



Board Agenda Item 28

DATE: September 11, 2018

TO: Board of Supervisors

SUBMITTED BY: Margaret Mims, Sheriff-Coroner

SUBJECT: Retroactive Agreement with Gemalto Cogent for Maintenance and Support

RECOMMENDED ACTION(S):

1. **Make a finding that is in the best interest of the County to waive the competitive bidding process under Administrative Policy No. 34 due to unusual or extraordinary circumstances for continued maintenance and technical support for the Automated Fingerprint Identification System and integrated Mug Photo System; and**
2. **Approve and authorize the Chairman to execute a retroactive sole source agreement with Gemalto Cogent Inc. for the maintenance of and the purchase of additional products for the installed Automated Fingerprint Identification System (AFIS) and integrated Mug Photo System (that includes pre-paid annual maintenance payments) in Fresno County effective July 1, 2018, not to exceed five consecutive years, which includes a three-year base contract and two optional one-year extensions, total not to exceed \$3,750,000.**

There is no Net County Cost associated with the recommended actions. Approval of the recommended actions will allow Gemalto Cogent to continue providing maintenance and technical support and allow for the purchase of additional products and services to augment the performance and capabilities of the AFIS and mug photo system installed throughout Fresno County. This item is countywide.

ALTERNATIVE ACTION(S):

There is no viable alternative action. Should your Board not approve the recommended actions, Gemalto Cogent will terminate their maintenance and technical support. Without an operational fingerprint and mug photo system, Sheriff deputies and allied agencies' police officers will not be able to positively identify suspects.

SUSPENSION OF COMPETITION/SOLE SOURCE CONTRACT:

The Sheriff-Coroner's Office recommends that your Board waive the competitive bidding process consistent with Administrative Policy No. 34 due to unusual or extraordinary circumstances in order to have Gemalto Cogent continue providing maintenance and support for the AFIS system used by law enforcement agencies throughout the County. The system installed throughout Fresno County is provided only by Gemalto Cogent and no other vendor has the expertise to maintain the system. The Internal Services Department - Purchasing concurs with the Department's request to waive the competitive bidding process.

RETROACTIVE AGREEMENT:

The recommended agreement is retroactive to July 1, 2018 for continuity in maintenance and support of the installed system. Delays in negotiations prevented the recommended agreement from being presented to

your Board at an earlier date. The final agreement was executed by Gemalto Cogent on August 17, 2018.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended actions. All costs associated with purchases and maintenance under this agreement are fully offset with Cal-ID funding established by Vehicle Code Section 9250.19. As required by statute, these funds are not part of the County General Fund, instead they are kept in a separate fund and reflected in Org 9052. Sufficient appropriations and revenues for this agreement are included in this Org and will be included in future years.

DISCUSSION:

Pursuant to Vehicle Code Section 9250.19, the California Department of Motor Vehicles collects one additional dollar on private vehicles and two dollars on commercial vehicles registered within Fresno County. The funds collected are to be used exclusively to provide mobile and fixed location fingerprint identification of subjects for law enforcement. Equipment purchased with these funds must be approved by the Cal-ID Remote Access Network (RAN) Board comprised of a member of the Board of Supervisors, the Sheriff, the District Attorney, two police chiefs, a mayor of a city within the county, and a member at large. Subsequent to this approval, the RAN Board makes a recommendation to the Board of Supervisors on the purchase of equipment. As the Chairman of the RAN Board, the Sheriff is making this recommendation to the Board of Supervisors.

After a competitive bid process, on May 3, 2005, your Board approved a one year agreement with four additional automatic one year renewal periods with Cogent Systems to implement a countywide AFIS and integrated Mug Photo system with a contract maximum of \$2,300,912. Subsequent amendments approved by your Board on November 27, 2007 and October 20, 2009, increased the contract maximum to \$5,707,704. As part of the 2005 agreement (including amendments), implementation of the AFIS and integrated Mug Photo system (including the purchase of equipment) totaled \$4,118,397. In addition, annual maintenance for the system from fiscal years 2005-06 through 2011-12 totaled \$1,589,307. The contract with Cogent expired on May 2, 2010. Prior to expiration, the Department began the contract renewal process; only maintenance payments were made during this extended negotiation period.

On December 11, 2012, your Board approved a new agreement for three years with two additional automatic one-year periods with a contract maximum of \$3,000,000. LiveScan and Server refresh projects including software upgrade totaled \$1,368,875.59. In addition, annual maintenance for the system from fiscal years 2013-14 through 2017-18 totaled \$1,422,125.37. The contract expired December 10, 2017. No payments have been made since the expiration of the contract.

In June of 2017, Cogent Systems was acquired by Gemalto Inc. Under the recommended actions, Gemalto Cogent, Inc. will continue to maintain the regional AFIS and Mug Photo System and will provide computer servers, workstations, cameras, fingerprint scanners, and printers and cabinetry as necessary to augment the capabilities of local law enforcement to identify subjects they contact. The contract is for three years retroactive to July 1, 2018, with provision for up to two additional one-year renewal periods. The agreement requires advance payments for hardware and software maintenance on a year to year basis, but may be terminated for any reason by either party upon written notice given at least 30 days prior to the anniversary date. However, in such instance Gemalto Cogent will refund any unused or unearned portions of payments already made.

This agreement contains a warranty disclaimer and instead provides one-year warranties for the hardware and software the County purchases. After the warranties run out, the equipment and software will be maintained through the prepaid maintenance plan.

This agreement does not contain the County's standard contract language for indemnification and insurance. The County's indemnification language has been limited to bodily injury and tangible property

damage and does not cover other forms of injury, including injuries related to cyber risks. In addition, the County's standard language requiring notification to the County of any changes or cancelations in insurance is not in this agreement, which creates the risk that there could be a lapse in insurance coverage without the County being notified. However, the agreement does require the Contractor to maintain insurance policies in accordance with the County's current insurance limitation requirements and the Contractor will be providing the Sheriff with an insurance certificate once every month during the life of the agreement.

Risk Management has been apprised of the modifications to the insurance language and they do not support the removal of language requiring the Contractor to notify County of a change or cancellation of coverage, as this could allow for a lapse of coverage from month-to-month. However, Risk Management does agree with the language requiring the Contractor to provide certificates of insurance once per month if that is the most the Contractor is willing to provide. The Sheriff-Coroner recommends approval of the contract because with the requirement of monthly notification, the Department does not believe the foregoing variances present a serious risk to the County.

REFERENCE MATERIAL:

BAI #14, December 11, 2012
BAI #19, October 20, 2009
BAI #21, November 27, 2007
BAI #40, May 3, 2005
File #7372, May 12, 1987

ATTACHMENTS INCLUDED AND/OR ON FILE:

Sole Source Acquisition Request
On file with Clerk - Agreement with Gemalto Cogent, Inc.

CAO ANALYST:

Jeannie Z. Figueroa