



Board Agenda Item 11

DATE: October 24, 2023

TO: Board of Supervisors

SUBMITTED BY: Robert W. Bash, Director, Internal Services/Chief Information Officer

SUBJECT: Lease Agreement for Pitney Bowes Mailing Machines

RECOMMENDED ACTION(S):

Approve and authorize the Chairman to execute a Lease Agreement with Pitney Bowes, Inc., through a cooperative agreement with Sourcewell, for the lease of two mailing machines, effective November 11, 2023, for a five-year term, total not to exceed \$138,130.

There is no additional Net County Cost associated with the recommended action, which will allow for the Internal Services Department - Information Technology Division (ISD-IT), Graphic Communication Services (Graphics), to rent two new mailing machines and attendant software from Pitney Bowes, Inc. (Pitney Bowes), through a cooperative agreement with Sourcewell. Graphics processes the County's outgoing U.S. mail utilizing a centralized U.S. postage and mailing system. This item is countywide.

ALTERNATIVE ACTION(S):

Should your Board not approve the recommended action, the services would need to be bid by the County, or a new agreement enabling the County to "piggyback" by way of a purchasing cooperative would have to be identified, causing noticeable delays in mail processing times which may impact County department operations.

FISCAL IMPACT:

There is no increase in Net County Cost. The total compensation for the potential five-year term is \$138,130. Costs associated with this agreement are recovered through chargeback to user departments. Sufficient appropriations and estimated revenues are included in the ISD-IT Org 8905 FY 2023-24 Adopted Budget and will be included in future budget requests.

DISCUSSION:

Graphics provides a centralized U.S. postage and mailing service, processes all of the County's outgoing U.S. mail, and provides a benefit to all County departments. The leased machines allow Graphics to preload postage onto the County's account, and then apply postage to outgoing mail, usually at a reduced rate, before mail is delivered to the U. S. Post Office. By allowing Graphics to process all U.S. mail for the County, departments eliminate the need to have their own individual machines or deliver mail to the U.S. Post Office themselves, and receive the benefit of the lowest postage rates available to the County. Currently, the County leases two machines from Pitney Bowes, and under this recommended action, will receive updated equipment.

On March 3, 2022, Pitney Bowes entered into agreement #011322-PIT with Sourcewell for Mailing and Postage Equipment and Technology (Sourcewell agreement), to include mail machine rentals and related

software. Sourcewell is a State of Minnesota local government unit and service cooperative, that offers cooperative procurement solutions to government entities. The initial term for the Sourcewell agreement is March 3, 2022, through February 28, 2026, with an optional one-year extension upon written request by the parties of the contract.

The County's Purchasing Manual states that services competitively bid by another governmental agency may be procured via purchasing cooperative. Under this directive, the Internal Services Department - Purchasing Division (ISD-Purchasing) may use the California Cooperative Purchasing Contracts, if the items on the State contract meet the County's needs, and if it is unlikely that a separate County bid would result in a more favorable prices, terms, and/or conditions.

Consistent with the County's Purchasing Manual, ISD-Purchasing has decided to piggyback off the Sourcewell agreement, for its pricing terms, and to save staff time and resources, as ISD-IT has determined a separate bidding procedure would not result in more favorable pricing and terms. The recommended action will approve ISD-IT to utilize this piggyback, to continue renting two mailing machines from Pitney Bowes.

Because the recommended lease agreement is an existing government cooperative contract prepared by Sourcewell and negotiated by Sourcewell and Pitney Bowes (without the County's involvement), the format of the agreement, as well as certain language, is not County-standard.

Specifically, the recommended lease agreement includes the following non-standard language:

- (1) Limitation of Pitney Bowes' Liability: The recommended lease agreement limits Pitney Bowes' total liability to the amount paid by the County in the prior billing period, which is three (3) months, as well as limits any legal action filed against Pitney Bowes, by the County, to begin within one (1) year after the event that gives rise for the claim. Further, the recommended lease agreement also precludes damages paid to the County which were incurred by misuse or negligence, indirect or incidental damages, as well as loss of profits, data, or goodwill.
- (2) Indemnification: Under the recommended lease agreement, the County will be required to indemnify, defend, and hold harmless Pitney Bowes from all lawsuits and claims from using the equipment in a way that is not authorized.
- (3) Jurisdiction: The recommended lease agreement mandates arbitration for the settlement of disputes, which must be completed by the American Arbitration Association. The governing jurisdiction for the recommended lease agreement is the State of Delaware.
- (4) Termination: Under the recommended lease agreement, the County is not able to terminate without cause, without incurring a cancellation fee for early termination, which is equal to the net present value of the monthly payments remaining through the completion of the term, discounted to present value at a rate of six percent (6%) per year. However, the County still may terminate the recommended lease agreement for non-allocations of funds on the last day of the fiscal period for which funds were appropriated, suffering no penalty if there is satisfactory evidence of non-funding.

Although County Risk Management has advised against the use of the above non-standard language, ISD-IT believes the risks associated with the above non-standard language are an acceptable business risk for the following reasons:

- (1) As stated above, while the recommended lease agreement limits Pitney Bowes' total liability fees to the amount paid by the County in the prior billing period (i.e., three (3) months) and also limits the statute of limitations to one (1) year for any legal action filed by the County against Pitney Bowes, ISD-IT has determined that due to the nature of how the equipment is used (affixing postage to

processed mail), there is minimal risk to County for such limitations.

- (2) As stated above, while the recommended lease agreement also precludes damages paid to the County which were incurred by misuse or negligence, Graphics has utilized Pitney Bowes equipment for over a decade and has received adequate training on the machines. As such, ISD-IT has determined that the risk of misuse and negligence is minimal and that the likelihood of litigation arising is negligible.
- (3) As stated above, under the recommended lease agreement, the County is not able to terminate without cause without incurring a cancellation fee for early termination (i.e., the net present value of the monthly payments remaining through the completion of the term, discounted to present value at a rate of six percent (6%) per year). However, the County may still terminate the recommended lease agreement for non-allocation of funds on the last day of the fiscal period for which funds were appropriated, suffering no penalty if there is satisfactory evidence of non-funding. ISD-IT does not anticipate the need to cancel the recommended lease agreement.

Approval of the recommended action will authorize the lease with Pitney Bowes for Graphics to rent two-mailing machines and attendant software, effective November 11, 2023, for a five-year term, total not to exceed \$138,130.

REFERENCE MATERIAL:

BAI #39, September 11, 2018

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Lease Agreement with Pitney Bowes, Inc.

CAO ANALYST:

Ahla Yang