



# San Bernardino County

## Legislation Text

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**File #: 3185, Agenda Item #: 33**

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

**November 17, 2020**

#### **FROM**

**MARLENE HAGEN, Director, Children and Family Services**

#### **SUBJECT**

Order Form and Master Services Agreement with Social Solutions Global, Inc.

#### **RECOMMENDATION(S)**

Approve Order Form and Master Services Agreement with Social Solutions Global, Inc. in the amount of \$29,080 for license performance management software used to comply with State-mandated collection and reporting service outcomes, for the period of September 1, 2020 through August 31, 2021, automatically renewing annually.

(Presenter: Marlene Hagen, Director, 388-0242)

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

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

#### **FINANCIAL IMPACT**

This item does not require additional Discretionary General Funding (Net County Cost). The amount of \$29,080 for this software is funded with approximately 40% Federal and State sources (\$11,632), 50% Realignment (\$14,540), and 10% Discretionary General Funding (Net County Cost) (\$2,908). Adequate appropriation and revenue have been included in the Children and Family Services (CFS) Department's 2020-21 budget and will be included in the 2021-22 recommended budget.

#### **BACKGROUND INFORMATION**

CFS is mandated by the State to collect and report the outcomes of services provided to children and families. The System Improvement Plan (SIP), which identifies areas requiring improvement, e.g., recurrence of maltreatment, timeliness to adoptions, and children transitioning to self-sufficient adulthood, relies heavily on data collection.

Efforts-to-Outcomes Software (ETO) is web-based software developed by Social Solutions Global, Inc. (SSG) and used by numerous public and private organizations throughout the country. In 2007, the Family 2 Family Initiative was developed through a public private partnership between the State of California Department of Social Services (CDSS) and other National, and State social service agencies. The Family 2 Family Initiative recommended and selected ETO to qualify and quantify efforts made to achieve mission-critical outcomes. CFS uses ETO to track short-term, intermediate, and long-term child and family engagement outcomes.

Additionally, Child Abuse, Prevention, Intervention, and Treatment (CAPIT) and Promoting Safe and Stable

Families (PSSF) County Plan requirements mandate a program evaluation of service providers for continued funding. ETO assists CFS in gathering data from therapeutic providers via an automated process. CFS also utilizes ETO for post adoption case management services.

The Order and Master Service Agreement are SSG's standard commercial terms, 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. Governing law is the State of Texas.
  - The County standard contract requires California governing law.
  - Potential Impact: The contract will be interpreted under Texas law. Any questions, issues or claims arising under this contract will require the County to hire outside counsel competent to advise on Texas law, which may result in fees that exceed the total contract amount.
2. All disputes arising under contract, including the determination of the scope or applicability to arbitrate, shall be determined by arbitration.
  - The County standard contract does not require arbitration.
  - Potential Impact: The contract requires arbitration for all disputes between the parties. Disputes that might otherwise be settled in small claims court would incur arbitration costs that would exceed the costs of a small claims action. County Counsel cannot advise on, whether and to what extent, Texas law may affect whether an arbitration decision is appealable.
3. SSG may assign the Agreement in connection with the sale of all or substantially all of its assets without notice to the County and without the County's approval.
  - The County must approve any assignment of the contract.
  - Potential Impact: SSG could assign the contract to a third party or business with which the County may legally be prohibited from doing business due to issues of Federal debarment or suspension and conflict of interest, without the County's knowledge.
4. The contract does not address 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: There is no provision in the contract addressing each party's responsibility for paying attorneys' fees. County Counsel cannot advise on, whether and to what extent, Texas 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 contract.
5. The Order requires the County to defend, indemnify, and hold SSG harmless from claims and expenses arising from (i) breach of the contract, (ii) any allegation that the County did not have the right to obtain or transmit any data that the County included in any alert, (iii) County's use of the alert functionality or SSG's transmission of alerts, or (iv) violation of applicable law. In addition, the Master Services Agreement requires the County to defend, indemnify and hold SSG harmless from expenses arising out of: (a) County's Data or the combination of the County's Data with other applications, systems, content or processes, including any claim involving alleged infringement or misappropriation of third-party rights by County Data or by the use, development, design, production, advertising or marketing of County Data; (b) any and all losses, including without limitation, data loss or damage to hardware, software and other property arising from County's use of the services; (c) County's use of Services in violation of the terms of the contract or applicable law; or (d) a dispute between County and any of County user.
  - The County standard contract does not include any indemnification or defense by the County of a Contractor.

- Potential Impact: By agreeing to indemnify SSG, 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 SSG without such limitations and the County would be responsible to defend and reimburse SSG for costs, expenses, and damages, which could exceed the total contract amount. County Counsel cannot advise on, whether and to what extent, Texas law may limit or expand this contract term.
6. The contract does not require SSG to meet the County's insurance standards.
- 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 contract does not include County standard insurance requirements. This means that the County has no assurance that SSG will be financially responsible for claims that may arise from the County's use of the software, including loss, breach, or misuse of County data, which could result in expenses to the County that exceed the total contract amount.
7. SSG disclaims all liability for claims arising from the use of the alert functionality. In addition, SSG's limits its total liability to the County: (i) with respect to the SaaS Services, the fees (excluding implementation or other professional services fees) paid by County for the twelve (12) month period preceding the event giving rise to the liability or (ii) with respect to the professional services, the total fees received by SSG from County for the professional services under the SOW giving rise to the liability.
- 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. The limit does not exclude claims arising under SSG's indemnity obligations or from SSG's gross negligence, willful misconduct, or violation of law. In addition, the County's liability under the contract is not similarly limited. County Counsel cannot advise on, whether and to what extent, Texas law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
8. Payment terms are Net 30 date of invoice with 1.5% per month late payment interest.
- County standard payment terms are Net 60 days with no interest or late payment penalties.
  - Potential Impact: Failing to pay within 30 days from the date of invoice will result in a material breach of the contract, which allows SSG to terminate the contract and seek other legal remedies, including suspending any or all of the services, modify the payment terms, and request full payment before rendering any additional performance. The County agrees to reimburse SSG for expenses incurred, including 1.5% monthly interest and reasonable attorneys' fees in collecting amounts due], which would exceed the contract amount.
9. The contract automatically renews for the same length of time as the Initial Term.
- County Policy 11-06SP does not permit indefinite term or automatically renewing contracts unless approved by the Board.
  - Potential Impact: There is no end term to the contract and the County is indefinitely bound to the terms and conditions of the contract until it provides notice of non-renewal as set forth in the contract.
10. The County may not terminate the contract for convenience. In addition, the County agrees to a non-cancelable payment obligation.
- The County standard contract gives the County the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination without any obligation other than to pay amounts for services rendered and expenses reasonably incurred prior to the effective date of termination.

- Potential Impact: There is no termination for convenience without penalty. If SSG terminates for County's breach of contract, County is required to pay SSG for the remaining term as liquidated damages. County is not entitled to a refund of any fees paid regardless of the reason for termination.

11. Venue for arbitration is in Travis County, Texas

- 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 Travis County, Texas may result in additional expenses that exceed the amount of the contract.

This item is being presented at this time as this is the first date available for presentation following the required operational, fiscal, and legal reviews after lengthy negotiation of numerous non-standard provisions within the SSG ETO Order Form and Master Services Agreement. Approval by the Board of Supervisors (Board) at this time will have no impact on utilization of this software as SSG has continued to make this available throughout the period of negotiation, pending execution of the Order Form.

### **PROCUREMENT**

Purchasing supports the non-competitive justification for utilization of the SSG ETO Software based on the CDSS Family 2 Family initiative designation of this software for continued successful data collection.

Since 2007, CFS has been utilizing SSG's ETO Software under Purchase Orders within Purchasing authority. SSG provides an Order Form annually for continued use of the ETO Software. The Order Form is subject to and governed by the terms and conditions of SSG's Master Services Agreement. This item is being presented to the Board for approval due to these non-standard provisions. Approval at this time will not impact CFS' services or activities.

CFS is currently working with Human Services' Information, Technology and Support Division to move the database to an in house solution on or before August 31, 2021. SSG requires automatic annual renewal as standard contract language and would not agree to revision of this provision. However, the County has the ability to terminate the agreement by providing written notice 45 days prior to the end of the term.

### **REVIEW BY OTHERS**

This item has been reviewed by Human Services Contracts (Jennifer Mulhall-Daudel, Contracts Manager, 388-0241) on October 9, 2020; County Counsel (Bonnie Uphold, Deputy County Counsel, 387-5455) on October 13, 2020; Purchasing (Michelle Churchill, Buyer III, 387-2070; Stacey Chou, Buyer II, 387-3377) on November 2, 2020; Finance (John Hallen, Administrative Analyst, 388-0280) on November 2, 2020; and County Finance and Administration (Tanya Bratton, Deputy Executive Officer, 388-0332) on November 2, 2020.