

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: BREACH OF
CONTRACT AND FRAUD

CITY OF MINNEAPOLIS,

Court File No.:

Plaintiff,

Judge:

v.

COMPLAINT

INTERNET EXPOSURE INC.,

Defendant.

NOW COMES Plaintiff, CITY OF MINNEAPOLIS ("City"), as and for its Complaint against Defendant, INTERNET EXPOSURE INC. ("IE"), states and alleges as follows:

PARTIES

1. The Plaintiff, City of Minneapolis, Minnesota, a home rule charter city ("City"), is a municipal corporation residing in Hennepin County, State of Minnesota.
2. The Defendant, Internet Exposure Inc. ("IE"), is a Domestic Corporation incorporated under Minnesota State law and at all times relevant herein having its principle place of business in Hennepin County, State of Minnesota.

FACTS

3. That at all times relevant herein, Plaintiff City, employed Defendant IE to implement, test, and support a computer software system called Solid Waste Information System ("SWIS").
4. That on or about April 30, 2002, the Plaintiff City requested proposals for professional services relative to the development of SWIS.

5. That on or about May 10, 2002, the Defendant IE submitted a proposal for personal services relative to the development of SWIS.
6. Based upon representations and promises of Defendant IE's proposal, Plaintiff City awarded Defendant IE the SWIS project.
7. On June 11, 2002, a contract was entered into between Plaintiff City and Defendant IE for the SWIS project in consideration of the following terms, conditions and mutual promises set forth. The contract mandated that IE:
 - a. Develop and deliver SWIS computer software to be provided as specified in the Statement of Work and meet quality standards specified in chapter QA of Statement of Work;
 - b. Perform vendor services as specified in chapter VS of Statement of Work;
 - c. Deliver the vendor services and SWIS software by IE's workers named in chapter VS of Statement of Work; and
 - d. Deliver computer software and vendor services within the Project Schedule specified in chapter VS of Statement of Work.
8. The SWIS contract under Article No.3 Compensation, Requirement No. VS-14 mandated:
 - a. That IE meet the Phase 1 Deliverables deadline of July 12, 2002;
 - b. That IE meet the Phase 2 Deliverables deadline of August 2, 2002;
 - c. That IE meet the Phase 3 Deliverables deadline of September 2, 2002.
9. Defendant IE failed to meet:
 - a. The Phase 1 Deliverables deadline of July 12, 2002;
 - b. The Phase 2 Deliverables deadline of August 2, 2002;

- c. The Phase 3 Deliverables deadline of September 2, 2002.
10. Defendant IE requested and was granted a more lenient project schedule of its own making on October 2, 2002.
 11. On October 4, 2002, Defendant IE failed to deliver the new schedule's Phase 1 Deliverables.
 12. Defendant IE owner Jeff Hahn later stated, "that the company never regarded the schedule to be attainable, but accepted it in order to get the business."
 13. Requirement No. VS-12.01, 02, and .03, states that all design changes must be governed by the Change Control process specified in the Statement of Work Requirement VS-12, must be put into that process, and must be proposed to the SWIS Project Manager.
 - a. Defendant IE made several design changes without complying with the Change Control process or notifying the SWIS Project Manager.
 14. The Statement of Work's Requirement No. TA-04 specifies that the application server components are to operate on a primary dedicated application server computer and a standby dedicated application server computer.
 15. The Plaintiff City later discovered that the delivered product did not incorporate an application server component as required by Requirement No. TA-04.
 16. Defendant IE accepted a \$21,000 progress payment from the City under false pretenses.
 17. Defendant IE specified use of the software product Enhydra as the SWIS application server.
 18. The contract required that all changes be proposed to the SWIS Project Manager as soon as they are taken under consideration.

- a. Defendant IE removed Enhydra application server product without prior notification to the SWIS Project Manager or submitting a proposed Change Control.
 - b. The contract specified the DODS Java Data Object project in its proposal. Defendant Internet Exposure substituted a product called Caster for DODS without prior notification to the SWIS Project Manager or submitting a proposed Change Control.
 - c. Defendant IE substituted a product called KODO for Caster without prior notification to the SWIS Project Manager or submitting a proposed Change Control.
19. Defendant IE violated requirement No. VS-12.05.3 by introducing an application server logic that substantially differed from that specified in Statement of Work.
20. Defendant IE violated requirement No. VS-12.05.4 by introducing one or more run-time processes that were not specified in the Statement of Work.
21. Defendant IE violated requirement No. VS-12.05.4 by connecting Plaintiff City computers directly to the dedicated data server computer removing a step from SWIS data transactions.
22. Defendant IE violated requirement No. VS-12.05.10 by failing to provide an application server rendering the software more difficult to maintain because absence of application server software on computers substantially changed how system could be maintained and/or operated.
23. Defendant IE violated requirement No. VS-12.05.11 by delivering an unauthorized two-tier architecture (client + data server) product that substantially affected system

performance. Defendant IE stated the system would “take a performance hit” if an application server component were incorporated into the product.

24. Defendant IE violated Proposal Section No. ATT VQ-99.02 and Requirement No. VQ-09.02 by failing to submit an up-to-date resume for each proposed SWIS project worker.
 - a. Defendant IE proposed Charles Rector as a SWIS project worker with his resume showing his address to be 4529 42nd Avenue South, Minneapolis, Minnesota, the same address as that submitted on Defendant IE’s owner Jeff Hahn’s resume.
 - b. When it was later discovered that Rector resides in Dallas, Texas, Hahn acknowledged that Rector lived in Dallas, but stated that Rector lived with him at the time of proposal was submitted because Rector’s mother was ill at the time.
 - c. Later, Hahn also failed to notify the SWIS Project Manager that the computer programmer added to the project, Benjamin Eirich, resides in Columbia, Missouri.
25. November 14, 2002, the Plaintiff City terminated the Contract with Defendant IE for numerous failures of performance.

**COUNT 1
BREACH OF CONTRACT – INTERNET EXPOSURE**

26. Plaintiff City realleges and incorporates herein by reference the allegations contained in paragraphs 1 through 25 above.
27. Defendant IE and Plaintiff City entered into a contract for consideration, which required Defendant IE to perform professional services relative to the development of a computer software program called SWIS.
28. The contract entered into between Defendant IE and Plaintiff City mandated that Defendant IE provide a SWIS computer software program according to standards specified in contract.

29. The contract required that Defendant IE deliver the SWIS and vendor services according to schedule specified in contract.
30. Defendant IE failed to provide Plaintiff City with a SWIS computer software program that met quality standards specified in contract.
31. Defendant IE failed to deliver to Plaintiff City a SWIS computer software program and vendor services according to schedule mandated in contract.
32. Plaintiff alleges that by reason of Defendant IE's failure to properly perform its duties and obligations under the contract, Plaintiff City has been damaged in the sum of \$325,386.00.

**COUNT 2
FRAUD – INTERNET EXPOSURE**

33. Plaintiff City realleges and incorporates herein by reference the allegations contained in paragraphs 1 through 32 above.
34. Defendant IE misrepresented to Plaintiff City that it could develop and deliver a SWIS computer software program that would meet quality standards.
35. Defendant IE misrepresented to Plaintiff City that it could develop and deliver a SWIS computer software program according to project schedule specified in contract.
36. Defendant IE knew that at time of proposal and upon entering into contract for development of SWIS computer software that it would be unable to develop a SWIS program according to terms mandated in contract.
37. The misrepresentations made by Defendant IE to Plaintiff City were a material fact in Plaintiff City's decision to offer SWIS contract to Defendant IE and eventually enter into contract with Defendant IE for professional services relative to the development of SWIS project.

38. Defendant IE misrepresented to Plaintiff City purposely and knowingly its ability to perform professional services relative to the development of SWIS with the intent to induce Plaintiff City to offer and enter into contract with Defendant IE.
39. Due to misrepresentations by Defendant IE concerning its ability to provide professional services relative to the development of SWIS, Plaintiff City was induced to enter contract with Defendant IE.
40. Plaintiff City was justified and acted reasonable in believing that Defendant IE could perform the professional services mandated under contract.
41. Plaintiff City suffered damages due to misrepresentations by Defendant IE concerning its ability to provide professional services relative to the development of SWIS.
42. Damages caused to Plaintiff City were proximately caused by Defendant IE misrepresentations concerning its ability to provide professional services relative to the development of SWIS.

WHEREFORE, Plaintiff prays for judgment as follows:

- a. Against Defendant IE, awarding the City damages in an amount greater than \$50,000.00
- b. Against Defendant IE, awarding Plaintiff City its reasonable attorney fees and costs.
- c. Against Defendant IE, awarding Plaintiff City lost profits and reasonable expenses incurred in Plaintiff City finding alternative provider to provide professional services toward the development of SWIS.
- d. Granting Plaintiff leave to amend his prayer for relief to include such damages as may be reasonable and appropriate.

e. Such other and further relief as the Court shall deem equitable in the interest of justice.

PRAYER FOR RELIEF

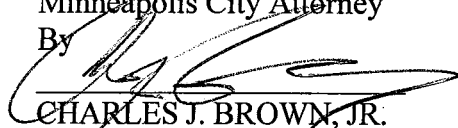
WHEREFORE, Plaintiff respectfully prays that this Court:

1. Enter a judgment against Defendant;
2. Award Plaintiff compensatory damages, statutory damages, attorney's fees, costs, interests and disbursements, as a result of Defendant's breach of contract and fraud;
3. Grant Plaintiff such other and further relief as may be just and equitable.

Dated: November 9, 2006

JAY M. HEFFERN
Minneapolis City Attorney

By


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*ATTORNEYS FOR PLAINTIFF CITY OF
MINNEAPOLIS*

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded to the opposing party or parties pursuant to Minn. Stat. § 549.211.

Dated: November 9, 2006


Charles J. Brown, Jr.