



# Board Agenda Item 27

DATE: June 18, 2019

TO: Board of Supervisors

SUBMITTED BY: Brandi L. Orth, County Clerk/Registrar of Voters

SUBJECT: Inclusion in Five-County Consortium and Agreement with Democracy Live; and, Memorandum of Understanding for Election Services from DRAM Settlement Grant Funds

## RECOMMENDED ACTION(S):

1. **Authorize participation in the Dynamic Random Access Memory (DRAM) Settlement Fund Consortium (Consortium) to fulfill State-mandated remote voter access requirements via the implementation of the Secure Select ADA-compliant Remote Accessible Vote by Mail system; and**
2. **Authorize and Approve the County of Fresno's inclusion, as part of the Consortium, in the Agreement between Democracy Live and El Dorado County; and**
3. **Approve and authorize the Chairman to execute the Memorandum of Understanding with El Dorado County for election services from DRAM Settlement Funds effective upon execution by both parties through April 22, 2021; and**
4. **Make a finding that is in the best interest of the County to waive the competitive bidding process consistent with Administrative Policy No. 34 for unusual or extraordinary circumstances for a Remote Accessible Vote by Mail System (RA-VBM).**

Approval of the recommended actions allows the County to meet new State-law requirements by joining with four (4) other Counties (El Dorado, Placer, Inyo, and Marin Counties; the "Consortium") to improve access to voting materials for Fresno County Voters who need accessibility assistance completing a ballot and providing these voters with a fully accessible downloadable ballot that can be independently completed at the voter's convenience. This capability has been mandated by Assembly Bill 1013 (2018) for all counties, effective January 1, 2020. This item is countywide.

## ALTERNATIVE ACTION(S):

The Board may elect to not approve the recommended Memorandum of Understanding, which will result in the County Clerk - Elections needing to enter into a new agreement with a vendor separate from the Consortium at an added Net County Cost of approximately \$40,000 over the next twenty four months.

## SUSPENSION OF COMPETITION/SOLE SOURCE CONTRACT:

The request to waive the competitive bidding process consistent with Administrative Policy No. 34, results from the fact that Democracy Live, has been selected by El Dorado as Lead County to provide RA-VBM Services. Since the Consortium, of which Fresno County is a member, has completed an Agreement with Democracy Live to provide these services, and no other vendor can meet the terms of the master Agreement between Democracy Live and the Consortium, it is recommended the competitive bidding process be waived. If a different vendor of an RA-VBM system is chosen by the County, per the DRAM

Settlement Consortium MOU, the County will be responsible for all fees associated with acquiring the alternate RA-VBM system. The Internal Services Department - Purchasing concurs with the Department's request to suspend the competitive bidding process.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended actions. DRAM Settlement Grant Funds, in the amount of \$198,000, have been accepted by El Dorado County on behalf of the five county Consortium. El Dorado County has entered into an Agreement with Democracy Live, effective April 23, 2019 to April 22, 2021, for Democracy Live to provide the Secure Select Remote Accessible Vote by Mail system to the five Consortium member counties. All invoices under this agreement will be directed to El Dorado County. Staff time spent to administer this program is expected to be minimal and will be absorbed by the Department.

DISCUSSION:

On September 29, 2018, Assembly Bill 1013 (Low) was signed into law by then-Governor Brown. This bill created Elections Code sections 3016.5 and 3116.5, which require all counties to implement a RA-VBM system by January 1, 2020 and allow members of the military and overseas voters to use that system, as well. The new law did allow for a delay in implementation if no RA-VBM system has been certified for use in California by the California Secretary of State. As of May 8, 2018, the California Secretary of State has certified three unique RA-VBM systems, activating the January 1, 2020 implementation requirement.

In 2018, El Dorado County applied for funding from the DRAM Settlement Fund for the purposes of implementing the required RA-VBM system. The DRAM Settlement Grant was specifically designated for projects that use innovative technology or software. El Dorado County applied for these funds as the lead county in a proposed newly formed consortium of counties, to be called the DRAM Settlement Grant Consortium. The five members of the Consortium are, pending approval by the respective Counties' Boards of Supervisors, El Dorado, Fresno, Placer, Inyo, and Marin Counties. Grant funding of \$198,000 was awarded on October 30, 2018.

Following a review of certified RA-VBM products, El Dorado entered into a Master Agreement with Democracy Live to provide RA-VBM services to all of the Consortium member counties for the twenty-four month period, April 23, 2019 to April 22, 2021. These services will include the Secure Select RA-VBM system, Secure Select UOCAVA system (whereby military and overseas voters may access the RA-VBM system), and accessible voter guide. These services satisfy the requirements of Election Code sections 3016.5 and 3116.5. These services will be paid for via a Subscription Fee for the Customer (the DRAM Settlement Grant Consortium), to be paid in two installments of \$99,000. Invoices for these installments will be made to El Dorado County, as the lead County on behalf of the Consortium, and paid using the \$198,000 awarded from the DRAM Settlement Grant.

Approval of the first recommended action will formalize Fresno County's inclusion in the DRAM Settlement Grant Consortium to be eligible to participate and share in the grant's contracted services and the payment for those services.

Approval of the second recommended action authorizes the County of Fresno's inclusion in the Master Consortium Agreement (Master Agreement) between Democracy Live and El Dorado County. This Master Agreement enables Democracy Live to provide to Fresno County the set-up and maintenance of the Secure Select Remote Accessible Vote by Mail services for which the grant funding is paying.

The Master Agreement contains terms allowing Fresno County to terminate, without good cause, its inclusion in the agreement upon providing 30-days written notice. The Master Agreement also contains a limitation of liability provision with the following terms: (1) excludes each parties' liability for indirect or incidental damages arising from Democracy Live's products/services and (2) limits each parties' total

liability for direct damages to the maximum compensation payable under the Agreement. Additionally, the Master Agreement includes a provision requiring Democracy Live to indemnify, defend and hold harmless the County against third-party intellectual property infringement claims. Risk Management has reviewed this Master Agreement and has concerns over the limitation of liability provision and the risks the County will incur with this provision. The Department (County Clerk/ROV) recommends the Board consider the necessity and fiscal advantages of Fresno County entering in the Consortium's Master Agreement with Democracy Live.

Approval of the third and fourth recommended actions will enable El Dorado County, as lead County for the Consortium, to move forward with implementation of the grant to each Consortium-member County by initiating Secure Select Remote Accessible Vote by Mail services through Democracy Live. Under the Consortium's Master Agreement with Democracy Live, the five member Counties will receive full Secure Select Remote Accessible Vote by Mail services, accessible County Voter Information Guides, and the Secure Select UOCAVA system for twenty four months beginning on the date the Master Agreement between the Consortium and Democracy Live is signed by El Dorado County, via two payments of \$99,000 paid by the lead County (total fees of \$198,000). No costs will be incurred by Fresno County for the use of these services. The term of this agreement will cover all elections during the twenty four month period of April 23, 2019 to April 22, 2021.

REFERENCE MATERIAL:

BAI #34, September 11, 2012

ATTACHMENTS INCLUDED AND/OR ON FILE:

Suspension of Competition

On file with Clerk - Memorandum of Understanding

On file with Clerk - Democracy Live Master Consortium Agreement with DRAM Settlement Grant Consortium

CAO ANALYST:

Yussel Zalapa