

Mem # 4-2A

**City of Carson City
Agenda Report**

Date Submitted: November 28, 2006

Agenda Date Requested: December 7, 2006
Time Requested: Consent

To: Mayor and Supervisors

From: Purchasing & Contracts

Subject Title: Action to authorize the Sheriff's Office to utilize Request for Proposal and Specifications for Inmate Telephone Service through June 3, 2008 with the option to extend the contract for an additional two year term which was approved by the Ozaukee County Sheriff's Department located in Port Washington, Wisconsin and which is exempt from competitive bidding pursuant to NRS 332.115 subsection 1 (m) and NRS 332.195 (File No. 0607-052)

Staff Summary: Contract No. 0304-049 Inmate Phone System will expire on January 15, 2007.

Type of Action Requested: (check one)
 Resolution Ordinance
 Formal Action/Motion Other (Specify)

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move to authorize the Sheriff's Office to utilize Request for Proposal and Specifications for Inmate Telephone Service through June 3, 2008 with the option to extend the contract for an additional two year term which was approved by the Ozaukee County Sheriff's Department located in Port Washington, Wisconsin and which is exempt from competitive bidding pursuant to NRS 332.115 subsection 1 (m) and NRS 332.195 (File No. 0607-052)

Explanation for Recommended Board Action: On January 15, 2004 the Board of Supervisors awarded Contract No. 0304-049 Inmate Phone System to SBC Nevada to provide the inmate phone system for the new jail facility and pay Carson City a commission of 45% for local/intraLATA calls and interLATA/interstate calls as well as a \$20,000 bonus. The contract was awarded through January 15, 2007 with provisions for two (2) one-year automatic extensions unless either party gives ninety (90) days notice of its intention not to renew.

On September 29, 2006 Nevada Bell Telephone company, formerly d/b/a/ SBC Nevada, now d/b/a AT&T Nevada, provided Carson City written notice of their intent not to renew Contract No. 0304-049 Inmate Phone System and to terminate the contract effective January 15, 2007.

Currently, Inmate Calling Solutions, LLC, d/b/a. ICSolutions (ICS) provides the platform for this service through a contractual relationship with AT&T. The Sheriff's Office has been satisfied with their service and wants to retain the existing platform which would allow for a seamless transition with no interruption in service.

The Ozaukee County Sheriff's Department Port Washington, Wisconsin awarded Request for Proposal and Specifications for Inmate Telephone Service to Inmate Calling Solutions, LLC, d.b.a. ICSolutions (ICS), 5883 Rue Ferrari, San Jose, CA 95138 800-661-3845 FAX #408-362-2798 through June 3, 2008.

ICS agrees to honor and apply the terms of the Ozaukee agreement as follows:

1. The inmate call processing system in place today will remain in place supporting the current number of inmate telephones and workstations.
2. Rates charged for calls will remain the same as those charged today.
3. The current call processing system will be upgraded to The ENFORCER™ platform within six months.
4. Commissions will be paid at the 48.4% rate specified in the Ozaukee Contract. This commission is paid on Gross Collect, PrePaid Collect and Debit Revenue
5. The effective date of the contract for Carson City will be January 16, 2007.
6. Commissions will be paid based on each calendar month's revenue, beginning with the partial month of January, 2007.
7. The initial contract term expires in June 3, 2008, with the option to extend the contract for an additional two year term, to June 3, 2010.

with the following exceptions:

1. Because of the reduced remaining contract term, ICSolutions cannot offer the Minimum Annual Guarantee or the Bonus Jail Management System to Carson City.
2. Because the contract will be performed in Nevada, any interpretation will be based upon Nevada law.

Pursuant to **NRS 332.115 subsection 1 (m) and NRS 332.195**, staff is requesting the Board of Supervisors declare that the contract is not adapted to award by competitive bidding.

NRS 332.115 Contracts not adapted to award by competitive bidding; purchase of equipment by local law enforcement agency or other local governmental agency; purchase of goods commonly used by hospital.

1. Contracts which by their nature are not adapted to award by competitive bidding, including contracts for:

(m) Supplies, materials or equipment that are available pursuant to an agreement with a vendor that has entered into an agreement with the General Services Administration or another governmental agency located within or outside this State;

are not subject to the requirements of this chapter for competitive bidding as determined by the governing body or its authorized representative.

NRS 332.195 Joinder or use of contracts by other governmental entities.

1. A governing body or its authorized representative and the State of Nevada may join or use the contracts of local governments located within or outside this State with the authorization of the contracting vendor. The original contracting local government is not liable for the obligations of the government entity which joins or uses the contract.
2. A governing body or its authorized representative may join or use the contracts of the State of Nevada or another state with the authorization of the contracting vendor. The State of Nevada or other state is not liable for the obligations of the local government which joins or uses the contract.

Applicable Statue, Code, Policy, Rule or Regulation: NRS 332.115 subsection 1 (m) and NRS 332.195

Fiscal Impact: Vendor will pay the inmate commissary fund a 48.4% commission on gross collect, prepaid collect, and debit revenue

Explanation of Impact: N/A

Funding Source: N/A

Supporting Material: Letter from AT&T, Memo from Sheriff's Office, Agreement to Adopt Terms of Ozaukee County, Wisconsin Contract for Inmate Telephone Services with ICSolutions, and Executed Inmate Telephone Services Agreement between ICS & Ozaukee County Sheriff's Department

Prepared By: Cheryl Adams, Purchasing & Contracts Manager

Reviewed By:

(Sheriff's Office)

(City Manager)

(District Attorney)

(Finance Director)

Date: 11/28/06

Date: 11/28/06

Date: 11/28/06

Date: 11/28/06

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)



AT&T Nevada
421 F Street
Marysville, CA 95901

T: 530.741.9734
F: 530.742.5037

September 29, 2006

Cheryl Adams
Manager
Carson Purchasing & Contracts
201 North Carson Street, Suite 11
Carson City, NV 89701

Dear Ms. Adams:

Nevada Bell Telephone Company, formerly d/b/a SBC Nevada, now d/b/a AT&T Nevada ("AT&T"), has valued our relationship with Carson City Jail ("City") over the past several years. As you are probably aware, our current Inmate Payphone Services Agreement, Contract No. 0304-049 Inmate Phone System ("Existing Agreement") is soon to renew for an additional one (1) year term unless exception is taken by either Party prior to October 17, 2006. Pursuant to Item 57 of the Existing Agreement, please accept this letter as formal notice that AT&T does not wish for the Existing Agreement to renew for an additional one (1) year term. Accordingly, the Existing Agreement will expire on January 15, 2007.

AT&T is proposing, however, effective January 16, 2007, to continue inmate pay phones service to the City on a month-to-month basis, under same terms and conditions of the Existing Agreement, with the following exceptions:

1. The commission rates as set forth in Items 68.7 through 68.10 of the Existing Agreement shall be reduced to twenty-five percent (25%) on both local and intraLATA toll and interLATA long distance calls.
2. This month-to-month arrangement between AT&T and the City may be terminated upon thirty (30) days prior written notice by either party to the other party of its desire to terminate.
3. Without limiting the responsibilities of the parties, AT&T shall be responsible for any and all proven claims, including claims of negligence, which arise due to AT&T's negligent acts or omissions, and the City shall be responsible for any and all proven claims, including claims of negligence, which arise due to City's negligent act or omissions.

If the City prefers for service to be discontinued instead of being provided on a month-to-month basis, please provide me with notice to that effect and we will coordinate the removal (or transition to a third party provider) of AT&T's equipment.

Should you have any questions or comments about this communication, please do not hesitate to contact me at (530) 741-9734.

Sincerely,

Thom Kiser
Director, Inmate Sales
Public Communications Division



Memorandum

"Action, Urgency, Excellence"

To: Cheryl Adams, Purchasing and Contracts Manager

From: Kathie Heath, Business Manager

Date: November 2, 2006

Subject: Inmate Phone System

The Sheriff's Office is currently under contract with AT&T to provide inmate phone services. AT&T provides oversight responsibility - the actual phone platform is provided by IC Solutions.

We are happy with the service as is. IC Solutions provides a secure, comprehensive system which meets our needs. For this reason, our intent was to extend the current contract with AT&T and IC Solutions. However, AT&T informed us that they would no longer be in the business of providing inmate phone systems.

After much consideration, we have decided best plan is to continue with IC Solutions by joining the contract with Ozaukee County, Wisconsin.

Joining this contract would allow for a seamless transition with no interruption in service. Commissions will not decrease, and the cost to place a call will not increase. In addition, IC Solutions has agreed to honor the terms of the Ozaukee agreement with minimal exceptions, as noted on the letter from Brendan Philbin dated October 26, 2006.

This change will have no general fund impact. The inmate commissary is a special revenue fund and requires no direct general fund support. Revenue from the inmate phone system is allocated to the inmate commissary fund. Expenditures are paid from both inmate phone revenue and commissary sales.

Please call me if you need any further information.



November 8, 2006

Cheryl Adams, Purchasing & Contracts Manager
Carson City Purchasing & Contracts
201 N. Carson Street Suite 11
Carson City, NV 89701

RE: Agreement to Adopt Terms of Ozaukee County, Wisconsin Contract for Inmate Telephone Service

Dear Ms. Adams:

It is our understanding that pursuant to the Nevada Revised Statutes Chapter 332 Local Government Purchasing Act Carson City is permitted to obtain vendor services by adopting the terms of pre-existing contracts executed by other governmental entities. We further understand that Carson City wishes to contract with Inmate Calling Solutions, LLC (ICS) for the provision of inmate telephone service at the Carson City Jail based upon the terms of an agreement which exists between Ozaukee County, Wisconsin and ICS. ICS currently provides the inmate calling system installed at Carson City as a subcontractor to AT&T (formerly SBC.) It is our understanding that AT&T no longer plans to be active in the inmate phone business.

Ozaukee County, Wisconsin issued a public request for proposals for inmate telephone service in August, 2004. Following evaluation of a number of competitive bids, Ozaukee County selected ICS and subsequently executed a contract for this service.

The parties agree to honor and apply the terms of the Ozaukee agreement as follows:

1. The inmate call processing system in place today will remain in place supporting the current number of inmate telephones and workstations.
2. Rates charged for calls will remain the same as those charged today.
3. The current call processing system will be upgraded to The ENFORCER™ platform within six months.
4. Commissions will be paid at the 48.4% rate specified in the Ozaukee Contract. This commission is paid on Gross Collect, PrePaid Collect and Debit Revenue
5. The effective date of the contract for Carson City will be January 16, 2007
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7. The initial contract term shall expire on June 3, 2008, with the option to extend the contract for an additional two year term, to June 3, 2010.

with the following amendments:

1. Due to the reduced remaining contract term, ICSolutions will not offer the Minimum Annual Guarantee or the Bonus Jail Management System to Carson City.
2. Since the contract will be performed in the State of Nevada, any interpretation will be based upon Nevada law.



Please sign below to indicate agreement with the foregoing:

Accepted:

A handwritten signature in black ink, appearing to read 'Brendan Philbin', written over a horizontal line.

Brendan Philbin
Chief Operating Officer

Accepted:

Marv Teixeira, Mayor
Carson City, Nevada



November 8, 2006

Cheryl Adams, Purchasing & Contracts Manager
Carson City Purchasing & Contracts
201 N. Carson Street Suite 11
Carson City, NV 89701

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Brendan Philbin
Chief Operating Officer

Accepted:

Marv Teixeira, Mayor
Carson City, Nevada

INMATE TELEPHONE SERVICES AGREEMENT

This Inmate Telephone Services Agreement ("Agreement") is made by and between Inmate Calling Solutions, LLC, d.b.a. ICSolutions, having its principal place of business at 5883 Rue Ferrari, San Jose, CA 95138 ("ICSolutions"), and Ozaukee County Sheriff's Department, Wisconsin having its principal place of business at 1201 South Spring Street, Port Washington, Wisconsin 53074 ("County".)

- 1. Term of Contract.** This Agreement shall commence upon the date inmates within the facility begin placing telephone calls from the Equipment (the "Cutover Date"), which has been estimated to be November 01, 2004 based on this Agreement being fully executed on or before September 7, 2004. This Agreement shall remain in force and effective for forty-three (43) months from the Cutover Date. Unless canceled by written notice delivered to either party at least 60 days prior to the termination of the initial term or any renewal term, this Agreement shall automatically renew for one (1) additional terms of two (2) years upon the same terms and conditions as set forth herein.
- 2. Material.** This Agreement applies to the provision of Material by ICSolutions within space provided by the County at each of the locations listed on Exhibit A, attached hereto (each a "Location"). The term "Material" is defined herein as ICSolutions' inmate telephone set and enclosures (if any) including, but not limited to, associated wiring, inmate operating equipment/systems, all as more fully described on Exhibit B, attached hereto, and applicable site preparation. All Material shall be installed by properly trained personnel and in a good, workmanlike manner. Where Material of ICSolutions is installed upon the premises owned, leased or otherwise under the supervision of County, such property shall remain in all respects that of ICSolutions. ICSolutions reserves the right to remove or relocate Material, which is subjected to recurring vandalism or insufficient usage to warrant the continuation of service. ICSolutions shall not exercise such right of removal or relocation unreasonably. ICSolutions will notify the County in writing of its intention to remove or relocate at least thirty (30) days prior to such action. Upon removal of Material by ICSolutions, ICSolutions shall restore said premise to its original condition, ordinary wear and tear excepted. However, ICSolutions shall not be liable for holes placed in walls, pillars or floors or other conditions on the premises, which resulted from the proper installation of Material described herein.
- 3. Alteration and Attachments.** County may not make alterations or place any attachments to Material provided by ICSolutions under this Agreement unless agreed in writing by ICSolutions. Material shall not be moved, removed, rendered inoperable or unusable, or made inaccessible to inmates or users by County at the location in which it is installed without the express written permission of ICSolutions.
- 4. Call Rates.** ICSolutions shall provide collect calling services to End-Users, on both a pre-paid and post-billed basis, at the rates and charges set forth on Exhibit C, attached hereto.
- 5. Commissions to Facility.** ICSolutions will install, operate and maintain Material at no charge to County except as stated below. ICSolutions will pay County the amounts set forth on Exhibit D, attached hereto (collectively the "Commissions"), in consideration of the County granting ICSolutions exclusive rights for the installation and operation of Material.

ICSolutions will pay Commissions to County on a monthly basis on or before the 20th day following the month in which such Commissions are earned or accrue. Such Commissions shall

be sent to the address designated by County or wired to an account designated in writing by County for such purpose.

County agrees that all Commissions are subject to change based on any changes that may be required by the applicable Public Service Commission or any policy, regulation or tariff of a regulatory body having jurisdiction over the public communications contemplated herein.

During the term of this Agreement, including any renewal period(s), both parties hereto shall, unless otherwise required by law, reasonably protect the confidentiality of all information regarding Material and inmate telephone station locations including, but not limited to, revenue and remuneration paid to the County.

6. County shall:

- a. Not allow any other provider, other than County's own telecommunications department, to install, operate, maintain or co-locate any inmate telephone or calling system during the original term or any renewal term of this Agreement, at any premises covered under this Agreement.
- b. Advise ICSolutions of any premise facility that has been closed.
- c. To the extent permissible by law, use ICSolutions as its exclusive agent in all matters relating to inmate telephone services.
- d. Reasonably protect the Material against willful abuse and report any damage, service failure or hazardous conditions to ICSolutions.
- e. Provide necessary power and power source, at no cost to ICSolutions, and to provide suitable space, accessible to inmates for inmate telephone service.
- f. Permit ICSolutions to display reasonable signs furnished by ICSolutions and not affix or allow to be affixed any other signs, equipment or information to the Material.
- g. Permit reasonable access to its respective facilities without charge or prejudice to ICSolutions employees or representatives, inmate telephone users, patrons or consignees.
- h. Comply with all federal, state and local statutes, rules, regulations, ordinances or codes governing or applicable to the telephone services offered by ICSolutions.
- i. Provide ICSolutions with County's Federal Tax ID: 39-05726

7. Law and Venue. The domestic law of the State of Wisconsin shall govern the construction, interpretation and performance of this Agreement and all transactions hereunder.

8. Notices. Any notice or demand required hereunder shall be given or made by mail, postage prepaid, addressed to the respective party as follows:

To ICSolutions:
Inmate Calling Solutions, LLC
5883 Rue Ferrari
San Jose, CA 95138
Attention: General Counsel

To County:

Attention: _____

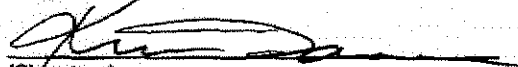
9. **Entire Agreement.** This Agreement, together with the Exhibits referenced herein, along with accepted proposal tendered by IC Solutions as of August 12, 2004 constitutes the entire Agreement between the parties and may not be modified or amended other than by a written instrument executed by both parties. Any orders placed by County hereunder shall incorporated herein by mutual consent of the parties and shall supplement but not supercede the provisions of this Agreement. The County represents and warrants that it has the legal authority to make decisions concerning the provisions of space for telephones placed by ICSolutions at the locations covered by the Agreement and that ICSolutions may rely thereon.
10. **Risk of Loss.** ICSolutions and its insurers, if any, shall relieve County of all risk of loss or damage to the Material during the periods of transportation and installation of the Material. However, County shall be responsible for loss or damage to Material located on the premise caused by fault or negligence of County or employees.
11. **Default.** In the event either party shall be in breach or default of any terms, conditions, or covenants of this Agreement and such breach or default shall continue for a period of thirty (30) days after the giving of written notice thereof by the other party, then, in addition to all other rights and remedies of law or equity or otherwise, including recovering of attorney fees and court cost, the non-breaching party shall have a right to cancel this Agreement without charge or liability. The waiver of any default hereunder by either party shall not constitute, or be construed as, a waiver of any subsequent default.
12. **Assignment.** This Agreement may be transferred or assigned, in whole or in part, by ICSolutions to any parent, successor, subsidiary, or affiliated company of ICSolutions. ICSolutions may sub-contract any portion of its duties hereunder provided, however, it shall remain at all times responsible for such sub-contracted duties. This Agreement may otherwise only be transferred or assigned by a party with the written consent of the other party, which consent shall not be unreasonably withheld or delayed.
13. **Application to Similar Parties.** Other Counties with Jails in the State of Wisconsin that are within 5% of size and revenue generated by the inmate telephones at the Ozaukee County Jail may enjoy the same equipment and commissions offered in this contract. If the size and revenue are outside this parameter, proportional adjustments will be made to the commission percentage in order to provide comparable technology and services.
14. **Liability.** Each party acknowledges that it is an independent contractor and this Agreement shall not be construed as a contract of agency or employment. Each party shall be solely

responsible and liable for compliance with all laws, rules and regulations and payment of all wages, unemployment, social security and other payroll taxes relating to it's employees including contribution from such persons, when required by law. ICSolutions shall not be held liable for interruption of telephone service from any cause unless caused by ICSolutions' gross negligence or willful misconduct. ICSolutions' liability for payment of remuneration in the event of known technical, computer or other difficulties resulting in the loss or unavailability of data necessary for calculation of remuneration's shall be limited to an amount equal to the pro rata average daily remuneration for each day or portion thereof such data was lost or unavailable as calculated based on the most recent three months' remuneration. In no event shall either party make any claim for consequential, special, reliance, punitive or indirect damages.

15. **Severability.** If any of the provisions of this Agreement shall be deemed invalid or unenforceable under the laws of the applicable jurisdiction, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of ICSolutions and County shall be construed and enforced accordingly.
16. **ADA.** ICSolutions will install Material in accordance with the Americans with Disabilities Act and any related federal, state and local regulations in effect at the time of installation. If, at the written request of County, ICSolutions makes alterations to the Material, other than as necessary for its correct operation and/or compliance with applicable laws, then all reasonable costs of such alterations shall be reimbursed by County or, at ICSolutions discretion, may be deducted from remuneration, otherwise payable under this Agreement.

In witness whereof, the parties hereto have executed this Agreement by their duly authorized representatives on the dates set forth below, and represent and warrant that they have full authority to execute this Agreement on behalf of their respective parties:

Inmate Calling Solutions, LLC

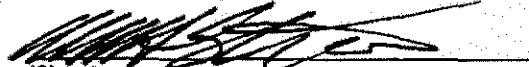

(Signature)

Ken Dawson
(Printed Name)

President
(Title)

9/2/04
(Date)

Ozaukee County Sheriff's Office


(Signature)

MAURY STRAUB
(Printed Name)

Sheriff, Ozaukee Cty.
(Title)

9-7-04
(Date)

Exhibit A - Locations

Location Name

Address

**Ozaukee County Sheriff's Department
Jail Division**

**1201 South Spring Street
Port Washington, WI. 53074-0245**

Exhibit B -- Material

1) **Radical Controlled Access Telephony System (CATS™) configured as follows:**

40 Inmate Station Ports
20 Line Ports (sufficient to maintain a P.01 grade of service)
2 Hour UPS unit
Collect & PrePaid Collect Call Processing
Monitoring & Recording
Long Term On-Line Recording Storage (Life of Contract – 1TB)
Administrator workstation with MS Office Suite

2) **Inmate Telephone Instruments**

39 CT 400 SS Inmate Telephones
Configured with invisible Hook Switch & 18" Armored Handset Cord

3) **Local Maintenance**

Phone maintenance will be provided by "The Phone Line" of Appleton, Wisconsin.

Exhibit C – Call Rates

Ozaukee County elects to utilize reduced rates specified below:

Call Type	Connect Fee	Per Minute
Local	\$4.25	\$0.10
Intra-LATA	\$3.95	\$0.45
Intra-State	\$3.95	\$0.59
Interstate	\$3.95	\$0.89

ICSolutions reserves the right to increase the call rates proportional to any increase in dominant, common carrier rates that may become effective, subject to ICSolutions providing 30-days prior written notice thereof.

Exhibit D – Commissions

Commission	BONUS
<p data-bbox="532 548 797 575">48.4% of Gross Revenue</p> <p data-bbox="548 611 781 730"><i>Minimum Annual Guarantee of \$204,000 (approximately \$17,000 per month)</i></p>	<p data-bbox="841 533 1166 743">Up to \$135,000 toward the purchase of a Jail Management System of the County's Choice <i>(Payable to the selected Vendor when the County is ready to initiate transition to the new JMS)</i></p>

Minimum Annual Guarantee: Throughout the year, commissions will be paid based on actual revenue times the percentage offered. At the end of each year, the total commissions will be added together and if they are lower than the minimum annual guarantee. ICSolutions will write Ozaukee County a check for the difference.

In the event the County elects to change rates or propose an alternate rate structure, ICS will implement such rates and adjust commissions accordingly. In all cases, rates must comply with applicable State and Federal rules and regulations.