

CONTRACT

LF112807-20

This Contract, dated effective _____, is made and entered into between Rapid City Department of Fire & Emergency Services ("Department"), and Golden West Technologies, ("Contractor")

Business Name: Golden West Technologies
Contract Name: Patty Nikkila
Business Address: 2727 N. Plaza Drive, Rapid City, SD 57702
Phone: 605-348-6529
FAX: 605-342-1160
E-Mail: pattynikkila@goldenwest.com

Whereas the purpose of this contract is replacement of the Rapid City Department of Fire & Emergency Services telephone system;

Whereas Contractor was selected using the following process Request For Proposal;

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance of the scope of work contained herein, or as attached and incorporated and made a part hereof, the Department and the Contractor mutually agrees as follows:

1. Scope of Work.

Contractor shall provide all supplies, equipment and services, according to the schedule prescribed. The materials shall be provided and orders completed according to the time schedule contained in this Contract.

The Contract shall, at all times, be subject to inspection by and with the approval of the Department, but the making of (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Contract, notwithstanding the Department's knowledge of defective or non-complying performance, its substantiality or the ease of its discovery.

2. Term of Contract.

The term of this contract shall commence on the date of execution by the parties to this Contract, and shall terminate no later than December 31, 2007. The Contractor shall deliver supplies, equipment or services, according to the attached "Scope of Work" and contract documents, upon receipt of a Purchase Order or other notice from the Department to proceed. Such delivery or work shall proceed and be completed according to the time schedule contained in this Contract.

Established completion times shall not be extended because of any unwarranted delays for which the Contractor is responsible, but may be extended by the Department because of delays caused by governmental action or other conditions beyond the control of the Contractor. During the progress of the Contractor's work, the Contractor may adjust the workforce to meet the schedule but time adjustments may be made only upon prior written approval by the Department.

Delays significantly affecting the completion of the work within the time specified for the completion, attributable to any cause by the parties hereto shall be considered as cause for the termination of this Contract by the other party.

Supplies or equipment shall be delivered as provided for in the attached specifications.

Telephone System
RAPID CITY DEPARTMENT OF FIRE & EMERGENCY SERVICES

Liquidated Damages: If delivery is not completed within the time specified, the Contractor agrees to pay the Department the sum of \$50.00 for each day the contract remains uncompleted after the expiration of the specified time as liquidated damages. Said sum is fixed and agreed upon by the parties because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Department would sustain in the event of non-completion within the specified time.

3. Compensation.

The Department promises and agrees to employ, and does employ, Contractor to provide the Supplies or Equipment provided for in this Contract according to the specifications contained herein. The Department agrees to pay Contractor according to the payment schedule below (or as attached). Said payment schedule includes any applicable sales or use tax. Such payment shall be in full compensation for the service performed or the equipment/supplies provided, and for all supervision, labor, supplies, materials, equipment or use thereof, and for all other expenses and incidentals, necessary to provide the supplies and equipment specified.

Total compensation payable to Contractor for satisfactory delivery of specified supplies and/or equipment under this Contract is \$31,558.07, or as specified in the Attachments, unless otherwise authorized by the Department in writing.

Contractor shall submit invoices for the compensation payable under this Contract for the supplies or equipment provided the Department. Each Contractor invoice shall set forth a detailed description of the supplies and equipment provided. Invoices shall be submitted to the following. Questions regarding invoices may be directed to Accounts Payable (605-394-4143):

City of Rapid City
Attention: Accounts Payable
300 6th Street
Rapid City, SD 57701

Any additional supplies or equipment provided by the Contractor that exceeds that which is provided for within this contract instrument must have prior written approval of the Department.

Pricing adjustments shall be made only as specified in the incorporated Attachments, or if not otherwise stated, according to the Terms and Conditions contained within this Contract.

4. Section has been intentionally deleted.

5. Insurance.

Contractor shall provide the following coverage as a requirement of the Contract:

Worker's Compensation and Employer's Liability Coverage: coverage or insurance in accordance with the applicable laws related to worker's compensation, and employer's liability insurance with limits no less than \$1,000,000 including \$1,000,000 for bodily injury by Accident, each accident; and \$1,000,000 bodily injury by disease, each employee; and \$1,000,000 bodily injury by disease, policy limit (including but not limited to, the SD Industrial Insurance Act and the laws of the state in which any such person was hired), regardless of whether such coverage or insurance is mandatory or merely elective under the law. In case of subcontracted work, the Contractor shall require each subcontractor to provide Worker's Compensation insurance for their employees unless such employees are covered by Contractor.

Suppliers Liability & Property Damage Insurance:

- a. Supplier shall procure and maintain at Supplier sole expense during the life of this Contract, Commercial General Liability, Product Liability, and Automobile Liability Insurance, as detailed herein, to protect the Department and Supplier from and against all claims, damages, losses and expenses arising out of or resulting from the performance of these services, with insurance companies or through sources approved by the Department. The Department reserves the right to require higher limits should it deem necessary in the best interest of the public, and if higher limits are requested by the Department the additional expense shall become an additional cost to the Department.
- b. If required by the Department Purchasing Manager, the insurance policies shall include the Department as Additional Named Insured on a Primary Basis without limitation, and shall include others if required by the Contract documents. All insurance policies shall be endorsed to provide that no policy shall be cancelled, changed or reduced in coverage, until after thirty (30) days prior written notice has been delivered to the Department using certified mail.
- c. If requested by the Department, a Certificate of Insurance including the second page naming the Additional Named Insured Endorsement, shall be filed with the Department after award but prior to execution of the contract, for a primary policy of commercial general liability insurance including Product Liability, and for Automobile Liability Insurance, meeting the requirements set forth herein. This Certificate shall be subject to approval by the Department as to company, terms and coverage. Failure of the contractor to fully comply with the requirements set forth herein regarding insurance shall be considered a material breach of contract and shall be cause of immediate termination of the Contract and of any and all obligations regarding the same.

d. Contractor shall not begin Work until all required insurance has been obtained or until such insurance has been approved by the Department. Said insurance shall provide coverage to the Supplier, any subcontractor performing work provided by this Contract, and the Department. The coverage so provided shall protect against claims for personal injuries, including accidental death, as well as claims for property damages which may arise from any act or omission of Contractor or subcontractor, or by anyone directly or indirectly involved or employed by either of them.

e. Approval of the insurance by the Department shall not relieve or decrease the liability of the Supplier for any damages arising from Contractor's performance of the Work.

f. Automobile Bodily Injury and Property Damage Insurance shall be in no case be for limits less than \$1,000,000 Combined Single Limit, for any and all vehicles that are used for the performance and/or delivery of specified equipment to the Department.

General Liability (Commercial General Liability Insurance) including Product Liability, shall be written with limits of liability of no less than \$1,000,000 combined single limits, per occurrence and \$2,000,000 in aggregate;

g. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Supplier's responsibility for payment of damages resulting from operations under this Contract.

h. Insurance shall provide, at a minimum, the types of insurance coverage, liability limits and endorsements as set forth below and shall be included in all applicable policies and on the Certificate of Insurance. The insurance coverage's listed below shall protect the Supplier and the Department from claims for damages of bodily injury, including death resulting therefrom, as well as claims for property damage, which may arise from operations under this Contract, whether such operation be by itself or by any subcontractor or by anyone directly employed by either of them, it being understood that it is the Supplier's obligation to enforce the requirements of this section in respect to any subcontractor employed for this project:

Commercial General Bodily injury and Property Damage Insurance, which shall include:
 Premises & Operations;
 Owners and Contractors Protective;
 Products Liability, including completed Operations Coverage;
 Contractual Liability;
 Broad Form Property Damage;
 Commercial Form (to include Extended Bodily Injury);
 Employees as Additional Insured;
 Independent Contractors;
 Personal Injury;
 Stop Gap; and
 Cross Liability Clause.

i. The coverage provided by this policy is primary to any insurance maintained by the Department.

j. ~~The inclusion of more than one (1) insured under this policy shall not affect the rights any insured as respects to any claims, suit or judgment made or brought by or for any other Insured or by or for any employee of any other Insured. This policy shall protect each Insured in the same manner as though a separate policy had been issued to each, except that nothing herein shall operate to increase the company's liability beyond the amount or amounts for which the company would have been liable had only one Insured been named.~~

k. The Certificate of Insurance (ACCORD Form 25-S) shall be amended as follows: The cancellation clause shall be revised to read: *Should any of the above described policies be cancelled, changed or reduced in coverage before the expiration date, the issue company will mail 30 day written notice delivered through certified mail, to the certificate holder named at the left.*

l. There shall be included in the liability insurance contractual coverage sufficiently broad to insure the provisions of that Section herein entitled "Hold Harmless Clause".

m. Failure to comply with provisions contained herein shall not waive the responsibility of the Supplier to provide the required protection.

6. Release, Indemnities, and Hold Harmless.

Contractor releases and shall defend, indemnify, and hold harmless the Department from and against all claims, cost liabilities, damages and expenses, (including but not limited to, reasonable attorney fees) arising directly out of or in connection with any fault, negligence, strict liability or product liability of Contractor in connection with this Contract; any lien asserted upon any property of the Department in connection with the Contract; any failure of Contractor, or the Contract to comply with any applicable law, ordinance, rule, regulation, order, license, permit or other requirement, now or hereafter in effect; any breach or default under this Contract by the Contractor.

As permitted by applicable law, this section shall apply. However, this section shall not require Contractor to indemnify the Department against any liability for damages arising out of bodily injury or property damages caused by or resulting from negligence of the Department. Further, in the case of concurrent negligence of Contractor on the one hand and the Department on the other hand, Contractor shall be required to indemnify the Department only to the extent of the negligence of the Contractor.

Contractor releases and shall defend, indemnify, and hold harmless the Department from and against all claims, cost liabilities, damages, expenses (including but not limited to reasonable attorney fees) and royalties based upon any actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or other intellectual property right, Contractor shall either (a) procure for the Department the right to such, or (b) modify the Contract so that they no longer infringe or misappropriate any such right.

7. Attorney Fees.

The prevailing party in any action shall be entitled to reasonable attorney's fees and court costs.

8. Record Keeping.

Contractor shall promptly furnish such information related to the Contract as requested by the Department. Until the expiration of twelve months after final payment of the compensation payable under this Contract, Contractor shall provide the Department prompt access to (and the Department shall have the right to examine, audit and copy) all of Contractor's books, documents, papers and records which are related to the Services of this Contract.

9. Property and Confidential Information.

Contractor shall not, without the prior written consent of the Department, disclose to third parties any information received in connection with the Contract unless the information is:

- a. Known to Contractor prior to receiving the same directly or indirectly in connection with the Services;
- b. In the public domain at the time of disclosure by Contractor; or
- c. Received by Contractor from a third party who has no obligation to keep the same confidential.

10. Governing Law.

This Contract is governed by, and construed in accordance with, the domestic laws of the State of South Dakota without giving effect to any choice or conflict of law provision. The Parties hereby: (1) consent to the jurisdiction of the United States District Court, District of South Dakota, and the State courts of South Dakota (collectively, the "Courts") for the purposes of resolving all issues of law, equity, or fact arising out of or relating to this Contract; (b) agree that any action or suit arising out of or relating to this Contract will be brought exclusively in the Courts; and (c) agree that venue for any such action or suit will be in Rapid City, South Dakota. Each Party consents to personal jurisdiction over it in the Courts and waives any defense of lack of personal jurisdiction.

11. Communications.

Offices and titles are provided below for Contractor to comply with contractual notification requirements stated herein. Individual names are provided for the convenience of Contractor only. The Department may change individual names without notice to Contractor, and such changes do not in any way waiver Contractor from properly fulfilling all notice requirements stated herein.

Communications regarding this Contract shall be to:

Rapid City Department of Fire & Emergency Services
Attention: Richard Lehmann, Contracts Manager
10 Main Street
Rapid City, SD 57701
Fax: 605-394-6754
Phone: 605-394-4180

Communications, coordination, delivery, implementation and instructions regarding the work practices will be supervised by the following serving as Project Manager for the Department:

Department Project Manager: Richard Lehmann
Address: 10 Main Street, Rapid City, SD 57701
Phone: 605-394-4180
E-Mail: richard.lehmann@rcgov.org
FAX: 605-394-6754

12. Miscellaneous.

The obligation of Contractor under all provisions of this Contract that may be reasonably interpreted or construed as surviving in the completion, termination, or cancellation of this Contract, shall survive the completion, termination or cancellation of this Contract.

The rights and remedies of the Department or the Contractor set forth in any provision of this Contract are in addition to, and do not in any way limit, any other rights or remedies afforded to the Department or the Contractor by any other provision of this Contract or by law.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed the day stated. Executed in duplicate.

RAPID CITY DEPARTMENT OF FIRE & EMERGENCY SERVICES:

MAYOR:

CONTRACTOR:

Signature

Signature

Date

Printed Name

ATTEST BY:

Title

Finance Director

Date

Date

REVIEW

This Agreement has been reviewed and

() is acceptable

() is acceptable as noted

Signed

Printed Name

Vendor

Date



2727 N Plaza Dr.
 Rapid City, SD 57702
 Phone 605-348-6529 Fax 605-342-1160

Quote

No. **22471**
 Date: **5/4/2007**

Prepared for:
 Mr. Richard Lehmann
 RC Fire Dept-#1
 10 Main Street
 Rapid City, SD 57701 U.S.A.

Prepared by: Patty A. Nikkila
 Account No.: 7708
 Phone: (605) 394-4180
 Fax: (605) 394-6754

JOB:

| Qty. | Description | UOM | Sell | Total |
|------|--|-----|------------|------------|
| 1 | Mitel 3300 CX Controller | EA | \$1,050.00 | \$1,050.00 |
| 1 | Mitel Power Cord Pack (Qty 3) | EA | \$24.06 | \$24.06 |
| 1 | Mitel 3300 S/W PKG #1 | EA | \$780.90 | \$780.90 |
| 1 | Mitel Analog Option Board II | EA | \$427.50 | \$427.50 |
| 1 | Mitel Dual DSP MMC | EA | \$630.10 | \$630.10 |
| 1 | Mitel 3300-Advanced Voicemail | EA | \$1,367.19 | \$1,367.19 |
| 26 | Mitel 3300 IP Phone Lens 1 user 1 device | EA | \$78.13 | \$2,031.38 |
| 92 | Mitel 3300 IP Mailbox License | EA | \$31.25 | \$2,875.00 |
| 2 | Mitel 5340 IP Phone | EA | \$358.88 | \$717.76 |
| 32 | Mitel 5330 IP PHONE | EA | \$223.36 | \$7,147.52 |
| 1.00 | Labor Telephone Voice Over IP | HR | \$4,000.00 | \$4,000.00 |
| 1.00 | Applicable Tax & Materials | EA | \$1,805.07 | \$1,805.07 |

Item Total: \$22,856.48
 Tax at 0.000%: \$0.00
Total: \$22,856.48

Prices are firm until 12/1/2007

Quoted by: Patty A. Nikkila, pattynikkila@goldenwest.com
 Part of RFP Bid Response total of \$31,558.07

Date: 5/4/2007

Accepted by: _____

Date: _____

Unless otherwise specified, all labor is charged on a time and materials basis. Any additional service charge or travel will apply.
 Terms: 30% down payment required for sales of \$ 5,000.00 or more, with the balance due Net 15 days of invoicing.
 A 40% fee may be added to any account that is sent to collections due to failure to pay.



2727 N Plaza Dr.
 Rapid City, SD 57702
 Phone 605-348-6529 Fax 605-342-1160

Quote

No. **21859**
 Date: **2/27/2007**

Prepared for:
 Mr. Richard Lehmann
 RC Fire Dept #1
 10 Main Street
 Rapid City, SD 57701 U.S.A.

Prepared by: Patty A. Nikkila
 Account No.: 7708
 Phone: (605) 394-4180
 Fax: (605) 394-6754

JOB: RFP Quote 2 of 3

| Qty. | Description | UOM | Sell | Total |
|------|----------------------------------|-----|------------|------------|
| 1 | hp procurve switch 2650-pwr -Gov | EA | \$2,815.00 | \$2,815.00 |
| 1.00 | Network Voip Set-up | HR | \$190.00 | \$190.00 |
| 2 | Mitel 3300 64 Device Assurance | EA | \$228.75 | \$457.50 |
| 1.00 | LABOR-CABLING-REG | HR | \$1,000.00 | \$1,000.00 |

Item Total: \$4,462.50
 Tax at 0.000%: \$0.00
Total: \$4,462.50

Prices are firm until 3/13/2007

Quoted by: Patty A. Nikkila, pattynikkila@goldenwest.com
 Part of RFP Bid Response total of \$31,558.07

Date: 2/27/2007

Accepted by: _____

Date: _____

Unless otherwise specified, all labor is charged on a time and materials basis. Any additional service charge or travel will apply.
 Terms: 30% down payment required for sales of \$ 5,000.00 or more, with the balance due Net 15 days of invoicing.
 A 40% fee may be added to any account that is sent to collections due to failure to pay.



2727 N Plaza Dr.
 Rapid City, SD 57702
 Phone 605-348-6529 Fax 605-342-1160

Quote

No. **21860**
 Date: **2/27/2007**

Prepared for:
 Mr. Richard Lehmann
 RC Fire Dept #1
 10 Main Street
 Rapid City, SD 57701 U.S.A.

Prepared by: Patty A. Nikkila
 Account No.: 7708
 Phone: (605) 394-4180
 Fax: (605) 394-6754

JOB: RFP Quote 3 of 3

| Qty. | Description | UOM | Sell | Total |
|------|---|-----|------------|------------|
| 1 | Multitech 1-Port FXS-FXO VOIP Gateway | EA | \$338.29 | \$338.29 |
| 1 | Mitel 3300 SIP Trunking option | EA | \$121.88 | \$121.88 |
| 1 | HP Procurve switch 2600-8-pwr with gigabit uplink | EA | \$678.92 | \$678.92 |
| 1.00 | Network Assessment | HR | \$1,000.00 | \$1,000.00 |
| 1.00 | Labor Telephone Voice Over IP | HR | \$2,000.00 | \$2,000.00 |
| 1.00 | Materials | EA | \$100.00 | \$100.00 |

| | |
|----------------|-------------------|
| Item Total: | \$4,239.09 |
| Tax at 0.000%: | \$0.00 |
| Total: | \$4,239.09 |

Prices are firm until 5/31/2007

Quoted by: Patty A. Nikkila, pattynikkila@goldenwest.com
 Part of RFP Bid Response total of \$31,558.07 (Fire Prevention)

Date: 2/27/2007

Accepted by: _____

Date: _____

Unless otherwise specified, all labor is charged on a time and materials basis. Any additional service charge or travel will apply.
 Terms: 30% down payment required for sales of \$ 5,000.00 or more, with the balance due Net 15 days of invoicing.
 A 40% fee may be added to any account that is sent to collections due to failure to pay.