



# San Bernardino County

## Legislation Text

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**File #: 3664, Agenda Item #: 32**

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

**February 9, 2021**

#### **FROM**

**CASONYA THOMAS, Assistant Executive Officer, Human Services**

#### **SUBJECT**

Software License and Service Agreements with Biometrics4ALL, Inc. for Live Scan Fingerprinting

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

1. Approve Live Scan Fingerprinting and Related Services Agreement with Biometrics4ALL, Inc., for Live Scan Fingerprinting, in the annual not to exceed amount of \$27,600 for a total amount not to exceed \$138,000 for the period of February 9, 2021 through February 8, 2026.
2. Approve Software License Agreement and Warranty and Maintenance Agreement with Biometrics4ALL, Inc. for license of the Biometrics4ALL software with warranty and maintenance, updates and enhancements in the annual amount of \$1,518, for the period of February 9, 2021 through February 8, 2022, automatically renewing annually.
3. Approve Biometrics4ALL California Department of Justice Services Agreement with Biometrics4ALL for services to electronically transmit records received from the County fingerprinting system to Cal-DOJ in the amount not to exceed of \$64 per transaction with an estimated 12,000 transactions, for an estimated amount of \$768,000 for the period of February 9, 2021 through February 8, 2026.

(Presenter: Tanya Bratton, Deputy Executive Officer, 388-0332)

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

**Create, Maintain and Grow Jobs and Economic Value in the County.**

**Improve County Government Operations.**

#### **FINANCIAL IMPACT**

This item does not require additional Discretionary General Funding (Net County Cost). The total estimated annual amount for the software license and services agreements with Biometrics4ALL, Inc. of \$182,718 will be funded with the Human Services (HS) Administration Claim allocations that are 75% (\$137,038) federal/state, 20% (\$36,544) Realignment and 5% (\$9,136) Net County Cost. Adequate appropriation and revenue have been included in the HS Administration Claim's 2020-21 budget and will be included in future recommended budgets.

#### **BACKGROUND INFORMATION**

The recommended software license and services agreements with Biometrics4ALL, Inc. will allow for continued use and upgrade of the existing Live Scan Fingerprinting software for completion of HS employee and In Home Supportive Services Public Authority (IHSS PA) care provider background clearance. HS Personnel currently uses the Live Scan Fingerprinting system for Department of Justice (DOJ) background

checks of newly hired staff for HS departments. Additionally, the system is used to support the Live Scan requirements for caregivers hired through IHSS PA.

HS Personnel has been using the Live Scan system for the last two years. Upgrade of the software provides a Live Scan process solution that takes into consideration recommended safeguards in response to the current COVID-19 pandemic. The software upgrade will provide the ability to complete Live Scan fingerprints using a full social distancing process. This process will provide a needed safety measure for HS Personnel staff and newly hired employees, in addition to any in the public the department may service with minimal close or physical contact. Currently HS Personnel staff stand next to the person being Live Scanned for an extended period with direct contact guiding their hands on the fingerprint roll. The upgraded system will allow the individual place their hands flat on the fingerprint pad while maintaining social distancing.

The Biometrics4ALL Live Scan Fingerprinting and Related Services Agreement is its 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. Biometrics4ALL shall invoice the County by the 5<sup>th</sup> of each month for services rendered by either Party in the prior month, and the County shall remit payments to Biometrics4ALL Net 30 days from receipt of invoice.
  - County standard payment terms are Net 60 days with no interest or late payment penalties.
  - Potential Impact: County standard processing time is 60 days or more. Failing to pay within 30 days from receipt of invoice will result in a material breach of the contract, which would allow Biometrics4ALL to terminate the contract and seek other legal remedies, which could exceed the contract amount.
2. Venue is in the United States District Court, Central District of California, Santa Ana Division and the California State Courts with jurisdiction of Orange County.
  - 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 Orange County may result in additional expenses that exceed the amount of the contract.

The Biometrics4ALL Software License Agreement and Warranty and Maintenance Agreement is its 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. Biometrics4ALL's total liability to County for damages, costs and expenses is limited to the compensation received by Biometrics4ALL under the software license. Biometrics4ALL has no liability for any loss or dissemination of County's data or materials unless it results from Biometrics4ALL willful misconduct or gross negligence. These limitations do not limit, reduce or restrict either party's indemnity obligations.
  - The County standard contract does not include a limitation of liability.
  - Potential Impact: Claims related to the software could exceed the liability cap and the contract amount leaving the County financially liable for the excess. Because this amount is limited to "this Agreement", it is severable from claims arising under the other agreements associated with this procurement.
2. The term of the agreement automatically renews for the period specified on a paid invoice.
  - 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.

3. Venue is in the state or federal courts of Orange 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 Orange County may result in additional expenses that exceed the amount of the contract.

The Biometrics4ALL California Department of Justice Services Agreement is its standard contract including terms required by the California Department of Justice, 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:

3. Biometrics4ALL shall invoice the County by the 5<sup>th</sup> of each month for services rendered by either Party in the prior month, and the County shall remit payments to Biometrics4ALL Net 30 days from receipt of invoice.
  - County standard payment terms are Net 60 days with no interest or late payment penalties.
  - Potential Impact: County standard processing time is 60 days or more. Failing to pay within 30 days from receipt of invoice will result in a material breach of the contract, which would allow Biometrics4ALL to terminate the contract and seek other legal remedies, which could exceed the contract amount.
4. Biometrics4ALL's total liability to Client for damages, costs, and expenses is limited to the compensation received by Biometrics4ALL under this Agreement. Biometrics4ALL shall not be responsible for any loss or dissemination of the County's data or materials unless it results from Biometrics4ALL willful misconduct or gross negligence. These limitations do not limit, reduce or restrict either party's indemnity obligations.
  - The County standard contract does not include a limitation of liability.
  - Potential Impact: Claims related to the software could exceed the liability cap and the contract amount leaving the County financially liable for the excess. Because this amount is limited to "this Agreement", it is severable from claims arising under the other agreements associated with this procurement.
5. Venue is in the state or federal courts of Orange 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 Orange County may result in additional expenses that exceed the amount of the contract.

## **PROCUREMENT**

Purchasing supports the non-competitive justification of the Biometrics4ALL, Inc. software update as it is the current background software HS is utilizing. Live Scan background clearance is required for HS departments, and the upgrade of this software provides a needed safety measure in response to the COVID-19 pandemic.

## **REVIEW BY OTHERS**

This item has been reviewed by Human Services Contracts (Jennifer Mulhall-Daudel, Contracts Manager, 388-0241) on December 29, 2020; County Counsel (Bonnie Uphold, Deputy County Counsel, 387-5455) on January 20, 2021; Human Services Personnel (David Quiroz, Administrative Manager, 386-3713) on January 20, 2021; Human Services Information, Technology and Support Division (Danny Tillman, Departmental Information Services Administrator 386-3765) on January 26, 2021; Purchasing (Michelle Churchill, Buyer III, 387-2070) on January 25, 2021; Finance (John Hallen, Administrative Analyst, 388-0280) on January 26,

2021; and County Finance and Administration (Tanya Bratton, Deputy Executive Officer, 388-0332) on January 26, 2021.