



Board Agenda Item 20

DATE: November 6, 2018

TO: Board of Supervisors

SUBMITTED BY: Oscar J. Garcia, CPA
Auditor-Controller/Treasurer-Tax Collector

SUBJECT: Agreement with Heartland Payment Systems to provide electronic payment processing

RECOMMENDED ACTION(S):

- 1. Make a finding that it 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 the solicitation of electronic payment processing services.**
- 2. Approve and authorize the Chairman to execute an agreement with Heartland Payment Systems to provide electronic payment and processing transaction services and credit/debit card payment transaction services effective December 1, 2018 through November 30, 2023 which includes a three-year base contract and two optional one-year extensions, with a total budgeted amount of \$550,000.**
- 3. Authorize the Auditor-Controller/Treasurer-Tax Collector to execute all documents necessary or convenient to use electronic payment processing transaction services and credit/debit card payment transaction services.**

Approval of the recommended actions would authorize Heartland Payment Systems to provide credit/debit card and electronic check processing via the County's website and at various County Locations for a three-year period and provide the option for two one-year extensions upon the written consent of both parties. The budgeted amount of the contract, including the two one-year extensions, is \$550,000, or \$110,000 per year, at no increase in Net County Cost. This item is countywide.

ALTERNATIVE ACTION(S):

There is no other viable option. Failure to approve the agreement would result in the County no longer being able to accept credit/debit card and electronic check payments via website or at various County locations.

SUSPENSION OF COMPETITION/SOLE SOURCE CONTRACT:

It is requested that the County waive the competitive bidding process consistent with Administrative Policy No. 34 under the "unusual or extraordinary circumstances" exception.

A Request for Proposal (RFP) was issued on August 28, 2012 for electronic payment processing services. The RFP closed on October 4, 2012. Out of the 17 respondents, Heartland was awarded the agreement and is the County's current vendor.

In 2019 the County will be converting its property tax system to MegaByte. Heartland is a preferred vendor of MegaByte and continuing the County's agreement with Heartland during the transition to MegaByte will save the County time and ensure continuity between the systems as Heartland has been used in all of the conversion testing. The property tax system conversion will be an enormous task and choosing Heartland will reduce potential conflicts that may occur between a new electronic payment processing provider and MegaByte. At the end of this agreement, it is the Auditor-Controller/Treasurer-Tax Collector's (ACTTC) intention to issue an RFP for vendors that are compatible with MegaByte. Purchasing supports this justification to waive the competitive bidding process.

FISCAL IMPACT:

Appropriations for this agreement are budgeted in the General Fund, Org 0410, Auditor-Controller/Treasurer-Tax Collector. The Auditor-Controller/Treasurer-Tax Collector's (ACTTC) Office pays the invoices for the merchant card services and receives reimbursement from various user departments. The appropriations are included in Account 7295 and the offsetting revenue is budgeted in Account 5990 in Org 0410. For FY 2018-19, \$110,000 is budgeted for merchant card services, which was based on prior FY's maximum vendor costs. If FY 2018-19 usage costs result in greater than budgeted amounts then ACTTC will return to the Board to increase appropriations and revenues. If actual costs exceed \$110,000 per year over the term of the contract, ACTTC will also return to the Board to increase appropriations and revenues.

There are no costs incurred by the County for electronic payment processing (credit card and e-check payments) for property tax payments. The convenience fees are paid by the individuals paying their property taxes. The following table details the rates applicable to taxpayers when paying their tax payments with this service:

- Those paid through Internet, IVR or In-Person by use of Credit Cards (Visa, MasterCard, Discover, American Express) will incur a 2.25% per transaction convenience fee.
- Those paid through Internet, IVR or In-Person by use of Debit Cards will incur a \$3.29 per transaction convenience fee.
- Those paid through Internet or IVR by use of electronic checks will incur a \$1.50 per transaction convenience fee.

Any other charges related to property tax payments are paid by the County's Tax Collector and recovered directly from taxpayers through fees established on the Master Schedule of Fees.

The following rates apply to payments other than taxes:

- Those paid through Internet, IVR or In-Person by use of Credit Cards (Visa, MasterCard, Discover, American Express) or Debit Cards will incur a 2.35% per transaction convenience fee.
- Those paid through Internet or IVR by use of electronic checks will incur a \$1.50 per transaction convenience fee.

These fees will be paid from the General Fund, Org 04101100, Account 7295 Professional & Specialized Services. The FY 2018-19 Budget has sufficient appropriations in Account 7295 to absorb these costs.

DISCUSSION:

The County collects payments of taxes, fines, fees and/or other types of monetary obligations. The County wishes to continue to permit payments by means of electronic transactions. The County currently is contracted with Heartland Payment Systems to provide electronic payment and processing transaction services and credit/debit card payment transaction services. The existing contract with Heartland will expire on November 30, 2018.

Notable limitations on the vendor's liability and deviations from our model contract that have been requested by Heartland have been added to the agreement, as follows:

- A requirement of 60 days' advance written notice of intent to terminate without cause, as opposed to the usual 30-day provision.
- Heartland is only liable to indemnify the County for negligence or misconduct that is directly related to its performance or failure to perform under the contract, which is a narrower indemnity than usually required in County contracts.
- Heartland has a limitation of liability for consequential or indirect damage to the County, which is a limitation that County contracts usually do not include.
- The County must give a written notice to Heartland at least five (5) days before an audit and inspection of Heartland's records and data with respect to the matters covered by the agreement.

Such limitations of liability and deviations do not usually appear in the County's contracts. In addition, Risk Management recommended this agreement should include a broader indemnity for data security issues than what Heartland is willing to provide. The deviation from the standards established by Risk Management have the potential to put the County at increased risk should issue arise. While this is not the standard and Risk Management has advised our department of the potential risk, due to the reasonableness of Heartland's requests, Heartland's regulatory obligations with respect to data security, the preference of Heartland by MegaByte, and having agreed to similar indemnity and limitation of liability language in the County's previous agreement with Heartland without issue, our department is recommending approval of this agreement so not to have a disruption in service.

The proposed agreement with Heartland Payment Systems will be effective December 1, 2018 through November 30, 2021, with an option to renew for two additional one-year periods with a budgeted cost of \$110,000 per year. From time to time during the term of the agreement a Government and Education Merchant Processing Agreement may be used to authorize each department that receives services from Heartland Payment Systems for electronic payments and debits to and from the County Designated Account. The Fresno County Auditor-Controller/Treasurer-Tax Collector will be authorized to sign an ACH authorization agreement on behalf of the County and designate authorized signers in that authorization agreement. The Tax Collector will monitor the performance of the vendor to ensure the vendor is performing satisfactory prior to implementing the renewal options.

REFERENCE MATERIAL:

BAI # 15, November 12, 2013

ATTACHMENTS INCLUDED AND/OR ON FILE:

Suspension of Competition Acquisition Request
On File with Clerk - Agreement with Heartland

CAO ANALYST:

Juan Lopez