

Amendment No.1
BC 04-167
NEC Unified Solutions, Inc.
Formerly, NEC Business Network Solutions, Inc.

It is mutually agreed that the telephone maintenance and support services contract BC 04-167 between the County of Santa Barbara (COUNTY) and NEC Unified Solutions, Inc. formerly NEC Business Network Solutions, Inc. (CONTRACTOR) is amended as stated below.

» Amend CONTRACTOR identity to NEC Unified Solutions, Inc.

NEC Business Network Solutions, Inc. (NEC BNS) ceased doing business in April 2004. All of NEC BNS assets and obligations, including interests in this agreement, were transferred to NEC Unified Solutions, Inc. Both parties acknowledge that this agreement remains in full force and effect with the new corporate identity of CONTRACTOR

» Amend Section 2. "NOTICES." to read:

"Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, or otherwise delivered as follows:

To COUNTY: Information Technology Department/Communications
4568 Calle Real Building C
Santa Barbara, CA 93110

To CONTRACTOR: NEC Corporation of America c/o NEC Unified Solutions, Inc.
Attn: Legal Division/Contract Administration Department
6535 N. State Highway 161
Irving, TX 75039

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail. "

» Amend Section 5. "COMPENSATION OF CONTRACTOR." to read:

"CONTRACTOR shall be paid an amount not to exceed \$4,100,000, for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address given in Section 2 NOTICES. above following the increments identified in EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice. "

» Amend EXHIBIT B "COST SCHEDULES AND PAYMENT ARRANGEMENTS" as attached.

These modifications to the agreement are in compliance with Section 23. ENTIRE AGREEMENT AND AMENDMENT, of the above referenced agreement.

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BC 04-167
NEC Unified Solutions, Inc.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date it is fully executed.

CONTRACTOR:
NEC Unified Solutions, Inc.

By: _____

Date: _____

COUNTY:
COUNTY OF SANTA BARBARA

ATTEST:

MICHAEL F. BROWN
CLERK OF THE BOARD

SALUD CARBAJAL, CHAIR
BOARD OF SUPERVISORS

By: _____
Deputy

By: _____

Date: _____

Date: _____

APPROVED AS TO FORM:
DENNIS A. MARSHALL
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:
ROBERT W GEIS, CPA
AUDITOR-CONTROLLER

By: _____
Kevin E. Ready, Sr.
Deputy County Counsel

By: _____
Deputy

Date: _____

Date: _____

EXHIBIT B

COST SCHEDULES AND PAYMENT ARRANGEMENTS

1.0 GENERAL

A. For CONTRACTOR services to be rendered under this contract, CONTRACTOR shall be paid in accordance with the following payment arrangements and cost schedules. This exhibit details the contracted costs, economic price adjustments, and payment terms for:

- Telephone System maintenance
- Telephone System support (move, add, and change activity)
- Call Accounting System Support
- Category 5e or category 6 data cabling
- Voice Mail System support
- Video Conference maintenance and support (move, add and change activity)

The prices on the following cost schedules apply to the first year of the contract unless otherwise indicated. The cost for subsequent years shall be adjusted as described in the following section.

B. Payment for services and/or reimbursement of costs shall be made upon CONTRACTOR'S satisfactory performance, based on the scope and methodology contained in Exhibit A as determined by COUNTY. Payment for services and/or reimbursement of costs shall be based upon the costs, expenses, overhead charges and hourly rates for personnel, as defined in cost schedules A thru E. Invoices submitted for payment that are based upon the cost schedules must contain sufficient detail to enable an audit of the charges and provide supporting documentation if so specified in Exhibit A.

C. Upon completion of the work or each milestone and/or delivery to COUNTY of item(s) specified in Exhibit A, CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed for each
~~work order, or milestone for equipment purchases. These invoices or~~
certified claims must cite the assigned Board Contract Number.

COUNTY REPRESENTATIVE shall evaluate the quality of the service performed and/or item(s) delivered and if found to be satisfactory and in accordance with the cost basis of cost schedules A thru E, shall initiate payment for processing. COUNTY shall pay invoices or claims for satisfactory work within thirty (30) days of presentation if received by the 20th of the month. Otherwise payment will be made within sixty (60) days.

- D. COUNTY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.

1.1 ECONOMIC PRICE ADJUSTMENTS:

The prices for system maintenance as well as unit pricing for additional telephone and data equipment and services shall be adjusted annually at the start of each new contract year (years two (2) thru ten (10) of this contract based upon the following procedures and restrictions. The pricing most beneficial to the COUNTY shall apply.

- A. The maximum price for any item of engineering, service, or equipment purchased by COUNTY under the contract shall be the lowest of the following:
1. The lowest price at which CONTRACTOR then offers the equipment or service to its most favored customers, or
 2. Pricing from the cost schedules which are adjusted based on the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI), U.S. City Average all items, 1967 = 100, as published by the U.S. Bureau of Labor Statistics for the previous calendar year. However, in no case shall an annual upward adjustment exceed four (4%) percent regardless of the amount of change in the CPI.
- B. Adjustments shall be made by calculating the CPI factor in effect on the January 1st immediately prior to the adjustment date. This factor is multiplied by the old unit prices to establish the new unit prices. If the CPI factor is greater than 1.04, then the factor 1.04 shall be used in all calculations.

1.2 ANNUAL MAINTENANCE COST ADJUSTMENT

Annual price adjustments for system maintenance (inclusive of telephone, voice mail, data cabling, video conference and call accounting systems) shall be calculated solely by; 1) multiplying the prior year maintenance cost by the applicable CPI factor, and; 2) calculating the number of active station ports (not including additional trunk or tie ports or additional voice mail users) added during the prior year (as of February 15th); multiplying that number times the per port maintenance charge of (\$13.20) per station. The \$13.20 port charge shall not be subject to the annual CPI adjustment and shall remain at \$13.20 for the life of the contract. The results of 1 and 2 above are added together to determine the annual maintenance rate for the upcoming maintenance year. Should the number of active station ports decrease from the prior year, the net reduction in stations from the prior year station count shall be multiplied times the annual port charge and subtracted from the total.

1.3 COST SCHEDULE FOR SYSTEM MAINTENANCE:

The total cost for system maintenance shall not exceed \$1,800,000. Cost Schedule A identifies the bundled annual costs related to the maintenance of the COUNTY Telephone Network, including, the Call Accounting, Voice Mail Systems, Video Conference, and Cabling Systems.

1.4 COST SCHEDULE FOR: TELEPHONE EQUIPMENT AND SERVICES; VOICE MAIL MAINTENANCE AND SUPPORT; DATA CABLING; EQUIPMENT AND SERVICES NOT PRICED.

The total costs for Telephone Equipment and Services, Voice Mail Maintenance and Support, Data Cabling, and Equipment and Services not priced (Sections 1.4A-D) shall not exceed \$2,300,000.

A. TELEPHONE EQUIPMENT AND SERVICES:

Cost schedule B identifies unit costs for equipment and labor for telephone move, add, and change activity related to the support of the COUNTY telephone network.

B. VOICE MAIN MAINTENANCE AND SUPPORT:

Cost Schedule C identifies costs for maintenance of the Octel Overture 350 voice mail system. This schedule also identifies unit pricing (including installation) for optional features and system expansion.

C. DATA CABLING:

Cost Schedule D identifies unit pricing for the installation of category 5e and category 6 data cabling and related services. The unit pricing includes material, labor and tax.

D. EQUIPMENT AND SERVICES NOT PRICED:

Cost Schedule B identifies fixed discount percentages that shall be applied to unpriced NEC telephone equipment and systems which COUNTY may elect to purchase under this contract. The discount percentages shall be applied to NEC's published list pricing. This Cost Schedule also identifies fixed mark-up percentages which will be applied to the purchase of all unpriced third party equipment or services.

1.5 INVOICING AND PAYMENT:

- A. INVOICES FOR SYSTEM MAINTENANCE – CONTRACTOR shall invoice COUNTY on a quarterly basis fifteen (15) days in advance of the beginning of each quarterly maintenance period for which the payment is due. CONTRACTOR shall comply with invoicing requirements, and COUNTY shall comply with invoice review and processing requirements as per Section 1.0 above.
- B. INVOICING FOR TELEPHONE, DATA, VIDEO AND CONFERENCE AND VOICE MAIL WORK ORDERS – All telephone data cabling, and voice mail expansion work orders shall be invoiced in accordance with the contracted unit price schedule unless the task is specifically requested to be billed on a quote basis. Invoices shall be submitted to COUNTY within sixty (60) calendar days of completion of the task. CONTRACTOR shall comply with invoicing requirements, and COUNTY shall comply with invoice review and processing requirements as per Section 1.0 above.

C. INVOICING FOR TELDAT PROGRAMMING – Invoicing for Teldat programming shall be same as for paragraph B of this section.

D. INVOICING FOR UNPRICED EQUIPMENT AND SERVICES – Invoices for NEC equipment and services not priced shall include both the manufacturer's published price and the applicable discounted price. For third party equipment and services, the invoice shall identify the cost charged to CONTRACTOR by the third party, the markup percentage, and the cost of COUNTY. CONTRACTOR shall comply with invoicing requirements, and COUNTY shall comply with invoice review and processing requirements as per Section 1.0 above.

1.6 DISCOUNT FOR LATE COMPLETION OF WORK ORDERS – The CONTRACTOR shall apply the discounts specified below for telephone and data cabling work orders which are not completed by the contracted or mutually agreed (in writing) due dates:

Work Order completed three (3) to seven (7) business days past due date – CONTRACTOR shall discount the contracted cost for the service by twenty (20%) percent.

Work Order completed eight (8) to fifteen (15) business days past the due date – CONTRACTOR shall discount the contract price for the service by fifty (50%).

Work order completed over fifteen (15) business days past due date – CONTRACTOR shall forfeit payment for services.

CONTRACTOR shall not be responsible or charged for delays caused by activities beyond its control such as furniture installation delays, delays in the installation of essential infrastructure improvements such as conduit, or remodeling activities which inhibit the activity of the CONTRACTOR. The completion dates for Telephone work orders shall be provided in the form of a written report to Telephone Services Coordinators.