



San Bernardino County

Legislation Text

File #: 1269, Agenda Item #: 37

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

November 5, 2019

FROM

BOB PAGE, Registrar of Voters, Registrar of Voters

SUBJECT

Contract with Apple, Inc. for enrollment to purchase and manage content for electronic poll books and support services.

RECOMMENDATION(S)

1. Approve a non-financial Apple Business Manager Agreement with Apple, Inc., to automate enrollment of Apple-branded products for mobile device management, to purchase and manage content for such products, and to access facilitation tools for related services all related to electronic poll books for the period of one year, automatically renewing for successive one-year terms, subject to either party terminating the Agreement with 30 days notice.
2. Authorize the Deputy Executive Officer of the Community Services Group or the Registrar of Voters to electronically execute the Apple Business Manager Agreement with Apple Inc., and any subsequent non-substantive amendments or to terminate the agreement on behalf of the County, subject to review by County Counsel.
3. Direct the Deputy Executive Officer of the Community Services Group or the Registrar of Voters to transmit all documents and amendments in relation to this agreement to the Clerk of the Board of Supervisors within 30 days of execution.

(Presenter: Bob Page, Registrar of Voters, 387-2100)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Improve County Government Operations.

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

FINANCIAL IMPACT

Approval of the item will not result in the use of Discretionary General Funding (Net County Cost) as Apple Business Manager enrollment is available to users at no cost.

On June 11, 2019 (Item No. 106), the Board of Supervisors (Board) approved one-time funding in the amount of \$30 million for the purchase and implementation of a new, State-certified voting system. Of that amount, \$19.5 million is currently included in the Registrar of Voters' (ROV) 2019-20 budget. The remaining allocation of \$10.5 million is in General Fund Reserves (Reserves) for additional one-time costs of the voting system replacement project.

BACKGROUND INFORMATION

This recommended Agreement is required to implement the purchase of electronic poll books through the contract with KNOWiNK, LLC approved by the Board of Supervisors (Board) on October 22, 2019 (Item No. 39). The recommended Agreement will enable ROV to purchase Apple Inc. (Apple) products, manage content, and access facilitation tools for services related to electronic poll books, which will be used by ROV to more efficiently conduct elections and provide voters with modernized, easy-to-use, and accessible voting solutions, certified by the Secretary of State.

It is recommended that the Board authorize the Deputy Executive Officer of the Community Services Group or the Registrar of Voters to execute, non-substantively amend, or terminate this Agreement, because all Apple documents must be executed electronically. Any future amendments Apple makes to the Agreement will be reviewed by County Counsel before the Deputy Executive Office of the Community Services Group or the Registrar of Voters agrees to the new terms on behalf of the County.

Apple's Business Manager Agreement is its standard commercial license, which contains terms that differ from the standard County contract. The non-standard terms include the following:

1. County indemnifies Apple for claims arising from: (i) County's breach of the Agreement; (ii) County's use of the Service; (iii) any claims about County's use, deployment or management of Apple-branded products that are owned or controlled by the County, County's settings configuration and management; and/or (iv) any claims about the provision, management, and/or use of Authorized Devices, Administrator accounts, Content licensed or purchased through the Service, and/or any other use of the Service.
 - The County standard contract does not include the County's indemnity of the Contractor.
2. Disclaimer of any warranty of non-infringement and no indemnity for infringement claims.
 - 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.
3. Limitations of liability to the County for all damages (other than as may be required by applicable law in cases involving personal injury) not to exceed \$50.00.
 - The County standard contract does not include a limitation of liability.

Potential impacts of these non-standard provisions include:

1. By agreeing to indemnify Apple, the County could be contractually waiving the protection of sovereign immunity. Claims that would be barred against the County, time limited, or expense limited could be brought against Apple without such limitations and the County would be responsible to defend and reimburse Apple for costs, expenses, and damages, which could exceed the total contract amount.
2. 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 the Apple software or services, 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.
3. Apple limits its liability to a maximum of \$50 all claims arising under the contract. Claims could exceed the liability cap and the contract amount leaving the County financially liable for the excess.

PROCUREMENT

As the result of a competitive procurement process, the Board approved a contract with KNOWiNK on October 22, 2019 (Item No. 39) for the purchase of State-certified electronic poll books including software and hardware components, licensing, warranty, training, and election support services in an amount not to exceed \$7,140,534 for the five-year period of October 22, 2019 through October 21, 2024. This recommended Apple Business Manager Agreement with Apple is required to utilize the Apple products required under the KNOWiNK contract.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Deputy County Counsel, 387-5455) on October 25, 2019; Purchasing (Ricardo Salazar, Supervising Buyer, 386-8305) on October 25, 2019; Information Services (Larry Ainsworth, Interim Chief Information Officer, 388-0567) on October 28, 2019; Finance (Elias Duenas, Administrative Analyst, 387-4052) on October 28, 2019; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on October 28, 2019.