

Lexington Police Department L400 Upgrade

Proposal Number: P04554-LPD

October 17, 2017



Prepared for:

A. T. Adams

Police Department

East Lexington

Lexington, MA

PRISim



CUBIC

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1 SUMMARY OF PROPOSAL

1.1 DESCRIPTION OF EFFORT/OFFER

Cubic has acquired the PRISim and QuickRange product lines formerly owned by Advanced Interactive Systems (AIS). We have successfully restarted production of the PRISim product line and have incorporated upgraded technology to enhance an already excellent police training system. The systems are produced in Orlando, Florida, using domestically produced and sourced components wherever possible.

Cubic shall deliver the items in the following table for a total of \$13,239 USD.

CLIN	Part Number	Description	QTY	Price	Total \$USD
0001	922211043-009	Authoring Upgrade, \$1 if existing license is valid, transfer to new system	1	\$1	\$1
		Replacement Parts			
0002	922211138	L400/P400 Installed Systems Computer only Upgrade - reuse monitors, speakers	1	\$8,699	\$8,699
		System Assessments			
0003	Labor	Onsite System Assessment 1.5 days	1	\$4,244	\$4,244
		Shipping			
0004	Shipping	Shipping	1	\$295	\$295
				Total	\$13,239

The above deliveries are inclusive of:

- 1 – L400 computer running PRISim Suite v4.7 or later, all law enforcement scenarios
- 1 – Installation of L400 computer, tuning of the system, M150 calibration (must be performed immediately prior to and concurrently with User video (scenario) authoring training)
- 1 – Shipping to Lexington, KY

1.2 OPTIONS

No options are priced as part of this effort

1.3 VALIDATION OF OFFER

This Firm Fixed Price (FFP) proposal is valid for award to Cubic through 30 September 2018 and is so provided under authority by:



Christiana Casto, Contracts Administrator
858-266-8450
Christiana.casto@cubic.com

1.4 INSPECTION AND ACCEPTANCE

Inspection and acceptance is at Origin.

1.5 DELIVERY

Cubic will deliver within 3 months after receipt of order.

1.6 CONTRACTOR DATA

Cubic provides the following required contractor data.

Cubic is classified as a large corporation.
DUNS Number: 080431767
Cage Code: 7R8H9
TIN: 33-0248402

1.7 SPECIAL INSTRUCTIONS

Please note that the products quoted are outside the scope of Cubic's General Services Administration (GSA) contract and are offered on an open market basis.

If simulated weapons are ordered, Cubic requires a copy of the Government prime delivery order, which itemizes the weapons to be purchased. This is for Alcohol, Tobacco, Firearms, and Explosives (ATF) licensing purposes.

Please note that for ATF licensing purposes, Cubic may require a copy of the Government prime delivery order, which defines the weapons to be purchased and their final destination.

2 SYSTEM DESCRIPTION

Cubic will deliver a new L400 computer running PRISim Suite v4.7 or later and all law enforcement scenarios. Any custom customer content will be ported to the new system if compatible. Technician will install the system, tune current projector and M150 camera, evaluate and diagnose any system issues to include the Shootback II cannon.

3 TERMS AND CONDITIONS

This proposal, including the terms and conditions contained herein, shall be incorporated into any subsequent award and supersede in the event of a conflict.

Purchase is through Cubic GSA schedule or direct order to Cubic. Other contracting vehicles may incur higher prices.

The Customer provides adequate electrical power for installation where and when needed. Specific requirements are available upon request.

The prices proposed are based on the quantities and delivery schedule provided. Any changes to the quantity or delivery schedule will affect prices and fees.

The Customer provides any desired tables, chairs, desks, or other furniture.

Installation occurs within 30 days from date of delivery, or additional costs may be incurred.

Cubic offers training courses at the Customer's site and at our home office (Orlando, Florida). Training must be scheduled at least 30 days before the required training date. Training required on short notice (less than 30 days) may incur additional expense to the Customer. Once training is scheduled, any changes to the date, time, or location may incur additional costs. The full cost of the training is due before the instructor arrives on site to conduct scheduled training.

The products offered are Cubic commercial products. Cubic and/or its subcontractors retain all proprietary rights.

Appropriate access must be provided for installation and training personnel.

The execution of a distribution license by the Customer may be required, depending on the software to be delivered. In the event Cubic's system(s) shall be delivered with Government-owned software, Cubic will require the Customer to execute the Government-required distribution agreement(s).

No other Terms and Conditions will be accepted with this order.

3.1 STANDARD TERMS & CONDITIONS OF SALE

A PAYMENTS

- A.1 Cubic shall be paid by Buyer in the manner specified below:
(X) Net 30 days from receipt of invoice;
- A.2 Prices and payment shall be in US dollars and excludes all federal, state, and local sales taxes, manufacturer's and retailer's excise taxes, duties, and/or use taxes, all of which shall be paid by Buyer.
- A.3 Past due amounts shall be subject to interest at ten (10) percent per annum.
- A.4 Payment shall be remitted to Cubic at the following address/wire account:
See order paragraph 4 Payment Information

B PACKAGING, SHIPPING, INSURANCE, DELIVERY

- B.1 Delivery terms are F.O.B. Origin. Unless otherwise expressly specified, the method of shipment is at Cubic's discretion.
- B.2 Packaging shall be in accordance with commercial practices. Buyer shall pay for the costs of special packaging.
- B.3 Cubic may make partial and advance deliveries.
- B.4 Delivery dates are estimates. Cubic shall notify Buyer if a scheduled delivery is expected to be delayed more than thirty (30) days. If Buyer requests, Cubic shall arrange for shipment by premium transportation and, if the delay beyond thirty (30) days is not excused (e.g., due to a force majeure, condition precedent), Cubic shall pay the additional shipping cost. Such shipment by premium transportation is Cubic's only obligation and liability for delay in delivery.
- B.5 If Buyer causes a delay in delivery, Buyer shall pay Cubic for the additional costs incurred.
- B.6 Buyer shall pay for shipping insurance and all freight charges.
- B.7 Cubic shall not be obliged to secure insurance on the delivery items. Risk of loss shall be borne solely by Buyer.

C INSPECTION AND ACCEPTANCE

- C.1 Cubic shall accept no purchase order, delivery order, subcontract, or other contract with Buyer unless governed expressly and exclusively by the terms and conditions set forth in this Agreement. All terms or conditions beyond those set forth herein are expressly rejected and shall have no force or effect.
- C.2 Acceptance for all items delivered hereunder shall be at Origin.
- C.3 Buyer shall properly inspect and test the delivery items immediately upon their arrival and, within thirty (30) days after their arrival, shall give written notice to Cubic of any claim that the delivery items do not conform with the terms of this Agreement. If the Buyer fails to inspect and test the delivery items or fails to notify Cubic of any perceived non-conformities within thirty (30) days, Buyer will be deemed to have finally accepted the delivery items and to have waived all rights to revoke acceptance after this thirty (30) day period.
- C.4 For systems that require installation and/or training by Cubic, the acceptance will be signed-off once a System Test Acceptance is performed by Cubic (or authorized representative) and accepted by the Buyer or as stated in Cubic's offer.

D WARRANTY (SEE BELOW SECTION 3.4 STANDARD WARRANTY)

E TERMINATION

- E.1 Either Party may terminate this Agreement for default in the event that the other Party becomes insolvent, the other Party becomes subject to bankruptcy proceedings, or the preponderance of the other Party's assets becomes subject to liquidation proceedings.
- E.2 Except as otherwise provided for in Paragraph E.3 of this Agreement, either Party may terminate this Agreement for default, subject to the notice and cure provisions set forth herein, in the event of breach of this Agreement that is not excused, waived, or timely cured.
- E.3 In the event that Buyer fails to timely pay Cubic, Cubic may terminate this Agreement for default subject to the notice provision set forth herein.
- E.4 This remedy shall not be exclusive, and in the event that Cubic terminates this Agreement on account of default by Buyer pursuant to either Paragraph E.2 or Paragraph E.3 of this Agreement, Buyer shall pay Cubic a re-stocking fee equal to 20% of the items that remain undelivered under the subject purchase order at the time of the default by the Buyer. Cubic reserves the right to pursue all other remedies.

F CURE

Except as provided in Paragraph E.3 above, in the event of breach of this Agreement, the Party in breach shall have thirty (30) days to cure such breach following receipt of written notice from the other Party, during which time performance of the Party in breach shall be excused.

G FORCE MAJEURE

Cubic shall not be liable for failure to perform any of its obligations due to causes beyond its reasonable control. Such causes shall include, but are not be limited to, fire, flood, earthquake, or other natural disaster, utility disruption, war, rebellion or insurrection, terrorist act, riot, civil disturbance, embargo, the intervention of any governmental authority, strikes (regardless of the characterization thereof), labor slowdowns, walkouts, and/or shortages, material shortages, shortage of transport, and failures of suppliers to deliver material and components in accordance with the terms of their contract(s).

H INTELLECTUAL PROPERTY RIGHTS

Cubic hereby retains all rights, title, and interest to all patents, patents pending, copyrights, trade secrets, trade dress, trade names, trademarks, service marks, service names, source codes, software, exceptionable codes, ideas, know-how, intellectual property, and the like pertaining to or associated with the deliverable items.

I CHANGES

These terms and conditions may not be changed, altered, or otherwise modified except through a formal amendment executed by duly authorized representatives of both Cubic and Buyer. All other prior and contemporaneous written and oral understandings concerning these terms and conditions of sale (including without limitation, the Buyer's terms and conditions), are superseded and hereby excluded unless expressly agreed to in writing by a duly authorized representative of Cubic.

J LIABILITY

Cubic shall be liable for any property damage or personal injury caused by its employees as a result of willful conduct or negligence while on the property of Buyer.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN OR IN ANY ASSOCIATED ORDER OR OTHER DOCUMENT: (1) CUBIC'S MAXIMUM AGGREGATE LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY CLAIM ARISING FROM OR RELATED TO THIS ORDER OR THE GOODS OR OTHER ITEMS FURNISHED OR TO BE FURNISHED UNDER THIS AGREEMENT, WILL IN NO EVENT EXCEED THE TOTAL PURCHASE PRICE PAID TO CUBIC HEREUNDER, NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY; AND (2) IN NO EVENT WILL CUBIC BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY FOR LOST DATA, LOST PROFITS, INTEREST, OR COST OF MONEY; OR FOR COVER; OR FOR ANY PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT, THE USE OF, INABILITY TO USE, OR RESULTS OF USE OF ANY GOODS OR OTHER ITEMS DELIVERED BY CUBIC HEREUNDER.

For the purpose of this Section, "Cubic" includes Cubic Corporation, its divisions, subsidiaries, the assignees of each, subcontractors, suppliers and affiliates, and their respective directors, officers, employees and agents. The Parties acknowledge and agree that the price for the items to be delivered by Cubic hereunder and the other mutual agreements of the Parties set forth in this Agreement were arrived at in consideration of each of such provisions, specifically including this Limitation of Liability Section. The provisions of this Section shall survive any completion, termination, or expiration of this Agreement.

K APPLICABLE LAW

This Agreement shall be construed in accordance with the laws of the Commonwealth of Kentucky, excluding its conflict of laws provisions. The United Nations Convention on the International Sale of Goods shall not apply to this Agreement.

L DISPUTE RESOLUTION

Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration using the American Arbitration Association (AAA) and its Commercial Rules then in effect, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The arbitration shall be conducted in Lexington, Kentucky. The arbitrator shall be bound by the express provisions of this Agreement in deciding any arbitration claim. Any court of competent jurisdiction may enforce any award or determination rendered by the arbitrator.

M EXPORT COMPLIANCE

Buyer and Cubic each agree to comply with all applicable export control laws and regulations.

N ANTI-BRIBERY / GRATUITIES / CORRUPTION COMPLIANCE

Buyer hereby certifies that it has and will continue to comply with all applicable anti-bribery, anti-corruption, and procurement integrity laws and regulations (including, but not limited to, the United States Foreign Corrupt Practices Act and the U.K. Bribery Act) in all matters pertaining or related to the subject matter of this Agreement. Buyer shall, from time to time, provide written certifications to this effect upon written request from Cubic.

O ENGLISH LANGUAGE

All data, reports, documents, manuals, communications, and the like, required hereunder shall be in the English language. In the event this Agreement or any such items are translated into any other language, the English language version shall take precedence if the versions are inconsistent.

P HEADINGS

The titles or headings of the various paragraphs hereof are intended solely for convenience or reference and are not intended and shall not be deemed to modify or explain any of the provisions of this Agreement.

Q SEVERABILITY

PRISim

 CUBIC

If any material condition or provision herein contained is held to be invalid, void, or unenforceable by a final judgment of any court of competent jurisdiction, then the remaining provisions of this Agreement shall remain in full force and effect.

R NOTICES

All notices, requests, demands, and other communications under this Agreement must be in writing and shall be in writing and delivered by reputable overnight courier, facsimile, or PDF e-mail. Notices shall be deemed to have been given when received by the Party to whom the communication is directed and shall be addressed to the Parties or their permitted assigns at the following address (or at such other address or number as is given in writing by either Party to the other):

To Cubic:

Julie Leduc
Cubic Defense Applications, Inc.
2001 W. Oak Ridge Road, STE 100
Orlando, FL 32809
Phone: 858-505-2809
E-Mail: Julie.leduc@cubic.com

PRISim Product Manager:

Robert Hoppenfeld
Phone: 407-514-1558
E-Mail: Robert.Hoppenfeld@cubic.com

To Buyer:

Per your order form

S NO THIRD PARTY BENEFICIARY

No person or entity shall be deemed to be a third party beneficiary hereof.

T WAIVER

The exercise by a Party of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. A failure or delay by a Party in exercising any right, privilege, or remedy shall neither operate as a waiver thereof nor modify the terms of this Agreement, nor shall any single or partial exercise by a Party of any right, privilege, or remedy preclude any other further exercise of the same or of any other right, privilege, or remedy.

U ASSIGNMENT /SUBCONTRACTING / BINDING EFFECT

Cubic may unilaterally assign its rights and obligations under the Agreement to its parent company and/or subsidiaries thereof, and Cubic may unilaterally assign its collection rights to a third party. Other than the foregoing, neither Party may assign any portion of this Agreement without the express written consent of the other Party. Such consent shall not be unreasonably withheld. Cubic reserves the right to enter into subcontracts with qualified vendors for the manufacture or provision of any items required by Cubic to meet its performance obligations hereunder. This Agreement shall inure to the benefit of and shall be binding upon the valid successors and assigns of the Parties.

V ENTIRE AGREEMENT

This Agreement is the complete agreement between the Parties with respect to the subject matter hereto and supersedes any and all prior agreements between the Parties.

3.2 PURCHASED TETHERLESS WEAPONS

The Customer is responsible for CO2 safety requirements. Refill CO2 canisters are not provided.

3.3 PURCHASED SPARES

If at any time during the period of performance a part is ordered that has become obsolete, Cubic reserves the right to renegotiate the unit price of that item. The price and delivery schedule will be determined based on availability and quotes obtained from vendors at the time of order.

For spares only orders, import/export requirements for compliance are the Customer's responsibility. Cubic has priced compliance with only commercially standard quality clauses applicable to spares.

3.4 STANDARD WARRANTY

This Standard Manufacturer's Equipment Warranty (this "Warranty") provides the sole and exclusive warranty, service, and support obligations of Cubic Simulation Systems, Inc. ("Cubic") with respect to the items (hereinafter collectively referred to as the "Goods") delivered by Cubic in accordance with a purchase order or other contract (the "Order") executed by Cubic and the Buyer.

3.4.1 Warranty Term

Subject to the terms, conditions, exclusions, and limitations provided herein, for a period of one (1) year from the purchase date of this Standard Warranty for the Goods to the Buyer pursuant to the Order (the "Warranty Period"), Cubic warrants to the Buyer that such Goods will be free from defects in materials and workmanship. If, in Cubic's reasonable determination, such a defect exists during the Warranty Period, Cubic, in its sole and absolute discretion and at its option, shall (a) repair the defective Goods using new or refurbished parts; or (b) exchange the defective Goods with new or refurbished Goods that, in Cubic's reasonable determination, are comparable to the Goods originally delivered to the Buyer by Cubic. Any replacement Goods delivered to the Buyer by Cubic shall be covered by this Warranty until the last to occur of the end of the Warranty Period or ninety (90) days after the delivery of the replacement Goods.

3.4.2 Notification and Return Process

If the Buyer believes that there exists a defect in materials and workmanship that is covered by the Warranty, the Buyer shall promptly notify Cubic in writing of such alleged defect (a "Warranty Claim"). The failure of the Buyer to deliver a Warranty Claim to Cubic prior to the end of the Warranty Period shall conclusively establish that no such defect existed during the Warranty Period.

Promptly following receipt of the Warranty Claim, Cubic shall promptly contact the Buyer regarding the Warranty Claim and provide pre-paid shipping labels and instructions to the Buyer for the return of the alleged defective Goods to Cubic's facilities.

Promptly following receipt of the alleged defective Goods, Cubic shall inspect the Goods and make a reasonable and good faith determination whether the Goods are defective in materials or workmanship, and Cubic shall promptly notify the Buyer of its determination. If Cubic determines that there exists a defect in materials or workmanship, Cubic shall inform the Buyer whether Cubic will repair the defective Goods as provided above and the estimated time-line of such repairs or replace the defective Goods as provided above and the estimated time-line of such replacement. If Cubic determines that there does not exist a defect in materials or workmanship or that the Warranty does not apply to the Goods (because of the limitations contained herein or otherwise), Cubic shall: (a) provide to the Buyer a brief explanation of its determination, (b) deliver to the Buyer an invoice for the costs incurred by Cubic for the Buyer to ship the Goods to Cubic and for Cubic to return the Goods to the Buyer and, promptly following receipt of payment for such invoice, return the Goods to the Buyer, and (c) if applicable, provide a price quote to address the alleged defects that were not covered by this Warranty and such other services as may be requested by the Buyer (such as system refurbishment, upgrades, or other products and services excluded from this Warranty). Any work requested by the Buyer outside of the scope of this Warranty shall be documented in a separate Purchase Order or other agreement, and Cubic shall only perform such work if and as provided in such Purchase Order or other agreement.

3.4.3 Shipping

Notwithstanding anything to the contrary provided above and except as expressly agreed upon in writing by Cubic in connection with a Warranty Claim, in no event shall Cubic be responsible for any shipment costs to or from any location outside of the Continental United States, and the Buyer shall be responsible and bear all costs for shipments to or from a destination outside of the Continental United States. Items shipped without prior approval will not be covered or reimbursed.

3.4.4 Exclusions and Limitations

Notwithstanding anything to the contrary above, in no event shall this Warranty cover:

- damage or an alleged defect that, in the reasonable and good faith determination of Cubic, was caused by accident, abuse, misuse, improper operation, operation inconsistent with or outside of the scope of the specifications and/or instructions provided by Cubic, or misapplication;
- damage or an alleged defect caused by services performed by anyone not expressly authorized by Cubic in writing to provide such services;

- any Cubic part or product that has been modified without the prior written permission of Cubic;
- unusual wear and tear;
- failure of subcomponents beyond their expected service life;
- inadequate or improper maintenance, unless caused by Cubic;
- use in out-of-specification environments;
- Acts of God, war, riots, insurrections, terrorism, and the like.

THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND AGREEMENTS, REMEDIES AND CONDITIONS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED. CUBIC SPECIFICALLY DISCLAIMS, AND THE BUYER HEREBY WAIVES, RELEASES, AND RENOUNCES, ALL WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES, WARRANTIES OF MERCHANTABILITY, AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

IN NO EVENT SHALL CUBIC BE RESPONSIBLE FOR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS PROFITS, DOWN TIME, GOOD WILL, AND DAMAGE TO OR REPLACEMENT OF EQUIPMENT AND PROPERTY.

IN NO EVENT SHALL CUBIC'S AGGREGATE TOTAL COST, EXPENSES, AND LIABILITY UNDER THE ORDER AND THIS WARRANTY EXCEED THE TOTAL PURCHASE PRICE PAID BY THE BUYER TO CUBIC UNDER THE ORDER.

During the warranty term, Cubic shall provide 24/7 telephone support to Customer through Cubic's toll free support line. Telephone support shall include:

- Direct Hotline Support. Customer may contact the designated support center directly for answers to questions Monday through Friday (excluding holidays) from 8:00 a.m. to 4:00 p.m., Eastern Standard Time. Telephone number is (866) 889-5974.
- 24-Hour Voice Messaging System. The system allows Customer to leave messages or questions for Cubic support engineers before or after standard hours provided in (a) above at the same telephone number.
- E-mail Support. Customer may email support questions to Cubic Customer service at: CDASupport@cubic.com.

4 PAYMENT INFORMATION

Cubic prefers electronic payments.

Wire/Electronic Payment:

Account Number:
 MUFG Union Bank
 ABA: 122000496
 Acct# 4001034232

Checks sent via mail:

Union Bank
 Attention: Cubic Corporation
 P.O. Box 30904
 Los Angeles, CA 90030-0904

If you wish to pay by Credit card please fill out the following form:

Credit Card Payment (Visa or MasterCard only):

Card Holder Name (as it appears on card)			
Company/Entity Name			
Billing Address	Address		
	Address		
	City	State	
	Zip Code		
Visa or MasterCard			
Card Number			
Expiration Date		CSC (3 digit on back)	

Procurement Details

Cubic Proposal ID:	P04554-LPD
Total Price / Amount of	\$13,239 USD

Buyer Authorization

Authorized Signature:	<i>*Remember to sign section 5.2 on the next page as well</i>
Printed Name:	
Date:	

5 YOUR ORDER FORM

Proposal Title:	Lexington Police Department
Proposal Description:	L400 Upgrade and Scenario Authoring Course
Cubic Proposal ID:	P04554-LPD
Total Price / Amount of	\$13,239 USD

5.1 SHIPPING AND BILLING INFORMATION

Shipping Address

Billing Address

_____	_____
_____	_____
_____	_____
_____	_____

5.2 CUSTOMER ACCEPTANCE AND ORDER FOR PRODUCTS/SERVICES

The above proposal, in its entirety to include prices, schedules, scope, specifications, terms, and conditions are deemed satisfactory and hereby accepted as written upon signature below.

This proposal is a binding contract upon acceptance by both parties via signature below.

ACCEPTED BY BUYER

ACCEPTED BY CUBIC SELLER

Authorized Signature:

Jim Gray

Christiana Castro

Print Name:

Jim Gray

Christiana Castro

Title:

Mayor

Contracts Administrator

Date of Acceptance:

FEB 22 2018

2/13/18