



San Bernardino County

Legislation Text

File #: 4232, Agenda Item #: 50

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

June 8, 2021

FROM

PHALOS HAIRE, Director, Preschool Services Department

SUBJECT

Software License Agreement with Hatch Early Learning for Purchase of Ignite All-in-One Computers for Head Start Classrooms

RECOMMENDATION(S)

Approve software license agreement with Hatch Early Learning in an amount not to exceed \$347,374, to purchase Ignite All-in-One computers, proprietary software, professional development training services, and subscription services for the three-year period of June 8, 2021 through June 7, 2024, for Preschool Services Department's Head Start classrooms.

(Presenter: Phalos Haire, Director, 383-2005)

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 impact Discretionary General Funding (Net County Cost). The amount not to exceed \$347,374 for a one-payment to purchase Hatch Early Learning's Ignite All-in-One computers, proprietary software, subscription services and professional development training services is funded by Head Start grant funds from the United States Department of Health and Human Services, Administration for Children and Families. Adequate appropriation and revenue have been included in Preschool Services Department's (PSD) 2020-21 budget.

BACKGROUND INFORMATION

PSD has utilized the Hatch Early Learning educational computer solutions for over 20 years in the Head Start classrooms. PSD utilizes interactive Smart Boards for teachers and children as well as All-in-One computers. The All-in-One computers and interactive displays in the classrooms enhance the classroom learning for children 28 months through age 5. The computer tools aid the Head Start teachers with reports and data collection, and provides a learning assessment and propels kindergarten readiness. Additionally, Hatch provides professional development training to PSD teaching staff on all computer equipment.

The recommended agreement with Hatch Early Learning will allow PSD to purchase 90 Ignite All-in-One computers that will include Ignite proprietary software and subscription services, to replace 83 computers in classrooms throughout the Head Start sites and an additional seven computers to be installed in new classrooms due to site expansions. The upgrade of Head Start classroom computers is necessary due to the age of the hardware and software of the current computer equipment in the classrooms. PSD will also

purchase professional development training to support the teachers and teacher aides in the classroom.

PSD provides Head Start, Early Head Start, and State Preschool programs that include comprehensive child development and family services comprised of education, health, nutrition, parent involvement, and psychological services for children ages 0 to 5 and their families. The overall goal of these programs is to increase the health and school readiness of disadvantaged children and increase the self-sufficiency of low-income families. Head Start and State Preschool programs have been operating in San Bernardino County since 1965. Since 1999, PSD has provided these programs through a combination of direct and contracted services.

The Hatch software license agreement (Agreement) includes terms that differ from the standard County contract terms. The non-standard terms include the following:

1. The Governing law is North Carolina.
 - The County standard contract requires California governing law.
 - Potential Impact: The Agreement will be interpreted under North Carolina law. Any questions, issues or claims arising under this agreement will require the County to hire outside counsel competent to advise on North Carolina law, which may result in fees that exceed the total agreement amount.
2. Hatch may assign the contract without notice to the County and without the County's approval.
 - The County must approve any assignment of the contract.
 - Potential Impact: Hatch 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.
3. Payment is due within 30 days of notification, unless otherwise stated in the order form. Failing to make timely payments will incur 1.5% late payment interest and Hatch may recover attorneys' fee in any collection action.
 - 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 timely pay Hatch will result in a material breach of the contract, which would allow Hatch to terminate the contract and seek other legal remedies, including charging the County interest at a rate of 1.5%, which would exceed the contract amount.
4. The County is required to indemnify Hatch for County's violation of privacy laws, breach of the Agreement and misuse or unauthorized use of the products.
 - The County standard contract does not include any indemnification by the County of a Contractor.
 - Potential Impact: By agreeing to indemnify Hatch, 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 Hatch without such limitations and the County would be responsible to reimburse Hatch for costs, expenses, and damages, which could exceed the total contract amount. County Counsel cannot advise on, whether and to what extent, North Carolina law may limit or expand this Agreement term.
5. The contract does not require Hatch to meet the County's insurance standards as required pursuant to County Policy 11-07.
 - 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 Agreement does not include County standard insurance requirements. This means that the County has no assurance that Hatch 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. Hatch's liability is limited to fees paid in the 12 months prior to 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 Agreement amount leaving the County financially liable for the excess. In addition, the County's liability under the Agreement is not similarly limited. County Counsel cannot advise on, whether and to what extent, North Carolina law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
7. There is no termination for convenience and orders are non-cancelable.
 - The County standard contract gives the County the right to terminate the contract, for any reason, with a 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:** Upon any termination by either party regardless of cause, the County is required to pay the full order amount, plus additional expenses, if any, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.
8. Venue is in Forsyth County, North Carolina
 - 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 Forsyth County, North Carolina may result in additional expenses that exceed the amount of the contract.

PROCUREMENT

PSD explored several options for the necessary upgrade to the Head Start classroom computers. It was determined that the most cost efficient option was to purchase the new computers and associated software and services from PSD's current vendor, Hatch Early Learning, due to the compatibility with PSD's existing Hatch Early Learning system and equipment. The Purchasing Department concurs with the non-competitive procurement of Hatch Early Learning Ignite All-in-One computers, proprietary software and services based on the justification of continuity of services.

REVIEW BY OTHERS

This item has been reviewed by Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on May 19, 2021; County Counsel (Adam Ebright, Deputy County Counsel, 387-5455) on May 19, 2021; Finance (Paul Garcia, Administrative Analyst, 386-8392) on May 14, 2021; and County Finance and Administration (Tanya Bratton, Deputy Executive Officer, 388-0332) on May 18, 2021.