

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

April 8, 2025

**FROM**

**Gilbert Ramos, Assistant Executive Officer, Human Services**

**SUBJECT**

Purchase Order with Nth Generation Computing, Inc. for Cohesity Software as a Service for New Storage and Back-Up Data and Recovery Solutions

**RECOMMENDATION(S)**

1. Approve Cohesity, Inc.'s End User License **Agreement No. 25-231**, including non-standard terms, for the Cohesity Data Cloud Secure Bundle, for the period of April 17, 2025 through April 16, 2028.
2. Approve Cohesity, Inc.'s Terms of Service (**Agreement No. 25-232**), including non-standard terms, for the Cohesity Data Cloud Secure Bundle, for the period of April 17, 2025 through April 16, 2028.
3. Authorize the Purchasing Agent to issue a purchase order to Nth Generation Computing, Inc., subject to the terms and conditions in Cohesity, Inc.'s End User License Agreement and Terms of Service, for the purchase of Cohesity Data Cloud Secure Bundle, in the amount of \$712,858, for the period of April 17, 2025 through April 16, 2028.

(Presenter: Gilbert Ramos, Assistant Executive Officer, 387-4261)

**COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Improve County Government Operations.**

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

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

**FINANCIAL IMPACT**

This item does not require additional use of Discretionary General Funding (Net County Cost). The purchase order amount of \$712,858 is for the three-year period and will be funded with 100% State funds through the Child Welfare Services allocation. Adequate appropriation and revenue have been included in the Human Services Administrative Claim 2024-25 budget and future recommended budgets.

**BACKGROUND INFORMATION**

Human Services (HS) Information, Technology, and Support Division (ITSD) delivers customized solutions to meet all HS departments' information technology and business needs.

ITSD currently uses Commvault as their backup and recovery for HS data. The current contract for Commvault software expires on April 17, 2025. Due to the increase in cyberattacks, ITSD recognized the need to explore alternative backup and recovery solutions on the market to identify software that better aligns with the requirements of San Bernardino County (County).

Cohesity, Inc. (Cohesity) offers advanced capabilities to protect against ransomware attacks by providing immutable backups, ensuring recovery of clean data even if systems are

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compromised. The platform also encrypts data both at rest and in transit, safeguarding sensitive information throughout its entire lifecycle, whether it is being stored, moved, or accessed. This level of protection is exactly what is needed to combat modern day cyber threats. Not only does Cohesity deliver cutting edge technology to secure data, but it also provides a net savings of over \$300,000 to the County, making it a highly cost-effective solution.

Cohesity sells its products strictly through third party resellers, such as Nth Generation Computing, Inc., and does not sell directly to businesses, government, and consumers.

Cohesity provides backup data solutions that protect the safety and integrity of data in case of server failure, user deletion, or ransomware attack. Cohesity will protect and manage HS data from attacks and outages, across any environment. It provides fast response and recovery from cyberattacks or any disruptions that threaten operations.

The End User License Agreement and Software As A Service Terms of Service (together referred to as the "Agreements") are Cohesity's standard commercial contracts, which include terms that differ from the standard County contract and omits certain County standard contract terms. The non-standard and missing terms include the following:

1. Cohesity may assign the Agreements without notice to the County and without the County's approval.
  - The County standard contract requires that the County must approve any assignment of the contract.
  - Potential Impact: Cohesity could assign the Agreements to a third party or business with which the County is legally prohibited from doing business due to issues of Federal debarment or suspension and conflict of interest, without the County's knowledge. Should this occur, the County would be out of compliance with the law until it becomes aware of the assignment and terminates the Agreements.
2. All disputes arising under the Agreements must be settled by binding arbitration.
  - The County standard contract does not require arbitration.
  - Potential Impact: Binding arbitration decisions are not appealable. In addition, disputes that might otherwise be settled in small claims court would incur arbitration costs that could exceed the costs of a small claims action, and the Agreement amount.
3. The prevailing party is entitled to recover attorneys' fees and costs.
  - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
  - Potential Impact: If either party demands arbitration related to the Agreements, the arbitrator may award reimbursement of reasonable expenses, including attorneys' fees to the prevailing party, which could exceed the total Agreement amount.
4. The Agreements do not comply with the standard indemnification provisions, as required by County Policy 11-07.
  - The County standard contract indemnity provision requires the contractor to indemnify, defend, and hold County harmless from third party claims arising out

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- of the acts, errors or omissions of any person. The standard contract provision for intellectual property indemnity is: Contractor will indemnify, defend, and hold harmless County and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services.
- Potential Impact: Cohesity is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from Cohesity's negligent or intentional acts and intellectual property infringement. If the County is sued for any claim, including intellectual property infringement based on its use of Cohesity's software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total Agreement amount.
5. The County is required to indemnify Cohesity against third party claims arising out of the County's breach of the Agreements or violation of law by County or County users.
- The County standard contract does not include any indemnification or defense by the County of a contractor.
  - Potential Impact: By agreeing to indemnify Cohesity, the County could be contractually waiving the protection of sovereign immunity or other statutory immunities. Claims that may otherwise be barred against the County, time limited, or expense limited could be brought against Cohesity without such limitations and the County would be responsible to reimburse Cohesity for costs, expenses, and damages, which could exceed the total Agreement amount.
6. The Agreements do not require Cohesity to meet the County's insurance standards as required pursuant to County Policy 11-07.
- 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.
  - Potential Impact: The County has no assurance that Cohesity will be financially responsible for claims that may arise from the County's use of the service, which could result in expenses to the County that exceed the total Agreement amount.
7. Cohesity limits its aggregate maximum liability to the greater of the amount of fees paid to Cohesity for the applicable services during the 12 month period prior to the date the cause of action arose and \$250,000, excluding (a) liability that cannot be limited by law; (b) bodily injury or death resulting from negligence; (c) gross negligence or willful misconduct; (d) breach of confidentiality; and (e) indemnification.
- The County standard contract does not include a limitation of liability.
  - Potential Impact: Claims could exceed the liability cap and the Agreement amount leaving the County financially liable for the excess.

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8. Venue for disputes arising under the Agreement is in the federal and state courts in the Northern District of California.
  - The County standard contract requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
  - Potential Impact: Having a venue in the Northern District of California may result in additional expenses that exceed the amount of the Agreement.
9. Cohesity provides the services and products "AS IS" and disclaims all express or implied warranties.
  - County Policy 11-05 requires a contractor to fully warrant its services and products.
  - Potential Impact: The County's use of the services and products is solely at its own risk.

The Agreements, including non-standard terms, will be used to accompany the purchase order in Recommendation No. 3. HS ITSD is requesting the Board's approval of the Agreements, including the non-standard terms, and for authority for the Purchasing Agent to issue a purchase order for the purchase of Cohesity Data Cloud Secure Bundle due to the benefits outweighing the risks. Cohesity Data Cloud Secure Bundle is a solution that enhances data security with encryption and ransomware protection while ensuring compliance with data regulations. It streamlines operations by consolidating data management, reducing complexity, and improving efficiency, leading to both immediate and long-term cost savings. Most importantly, adopting this solution results in a \$300,000 savings compared to the current system while providing advanced technology and features, thereby making it a financially and strategically sound decision. Approval of Recommendation No. 3 is requested as the total amount of \$712,858 is outside of the Purchasing Agent's annual authority, and therefore requires Board approval.

**PROCUREMENT**

On February 19, 2025, HS ITSD released Invitation to Bid (ITB) HSSA25-HSSA-5788 for pricing on Cohesity Data Cloud Secure Bundle using the County's Electronic Procurement Network (ePRO). A total of 434 vendors were included in the email distribution list. Four bids were received by the February 25, 2025 due date, with one bid considered nonresponsive:

	<b>Nth Generation</b>	<b>GST</b>	<b>vPrime Tech</b>
Cohesity Data Cloud Secure Bundle Line Items			
Hardware	\$ 93,948	\$ 82,562	\$ 80,395
Software	\$558,094	\$613,696	\$588,095
Support/Services	\$ 52,595	\$ 47,866	\$ 46,027
Freight	\$0	\$ 1,050	\$0
Non-Taxable Total	\$610,689	\$662,612	\$634,122
Taxable Total	\$ 93,948	\$ 82,562	\$ 80,395
Subtotal	\$704,637	\$745,174	\$714,517
Sales Tax (8.75%)	\$8,221	\$ 7,225	\$ 7,034
<b>Total</b>	<b>\$712,858</b>	<b>\$752,399</b>	<b>\$721,551</b>

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Based on quotes received, Nth Generation Computing, Inc. is the lowest cost vendor and will be awarded the Purchase Order for Cohesity Data Cloud Secure Bundle. Quotes received are the total cost for the three year contract term. Award and denial letters were sent on February 25, 2025 and no protests were received. The Purchasing Department supports this competitive procurement based on the formal quotes solicited for the services.

**REVIEW BY OTHERS**

This item has been reviewed by Human Services Contracts (Patty Steven, Contracts Manager, 388-0241) on March 7, 2025; County Counsel (Daniella Hernandez, Deputy County Counsel, 387-5455) on March 13, 2025; Purchasing (Jessica Barajas, Supervising Buyer, 387-2060) on March 13, 2025; Information Technology and Support Division (Marcella Ramirez, Departmental Information Systems Administrator, 386-3780) on March 13, 2025; Innovation and Technology Division (Lynn Fyhrlund, Chief Information Officer, 388-5555) on March 21, 2025; Risk Management (Greg Ustaszewski, Staff Analyst II, 386-8655) on March 20, 2025; Finance, (John Hallen, Principal Administrative Analyst, 388-0278) on March 24, 2025; and County Finance and Administration (Cheryl Adams, Deputy Executive Officer, 388-0332) on March 24, 2025.

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Record of Action of the Board of Supervisors  
San Bernardino County

**APPROVED (CONSENT CALENDAR)**

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

Lynna Monell, CLERK OF THE BOARD

BY   
DATED: April 8, 2025



cc: HS - West w/agree  
Contractor - c/o HS w/agree  
File - w/agree  
MBA 04/15/2025