



County of Fresno

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Legislation Text

File #: 19-1248, **Version:** 1

DATE: October 8, 2019

TO: Board of Supervisors

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

SUBJECT: Agreement with International Business Machines Corporation

RECOMMENDED ACTION(S):

1. **Make a finding that it is in the best interest of the County to suspend the competitive bid process consistent with Administrative Policy No. 34 for unusual or extraordinary circumstances, as International Business Machines Corporation possesses proprietary products; and**
2. **Approve and authorize the Chairman to execute a retroactive Agreement with International Business Machines Corporation for the purchase and support of software, hardware, maintenance, service, and technical support of the numerous products used throughout the County, effective July 16, 2019, not to exceed five consecutive years, which includes a three-year base contract and two optional one-year extensions, total not to exceed \$5,000,000; and**
3. **Authorize the Director of Internal Services/Chief Information Officer or his or her designee to sign and execute various operational documents associated with the payment of the annual licenses, support, and maintenance for the products, as well as the purchase and technical support of future products.**

Approval of the first and second recommended actions would allow International Business Machines Corporation (IBM) to continue providing its products and services, including maintenance and technical support for existing products used for document storage and management for County departments. Approval of the third recommended action would allow for the ability to purchase additional products needed to meet technological changes, regulatory requirements, and operational needs. This item is countywide.

ALTERNATIVE ACTION(S):

Should your Board not approve the recommended actions, IBM will terminate the maintenance and technical support of IBM software, FileNet licenses, and hardware.

SUSPENSION OF COMPETITION/SOLE SOURCE CONTRACT:

The Department's request to suspend the competitive bidding process consistent with Administrative Policy No. 34 results from the fact that most IBM software, hardware, and maintenance products are proprietary, and can only be purchased from IBM or an authorized IBM business partner. All products, including FileNet licenses, maintenance, and technical support, purchased directly from IBM, as well as special services projects requiring a Statement of Work (SOW), can only be provided from IBM based on the terms and conditions covered in an IBM Client Relationship Agreement (CRA). The Internal Services Department - Purchasing Division concurs with the Department's request to waive the competitive bid process.

RETROACTIVE AGREEMENT:

The recommended agreement is retroactive to July 16, 2019 due to finalization of the agreement terms. The prior agreement expired July 15, 2019. Subsequent time for review and processing delayed presentation at an earlier date.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended actions. Costs for this agreement shall not exceed \$5,000,000 for the entire five-year term of the agreement (the base three-year term totals \$3,000,000 and each optional one-year term extension will increase the total by \$1,000,000). Costs for services are recovered through charges to user departments. Sufficient appropriations are included in the FY 2019-20 Internal Services Department - Information Technology Services, Org 8905 Adopted Budget. Future costs associated with this agreement will be requested in future years.

DISCUSSION:

On July 15, 1997, the Board approved Agreement No. 97-325 covering the business transactions that the County may do with IBM to purchase machines, licenses, and services. On June 3, 2008, the Board approved Agreement No. 08-270 for the purchase of IBM FileNet licenses, maintenance, and support. On July 15, 2014, the Board approved a master agreement with IBM to continue providing software, hardware, maintenance, and support for IBM products. This agreement superseded all of the County's evergreen agreements with IBM.

The recommended agreement, IBM's Client Relationship Agreement (CRA), is in IBM's standard format, and defines the terms and conditions for the purchase of IBM products and services. The recommended agreement allows the County to continue purchasing proprietary products through IBM, as well as continue obtaining maintenance and technical support. Products include FileNet, an enterprise content management system for document management used by the Department of Social Services to optimize the capture, management, and archival of data in compliance with various regulatory requirements.

The recommended agreement does not contain the following standard clauses: Hold Harmless, Breach of Contract, and Termination Without Cause. The recommended agreement does provide a defense provision for patent and copyright infringement claims. The recommended agreement also has a non-standard limitation of liability clause and a non-standard warranty clause. However, Risk Management and ISD staff have reviewed this language, and believes the benefits of entering into the recommended agreement outweigh the risks, as a prudent business decision.

REFERENCE MATERIAL:

BAI #60, July 15, 2014
BAI #44, June 3, 2008
BAI #26d, July 15, 1997

ATTACHMENTS INCLUDED AND/OR ON FILE:

Sole Source Acquisition Request
On file with Clerk - Agreement with International Business Machines Corporation

CAO ANALYST:

Yussel Zalapa