

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

August 8, 2023

FROM

PETE MENDOZA, Interim Director, Purchasing

SUBJECT

Amendments and Agreement for Video Management Systems Services, Software, License and Equipment

RECOMMENDATION(S)

1. Approve a non-financial Software License **Agreement No. 23-856** with Genetec Inc., including non-standard terms, for license of all-in-one security monitoring software for the period of August 8, 2023, through November 16, 2025.
2. Approve **Amendment No. 1 to Agreement No. 20-1103** with Convergent Technologies LLC for video management services, software, and equipment, adding the software license agreement with Genetec Inc. referenced in Recommendation No. 1, with no change to the period of November 17, 2020, through November 16, 2025.
3. Approve **Amendment No. 1 to Agreement No. 20-1104** with Siemens Industries, Inc. for video management services, software, and equipment, adding the software license agreement with Genetec Inc. referenced in Recommendation No. 1, with no change to the period of November 17, 2020, through November 16, 2025.

(Presenter: Pete Mendoza, Interim Director, 387-2073)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Improve County Government Operations.

Operate in a Fiscally-Responsible and Business-Like Manner.

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

Provide for the Safety, Health and Social Service Needs of County Residents.

FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost). Impact on individual department budgets is based upon the need for service. Departments that require video management services are responsible for ensuring adequate funding in current and future budgets.

BACKGROUND INFORMATION

Approval of the recommended non-financial agreement with Genetec Inc. (Genetec) and amendments with Convergent Technologies LLC (Convergent) and Siemens Industries, Inc. (Siemens) will allow departments to continue to procure and maintain surveillance video management systems to secure County buildings and property, and to provide for the safety of employees and the public.

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On November 17, 2020 (Item No. 67), the Board of Supervisors (Board) approved agreements with Convergent and Siemens to provide surveillance video management, equipment, and software for a term of November 17, 2020, through November 16, 2025. A primary objective of this item was to standardize the Genetec equipment and software platform for video management and surveillance. The recommended Genetec software license agreement was inadvertently omitted from the agreements with Convergent and Siemens previously approved by the Board. Approval of this item will incorporate the Genetic software license agreement into the Convergent and Siemens agreements and ensure those agreements are compliant with County Policy, retroactively effective to the original effective date of November 17, 2020.

Upon approval of this item, departments will procure services, software, and equipment from either Convergent or Siemens based on fixed rates established in the agreements for projects up to \$60,000. Departments with projects over this threshold will be required to complete the construction bid process pursuant to Public Contract Code.

The Genetec software license agreement (Agreement) is Genetec's standard commercial contract, which contains terms that differ from the standard County contract terms and omits certain County standard contract terms. While the parties negotiated certain contract terms to County standards, Genetec would not agree to all County standard terms. The non-standard and missing terms include the following:

1. The Agreement does not contain the standard contract provisions regarding Government Code section 84308 (Senate Bill 1439) and the disclosure of campaign contributions to a member of the Board or other County elected officer.
 - Under the County standard contract the contractor states it has disclosed campaign contributions of more than \$250 to any member of the Board or other County elected officer and completed a form providing additional information.
 - Potential Impact: The County may have difficulty gathering information about campaign contributions made by Genetec.
2. The County agrees to defend and indemnify Genetec for claims that may arise from the County's non-compliance with applicable law or breach of the license restrictions, including use of the Subscription Services in any application or environment where failure could cause personal injury, loss of life, or other substantial harm.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify Genetec, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited, or expense limited could be brought against Genetec without such limitations and the County would be responsible to defend and reimburse Genetec for costs, expenses, and damages, which could exceed the total Agreement amount.
3. Genetec's total aggregate liability to the County is limited to the amount paid by the County for the relevant software license including claims arising from Genetec's gross negligence, willful misconduct, and violations of law.
 - The County standard contract does not include a limitation of liability.

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- Potential Impact: Claims could exceed the liability cap and the Agreement amount leaving the County financially liable for the excess.
4. The Agreement does not include certain standard County insurance provisions, including the naming the County as an additional insured, waiver of subrogation, policies primary and non-contributory, severability of interests, and insurance review.
- County Policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and set forth in the County standard contract and County Policy 11-07SP.
 - Potential Impact: No waiver of subrogation may allow Genetec's insurer to bring suit against the County, which could result in expenses that exceed the total Agreement amount.
5. There is no termination for convenience.
- The County standard contract gives the County the right to terminate the contract, for any reason, with a 30-day written notice of termination without any obligation other than to pay amounts for services rendered and expenses reasonably incurred prior to the effective date of termination.
 - Potential Impact: The County cannot terminate the Agreement during any subscription period unless Genetec breaches the Agreement. Any attempt for early termination without cause will result in the County's loss of any pre-paid subscription fees, payment of fees for the remaining subscription period, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.

Purchasing recommends approval of the Agreement, including the non-standard terms, to provide County departments access to Genetec's platform to meet the County's various needs for video surveillance management systems to secure County buildings and property.

PROCUREMENT

On May 18, 2020, a Request for Proposals (RFP) 20-PURC-3810 for video management systems services, software, and equipment was released. Based on the evaluation of this solicitation, Convergent and Siemens were selected to provide these services to the County. Departments procure the Genetec software directly from these vendors as part of the awarded agreements.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Adam Ebright, Deputy County Counsel and Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on July 12, 2023; Innovation and Technology Department (Jake Cordova, Assistant Chief Information Officer, 388-0503) on July 12, 2023; Risk Management (Victor Tordesillas, Director, 386-8623) on July 12, 2023; Finance (Ivan Ramirez, Administrative Analyst, 387-4020) on July 21, 2023; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on July 24, 2023.

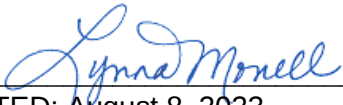
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Curt Hagman Seconded: Joe Baca, Jr.
Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: August 8, 2023



cc: Purchasing - Stremel w/ agrees
 Contractor c/o Purchasing w/ agree
 File w/ agree

JLL 08/11/2023