



Monterey County

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Board Report

Legistar File Number: A 14-292

December 16, 2014

Introduced: 12/8/2014

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Agreement

- a. Ratify a three-year Agreement (“Agreement”) with Netsmart Technologies, Inc. for the provision of implementation services for the migration of the existing electronic medical record system from a County hosted software solution to a Contractor hosted solution, software maintenance/support services, and technical support in the amount of \$630,240 for the period July 1, 2014 through June 30, 2015, \$529,442 for the period July 1, 2015 through June 30, 2016, and \$501,942 for the period July 1, 2016 through June 30, 2017, for a total aggregate amount not to exceed \$1,661,624; and
- b. Accept the non-standard risk terms regarding limitations on liability, limitations of warranty, and indemnification, as recommended by the Director of Health ; and
- c. Authorize the execution of the Agreement by the Contracts/Purchasing Officer; and
- d. Authorize the Contracts/Purchasing Officer, to sign up to three future amendments to this Agreement where the total amendments do not exceed ten percent (10%) of the original contract amount and do not significantly change the scope of work.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Ratify a three-year Agreement (“Agreement”) with Netsmart Technologies, Inc. for the provision of implementation services for the migration of the existing electronic medical record system from a County hosted software solution to a Contractor hosted solution, software maintenance/support services, and technical support in the amount of \$630,240 for the period July 1, 2014 through June 30, 2015, \$529,442 for the period July 1, 2015 through June 30, 2016, and \$501,942 for the period July 1, 2016 through June 30, 2017, for a total aggregate amount not to exceed \$1,661,624; and
- b. Accept the non-standard risk terms regarding limitations on liability, limitations of warranty, and indemnification, as recommended by the Director of Health ; and
- c. Authorize the execution of the Agreement by the Contracts/Purchasing Officer;
- d. Authorize the Contracts/Purchasing Officer, to sign up to three future amendments to this Agreement where the total amendments do not exceed ten percent (10%) of the original contract amount and do not significantly change the scope of work.

SUMMARY/DISCUSSION:

Netsmart Technologies, Inc. (“Netsmart”) was selected as the Electronic Health Record (EHR) vendor for Monterey County Behavioral Health as a result of a formal RFP process in 2008. Since 2008, Netsmart’s Avatar product has processed over 3.3 million services for the Behavioral Health Bureau. The Bureau now seeks to migrate its Avatar EHR data from a County server to a server hosted by Netsmart called the Netsmart Plexus Data Centers.

The Health Department’s Behavioral Health Bureau seeks ratification of a new three-year service Agreement with (“Netsmart”). Succeeding Agreement A-11182 that expired on June

30, 2014, the FY 2014-17 Agreement with Netsmart provides for maintenance services for the existing EHR system, professional services for the migration of data from the County server to the vendor's server, and for Plexus Cloud Hosting services following migration of EHR data.

The Health Information Technology for Economic and Clinical Health (HITECH) Act, as part of the American Recovery and Reinvestment Act of 2009 (ARRA), provides significant financial incentives to hospitals and behavioral health professionals who demonstrate meaningful use of certified EHR technology. Beginning in 2015, the law also imposes penalties (Medicare reimbursement reductions) to those organizations that are not meeting Meaningful Use criteria. The continuation of the application through Netsmart Technologies, Inc. will assist the Health Department, Behavioral Health Bureau to meet this criteria.

While this work is not directly in support of a Health Department strategic initiative, it is in support of one or more of the ten essential public health services, specifically: Enforce laws and regulations that protect health and ensure safety and evaluate effectiveness, accessibility, and quality of personal and population-based health services.

The Health Department seeks ratification of this Agreement. During negotiations of a new contract with Netsmart, software licensing and maintenance services were continued beyond the termination date of the parties' prior agreement, permitting the Behavioral Health Bureau to continue its EHR system but without compensation to Netsmart.

In addition, the Health Department seeks approval of numerous non-standard provisions in the Agreement. The Agreement contains indemnity provisions that protect the County in the event of third party intellectual property infringement claims or breach of confidentiality, but the Agreement also requires the County to indemnify Netsmart if third parties file claims against Netsmart for the County's improper use of its Netsmart software licenses. Whereas the Agreement provides that Netsmart shall warrant that its software will substantially conform to the requirements of the Agreement and that Netsmart shall use commercially reasonable measures to screen the software to avoid viruses from disabling the County's systems, the Agreement caps Netsmart's cumulative liability for tort or breach of contract to all license fees and professional fees paid to Netsmart under the Agreement and prohibiting the County from recovering consequential damages.

OTHER AGENCY INVOLVEMENT:

Information Technology, County Counsel, and the Auditor-Controller have reviewed this Agreement and concur with this recommendation. Risk Management reviewed the Agreement but did not concur with this recommendation in light of the non-standard risk provisions in the Agreement. A copy of this Agreement is on file with the Clerk to the Board.

FINANCING:

MHSA CSS funds will be used to pay for the Meaningful Use server hardware, Consumer and Care Connect Services and Plexus Cloud Hosting provided in FYs 2014-17. The funds for this Agreement have been included in the Health Department's Behavioral Health Bureau (HEA012, Unit 8410) Approved Budget for Fiscal Year 2014-15. There is no impact on the County General Fund Contribution associated with this Agreement.

Prepared by: Rose Moreno, Management Analyst, 4716
Approved by: Ray Bullick, Director of Health, 4526

Attachment: Agreement is on file with the Clerk of the Board