



County of Los Angeles
**CHIEF EXECUTIVE OFFICE
OPERATIONS CLUSTER**

WILLIAM T FUJIOKA
Chief Executive Officer

DATE: July 26, 2012
TIME: 1:00 p.m.
LOCATION: Kenneth Hahn Hall of Administration, Room 830

AGENDA

Members of the Public may address the Operations Cluster on any agenda item by submitting a written request prior to the meeting.
Three (3) minutes are allowed for each item.

1. Call to order – Ellen Sandt
- A) **Board Letter - APPROVAL TO AWARD EQUIPMENT MAINTENANCE AND REPAIR SERVICES CONTRACTS**
ISD – Tom Tindall or designee
2. Public Comment
3. Adjournment



TOM TINDALL
Director

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"To enrich lives through effective and caring service"

August 14, 2012

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

APPROVAL TO AWARD EQUIPMENT MAINTENANCE AND REPAIR SERVICE CONTRACTS (ALL DISTRICTS – 3 VOTES)

SUBJECT

Approval to award multiple contracts and extend three existing contracts for equipment maintenance services.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Authorize the Director, Internal Services Department (ISD), or his designee, to execute sixteen (16) equipment maintenance and repair services contracts listed on Attachment I effective October 1, 2012 for an initial term of three (3) years with two (2) one-year extension options and twelve (12) month-to-month extensions that may be exercised by the Director, ISD, or his designee, upon County Counsel's approval as to form.
2. Authorize the Director, ISD, or his designee, to extend two (2) current equipment maintenance and repair services contracts (see Attachment I) effective October 1, 2012 for three (3) additional years, with up to two (2) one-year extensions and twelve (12) month-to-month extensions that may be exercised by the Director, ISD, or his designee, upon County Counsel's approval as to form.
3. Authorize the Director, ISD, or his designee, to extend one (1) current equipment maintenance and repair services contract (see Attachment I) effective October 1, 2012 for six (6) additional months.
4. Authorize the Director, ISD or his designee to add/delete equipment items, brands, and manufacturers in each contract and resultant cost modifications and,

execute applicable contract amendments when the original contracting entity has merged, been purchased or has otherwise changed or when service levels change based on County departments' needs.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTIONS:

ISD currently administers equipment maintenance and repair services contracts that provide preventive maintenance and repairs of large photocopy machines, mainframe computers, servers and other major equipment for all County departments in various locations throughout the County, including the County Data Center and Local Recovery Center. The contracts currently expire on September 30, 2012. Your Board's approval of the recommended contracts and extensions will allow ISD and other County departments to continue receiving equipment maintenance services without a lapse in services.

Implementation of Strategic Plan Goals

The recommended action supports the Countywide Strategic Plan Goal Number One (Operational Effectiveness) by establishing centralized contracts that provide maintenance services to County departments for high end business machines.

FISCAL IMPACT/FINANCING:

Expenditures under these contracts vary from year to year based on the needs of County departments. For Fiscal Year 2012-13, the services provided under the recommended contracts are estimated at \$10.4 million in the aggregate (see Attachment I for individual contract estimated annual costs).

Funding for these services is included in the Fiscal Year 2012-13 adopted ISD and user departments' budgets. Future fiscal year funding will be requested in ISD and departmental budgets for each annual term and any extensions. Expenditures in any given year will remain within each department's budgeted appropriation for such services. Contract rates are fixed for the entire contract term, including extension options.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS:

ISD is seeking approval of nineteen (19) contracts for different types of high end equipment categorized and referred to as Classes. Attachment I lists the Classes, types of equipment in each Class, and estimated annual costs for each recommended contract. Of these, sixteen (16) are new contracts and three (3) are extensions of current contracts.

Twelve (12) of the new contracts include the County's standard terms and conditions, and seven (7) of the recommended new or extended contracts include terms and conditions that vary from the County's standards. Attachment II summarizes the terms and conditions that were negotiated. These terms were negotiated after bid

submissions or are included in the current contracts which were previously approved by your Board. ISD worked closely with CEO Risk Management and County Counsel to negotiate the most advantageous terms possible for the County. In each of these instances, the recommended contractor submitted the only qualified bid in the respective Classes.

Except as detailed on Attachment II, the recommended contracts contain the Board's required provisions, including those pertaining to consideration of qualified county employees targeted for layoff as well as qualified GAIN/GROW participants for employment openings, and compliance with the Jury Duty Ordinance, Safely Surrender Baby Law and the Child Support Program. The recommended contracts will be executed after approval by County Counsel as to form.

Due to the technical nature of the contracted services, these are not Proposition A contracts and not subject to the Living Wage Program (County Code Chapter 2.221). ISD has determined that the services under these contracts do not impact Board Policy No. 5.030, "Low Cost Labor Resource Program", due to the specialized training needed to perform the work.

CONTRACTING PROCESS:

On June 22, 2011 ISD released a Request for Bid (RFB) for nineteen (19) different Classes of equipment for maintenance and repair services of large photocopy machines, mainframe computers, servers and other major equipment, some of which support the County Data Center and Local Recovery Center. The RFB and contracting opportunity announcement were posted on the County's "Doing Business with Us" web site (Attachment III).

Fifty six (56) proposals were received on August 16, 2011 and were reviewed for compliance with the minimum requirement criteria stated in the RFB. After a careful analysis and review, twenty (20) bids were disqualified. The remaining bids were reviewed in accordance with the bid review process identified in the RFB. The non-selected proposers received debriefings from February 15, 2012 through March 13, 2012.

Signature Technology submitted a bid and was selected for Class 11 but withdrew its bid during the negotiations phase. Since no other bids were received for Class 11, ISD entered into negotiations with the incumbent contractor, American Power Conversion, Sales & Service Corporation (APC), and APC agreed to extend their current contract under the existing negotiated terms and conditions with an increase of approximately 25% over its current prices.

For Classes 18 and 20, the RFB was released with service requirements that did not include software necessary to appropriately diagnose issues to maintain and repair the equipment. Further, the software is also required to continue the current service levels. During the negotiation process ISD was informed that due to the proprietary nature of the equipment and in order to obtain more favorable pricing and required service levels,

software support services must be bundled with the hardware services for both Class 18 and Class 20. Since there were no additional bidders in either Class, ISD obtained updated pricing that included software from the two (2) incumbent vendors – Hewlett Packard (HP) and EMC, respectively.

Hewlett Packard (HP) responded to the RFB but took exceptions to the County's standard terms and conditions. After several negotiation meetings, HP indicated that it wanted to discontinue negotiating new contract terms and instead extend the current contract. HP offered to extend the current contract under the existing negotiated terms and conditions, to coincide with the term of the new contracts, and at the current fixed costs. ISD accepted the extension offer as it provides the same level of services at an exceptional price which will remain fixed for the proposed contract period (up to six years).

OCE responded to the RFB under Class 6 with numerous exceptions to the County's standard terms and conditions and was unable to negotiate a new contract. ISD is recommending a contract extension of six (6) months for the period of October 1, 2012 to March 31, 2013 at the same contract price. Canon recently acquired OCE and will be in a position to provide the required services currently provided by OCE at the beginning of 2013. The recommended contract extension will allow OCE to continue providing the required services until ISD can transfer the equipment to the proposed contract with Canon.

Contractual terms and conditions were aggressively negotiated with four (4) vendors that took exceptions to various County standard terms and conditions. Attachment II represents the best and final positions agreed upon by both the County and the recommended contractors. It is critical that equipment maintenance and repair services continue to be provided and we believe the proposed contracts represent manageable risk exposure to the County as services are provided only to perform preventive maintenance or repair pieces of equipment if it breaks down.

Community Business Enterprise (CBE) information for all firms recommended for contracts is summarized in Attachment IV.

IMPACT ON CURRENT SERVICES (OR PROJECTS):

Approval of these recommendations will ensure that ISD and County departments continue to receive equipment maintenance and repair services without a lapse in service.

Respectfully submitted,

Tom Tindall
Director

The Honorable Board of Supervisors
August 14, 2012
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Attachments (4)

DRAFT

Equipment Maintenance and Repair Services
Recommended Vendors

Large Photocopy Machines, Mainframe Computers, Servers and
 Other Major Items of Equipment

Class	Type of Equipment	Contractor	Estimated Annual Price		
1	Canon Reproduction Equipment	Canon	\$ 764,830.81	*	
2	HP Reproduction Equipment	Logix Service dba Amtek	\$ 31,328.40	**	
3	IBM Reproduction Equipment	Logix Service dba Amtek	\$ 36,597.00	**	
4	Lexmark Reproduction Equipment	Logix Service dba Amtek	\$ 195,000.00	**	***
5	Miscellaneous Reproduction Equipment	Wiztec	\$ 379,870.80		
6	OCE Reproduction Equipment	OCE-Canon	\$ 286,253.51	*	
7	Xerox Reproduction Equipment	Xerox	\$ 430,814.42	*	
8	Library Book Security 3M	3M	\$ 177,161.50		
9	Bell and Howell Reproduction Equipment	Bell & Howell	\$ 116,740.68		
10	Uninterruptable Power Supply (1)	UPSCO	\$ 113,000.00		
11	Uninterruptable Power Supply (2)	APC	\$ 157,670.20		
12	Communications and Test Equipment	Aeroflex	\$ 65,952.80		

Equipment Maintenance and Repair Services
Recommended Vendors

Large Photocopy Machines, Mainframe Computers, Servers and
 Other Major Items of Equipment

Class	Type of Equipment	Contractor	Estimated Annual Price	
13	Printing Press Equipment	Presstek	\$	135,200.00
14	HP Midrange Computers	Logix Service dba Amtek	\$	24,188.12
15	IBM Midrange Computers	Logix Service dba Amtek	\$	22,422.40
16	STK and Sun Midrange Computers	Logix Service dba Amtek	\$	100,938.86
18	HP Equipment	HP	\$	3,449,116.00 ****
19	IBM Equipment	IBM	\$	1,059,466.80
20	EMC Large Scale Disk Storage	EMC	\$	2,810,578.93 *****
Estimated Total Annual Price			\$	10,357,131.23

* Price includes estimated copy charges which fluctuate based on customer usage.
 ** Price does not include estimated copy charges since copy usage information was not available at this time.
 *** Price adjusted for significant inventory additions since the initial RFB equipment list was released.
 **** Price represents extension of current contract (including software support services) with no increase in cost.
 ***** Price includes software support services.

**EQUIPMENT MAINTENANCE AND REPAIR SERVICES AGREEMENTS
NEGOTIATED CONTRACT TERMS AND CONDITIONS**

Contractor	Negotiated Terms that Depart from County's Standard Terms and Conditions
<p align="center">Bell and Howell, LLC</p>	<p>Confidentiality: Provision modified to ensure that County exercises "reasonable judgment" in making a determination regarding Contractor providing full and adequate legal defense to County.</p> <p>Compliance with Applicable Law: Provision modified to ensure that County exercises "reasonable judgment" in making a determination regarding Contractor providing full and adequate legal defense to County.</p> <p>Damages to County Facilities, Buildings or Grounds: Provision modified to include a 30 day cure period to allow Contractor to make repairs prior to County proceeding to make necessary repairs.</p> <p>Employment Eligibility Verification: Provision modified to include written notification by the County to the Contractor of any actual or threatened claim and to provide reasonable cooperation.</p> <p>Force Majeure: Provision modified to omit "totally" and include "reasonable" as it relates to failure to perform.</p> <p>Evidence of Coverage and Notice to County: Provision modified to include Additional Insured status related to Contractor's General Liability policy. Additionally, the requirement for Contractor to submit "certified copies" of Contractors/Sub-Contractor insurance policies was revised to only require the submission of "copies" of insurance policies.</p> <p>Deductibles and Self-Insured Retentions (SIRs): Provision modified to limit the County's right to require the Contractor to reduce or eliminate Contractors policy deductibles or SIRs.</p> <p>Liquidated Damages: Provision modified to include a yearly aggregate amount for liquidated damages to be capped at the fees payable to Contractor for said yearly period, and extends time period for Contractor to correct deficiencies from 5 days to 10 days.</p> <p>Most Favored Public Entity: Provision modified to include "terms and conditions" as it relates to the Contractor providing the same goods and services under similar quantity and delivery conditions, to the State, any other county, or municipality at a lower rate, those rates shall be applicable to the County.</p> <p>Public Records Act: Provision modified to include written notification by the County to the Contractor of any actual or threatened claim and to provide reasonable cooperation.</p> <p>Record Retention and Inspection/Audit Settlement: Provision modified to remove requirement to maintain financial records within Los Angeles County after the expiration of the contract.</p> <p>Termination for Default: Provision modified to include a written notification of County's intent to terminate the contract after certain conditions set forth in this paragraph have remained uncured for 10 days.</p> <p>Warranty Disclaimer: Provision modified to include a stipulation that Contractor makes no warranty of merchantability; a provision which was carried over from the existing contract.</p>

**EQUIPMENT MAINTENANCE AND REPAIR SERVICES AGREEMENTS
NEGOTIATED CONTRACT TERMS AND CONDITIONS**

Contractor	Negotiated Terms that Depart from County's Standard Terms and Conditions
<p align="center">Bell and Howell, LLC (Continued)</p>	<p>Limitation of Liability: Provision modified to include a stipulation that neither party will be liable for lost profits for special, incidental, indirect, consequential or exemplarily damages under certain conditions; a provision which was carried over from the existing contract.</p> <p>Ownership of Materials, Software and Copyright: Provision deleted in its entirety as it is not applicable to this specific contract.</p> <p>Patent, Copyright and Trade Secret Indemnification: Provision modified to outline that the County notify the Contractor "in writing" of any claim or action of an alleged infringement claim or unauthorized disclosure.</p>
<p align="center">Canon Business Solutions</p>	<p>Refunds and Other Payments: Provision modified to include contractual or statutory reasons in addition to other certain grounds in which the Contractor shall provide refunds or other payments to the County.</p> <p>Addition/Deletion of Equipment: Provision modified to (i) include "substantially similar" when referring to adding or deleting equipment with like models and features that are covered under this contract; and (ii) include "on or in substantially similar terms, conditions, circumstances and volumes" in relation to pricing/rates/discount rates for adding equipment.</p> <p>Amendments: Provision modified to state that Amendments to the contract shall be implemented with "Contractor's assent".</p> <p>Assignment and Delegation: Provision modified to include "good faith" regarding the County's discretion to consent to any assumption, assignment, delegation, or takeover by an entity other than the Contractor.</p> <p>Governing Law, Jurisdiction, and Venue: Provision modified to indicate that the Contractor agrees and consents to exclusive jurisdiction of the "federal and state courts located in the State of California."</p> <p>Failure to Maintain Insurance: Provision modified to allow Contractor 7 days to cure failure to provide evidence of insurance.</p> <p>Liquidated Damages: Provision modified to (i) include "disputed portion of the monthly payment" as it relates to Contractor's non-compliance with terms and obligations of the contract; (ii) include a statement that provides Contractor the opportunity to correct certain correctable deficiencies within a time span of "at least seven (7) working days"; and (iii) provide for liquidated damages to be capped at the fees payable to Contractor for said yearly period.</p> <p>Most Favored Public Entity: Provision modified to state that in the event that the Contractor's prices decline or they provide the same goods or services "substantially" similar in quantity or "delivery, risk allocation and other market conditions" during the term of the contract to the State of California or a "comparable" county, such lower prices shall be extended to the County.</p> <p>Public Records Act: Provision modified to include written notification by the County to the Contractor of any defense of an action or liability arising under the Public Records Act.</p> <p>Termination for Convenience: Provision revised to clarify that "days" are "working days."</p>

**EQUIPMENT MAINTENANCE AND REPAIR SERVICES AGREEMENTS
NEGOTIATED CONTRACT TERMS AND CONDITIONS**

Contractor	Negotiated Terms that Depart from County's Standard Terms and Conditions
<p>Canon Business Solutions (Continued)</p>	<p>Termination for Default: Provision modified to (i) include a cure period of ten (10) working days in relation to material breach, provide and/or satisfactorily perform task, deliverable, service; and (ii) increase the cure period from five (5) working days to "ten (10) working days" regarding Contractor's fulfillment of requirements under the contract.</p> <p>Ownership of Materials, Software and Copyright: Provision deleted in its entirety as it is not applicable to this specific contract.</p>
<p>EMC Corporation</p>	<p>Applicable Documents: Provisions modified to add a reference to Exhibit A-2, Contractor's Maintenance Plan.</p> <p>Contract Sum: Provision clarifies that any Time and Materials (T&M) rate is to include all costs except parts and supplies. Also, specifies that review of any configuration or location of Software and equipment is to be at the specified T&M rate.</p> <p>Invoices and Payments: Provision modified to add a reference to sub-paragraph 5.5.5, and specifies that payment of invoices is to be monthly in arrears. Adds a reference to Exhibit A-2, Contractor's Maintenance Plan.</p> <p>Addition/Deletion of Equipment: Provision modified to add clarifying language. Also ends paragraph after "contract execution."</p> <p>Confidentiality: Provision modified to clarify that "each party" is to maintain confidentiality. County diligently negotiated this provision, and Contractor insisted that they do not manage or have direct access to County data and records on the equipment and therefore could not be responsible for the data. This provision was also modified to include more appropriately, Exhibit F1-IT for confidentiality covering contractor, contractor's employees, subcontractors, etc.</p> <p>Compliance: Provision modified to (i) delete 10-day period for contractor to respond to user complaints; and (ii) extend length of time Project Manager has to respond to complaints from three to five business days.</p> <p>Consideration of Hiring County Employees Targeted For Layoff/Or Re-employment List: Provision modified to delete the word "first" and confirm EMC's future compliance with the clause.</p> <p>Damage to County Facilities, Buildings or Grounds: Provision modified to clarify that the clause is subject to the terms of the Contract, and clarifies that the "days" are "calendar days."</p> <p>Indemnification: Provision modified to clarify that the contractor shall not be liable for actions that are due to the sole negligence of County, and clarifies that actions for which contractor is liable hereunder additionally result in bodily injury, death, personal injury or property damage.</p>

**EQUIPMENT MAINTENANCE AND REPAIR SERVICES AGREEMENTS
NEGOTIATED CONTRACT TERMS AND CONDITIONS**

Contractor	Negotiated Terms that Depart from County's Standard Terms and Conditions
<p>EMC Corporation (Continued)</p>	<p>General Provisions For All Insurance Coverage: Provision modified to (i) clarify that other evidence of coverage is acceptable; (ii) change time span from thirty to fifteen days for providing insurance certificate; (iii) clarify that each party is responsible for its portion of acts or omissions; (iv) extend notification period from 10 days to at least 15 days in advance for cancellation or policy change; (v) clarify that contractor is to maintain coverage at all times during the contract period and ensure that there is no disruption in coverage; (vi) clarify that any insurance available to EMC shall be primary for any claims filed under this contract; (vii) clarify that any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Contractor coverage; (viii) delete bond requirement; (ix) require contractor to maintain coverage for two years following contract expiration instead of three years; and (x) add clarifying language that County's review and adjustment of required insurance provisions is reasonable.</p> <p>Insurance Coverage: Provision modified to delete requirement that contractor maintain errors and omissions coverage for three years after contract termination.</p> <p>Liquidated Damages: Provision modified to (i) clarify that County may deduct from contractor's monthly payment or deduct liquidated damages, but not both; (ii) clarify reference to SOW exhibit; (iii) clarify that the contractor shall be liable for County costs to complete deficient work; (iii) clarify that any alternate source selected to complete work not done by contractor should be authorized or certified; and (iv) limit contractor's liability to two times the amount due to contractor in same monthly billing period for covered equipment and software.</p> <p>Most Favored Public Entity: Provision modified to delete clause.</p> <p>Notice of Disputes: Provision modified to clarify that disputes are to be resolved with contractor's project manager in addition to County's Director ISD.</p> <p>Prohibition Against Inducement or Persuasion: Provision modified to clarify that employment ads and employment agencies are acceptable for initiating hiring actions.</p> <p>Record Retention and Inspection/Audit Settlement: Provision modified to (i) include "reasonable prior written notice" as it relates to the County's access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Contract and; (ii) replace "bank statements, cancelled checks or other proof of payment" with "invoices and related proof of payment" as it relates to material that EMC shall make available to the County.</p> <p>Termination For Convenience: Provision modified to (i) extend effective date of notice of termination from 10 to 20 days; (ii) clarify that contractor shall be paid for all work performed through the effective date of termination; (iii) clarify that evidence and such to be maintained is "relevant to" rather than "bearing on" the costs and expenses of the contractor.</p> <p>Termination For Default: Provision modified to (i) extend cure period from 5 working days to 15 working days; and (ii) clarify that contractor should be paid for all "undisputed" work performed through the effective date of termination. After exhausting all options, provision modified to include existing contract clause which limits contractors liability to two times the value of services amount. This limitation is in the current contract. Clarifying language added to allow subcontractors to reasonably obtain alternate sources to meet required performance.</p>

**EQUIPMENT MAINTENANCE AND REPAIR SERVICES AGREEMENTS
NEGOTIATED CONTRACT TERMS AND CONDITIONS**

Contractor	Negotiated Terms that Depart from County's Standard Terms and Conditions
<p align="center">EMC Corporation (Continued)</p>	<p>Termination For Non-Appropriation of Funds: Provision modified to clarify that vendor will be notified of decision as soon as County determines there will be no appropriation of funds.</p> <p>Waiver: Provision modified to clarify that breach of provision or failure to enforce provision applies to either party. This is consistent with current contract provision.</p> <p>Warrant Against Contingent Fees: Provision modified to clarify readability and to clarify that County uses "reasonable" discretion to terminate contract under this provision.</p> <p>Warrant of Service And Performance: Provision modified to (i) clarify that provision includes software option; (ii) clarify that reference is to parts covered under this provision and dependent on County's notification to contractor within 30 days of failure; and (iii) delete provision relating to warranty to maintain reference library, because contractor is original equipment manufacturer (OEM).</p> <p>Participating Entity Use of Contract Pricing: Provision modified to (i) add contractor's prior approval and mutual agreement for entering into such agreement; (ii) clarify that Contractor and Participating Entity must mutually agree upon scope of services and applicability of terms and conditions; and (iii) clarify that such an agreement will be a participation agreement or purchase order.</p> <p>Limitation of Liability: Provision added to limit contractor's liability except with respect to warranty and indemnification obligations, to one million dollars per claim or the price paid by County for the specific service from which such claim arises. Exceptions include violation of intellectual property rights.</p> <p>Ownership of Material, Software and Copyright: Provision modified to (i) clarify that software provided by contractor remains property of contractor; (ii) clarify that property under this provision to which County maintains rights and ownership; (iii) clarify conditions under which County may use contractor's proprietary materials and restricts County's sublicensing of contractor proprietary materials; (iv) modify definition of "confidential and proprietary"; and (v) clarify that contractor's provision of security should be reasonable and consistent with corporate policies.</p> <p>Patent, Copyright and Trade Secret Indemnification: Provision modified to closely mirror language in County's current Software License Agreement with EMC.</p>
<p align="center">International Business Machine Corporation (IBM)</p>	<p>Indemnification: Provision modified to limit Contractor's indemnification to 3rd party claims for damages for bodily injury, including death, and damages to real or tangible personal property and all costs, damages and attorney's fees that a court finally awards provided County promptly notifies Contractor's of any claims, allows Contractor to control the defense of any action or claim, and cooperates with Contractor in the defense and any related settlement negotiations. This limitation applies to the indemnification provisions and the insurance provisions, so that the required policy limits are not available to the County and damages normally covered by the required insurance policy may not be available. This negotiated term was carried over from the existing contract.</p> <p>Insurance: Provision modified to delete the following language "The County, at its sole option, may obtain damages from the Contractor resulting from said breach. Alternatively, the County may purchase such required insurance coverage, and without further notice to the Contractor, the County may deduct from sums due to the Contractor any premium costs advanced by the County for such insurance," and replacing it with "<i>and pursue any remedies to which it is entitled by law.</i>" This negotiated term was</p>

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Contractor	Negotiated Terms that Depart from County's Standard Terms and Conditions
<p align="center">International Business Machine Corporation (IBM) (Continued)</p>	<p>carried over from the existing contract.</p> <p>Limitation of Liability: Provision modified to limit Contractor's liability for damages to the damages for bodily injury (including death) and damage to real and tangible personal property and the amount of any other direct damages up to the greater of \$100,000 or 12 months of maintenance charges for the specific equipment that was damaged or that caused the damages. Contractor will not be liable for loss of or damage to data, special, incidental, or indirect damages or any economic consequential damages, lost profits, business, revenue, goodwill or anticipated savings. This negotiated term was carried over from the existing contract.</p> <p>Liquidated Damages: Provision modified to limit Contractor's liability to two percent (2%) the amount due to contractor in same monthly billing period for covered equipment and software. This negotiated provision is similar to terms in the existing contract.</p> <p>Unscheduled Work: Provision modified to allow for a change in Time and Materials Rate upon mutual agreement between County and Contractor.</p> <p>Employment Eligibility Determination: Provision modified to remove the indemnification language associated with this provision and in the event Contractor breaches this provision, the County is not protected under the general indemnification language as agreed to by Contractor. This negotiated term was carried over from the existing contract.</p> <p>Nondiscrimination & Affirmative Action: Contractor concurred with the provision set forth in County Code Section 4.32.010 except they will not allow the County access to its employee records to verify compliance with the provisions. Contractor cited employee privacy and confidentiality concerns. Contractor was also resolute on defining the calculation of liquidated damages associated with breach of this provision as '<i>an act of Contractor affecting multiple employees shall be counted as a single violation</i>'. This negotiated term was carried over from the existing contract.</p>