant for two reasons: first, the \$3 fee per criminal offense and non-criminal moving traffic violations that helps fund SLERS will sunset unless renewed by the Legislature; and second, the SLERS contract with L3Harris expires. Unless an extension is reached by then, DMS will take over the operation and maintenance of SLERS and any discussions with either L3Harris or Motorola would be subject to a new procurement.

Florida TaxWatch believes it is in the best interest of all Floridians for DMS and L3Harris to extend the current SLERS agreement through the end of FY 2025-26, to permit the transition to SLERS-2 and the decommissioning of the current SLERS legacy system. It is doubtful that DMS will be prepared to assume full ownership of SLERS on July 1, 2021 and, in an abundance of caution, state law enforcement agencies are pursuing their own deals to secure new radios with the Legislature. The cost of the extension is likely to be higher than the cost of the current agreement. **The additional cost could be offset to some degree should the Legislature repeal the sunset of the \$3 fee per criminal offense and for all non-criminal moving traffic violations, which sunsets on June 30.**

The importance of interoperability in emergency communications cannot be overstated. Interoperability permits first responders to communicate effectively with other public safety organizations during incidents that require the coordinated actions of first responders. Interoperability allows emergency personnel to share information seamlessly through voice and data channels, in real time. When first responders cannot communicate and coordinate effectively, it can literally cost lives --- not only of emergency responders, but of those emergency responders are trying to help.

Florida taxpayers have every reason to expect L3Harris to ensure that radios provided through an extension are dually compatible with both the existing SLERS network and any future P25 standards-based SLERS-2 radio system. For the SLERS (and its replacement SLERS-2) system to operate reliably and effectively, DMS must make sure that the communications capabilities of state law enforcement agencies are fully compatible with the capabilities of local law enforcement, fire and emergency medical responders, and other appropriate state and federal agencies.

The SLERS-2 procurement underscores the need to overhaul Florida's procurement system. Florida's history of poorly executed large technology-related projects is well documented and should give taxpayers cause for concern. Florida taxpayers must hold state government accountable for making smart business decisions and conducting the high-level planning and project management necessary to ensure success and minimize the risk to the state. Florida TaxWatch has joined with Associated Industries of Florida in calling for a complete overhaul of the state's procurement system, with a new focus on transparency, open competition, and a commitment to always focus on the best outcomes for Florida's taxpayers.²⁷

After a seven-month bid protest process and 14 months of negotiations that followed without a contract, DMS was no closer to a contract for a successor P25 SLERS-2 network in December 2020 than it was in March 2018. Twenty-nine months after the bid protest, the vendor solicitation process established in Chapter 287, Florida Statutes, began anew, at considerable taxpayer expense, with the selection of a consultant to prepare a new business case.

This raises the question "[W]hat comfort do taxpayers, law enforcement officers, firefighters, other first responders, and Florida legislators have that this will not repeat itself when DMS initiates a new SLERS-2 procurement in a few months?" In its June 2016 final report, the constitutionally-mandated Government

²⁷ Florida TaxWatch, "It Is Time to Overhaul the State Procurement System," September 1, 2020.

Efficiency Task Force recommended that the Legislature amend Florida procurement laws to implement additional measures to reduce the number of bid protests and simplify the bid process, including a flexible and responsive “debriefing process” that permits all parties to benefit from the early identification and resolution of any errors or other issues.²⁸

Bid protests are filed for several reasons. In some instances, bid protests are filed simply because the unsuccessful bidder does not understand the process or how their proposal was scored. Florida’s procurement process affords limited access to relevant information before an award is made, so many bidders feel compelled to file a bid protest to better understand why they lost. In these instances, the debriefing process would help to ensure a bidder’s concerns are heard, but not at the expense of the taxpayer or the project’s schedule. The debriefing process would permit an agency to stop the bid process before an award is made, respond as lawful and appropriate to address the issue(s), and then resume the process, avoiding the bidder having to file a bid protest to resolve the issue(s).

The Task Force acknowledged that bid protests are often used to delay contract awards or to force concessions in the form of settlement agreements from state agencies or winning bidders. The Task Force reviewed 91 bid cases that had been reviewed by DOAH since 2014 and found that 51 of these cases (56 percent) had been settled and/or dismissed prior to the entry of a recommended order or final order.²⁹

In the case of large, multi-million-dollar, multi-year projects like SLERS-2, there is little to discourage an unsuccessful bidder from filing a bid protest. In these instances, filing a bid protest is tantamount to “playing for a three-run homer.” The possibility of the winning bid being overturned on a technicality (e.g., prohibited communication between the bidder and the agency) or agency error (e.g., incorrect scoring), or the possibility of entering into a settlement agreement with the agency or winning bidder, often makes the costs of a bid protest worth the risk. If the protest is unsuccessful, then these costs are dismissed as a “cost of doing business.” So... we need to change the nature of the business.

To date, no legislative action has been taken to address the Task Force’s concerns. **Florida’s procurement system is flawed, and Florida TaxWatch is calling on the Legislature to take necessary corrective actions to repair the bid protest process during the 2021 session, in time to guide the SLERS-2 procurement process.**

²⁸ Florida Government Efficiency Task Force, “Final Report,” June 30, 2016.

²⁹ Florida Government Efficiency Task Force, “Final Report,” June 30, 2016.

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As an independent, nonpartisan, nonprofit taxpayer research institute and government watchdog, it is the mission of Florida TaxWatch to provide the citizens of Florida and public officials with high quality, independent research and analysis of issues related to state and local government taxation, expenditures, policies, and programs. Florida TaxWatch works to improve the productivity and accountability of Florida government. Its research recommends productivity enhancements and explains the statewide impact of fiscal and economic policies and practices on citizens and businesses.

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