



Board Agenda Item 5

DATE: May 14, 2019

TO: Board of Supervisors

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

SUBJECT: Agreement with Dominion Voting Systems, Inc. and Application/Agreement for Funding from California Voting Modernization Bond Act

RECOMMENDED ACTION:

1. **Approve and authorize the Chairman to execute an Agreement with Dominion Voting Systems, Inc., for the purchase of voting equipment, election services, maintenance and support, effective May 14, 2019 through May 13, 2024, which includes a three-year base contract and two optional one-year extensions, total not to exceed \$2,898,404; and**
2. **Adopt Budget Resolution increasing the FY 2018-19 appropriations and estimated revenues for the County Clerk-Elections Org 2850 in the amount of \$3,577,130.54 (4/5 vote); and**
3. **Adopt Resolution authorizing the County Clerk/Registrar of Voters to author and submit the Application to the State of California for funding Consideration, and accept the award upon the State's approval of application, under the Voting Modernization Bond Act of 2002; and**
4. **Approve the Agreement with the Voting Modernization Board for receipt of Voting Modernization Funds and authorize the County Clerk/Registrar of Voters to execute the Agreement upon funding award.**

There is no increase in Net County Cost associated with the recommended actions. Approval of the recommended actions will allow the County Clerk-Elections Department to contract with Dominion Voting Systems, Inc., (Dominion) for the purchase of voting equipment and election services, including maintenance and support, as a result of a competitive bid process. The purchase will be made with State Proposition 41 grant funding and Federal Help America Vote Act (HAVA) 301 grant funding. This item is countywide.

ALTERNATIVE ACTION:

There is no viable alternative action. If the recommended actions are not approved, the Department will be unable to conduct elections beyond February 2020. The current voting system was purchased in 1999 and will be de-certified for use by the California Secretary of State as of February 22, 2020. Should your Board not approve the recommended agreement, the department will not have the requisite equipment to conduct an election.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended actions. The purchase of this voting system will be fully offset with a combination of State Prop 41 grant funding and Federal HAVA funding. HAVA grant funds will be used for the County's required matching of State grant funds on a 3-to-1 ratio. The total contract maximum for the term of the proposed agreement (May 14, 2019 through May 13, 2024) shall not exceed \$2,898,404. The associated budget resolution will increase appropriations and

estimated revenues in the County Clerk-Elections FY 2018-19 Org 2850 in the amount of \$3,577,130.54 and includes sufficient appropriations for the fixed assets (Account/Program: 8300/91526). Appropriations for future year costs will be included in subsequent budget requests.

DISCUSSION:

On August 8, 2018, the County of Fresno on behalf of the County Clerk-Elections Department issued Request for Proposal (RFP) No. 19-006 for Fresno Voting System to all vendors certified by the California Secretary of State. The response period closed on September 19, 2018, and three vendors responded to the Voting Systems' specific sections: HART Inc., Election Systems & Software, and Dominion Voting Systems.

An evaluation panel composed of four representatives from the Fresno County Clerk-Elections Department and one representative from the Department of Internal Services - Information Technology Division evaluated each proposal solely based on the requirements of the RFP. Each evaluator individually reviewed each proposal on its own merit based on bidder-provided data, capability, and qualifications. The evaluation panel invited all three vendors to participate in product demonstrations.

Each vendor was evaluated based on the live demonstrations of their system and the evaluation panel recommended the proposal submitted by Dominion to provide the Fresno Voting System under the terms of the RFP. The recommendation for award is based on: Dominion demonstrated a thorough understanding of the importance of providing a user-friendly and contemporary system to assist staff in successfully carrying out their work and possessing the capability of effectively interfacing with other systems. Dominion's solution possesses powerful and intuitive features, such as the ImageCast Central Adjudication Application with full audit trail capture, the ADA compliant ImageCast X, and the use of off-the-shelf color printers. The straightforward nature of the ballot marking devices coupled with the easy to read, large touchscreens suggests increased application for voters, now and in the future. An award recommendation letter was issued by the Internal Services Department - Purchasing Division on February 27, 2019.

On March 12, 2019, your Board approved the Voter's Choice Act voting model for the March 2020 Presidential Primary Election. The recommended Dominion contract provides the voting system equipment necessary for successful implementation.

Upon approval of the first recommended action, the Agreement will allow the Department to purchase the Democracy Suite 5.2 Election Management system made up by: ImageCast Central, central count system including six (6) high speed document scanners for Vote by Mail tabulating; sixty (60) ImageCast Evolution in Vote Center tabulators; ImageCast Central Adjudication Application with full audit trail capture; two hundred and forty (240) ADA compliant ImageCast X ballot marking devices and one hundred (100) Mobile Ballot Printer kits required at all vote centers. Support and maintenance for the equipment will be included throughout the initial contract period and optional renewal periods. The implementation schedule allows for the new equipment to be used in a 2019 election.

The Agreement contains provisions that (1) excludes Contractor's liability for indirect or incidental damages arising from Contractor's products/services and (2) limits both parties' total liability for direct damages to the maximum compensation payable under the Agreement. The Agreement includes a mutual Hold Harmless provision. Risk Management has reviewed this Agreement and has concerns over the liability risks the County will incur with these provisions. The Department (County Clerk/ROV) recommends your Board consider the necessity of entering into this Agreement with the Contractor.

Approval of the second recommended action will allow the transfer of previously accepted funds from the Voting Modernization Bond Act of 2002 and HAVA Section 301 (c) Program into appropriations for the FY 2018-19 County Clerk-Elections Adopted Budget. A total of \$3,577,130.54 Federal and State dollars will be transferred to Accounts 7295 and 8300 with \$696,438.75 assigned to the Fixed Assets Program (8300/91526) Voting System. These funds will be used on a 3:1 State to Federal match basis to complete

the purchase associated in the first recommended action.

Approval of the third recommended action will authorize the County Clerk/Registrar of Voters, or her designee, to submit the application and spending plan with the State of California for funding available under the Voter Modernization Act of 2002 and to conduct all negotiations, execute and submit all documents including, but not limited to applications and payment requests, which may be necessary for the completion of the project. Fresno County is eligible for \$2,018,771.78, which would be utilized to complete the replacement of its voting system to be fully compliant with standards mandated by HAVA and the California Secretary of State. A signed agreement with the selected vendor (Dominion Voting Systems, Inc.) for the voting equipment must be in place before the application can be submitted. The Application contains the following certifications/assurances:

- (a) Any HAVA Section 102 money received by the County shall be expended no later than 30 (thirty) days after the receipt of the money toward the purchase of a voting system for which funds have been awarded from the Voting Modernization Fund by the Voting Modernization Board (State Board), to the extent necessary to comply with the match provided for by Elections Code 19234(c)(2);
- (b) The County shall provide to the State Board, no later than 30 (thirty) days after the expenditure of any HAVA Section 102 money expended as provided above, full documentation of the expenditure or expenditures, including invoices and other documentation, as specified by the State Board;
- (c) If the HAVA Section 102 money received by the County is not expended as provided for as specified above, the County hereby agrees that it shall, within 60 (sixty) days of receiving the HAVA Section 102 money, return to the State Board or not accept from the State Board, that portion of its award of money from the Voting Modernization Fund for which there has not been compliance with the match requirements of Elections Code subdivision 19234(c)(2), as set forth in this agreement;
- (d) Prior to the actual release to the County of money from the Voting Modernization Fund, the County shall submit to the State Board a duly adopted resolution of the County's Board of Supervisors certifying that the County will comply with the conditions set forth in paragraph (a) through (c), inclusive, of this agreement.

Approval of the fourth recommended action would approve the Agreement, including certifying that the County will comply with the conditions set forth in paragraphs (a) through (c) above, between the Voting Modernization Board and the County and authorize the County Clerk/Registrar of Voters to execute the Agreement, should funding be awarded to the County.

REFERENCE MATERIAL:

BAI #7, March 12, 2019

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Agreement with Dominion Voting Systems, Inc.
On file with Clerk - RFP 19-006 Fresno Voting System
On file with Clerk - Dominion Voting Systems RFP Response
On file with Clerk - Budget Resolution
On file with Clerk - Resolution Approving Application/Certifications for Voting Modernization Bond Act of 2002 Funding
On file with Clerk - Agreement with Voting Modernization Board

CAO ANALYST:

Yussel Zalapa