



Board Agenda Item 23

DATE: August 24, 2021

TO: Board of Supervisors

SUBMITTED BY: James A. Kus, County Clerk/Registrar of Voters

SUBJECT: Retroactive Suspension of Competition Agreement with Election Systems and Software, LLC

RECOMMENDED ACTION(S):

- 1. Make a finding that it is in the best interest of the County to suspend the competitive bidding process consistent with Administrative Policy No. 34 for unusual or extraordinary circumstances as Elections Systems and Software, LLC is the only vendor that provides ongoing license, support, and maintenance for their proprietary hardware and software; and**
- 2. Approve and authorize the Chairman to execute a retroactive Agreement with Election Systems and Software, LLC for signature capture and comparison equipment maintenance and support, effective July 1, 2021, not to exceed five consecutive years, which includes a three-year base contract and two optional one-year extensions, total not to exceed \$405,570.**

Approval of the recommended action will allow the County Clerk/Registrar of Voters' Department (Department) to contract with Election Systems and Software, LLC (ES&S) for maintenance and support of signature capture and comparison equipment. There is no increase in Net County Cost associated with the recommended action. This item is countywide.

ALTERNATIVE ACTION(S):

California Elections Code 3019 et seq. requires the Department to compare the signature on the vote-by-mail return envelope to the signature on the voter's registration record. Approximately 300,000 signatures per fiscal year on average are checked through an automated process with signature capture and comparison equipment. Should your Board not approve the recommended Agreement, the signature comparison function would revert to a manual process.

SUSPENSION OF COMPETITION/SOLE SOURCE CONTRACT:

The Department's request to suspend the competitive bidding process is consistent with Administrative Policy No. 34 for unusual or extraordinary circumstances as ES&S is the only vendor that provides ongoing license, support, and maintenance for their proprietary hardware and software. The Internal Services Department - Purchasing concurs with the Department's request to suspend the competitive bidding process and that this decision is in the best interests of the County.

RETROACTIVE AGREEMENT:

The proposed agreement is retroactive to July 1, 2021 due to a delay in obtaining a draft agreement from the

vendor.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended actions. The maximum cost of the proposed agreement with ES&S during the full term is \$405,570. A portion of these costs will be offset through State of California grant revenues and election revenues through the pro-rata election billing process to entities participating in elections. Sufficient appropriations and estimated revenues are included in the Department's Org 2850 FY 2021-22 Requested Budget and will be included in future budget requests.

DISCUSSION:

California Elections Code 3019 et seq. requires vote by mail signatures to be verified against the voter registration record. In 2016 the Department purchased two Mail Ballot Verifiers as a result of an RFP process and entered into a five-year agreement for ongoing license, support, and maintenance which expired June 30, 2021. In 2020 the Department purchased an additional Mail Ballot Verifier machine from ES&S in anticipation of an increased number of vote-by-mail ballots due to record turnout and changes in voter behavior precipitated by the COVID 19 Pandemic.

The proposed agreement provides support and maintenance of the Mail Ballot Verifier units currently owned by the Department. ES&S is the only vendor providing license, maintenance, and support for their proprietary equipment.

This Agreement includes the County's boilerplate indemnification language whereby ES&S agrees to indemnify the County arising out of ES&S' performance or failure to perform under the Agreement. However, the Agreement limits ES&S' duty to indemnify the County to no more than the aggregate amount to be paid by County to ES&S under the Agreement. Additionally, this Agreement limits the time period in which the County can initiate legal action against ES&S to one year after the cause of action has accrued.

Additionally, the Agreement provides that the County will indemnify ES&S for third party infringement claims resulting from County's failure to install updates provided by ES&S, County's use of ES&S equipment and/or software in combination with other equipment, hardware or software not meeting ES&S' specifications, or County's modification or alteration of any ES&S equipment or software without prior written consent of ES&S, as well as for third party claims arising out of or relating to County's use or misuse of any third party items and for personal injury or property damage caused by any negligent or willful act of County. While Risk Management does not recommend the County indemnify ES&S, we believe that the County's indemnification of ES&S for County's actions is appropriate.

ATTACHMENTS INCLUDED AND/OR ON FILE:

Suspension of Competition
On file with Clerk - Agreement with Election Systems and Software LLC

CAO ANALYST:

Raul Guerra