



San Bernardino County

Legislation Text

File #: 4994, Agenda Item #: 51

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

October 26, 2021

FROM

PATRICK SCALZITTI, Interim Director, Purchasing Department

SUBJECT

Agreement with Carahsoft Technology Corporation for DocuSign Digital and Electronic Signatures

RECOMMENDATION(S)

1. Approve participation in the National Association of State Procurement Officers Cloud Solutions Master Agreement AR2472 with Carahsoft Technology Corporation to procure subscriptions to the DocuSign digital signature platform for the period of October 27, 2021 through September 15, 2026.
2. Authorize the Purchasing Agent to execute any documents related to the Agreement issued by the National Association of State of Procurement Officers with Carahsoft Technology Corporation, or to terminate participation in accordance with contractual terms and conditions, subject to County Counsel review.

(Presenter: Patrick Scalzitti, Interim Director, Purchasing Department, 387-2074)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Promote the Countywide Vision.

Improve County Government Operations.

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

FINANCIAL IMPACT

Approval of the recommended agreement will not result in the use of Discretionary General Funding (Net County Cost). Departments that require digital signature solutions are responsible for ensuring adequate funding for these services is included in their respective budgets.

BACKGROUND INFORMATION

Approval of this item will enable County departments to use DocuSign digital and electronic signature technology utilizing its Software-as-a-Service (SaaS) secure platform. Due to the pandemic, many vendors experienced temporary office closures and allowed for telecommuting work arrangements. Also, the California Department of Public Health had issued directives for local agencies to promote social distancing. These restrictions made it difficult for departments to obtain original or wet signatures in a timely manner. After approval of this item, departments will issue individual purchase orders to Carahsoft Technology Corporation (Carahsoft) based on their annual usage, adhering to County purchasing policies.

To avoid business delays, County departments began to utilize DocuSign as an alternative approach to collecting original or wet signatures on agreements and other critical documents. DocuSign SaaS platform is

operated within a secure environment. It provides seamless document transmission and reduces risk of mail loss or misplacement. This platform also supports the County's sustainability efforts by eliminating printing needs.

The National Association of State of Procurement Officers (NASPO) contract with Carahsoft 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. The County is required to indemnify DocuSign against third party (3P) claims arising from County's breach of its confidentiality obligations, alleged infringement by County of any 3P intellectual property rights, and County content.
 - The County standard contract does not include any indemnification or defense by the County of a Contractor.
 - Potential Impact: By agreeing to indemnify DocuSign, 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 DocuSign without such limitations and the County would be responsible to defend and reimburse DocuSign for costs, expenses, and damages, which could exceed the total contract amount.
2. The County is barred from hiring or soliciting for hire, any DocuSign employee for one year after expiration of contract term without the prior written consent of DocuSign.
 - The County standard contract does not include a non-solicitation/non-compete provision.
 - Potential Impact: Hiring or soliciting for hire a DocuSign employee will result in breach of the contract and DocuSign may terminate the contract and seek any available legal remedies.

The pandemic has continued to impact the way County conducts business and delivers services, where departments are adopting new processes including the use of digital and electronic signatures that are efficient and improves effectiveness. As a result, Purchasing recommends a countywide agreement enabling any County department to implement DocuSign for the purpose of obtaining digital and electronic signature technology.

California law specifies that the digital signature platform must conform to regulations adopted by the Secretary of State (SOS). The County Innovation and Technology Department has confirmed that DocuSign technology satisfies SOS regulations. These regulations incorporate information security, information privacy, and audit measures and controls to mitigate risks while using their technology.

Although DocuSign conforms to the regulations of the SOS, the regulations proscribe certain types of documents. The list of excluded documents is attached to this BAI.

PROCUREMENT

NASPO Valuepoint is a cooperative purchasing program that helps facilitate public procurement and is able to provide competitive pricing options due to its collective purchasing power. The procurement under NASPO consists of a competitive process conducted by a lead agency. Utah is assigned as the lead agency for NASPO's Cloud Solutions Master Agreement AR2472. Under this agreement, the State of California signed Participating Addendum No. 7-17-40-05 approving participation for the State, political subdivisions, and other eligible entities for the term of September 15, 2017, through September 15, 2026. As a political subdivision, the County is allowed to participate in this cooperative agreement.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Deputy County Counsel and John Tubbs II, Deputy County Counsel, 387-5455) on September 17, 2021; Innovation and Technology Department (Robert

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Pittman, Chief Information Security Officer, 388-5510) on October 8, 2021; Finance (Sofia Almeida, Administrative Analyst, 387-4378) on October 8, 2021; County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on October 8, 2021.