

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

August 20, 2024

FROM

ENSEN MASON, Auditor-Controller/Treasurer/Tax Collector

SUBJECT

Agreement with RT Lawrence Corporation for the Purchase of Imaging Business Machines, LLC High-Volume Document Scanners, Software, and Professional Integration Services

RECOMMENDATION(S)

Approve **Agreement 24-773** with RT Lawrence Corporation, including third party non-standard software license terms with Imaging Business Machines, LLC, for hardware, software, and implementation services to replace the Tax Collector's critical remittance processing machines, in addition to maintenance and support for the one-year period of August 20, 2024, through August 19, 2025, in a total amount not to exceed \$821,127.

(Presenter: Diana Atkeson, Assistant Auditor-Controller/Treasurer/Tax Collector, 382-7004)

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 item will not result in the use of additional Discretionary General Funding (Net County Cost). Sufficient appropriation has been included in the Auditor-Controller/Treasurer/Tax Collector's (ATC) 2024-25 budget. Future maintenance and support will be included in future recommended budgets.

The recommended agreement's total cost is \$821,127 which includes two Fusion scanners from Imaging Business Machines, LLC (ibml) for \$720,704, an implementation cost of \$10,500, a software cost of \$14,000, and one year of maintenance and support on the ibml scanners and software for \$75,923.

BACKGROUND INFORMATION

A critical role of the County Tax Collector is the administration of ad valorem and other property taxes according to California law provisions listed in the Revenue and Taxation Code and other codes. The Tax Collector Division is responsible for the billing and collection of secured, unsecured, supplemental, and transient occupancy taxes and other special assessments totaling over \$3 billion each year. A large portion of tax payments are received via mail and processed through the remittance processing machines. During the first half of 2023-24, the Tax Collector Division processed over 450,000 pieces of mail (256,304 stubs and 194,472 checks).

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The current 25-year-old remittance processing machines, NCR's iTran Model 9810 Class 3001, are enterprise grade and efficiently handle large volume of payments, sorting them appropriately based on category. The machines read and sort checks and stubs, create a reformat file for upload, mark the payable as paid, capture images of the documents processed and store them electronically, create an image cash letter file (ICL) that encodes and endorses the check for deposit, and prepares the deposit slip when fully integrated with RT Lawrence Corporation (RTL) software. This automated process also facilitates identification of duplicate and erroneous payments and prepares them for special handling.

As of May 31, 2022, NCR discontinued production and support of replacement parts for their legacy machines. This has resulted in a critical parts scarcity that threatens the long-term viability of the Tax Collector's current equipment. However, ATC's Information Technology Division has proactively secured alternative support options to cover maintenance and repairs for the existing machines until the new Fusion scanners are fully operational. This ensures the Tax Collector can maintain the continuity of its current business practices until a point in time when the machines fail beyond salvageable repair or parts are no longer available.

The contract with RTL includes third party Software License Terms (License) with ibml, which includes terms that differ from the standard County contract and omits certain County standard contract terms. The License is non-negotiable. The non-standard and missing terms include the following:

1. The License is silent on governing law
 - The County standard contract requires California governing law.
 - Potential Impact: Having no specified governing law in the License results in uncertainty over which state's laws will govern the interpretation of the License and leads to ambiguity in interpretation of the License terms. ibml is a limited liability corporation headquartered in Alabama. The License could be interpreted under any state law depending on where the claim is brought, including Alabama or California. Any questions, issues or claims arising under this License could require the County to hire outside counsel competent to advise on the applicable state law, which may result in fees that exceed the total License amount.
2. ibml may assign the License 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: ibml could assign the License 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 could be out of compliance with the law until it becomes aware of the assignment and terminates the License. County Counsel cannot advise on whether and to what extent Alabama law may permit or restrict a party's right to assign without an express provision in the License.
3. There is no provision in the License addressing each party's responsibility for paying attorneys' fees.
 - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.

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- Potential Impact: County Counsel cannot advise on, whether and to what extent, Alabama law may affect a party's requirement to pay the prevailing party's attorneys' fees and costs in a legal action where no specific provision is provided in the License.
4. The License does not require ibml to meet the County's insurance standards as required pursuant to County Policies, 11-05, 11-07 and 11-07SP.
 - County policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and as set forth in County policy and in the County standard contract.
 - Potential Impact: The County has no assurance that ibml will be financially responsible for claims that may arise under the License, which could result in expenses to the County that exceed the total License amount.
 5. The License does not require ibml to indemnify the County, as required by County Policies 11-05 and 11-07, including for intellectual property infringement claims.
 - The County standard contract indemnity provision requires the contractor to indemnify, defend, and hold the County harmless from third party claims arising out 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: ibml is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from ibml'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 ibml's software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total License amount. County Counsel cannot advise on whether and to what extent Alabama law may allow the County to require ibml to defend or indemnify it absent an express provision in the License.
 6. The County is required to indemnify ibml against any and all losses resulting from any Third-Party Claim based on County's: (i) negligence or willful misconduct; (ii) use of the ibml software, documentation or License in a manner not authorized or contemplated by the License; (iii) use of the software in combination with data, software, hardware, equipment or technology not provided or authorized by ibml; (iv) use of any version of the software other than the most current version of the software; (v) modifications to the products not made or approved in writing by ibml; or (vi) breach of the License.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify ibml, 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 ibml without such limitations and the County could be responsible to defend and reimburse ibml for costs, expenses, and damages,

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which could exceed the total License amount. County Counsel cannot advise on, whether and to what extent, Alabama law may limit or expand this License term.

2. There is no stated venue in the License.
 - County Policy 11-05 requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: ibml is located in Jefferson County, Alabama. Having no express venue in the License means that Jefferson County, Alabama venue could be applied to disputes arising under this License, which may result in additional expenses that exceed the amount of the License.

ATC recommends approval of the License with ibml, including the non-standard terms, as this will allow ATC to procure the necessary hardware to ensure continuous and uninterrupted remittance check processing, and significantly reduce the risk of costly repair delays and operational impacts.

PROCUREMENT

Request for Proposal (RFP) No. ACT123-ACTT-4812 was released on December 16, 2022, to solicit proposals from interested and qualified agencies to provide Remittance Processing Machine Replacements. The RFP was posted to the County’s Electronic Procurement Network (ePro).

One proposal was received by the established deadline in response to the RFP. The proposal from the agency listed below met the minimum requirements and continued through the evaluation process.

Vendor	Location	Cost
RTL	Whittier, CA	\$821,127

An evaluation subcommittee comprised of individuals from ATC’s Tax Collector and Information Technology Divisions, reviewed and evaluated the proposal based on the criteria listed in the RFP. The criteria included: proposer qualifications, financial review, business requirements (and technical requirements, implementation approach, maintenance and operation support), total cost, references, and vendor demonstration.

Based on the evaluation criteria, the evaluation panel determined that RTL met the needs of the County and recommended them for contract award. No formal appeals were received during the allowable protest period.

The Purchasing Department supports this competitive procurement based on the formal solicitation described above.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on July 29, 2024; Risk Management (Greg Ustaszewski, Staff Analyst, 386-9008) on July 11, 2024; Purchasing (Jessica Barajas, Supervising Buyer, 387-2065) on June 25, 2024; Finance (Penelope Chang, Administrative Analyst, 387-4886) on July 31, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on August 5, 2024.

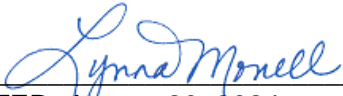
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Record of Action of the Board of Supervisors
San Bernardino County

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 20, 2024



cc: ATC - Mikulski w/agree
Contractor - c/o ATC w/agree
File - w/agree
CCM 08/22/2024