

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

June 8, 2021

FROM

BOB DUTTON, Assessor-Recorder-County Clerk

SUBJECT

Agreement with Ruckus Wireless, Inc. for Hardware Support Services

RECOMMENDATION(S)

1. Approve a General Terms and Conditions for Support and Services **Agreement No. 21-419** with Ruckus Wireless, Inc. for a contract period retroactive to May 18, 2021, through May 17, 2024, for hardware support services for Ruckus switches located at the Hall of Records.
2. Approve an **Agreement No. 21-420** with GHA Technologies, Inc. for Ruckus Wireless hardware support services in an amount not to exceed \$2,837 for a contract period retroactive to May 18, 2021, through May 17, 2024.

(Presenter: Bob Dutton, Assessor-Recorder-County Clerk, 382-3207)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

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

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General funding (Net County Cost). The estimated cost of this Ruckus Wireless support agreement for five (5) Ruckus switches located at the Hall of Records is not to exceed \$2,837. Adequate appropriation and revenue have been included in the Assessor-Recorder-County Clerk's (ARC) 2020-21 budget (3111001000).

BACKGROUND INFORMATION

The Assessor's Office is the main data source for countless internal and external public agencies, property owners, and business entities for public property records. A network is necessary to house this robust amount of data. Ruckus switches act as the primary connection point to the ARC and County networks, which allow access to all critical business services and applications on a daily basis. Support services are necessary to ensure that these switches remain fast, flexible, and secure to keep the Assessor's network running at peak performance. Support services include rapid problem resolution for issues that result from unexpected complications related to the switches and allow for access to recent patches and security updates among other related services. This item is being presented to the Board at this time, as this is the first date available for presentation after extended negotiations were completed with Ruckus Wireless, Inc. over non-standard County terms.

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The Ruckus Wireless, Inc. General Terms and Conditions for Support and Services is Ruckus' standard commercial contract, which includes 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. Ruckus may assign its right to payment or the contract without notice to the County and without the County's approval to an affiliate or successor in interest of its assets.
 - The County must approve any assignment of the contract.
 - Potential Impact: Ruckus may assign the contract 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.
2. 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 institutes any legal proceedings related to the Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees, which could exceed the total contract amount.
3. The contract does not require Ruckus to indemnify the County, including for intellectual property infringement claims.
 - The County standard contract indemnity provision requires the Contractor to indemnify, defend, and hold 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: Ruckus is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from Ruckus' 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 Ruckus' software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total contract amount.
4. The County is required to indemnify Ruckus against all claims arising from the County's actual or alleged violation of law.
 - The County standard contract does not include any indemnification or defense by the County of a Contractor.

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- Potential Impact: By agreeing to indemnify Ruckus 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 Ruckus without such limitations and the County would be responsible to defend and reimburse Ruckus for costs, expenses, and damages, which could exceed the total contract amount.
5. The contract does not require Ruckus to meet the County's insurance standards as required pursuant to County Policy 11-07.
- The 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 contract does not include County standard insurance requirements. This means that the County has no assurance that Ruckus 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 Ruckus to One Thousand Dollars (\$1,000) or the amounts paid by the County in the six-month period preceding the event giving rise to the claim.
- 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.
7. Venue is in Santa Clara County, 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 Santa Clara County, California may result in additional expenses that exceed the amount of the contract.

The recommended agreement will enable ARC to receive support services for its network switches. Approval of this item will allow ARC to improve County government operations and operate in a fiscally-responsible and business-like manner.

PROCUREMENT

The Assessor division of ARC solicited informal quotes from vendors that are authorized to distribute Ruckus Wireless products via email and received quotes from three interested vendors as follows:

Vendor	Location
GHA Technologies, Inc.	Phoenix, AZ
CDW-G	Vernon Hills, IL
VPLS Solutions	Los Angeles, CA

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These quotes were evaluated based on cost. GHA Technologies, Inc. is recommended for an agreement to provide all services listed in the quote. GHA Technologies is an authorized distributor for Ruckus switches and support services.

The County Procurement Manual's solicitation method of purchase of low value good, supplies, equipment, and services up to \$4,999 is Informal Quote. County Policy requires departments to obtain Board of Supervisor approval for procurement of service with non-standard terms and conditions.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Deputy County Counsel, 387-5455) on May 27, 2021; Risk Management (LeAnna Williams, Director of Risk Management, 386-8623) on May 27, 2021; Purchasing (Michelle Churchill, Supervising Buyer, 387-2070) on May 27, 2021; Finance (Carl Lofton, Finance Analyst, 387-5404) on May 27, 2021; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-4342) on May 27, 2021.

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

APPROVED (CONSENT CALENDAR)

Moved: Janice Rutherford Seconded: Joe Baca, Jr.

Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: June 8, 2021



cc: ARC - Gaeta w/agrees
Contractor - C/O ARC w/agree
File - w/agree

CCM 06/14/2021