



# San Bernardino County

## Legislation Text

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**File #: 6182, Agenda Item #: 33**

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

**June 14, 2022**

#### **FROM**

**LARRY AINSWORTH, Chief Information Officer, Innovation and Technology Department**

#### **SUBJECT**

Agreement with 1323826 Ontario Inc. O/A NetCentric Technologies for Software Licensing

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

Approve NetCentric Technologies Software License Agreement with 1323826 Ontario Inc. O/A NetCentric Technologies, including non-standard terms, for electronic document accessibility software for compliance accessibility standards to make future purchases in amounts as authorized by County Policy for a five-year period of June 14, 2022 through June 13, 2027.

(Presenter: Larry Ainsworth, Chief Information Officer, 388-5501)

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

**Improve County Government Operations.**

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

**Ensure Development of a Well-Planned, Balanced, and Sustainable County.**

#### **FINANCIAL IMPACT**

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The NetCentric Technologies Software License Agreement (Agreement) from 1323826 Ontario Inc. O/A NetCentric Technologies (NetCentric) is non-financial in nature and does not commit the County to make any purchases. If future purchases are made under this Agreement, the Innovation and Technology Department (ITD) will adhere to County purchasing policies and return to the Board of Supervisors (Board) for approval.

#### **BACKGROUND INFORMATION**

ITD's Business Solutions Development (BSD) division provides programming and consulting services to County departments for the development, enhancement, and maintenance of business solutions, which include adherence to accessibility compliance standards for electronic documents in accordance with the Americans with Disabilities Act (ADA) and Section 508 of the Environmental Protection Agency's (EPA) Rehabilitation Act. Portable Document Format (PDF) and other documents are ensured to adhere to accessibility standards identified by Web Content Accessibility Guidelines (WCAG) and the PDF Universal Accessibility organization. NetCentric's CommonLook software offers PDF remediation, a process of tagging digital elements of PDF documents so they can be read using assistive technology. CommonLook software remediated PDF documents have greater accessibility standards compared to other similar products and is also used for testing, creating, and validating PDF documents. In addition to remediation, CommonLook ensures that PDFs are accessible and in compliance with the latest ADA and EPA standards.

The Agreement is NetCentric's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. While the parties negotiated certain contract terms to County standards, NetCentric would not agree to all County standard terms. The non-standard and missing terms include the following:

1. NetCentric may assign the Agreement as part of a corporate reorganization, consolidation, merger, or sale of all or substantially all of its assets without notice and without the County's consent.
  - The County standard contract requires County approval of any assignment of the contract.
  - **Potential Impact:** NetCentric could assign the Agreement 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. Should this occur, the County would be out of compliance with the law until it becomes aware of the assignment and terminates the Agreement. Although interpretation of the Agreement and the settle of disputes thereunder will be decided under California law, NetCentric is a Canadian corporation, and County Counsel cannot advise on the effect of Canadian corporations' law with respect to corporate transactions and assignment.
2. NetCentric's maximum liability to the County is limited to the amount paid for the software, excluding claims arising from NetCentric's gross negligence, willful misconduct, violation of law, and indemnification obligations. NetCentric's maximum liability for claims arising from NetCentric's violation of law and indemnification obligations are limited to \$1 million.
  - 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.

ITD recommends approval of the Agreement, including non-standard terms, to allow ITD to utilize NetCentric's CommonLook software for better PDF accessibility, for faster, more cost-efficient, and more reliable means to achieve accessibility standards and guidelines with PDF and other documents.

### **PROCUREMENT**

On March 25, 2022, ITD solicited informal bids from vendors for three similar software products. NetCentric's CommonLook software offered the best comprehensive and documented compliance to ADA standards, at the lowest price, for ITD's needs.

<b>Vendor</b>	<b>Location</b>	<b>Cost</b>
1323826 Ontario Inc. O/A NetCentric Technologies	Arlington, VA	\$2,628
Onix Networking	Lakewood, OH	\$6,800
Crawford Technologies	Ontario, Canada	No bid

The Agreement, including non-standard terms, will be used to accompany future purchase orders to be approved, as necessary, per County Policy 11-04 Procurement of Goods, Supplies, Equipment and Services.

### **REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Bonnie Uphold, Deputy County Counsel, 387-5455) on May 13, 2022; Purchasing (Tevan Stremel, Buyer III, 387-2098) on May 16, 2022; Risk Management (Victor Tordesillas, Director, 386-8623) on May 31, 2022; Finance (Sofia Almeida, Administrative Analyst, 387-4378) on May 30, 2022; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on May 30, 2022.