

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

May 19, 2020

FROM

**LARRY AINSWORTH, Chief Information Officer, Information Services Department
FRANK GUEVARA, Director, Veterans Affairs**

SUBJECT

Statement of Work with Advantage Technologies, Inc. and End User License Agreement with Ribbon Communications Inc. for RightFax™ System

RECOMMENDATION(S)

1. Approve the Advantage Technologies, Inc. Proposal and Statement of Work **Agreement No. 20-275** in an amount not to exceed \$23,000 for purchase and installation of a new RightFax™ System including maintenance and support for the period May 19, 2020, to May 18, 2023.
2. Approve the non-financial **Agreement No. 20-276**, perpetual Ribbon Communications Inc. End User License Agreement for Ribbon Communications Software and Hardware including the non-standard terms.
3. Authorize the Auditor-Controller/Treasurer/Tax Collector to post 2019-20 appropriation adjustments as detailed in the Financial Impact section (Four votes required).
4. Designate the Director of Veterans Affairs as the authorized official to sign non-financial documents as they pertain to changes to the Statement of Work and support services, subject to review by County Counsel, so long as such documents do not increase the total contract amount or modify the terms.
5. Direct the Director of Veterans Affairs to transmit copies of all documents in relation to these agreements to the Clerk of the Board of Supervisors within 30 days of execution.

(Presenter: Jake Cordova, Information Services Division Chief, 388-0503)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Improve County Government Operations.

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

FINANCIAL IMPACT

Approval of this purchase will not result in the use of additional Discretionary General Funding (Net County Cost). The Veterans Affairs (VA) 2019-20 modified budget includes \$23,000 in capitalized equipment for a faxing solution. Upon further review, it was determined that the RightFax™ system is not a capitalized equipment purchase. A budget adjustment of \$23,000 is requested to increase VA's services and supplies appropriation and decrease VA's capitalized equipment appropriation, as follows:

**Statement of Work with Advantage Technologies, Inc. and End User License Agreement with Ribbon Communications Inc. for RightFax™ System
May 19, 2020**

Fund Center	Commitment Item/GL Account	Description	Action	Amount
5400001000	54404040	Equipment	Decrease	\$23,000
5400001000	52002115	Computer Software Expense	Increase	\$9,492
5400001000	52002125	Inventoriable Equipment	Increase	\$2,400
5400001000	52002445	Professional Services	Increase	\$11,108

Approval of the Ribbon Communications Inc. (Ribbon) End User License Agreement (EULA) will not result in the use of Net County Cost as it is non-financial in nature. However, after approval, the Ribbon EULA will be used to accompany future purchases from VA and other County departments for a variety of Ribbon software maintenance and support services to be approved, as necessary per County Policy 11-04.

BACKGROUND INFORMATION

The VA files claims for over 28,000 veterans a year. This business process relies heavily on faxing documents. Seventy-five percent of claims are faxed to different Federal VA Organizational Services, with an estimated 152,000 pages faxed every year. Currently, VA offices use a conventional fax system using standard phone lines which can result in incomplete transmittal of claims, false receipt of transmittal completion, inefficient processing and a backlog of work.

The Information Services Department (ISD) was tasked with finding a Fax Solution Enhancement for the VA. ISD researched available faxing solutions, and recommends the RightFax™ system. The RightFax™ system is an automated electronic document delivery system, which integrates most desktop and business applications to maximize employee productivity, improve information security, and decrease paper-related costs and security risks from stand-alone fax machines. The RightFax™ system will allow VA staff to send and receive faxed documents quickly and efficiently from their desktop computers.

The VA and ISD are requesting approval of a Statement of Work for professional services from Advantage Technologies, Inc. (Advantage) and for Advantage to install and configure the RightFax™ system for the VA. The RightFax system is licensed under the Open Text EULA that was approved by the Board on April 21, 2020 (Item No. 31). Additionally, the RightFax™ system includes a Sonus SBC1000 Network Fax Device. The Ribbon EULA governs the Sonus SBC Network Fax Device.

The Ribbon EULA is its standard commercial license and contains terms that differ from the standard County contract. The non-standard terms include the following:

1. Governing law is the State of Massachusetts.
 - The County standard contract requires California governing law.
 - Potential Impact: The contract will be interpreted under Massachusetts law. Any questions, issues or claims arising under this contract will require the County to hire outside counsel competent to advise on Massachusetts law, which may result in fees that exceed the total contract amount.

2. There is no limit on Ribbon's right to assign the EULA.

**Statement of Work with Advantage Technologies, Inc. and End User
License Agreement with Ribbon Communications Inc. for RightFax™
System
May 19, 2020**

- The County must approve any assignment of the contract.
 - Potential Impact: County Counsel cannot advise on, whether and to what extent, Massachusetts law may affect a party's right to assign a contract to another party where no specific provision is provided in the contract.
3. There is nothing in the EULA that addresses attorneys' fees.
- The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: County Counsel cannot advise on, whether and to what extent, Massachusetts law may affect a party's requirement to pay the prevailing party in a legal action where no specific provision is provided in the contract.
4. Ribbon disclaims the warranty of non-infringement and provides no indemnification for claims made against the County based on Ribbon's performance under the EULA.
- There is no warranty requirement in the County standard contract. 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: The disclaimer of a warranty of non-infringement, coupled with the lack of indemnity for intellectual property infringement means that, should the County be sued for intellectual property infringement based on its use of Ribbon's software, the County will be liable for the costs of defense and damages. While infringement claims against end users are rare, they have been known to occur, and the County could be responsible for defense costs and damages, which could exceed the total contract amount.
5. The EULA does not include County standard insurance requirements.
- The County standard contract requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department.
 - Potential Impact: The County has no assurance that Ribbon will be financially responsible for claims that may arise from the County's use of the software, which could result in expenses to the County that exceed the total contract amount.
6. Limitation of liability of Ribbon to the County for all claims arising under the EULA, delivery of the software products and any other act is limited to the price paid for the affected product, excluding damages for personal injury and to the extent no excluded or limited by law.
- The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the contract amount leaving the County financially liable for the excess. In addition, the County's liability under the contract is not similarly limited. County Counsel cannot advise on, whether and to what extent, Massachusetts law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
7. Venue is in the courts of Boston in Massachusetts.

**Statement of Work with Advantage Technologies, Inc. and End User
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- 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 Boston, Massachusetts may result in additional expenses that exceed the amount of the contract.

ISD and Veterans Affairs recommend approval of the Advantage Statement of Work and the Ribbon EULA. Approval of both will ensure VA the quick and efficient automated “faxed” document delivery provided by RightFax™ system. The Ribbon EULA will be used by other County departments to accompany future purchases as necessary pursuant to County Policy 11-04.

PROCUREMENT

On July 25, 2019, ISD released an informal request for bids for a RightFax™ system from authorized resellers and certificated installers of the RightFax™ software and Sonus SBC product lines and related software and applicable upgrades. Two bids were received and evaluated by ISD based on technical review and cost. The Fax Guys submitted the lowest cost bid; however, the bid contained the wrong specifications. Advantage Technologies was selected based on their ability to provide the requested RightFax™ solution.

Vendor	Location	Total Cost
Advantage Technologies	New York, NY	\$18,832
The Fax Guys	Burnsville, MN	\$18,731

REVIEW BY OTHERS

This item has been reviewed by Auditor-Controller/Treasurer/Tax Collector (Erika Gomez, General Accounting Manager, 382-3196) on May 7, 2020; Veterans Affairs (Frank Guevara, Director, 382-3288) on April 21, 2020; County Counsel (Bonnie Uphold, Deputy County Counsel, 387-5455) on April 27, 2020; Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on April 27, 2020; Finance (Joon Cho, Administrative Analyst, 387-5402 and Paul Garcia, Administrative Analyst III, 386-8392) on April 29, 2020; County Finance and Administration (Kelly Welty, Deputy Executive Officer, 387-5423 and Tanya Bratton, Deputy Executive Officer, 388-0332) on April 30, 2020.

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Record of Action of the Board of Supervisors
County of San Bernardino

APPROVED (CONSENT CALENDAR)

Moved: Robert A. Lovingood Seconded: Josie Gonzales
Ayes: Robert A. Lovingood, Janice Rutherford, Dawn Rowe, Curt Hagman, Josie Gonzales

Lynna Monell, CLERK OF THE BOARD

BY  _____
DATED: May 19, 2020



cc: ISD- Hay w/agree
Contractor- C/O ISD w/agree
File- w/agree
la 05/21/2020