CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

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April 5, 2012

TO: Budget and Finance Sub-Committee

FROM: Budget and Legislative Analyst

SUBJECT: April 11, 2012 Budget and Finance Sub-Committee Meeting

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Item 1 File 12-0237	Department: San Francisco International Airport (Airport)

EXECUTIVE SUMMARY

Legislative Objective

- Resolution approving a new agreement between New South Parking – California (New South Parking) and the Airport for the management and operation of the Airport's public and employee parking facilities, for a not-to-exceed amount of $95,939,378.

Key Points

- In October 2011, the Airport issued a competitive Request for Proposals (RFP) for the management and operation of the Airport's public and employee parking facilities. New South Parking received the highest score from the Airport, based on experience, operating and maintenance plans, security plans, customer service and marketing plans, and financial qualifications.
- New South Parking has an existing five-year agreement with the Airport for the operation and maintenance of public and employee parking facilities, as previously approved by the Board of Supervisors. The existing agreement began on July 1, 2007 and terminates on June 30, 2012. The proposed new agreement between New South Parking and the Airport is for a five-year period, from July 1, 2012 to June 30, 2017.
- Under the proposed agreement between New South Parking and the Airport, New South Parking would manage and operate the Airport's public and employee parking facilities, including (a) collection of public parking fees, (b) facilities maintenance and janitorial services, (c) security services, (d) management of the Employee Parking Program and collection of employee parking fees, and (e) providing the Airport with monthly operational and fiscal reports on such parking operations.

Fiscal Impacts

- The proposed agreement provides for annual compensation that includes (a) reimbursable costs and (b) a management fee. In the first year of the agreement, the Airport would reimburse New South Parking for their costs to operate and maintain the public and employee parking facilities, up to a maximum of $17,977,385. Reimbursable costs include (a) staff costs for operating the public and employee parking facilities, (b) management, administrative, technical, and support staff costs, (c) office expenses, (d) insurance, and (e) subcontract costs for janitorial, security and other related services. In addition, the Airport would pay New South Parking a management fee of $99,000, which includes profit and costs that are not otherwise eligible for reimbursement under the proposed agreement, for a guaranteed maximum price in the first year of $18,076,385.
- The proposed resolution states that the not-to-exceed amount for the five-year period of the agreement is $95,969,983, which is $30,605 more than the correct not-to-exceed amount of $95,939,378 as specified in the proposed agreement. Therefore, the proposed resolution should be amended to reduce the not-to-exceed amount by $30,605 from $95,969,983 to $95,939,378.

Recommendations

- Amend the proposed resolution to reduce the not-to-exceed agreement amount by $30,605 from $95,969,983 to $95,939,378.
- Approve the proposed resolution as amended.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

In accordance with City Charter Section 9.118(b), the proposed new agreement between the Airport and New South Parking - California is subject to Board of Supervisors approval because the proposed agreement is for an amount greater than $10,000,000.

Background

On March 21, 2007, the Board of Supervisors approved a three-year agreement between the Airport and New South Parking – California (New South Parking) for the management and operations of the Airport’s public and employee parking facilities, for a total not-to-exceed agreement amount of $48,287,442 for the three-year period from July 1, 2007 to June 30, 2010, with two additional one-year options to extend (File 07-0227). According to Mr. Kevin Van Hoy, Manager of Parking for the Airport, the Airport selected New South Parking after a competitive Request for Proposals (RFP) process. At the conclusion of the initial three-year agreement period on June 30 2010, the Airport exercised the two consecutive one-year options to extend the agreement with New South Parking, for the periods from July 1, 2010 to June 30, 2011 and July 1, 2011 to June 30, 2012, respectively.

In October 2011, the Airport issued a new competitive RFP for the management and operation of the Airport’s public and employee parking facilities. Mr. Van Hoy advises that the Airport Commission received three proposals from the following firms: (a) New South Parking, (b) Standard Pacific, and (c) Ampco U-Street. The Airport selected New South Parking as the highest ranking firm for the provision of management and operation services of the Airport’s public and employee parking. New South Parking received a score of 178.5 on the written proposal and oral evaluation, compared to Standard Pacific, which received the second highest score of 158.3.

Table 1 below shows the fee proposals submitted by the three proposers. According to Mr. Van Hoy, while the Ampco U-Street proposal of $95,839,953 was $99,425 less over the five-year term of the proposed $95,939,378 agreement with New South Parking, the New South Parking proposal received a higher overall score, based on experience, operating and maintenance plans, security plans, customer service and marketing plans, and financial qualifications.

Table 1. Total Fee Proposal Over Five-Year Term of the Proposed New Agreement

	New South Parking – California[1]	Standard Pacific	Ampco U-Street
Reimbursable Maintenance and Operating Costs[2]	$95,444,378	$96,411,581	$94,964,953
Management Fee	495,000[3]	843,717	875,000
Total Fee Proposal	$95,939,378	$97,255,298	$95,839,953

[1] Total fee proposal of $95,444,378 differs from not-to-exceed amount of $95,474,983 due to rounding.
[2] Reimbursable maintenance and operating costs increase by 3.0 percent per year.
[3] The management fee of $495,000 is based on $99,000 per year for five years.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new five-year agreement between the Airport and New South Parking, in a not-to-exceed amount of $95,939,378, for the management and operation of the Airport's public and employee parking facilities. Management and operation services include (a) collection of public parking fees, (b) facilities maintenance and janitorial services, (c) security services, (d) management of the Employee Parking Program[1] and collection of employee parking fees, and (e) providing the Airport with monthly operational and fiscal reports.

Under the proposed Agreement, New South Parking would manage and operate all public and employee parking facilities at the Airport as follows:

Public Parking Facilities – Domestic Terminal Parking Garage; International Terminal Garage A; International Terminal Garage G; Long-Term Public Parking Garage

Employee Parking Facilities – Lot C; Lot D; Westfield Garage; SFO Business Center

Other Parking Facilities – Airport Impound Lot; Air Cargo Lots: Northfield Cargo Building 1A, Plot 3, Plot 5, Plot 7, Plot 9, Plot 10 and Plot 11

FISCAL IMPACTS

Under the proposed new agreement, which has been recommended by the Airport on the basis of a competitive Request for Proposal process, the Airport would reimburse New South Parking for their costs to manage and operate the public and employee parking facilities, up to a maximum of $17,977,385 in the first year of the agreement, as shown in Table 2 below. In addition, the Airport would pay New South Parking an annual management fee of $99,000, which includes profit and costs that are not otherwise eligible for reimbursement under the proposed agreement, for a maximum price in the first year of $18,076,385.

[1] New South Parking will manage and operate the Airport's Employee Parking Program. This responsibility includes, but is not limited to: sale of permits as specified by the Airport, issuance of permit decals and access cards, company billings, revenue collection, accounting and deposits to City's designated bank account.

Table 2. New South Parking Budget for Managing and Operating the Public and Employee Parking Facilities in the First Year of the Agreement

Operating Costs	
New South Parking Personnel Costs	
Parking garage cashiers, valets, and supervisory staff	$5,440,115
General management, administrative, technical, and support staff	2,407,562
Payroll taxes	1,336,265
Subtotal, Personnel Costs	9,183,942
New South Parking Non-Personnel Costs	
Office expenses	563,465
Insurance	105,463
Subtotal, Non-Personnel Costs	668,928
Subcontractor Costs	
Janitorial services	2,399,087
Security and traffic control	3,616,035
Credit card and merchant fees	1,583,653
Other contract services	525,740
Subtotal, Subcontractor costs	8,124,515
Total Operating Costs	**$17,977,385**
Management fee	99,000
Total First Year Guaranteed Maximum Price	**$18,076,385**

Under the proposed agreement, reimbursable management and operations costs may increase up to 3 percent per year. As shown in Table 3 below, the proposed agreement is for a not-to-exceed total amount of $95,969,983 over a five year term.

Table 3. Maximum Annual Amount Payable by the Airport to New South Parking under the Proposed Agreement

	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	Five-Year Total[1]
Reimbursable Costs	$17,977,385	$18,516,707	$19,072,208	$19,644,374	$20,233,705	**$95,444,378**
Management Fee	99,000	99,000	99,000	99,000	99,000	**495,000**
Annual Guaranteed Maximum Price	**$18,076,385**	**$18,615,707**	**$19,171,208**	**$19,743,374**	**$20,332,705**	**$95,939,378**

[1] Totals one off by $1 due to rounding.

The proposed resolution states that the not-to-exceed amount is $95,969,983, which is $30,605 more than the not-to-exceed amount of $95,939,378 specified in the proposed agreement. Therefore, the proposed resolution should be amended to reduce the not-to-exceed amount by $30,605 from $95,969,983 to $95,939,378.

As shown in Table 4 below, provided by Mr. Van Hoy, under the existing agreement between the Airport and New South Parking for the management and operations of the public and employee parking facilities, the Airport has realized net parking revenues of $63,850,087 in FY 2010-11 after reimbursing New South Parking.

Table 4. Net Parking Revenues to the Airport
FY 2007-08 to FY 2011-12

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12 (through February 2012)
Annual Gross Revenue from Public and Employee Parking Fees	$66,784,266	$69,542,529	$74,313,172	$81,008,062	$59,431,059
Reimbursable Costs	15,493,260	16,083,566	16,465,201	17,157,975	10,859,300
Net Parking Revenues to the Airport	**$51,291,006**	**$53,458,963**	**$57,847,971**	**$63,850,087**	**$48,571,759**

RECOMMENDATIONS

1. Amend the proposed resolution to reduce the not-to-exceed agreement amount by $30,605 from $95,969,983 to $95,939,378.
2. Approve the proposed resolution as amended.

Item 2 File 12-0245	Department(s): Department of Public Health

EXECUTIVE SUMMARY

Legislative Objective

Resolution approving an amendment to the existing agreement between the Department of Public Health (DPH) and Netsmart New York, Inc. to (a) maintain user licenses, implement upgrades, and provide ongoing maintenance/support services for the Avatar Behavioral Health Information System, (b) acquire product enhancements, (c) increase the existing not-to-exceed $9,968,828 agreement by $21,817,991 to a not-to-exceed $31,786,819, and (d) extend the term by four years and eleven months (59 months) or from July 1, 2013 through June 30, 2018.

Key Points

- In 2005, DPH conducted a competitive Request for Qualifications (RFQ) process, and selected Netsmart New York, Inc. (Netsmart), a private company, to license, implement, and provide maintenance/support services for the Avatar System for a five-year period from August 1, 2008 through July 30, 2013, for a not-to-exceed $9,968,828 including a 12 percent contingency of $1,068,089 on the base agreement amount of $8,900,739.
- The Avatar System, which is a proprietary system of Netsmart, provides DPH with a fully integrated clinical, billing and financial Behavioral Health Information System for (a) Behavioral Health Patient Registration, (b) Scheduling, (c) Billing, (d) Accounts Receivable, (e) Managed Care, (f) Certified Electronic Medical Records, (g) Electronic Medication Prescriptions, and (h) Patient Access Portal.
- The proposed amendment to the existing agreement between DPH and Netsmart would authorize (a) the continuation of the existing agreement for an additional four years and eleven months through June 30, 2018, at an average annual cost, (excluding contingencies) for operations and maintenance of approximately $1,698,919 or $81,229 less than the average annual cost (excluding contingencies) of $1,780,148 under the existing agreement, and (b) the provision of enhancements for increased capabilities for both the remainder of the existing agreement and the proposed extended term of the agreement.
- The proposed amendment includes new software to address the Federal American Reinvestment and Recovery Act (ARRA) regulations for “Meaningful Use” of Certified Electronic Medical Records, which could result in incentive payments to DPH for a maximum of $63,750 per eligible provider. Such incentives payments to DPH would offset the cost of the proposed Avatar System enhancements for “Meaningful Use”.

Fiscal Impact

- The proposed amendment would authorize DPH to pay Netsmart an amount not-to-exceed $31,786,819, which is a $21,817,991 more than the current not-to-exceed amount of $9,968,828.
- Of the $21,817,991 requested increase to the existing agreement, $8,494,596 reflects the operations and maintenance costs, excluding contingencies, for the additional four years and eleven months extension (Years 6-10) of the agreement, from July 1, 2013 through June 30, 2018, or an average cost of $1,698,919 annually. The balance of $13,323,395 ($21,817,991

less $8,494,596) would be expended on project enhancements for optional licenses, services and subscriptions, and also provides for a $3,405,731 12 percent contingency on the base agreement amount of $28,381,088 (see Table 3 below).

Recommendation

- Approve the proposed resolution.

DETAILS OF PROPOSED LEGISLATION

Mandate Statement

In accordance with Charter Section 9.118, any contract (a) for more than $10,000,000, (b) that extends for longer than ten years, or (c) with an amendment of more than $500,000, is subject to Board of Supervisors approval.

Background

In 2005, the Department of Public Health (DPH) conducted a competitive Request for Qualifications (RFQ) process, and selected Netsmart New York, Inc. (Netsmart), a private company, to license, implement, and provide maintenance/support services for DPH's new integrated clinical, billing and financial Behavioral Health Information System. DPH's Community Behavioral Health Services (CBHS) programs encompass Mental Health and Substance Abuse patient treatment programs. The purpose of DPH's Behavioral Health Information System is to provide effective and secure electronic operations that facilitate mental health and substance abuse services through the Department's information system for the various private and public agencies that comprise CBHS.

The Netsmart's Avatar System, which is a proprietary system of Netsmart, replaced DPH's obsolete ECHO Management Group/Insyst application which utilized software and hardware components which were over 20 years old, were no longer supported by the vendor and contained no Electronic Medical Records capabilities. Netsmart's Avatar System provides DPH with a fully integrated Behavioral Health Information System for clinical, billing and financial needs, including (a) Behavioral Health Patient Registration, (b) Eligibility, (c) Billing, (d) Accounts Receivable, (e) Managed Care, (f) Certified Electronic Medical Records, (g) Electronic Medication Prescriptions, and (h) Quality Indicator reporting. According to Mr. Dave Counter, DPH's IT Director, DPH's existing Behavioral Health Information System (the Avatar System) provides a fully integrated and secure information system that combines the functionality of a billing information system with an electronic clinical patient record to optimize efficiency and eliminate redundancy in operations and data entry, which is accessed by DPH users over the Internet via secure connections.

DPH entered into a five-year agreement with Netsmart to license, implement, and provide maintenance/support services for the Avatar System for the period from August 1, 2008 through July 30, 2013, for a not-to-exceed $9,968,828 that included a 12 percent contingency of $1,068,089, as shown in Table 1 below. The agreement did not require approval by the Board of Supervisors because the agreement was less than the $10,000,000 and less than the ten-year Charter thresholds.

Table 1: Existing Agreement Funding of Netsmart's Avatar System

Project Amount	$8,900,739
12 Percent Contingency	$1,068,089
Total Not-To-Exceed Amount	**$9,968,828**

Ms. Jacquie Hale, DPH Director of Office of Contract Management and Compliance, notes that the Avatar System is currently utilized by DPH for over 2,500 Behavioral Health clinical providers and supports approximately $120 million in annual patient care revenue.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize an amendment to the existing agreement between DPH and Netsmart to (a) maintain user licenses, implement upgrades, and provide ongoing maintenance/support services for the Avatar Behavioral Health Information System, (b) acquire product enhancements, (c) increase the existing not-to-exceed $9,968,828 agreement by $21,817,991 to a not-to-exceed amount of $31,786,819, and (d) extend the term of the agreement by four years and eleven months or from July 1, 2013[1] through June 30, 2018.

The Attachment, provided by Mr. Counter, identifies the proposed product enhancements, and maintenance and support services that would be included under the subject amendment to the existing agreement between DPH and Netsmart for the continued operations of the Avatar System. According to Mr. Counter, the proposed product enhancements, and continued maintenance and support services under the proposed four years and eleven months extended term of the existing agreement were not subject to a separate competitive process because Netsmart has the proprietary rights to maintain its own computer hardware and software.[2]

The proposed amendment to the existing agreement also provides for new software to address the Federal American Reinvestment and Recovery Act (ARRA) regulation for "Meaningful Use" of Certified Electronic Medical Records. According to Mr. Counter, the ARRA regulations contain a provision known as Health Information Technology for Economic and Clinical Health (HITECH) which provides incentive payments to eligible hospitals and providers for the "Meaningful Use" of Certified Electronic Medical Records.[3] Mr. Counter advises that it is anticipated that the DPH's Behavioral Health medical providers, or psychiatrists and nurse

[1] The existing agreement term extends through July 30, 2013. The proposed amended agreement would commence July 1, 2013, or a month prior to the termination of the existing agreement, because DPH wants to coincide the proposed agreement and enhancements with the City's existing budget.

[2] The hardware included for the electronic signature function is certified by Netsmart as part of the Avatar System product line, and is configured by Netsmart in accordance with contract warranties.

[3] System vendors must meet certification criterion established by the Office of the National Coordinator (ONC) for achieving Core Objectives relating to "Meaningful Use". The Core Objectives for "Meaningful Use" include (a) the transition from paper to electronic records for data capture and sharing, (b) the development of advanced clinical processes for quality indicator reporting, and (c) eventual specific reporting criteria to demonstrate improved clinical outcomes. A summary of the Health Information Technology for Economic and Clinical Health (HITECH) Incentive program, as well as, "Meaningful Use" objectives and measures may be found at the Federal Center for Medicare and Medicaid Services (CMS) website at www.cms.gov.

practitioners who work either for DPH or non-profit Community-Based Organizations, will qualify for Eligible Provider incentive payments by the Center for Medicare and Medicaid Services (CMS) over the next fiscal year as the required enhancements to the Avatar System are fully implemented.

Mr. Counter further noted that Federal program mandates have established complex and comprehensive criteria which are constantly changing as the program evolves. According to Mr. Counter, it is both expensive and complex to create and maintain software to meet these criteria. However, Mr. Counter advises that Netsmart was the first to be certified as a HITECH meaningful user, Netsmart is responsible for maintaining compliance with the required criteria to maintain its Federal certification, and is one of a few vendors determined by DPH to be available to provide these fully integrated clinical, billing and financial services.

FISCAL IMPACTS

Based on a competitive Request for Qualifications (RFQ) process, DPH entered into an agreement with Netsmart to license, implement, and provide maintenance and support services for Netsmart's proprietary Avatar System for the five-year period from August 1, 2008 through July 30, 2013, for a not-to-exceed $9,968,828 that included a project budget of $8,900,739 and a 12 percent contingency of $1,068,089 (see Table 1 above).

Ms. Hale advises that both the previous and proposed Netsmart agreement will be funded with General Fund revenues, subject to appropriation approval by the Board of Supervisors.

As shown in Table 2 below, the total not-to-exceed $9,968,828 amount authorized under the existing agreement includes $8,249,801 in expenditures incurred through February, 2012 plus $1,719,027 for expenditures anticipated to occur from March 2012 through approximately June 30, 2013. According to Mr. Counter, DPH plans to expend the full contingency amount allowed of $1,068,089 for additional Netsmart services for system customizations, training and implementation support for over 2,500 DPH and Community-Based Provider Organization users. Mr. Counter notes that the 12 percent contingency is standard in DPH contracts to allow flexibility in funding changes when DPH has received additional funding and needs to reallocate funds from one contract to another contract.

Table 2: Authorized Amount Under the Existing Agreement for Netsmart's Avatar System

Contract Year	*Term Period*		*Project Cost*
Expenditures to Date			
Year 1	8/1/2008	6/30/2009	$2,397,500
Year 2	7/1/2009	6/30/2010	3,087,306
Year 3	7/1/2010	6/30/2011	1,205,375
Year 4 (current FY)*	7/1/2011	2/29/2012	1,559,620
Subtotal of Expenditures to Date			**$8,249,801**
Anticipated Expenditures			
Year 4 (current FY)*	3/1/2012	6/30/2012	118,288
Year 5	7/1/2012	6/30/2013	1,600,739
Subtotal of Anticipted Expenditures			**1,719,027**
Project Total**			**$9,968,828**

*Notes: *Total expenditures budgeted in the current FY 11-12 are $1,677,908*
***Includes expenditure of the $1,068,089 Contingency*

As shown in Table 3 below, the proposed amendment to the existing agreement with Netsmart would authorize DPH to pay Netsmart an amount not-to-exceed $31,786,819, which is a $21,817,991 increase from the current not-to-exceed amount of $9,968,828.

Table 3: Proposed Amendment Budget of Netsmart's Avatar System

Contract Year	*Term Period*		*Project Cost*
Year 1	8/1/2008	6/30/2009	$2,397,500
Year 2	7/1/2009	6/30/2010	3,087,306
Year 3	7/1/2010	6/30/2011	1,205,375
Year 4	7/1/2011	6/30/2012	2,623,738
Year 5	7/1/2012	6/30/2013	1,967,300
Year 6	7/1/2013	6/30/2014	1,700,000*
Year 7	7/1/2014	6/30/2015	1,700,000*
Year 8	7/1/2015	6/30/2016	1,700,000*
Year 9	7/1/2016	6/30/2017	1,694,596*
Year 10	7/1/2018	6/30/2018	1,700,000*
Project Total			**$19,775,815**
Optional Licenses, Services and Subscriptions			$8,605,273
Project Subtotal			**$28,381,088**
12 Percent Contingency			3,405,731
Total Not-to-Exceed Amount			**$31,786,819**

*Note: *Total of $8,494,596 for ongoing operations and maintenance costs for the approximate five year (4 years and 11 months) under the proposed extended term of the existing agreement.*

The proposed amended agreement primarily has two functions, (a) to continue the existing agreement for an additional four years and eleven months at an average annual cost $1,698,919 for operations and maintenance costs (excluding contingencies), or $81,229 less than the average annual cost of $1,780,148 for operations and maintenance costs (excluding contingencies) under the existing agreement; and (b) to provide enhancements for increased capabilities for both the remaining term of the existing agreement through July 30, 2013 and a five-year extension through June 30, 2018. Of the $21,817,991 requested increase to the existing agreement, (a) $1,312,391 reflects the increased cost for the proposed enhancements that are planned to be implemented in the remaining initial term through July 30, 2013; (b) $8,494,596 reflects the Project operations and maintenance costs for the additional four years and eleven months, from July 1, 2013 through June 30, 2018 to maintain user licenses and provide ongoing maintenance/support service; (c) $8,605,273 reflects the cost for optional licenses, services and subscriptions; and (d) $3,405,731 reflects a 12 percent contingency.

As shown in Table 3 above, and detailed in Table 4 below, the proposed amendment to the existing agreement contains $8,605,273 for Optional Licenses, Services and Subscriptions, including $3,625,030 related to "Meaningful Use" components of Netsmart's Avatar System.

Table 4: Proposed Contract Amendment Budget for Optional Licenses, Services and Subscriptions

Optional Licenses, Services and Subscriptions	***Cost***
Meaningful Use Components	$3,625,030
Web Services	586,051
Additional RADplus and Cache Licenses	1,715,957
Professional Services	
Additional Onsite Resources	2,611,935
My Avatar Upgrade	66,300
Optional Totals	**$8,605,273**

According to Mr. Counter, the $8,605,273 for optional licenses, services and subscriptions provides for the acquisition of system components at a cost of $3,625,030 as shown in Table 4 above, in order to comply with the ARRA regulations as well as for the expansion of the system to a greater number of Behavioral Health Information System users as Behavioral Health patient treatment programs evolve. In addition, the proposed Avatar System includes a $586,051 Web Services module which will provide a technical platform to link the DPH Avatar System with other proprietary systems which have been developed by or in use by DPH's contracted Community Based Provider organizations. Mr. Counter notes that additional RADplus and Cache Licenses at a cost of $1,715,957 are fees for anticipated additional end users of the Avatar application for the Rapid Application Development (RADplus) toolset for screen-building and reporting as well as the Cache relational database upon which the Avatar System is constructed. Ms. Anne Okubo, DPH Deputy Financial Officer, reports that although DPH cannot provide an estimate at this time due to the fluid environment of Health Care Reform, DPH expects to finance the $8,605,273 cost of such optional licenses, services and subscriptions with additional revenues anticipated to be obtained by DPH, instead of City General Fund revenues.

As discussed above, the proposed amendment to the existing agreement between DPH and Netsmart includes new software to address the Federal American Reinvestment and Recovery Act (ARRA) regulation for “Meaningful Use” of Certified Electronic Medical Records which could provide incentive payments to eligible hospitals and providers. As such, according to Mr. Counter, DPH could receive estimated Eligible Providers Incentive Payments of $21,250 in the first year and $8,500 in the subsequent years, with a maximum cap of $63,750 per eligible psychiatrist or nurse practitioner. Such incentive payments to DPH of up to $63,750 per psychiatrist or nurse practitioner are estimated to total $1,900,000 over the first three years of ARRA compliance, which would offset a portion of the $3,625,030 Meaningful Use cost of the proposed Avatar System enhancements.

RECOMMENDATION

Approve the proposed resolution.

AVATAR SYSTEM PRODUCT ENHANCEMENTS AND MAINTENANCE AND SUPPORT SERVICES INCLUDED IN THE PROPOSED CONTRACT AMENDMENT

Software
Electronic Signature
Document Management (Point of Service and Batch Scanning)
Three Interfaces:
Labs
Hospitals/Primary Care
Service Providers/Jail

Subscription
Consumer Connect

Implementation Services
Project Manager (Mar 2012 thru Nov 2012)
Billing Specialist (Sep 2011 thru Jun 2012)
Clinical Specialist (Sep 2011 thru Nov 2011)

Third Party Software
90 Additional InterSystems Cache Enterprise Licenses

Hardware
50 T-LBK755-HSB Electronic Signature Pads
62 T-S460-HSB Electronic Signature Pads
1 Dell OptiPlex 360 Minitower to be used with Batch Scanner
1 Batch Scanner
2 TB NAS Device (Storage for approximately 4,000,000 - 500 KB Images)
5 Point of Service (POS) Scanners

Optional Services
Optional Licenses, Services and Subscriptions
Meaningful Use Components
Order Connect: 152 User Subscriptions
Meaningful Use Stage 1 including Care Connect
Meaningful Use Stage 2
Web Services
RADplus and Cache Licenses
Professional Services Additional Onsite Resources
Professional Services My Avatar Upgrade

Optional Meaningful Use Components
Order Connect: 152 User Subscriptions
Meaningful Use Stage One (Includes Care Connect)
Meaningful Use Stage Two

Optional Products and Services
Web Services
100 RADplus and 25 Cache Licenses Additional Annually
Additional 6 Months Clinical Analyst and 6 Months Billing Analyst Annually
My Avatar Upgrade

Item 4 File 12-0082 (continued from April 4, 2012 meeting)	Departments: Human Rights Commission (HRC) City Controller's Office

EXECUTIVE SUMMARY

Legislative Objectives

- Ordinance amending the City's Administrative Code by adding Chapter 14C to provide for a four percent bid discount for companies qualifying under State law as a benefit corporation.

Key Points

- Under the traditional corporate structure, corporations must consider profit-making and the financial interests of shareholders above all else. As of January 2012, the California State Legislature authorized a new form of incorporation, known as a benefit corporation, which created a legal framework for socially-minded companies to consider non-financial interests when making business decisions.
- Since 1984, the City has granted bid preferences for several categories of disadvantaged businesses. The proposed ordinance provides a four percent bid discount for bid proposals from benefit corporations, if the result of the ranked proposal would not displace a local business enterprise (LBE), a nonprofit organization or a San Francisco-based business from being the apparent lowest bidder.

Fiscal Impacts

- It is uncertain as to how many, and what types of, companies will seek benefit corporation status, and of those, which will seek contracts with the City and County of San Francisco, such that the Budget and Legislative Analyst cannot quantify the fiscal impact of the proposed ordinance at this time. However, as a comparison, the Budget and Legislative Analyst reviewed 2011 construction contract award information for construction contracts of less than $10,000,000, in which an LBE was awarded the contract and a bid discount was applied, and found that the total additional cost to the City as a result of granting such LBE bid discounts was $822,172.
- In response to inquiries by the Budget and Finance Committee on March 14, 2012, an analysis was also completed on 2011 commodities purchases, which showed a potential impact only in the vehicle purchasing category, and on 2011 professional services contracts, which was inconclusive due to the subjective nature of the proposal review process for professional services contracts.

Note

- The proposed ordinance was continued for one week by the Budget and Finance Committee pending additional potential amendments to address: (a) a time limited term, such as three years, for the proposed benefit corporation bid discount program; and (b) how the proposed four percent discount for benefit corporations would not disadvantage other local regional businesses.

Recommendation

- Approval of the ordinance is a policy decision for the Board of Supervisors.

MANDATE STATEMENT

According to Charter Section 2.105, the Board of Supervisors shall act only by written ordinance or resolution, except that it may act by motion on matters over which the Board of Supervisors has exclusive jurisdiction.

BACKGROUND

Benefit Corporation Status

A benefit corporation is a new form of incorporation that is legally recognized in seven States, including California. Under the traditional corporate structure, corporations must consider profit-making and the financial interests of shareholders above all else. Benefit corporation status was developed as a response to the inability of existing legal frameworks to meet the needs of entrepreneurs and investors seeking to use business to solve social and environmental problems so that companies can balance the pursuit of corporate profits with environmental and social goals.

Because traditional corporate law has a narrow definition of fiduciary duty that makes it difficult for business leaders to focus on a mission that is broader than simply maximizing profit, businesses with a social mission need alternatives that allow them to be operate in ways that benefit more stakeholders. Maryland was the first State to allow benefit corporations in April 2010.

California Benefit Corporation Legislation – AB 361

Assembly Bill (AB) 361was adopted by the California State Legislature on October 9, 2011, and became effective on January 1, 2012, making California the sixth of seven States in the United States to recognize benefit corporations. AB 361 states that a benefit corporation may be formed for the purpose of creating a general public benefit, defined as a material positive impact on society and the environment, taken as a whole.

AB 361 is intended to encourage environmental and social responsibility, as well as greater standards of accountability and transparency for corporations, and as such allows benefit corporations to identify one or more specific public benefits including but not limited to: (a) providing low-income or underserved communities with beneficial products or services; (b) promoting economic opportunity for individuals or communities beyond the creation of jobs in the ordinary course of business; (c) preserving the environment; and (d) improving human health. In addition, AB 361 expands the fiduciary duty to create clarity for boards of directors about their obligations and liability protection, as well as for consumers and investors about what to expect from the business.

Since AB 361 became effective in January of 2012, 21 California companies have filed for incorporation as benefit corporations.

Existing Bid Discounts for Competitively Solicited Contracts in San Francisco

Since 1984, with the passage of the Minority/Women/Local Business Utilization Ordinance by the Board of Supervisors, the City and County of San Francisco has granted bid preferences for disadvantaged businesses. These businesses include minority-owned business enterprises (MBEs), women-owned business enterprises (WBEs), and locally-owned business enterprises (LBEs). Today, in accordance with City Administrative Code Chapter 14B, those businesses are now collectively categorized as LBEs, and receive 2 percent to 10 percent bid discounts when competing for City contracts.

Locally-owned businesses in San Francisco must receive certification of their LBE status from the San Francisco Human Rights Commission (HRC), which administers the bid discount. There are three levels of discounts available to certified LBEs, as follows: (1) a two-percent preference to Small Business Administration firms (SBAs)[1]; (2) a seven and one-half percent preference to joint ventures with local MBE or WBE participation; and (3) a 10 percent preference to "micro" and "small" LBEs. Classifications for "micro", "small" and "SBA" businesses are based on maximum annual gross revenues for each type of business, as shown in Table 1 below.

Table 1:
Maximum Annual Gross Revenues for LBE Certified Firms

	Micro Bid Discount: 10%	Small Bid Discount: 10%	SBA Bid Discount: 2%
Class A and Class B General Contractors	$7,000,000	$14,000,000	$33,500,000
Specialty Construction Contractors	3,500,000	7,000,000	17,000,000
Trucking and Hauling	1,750,000	3,500,000	8,500,000
Goods, Materials and Equipment Suppliers	3,500,000	7,000,000	17,000,000
General Service Providers	3,500,000	7,000,000	17,000,000
Architect/Engineering	1,250,000	2,500,000	7,000,000
Professional Services	1,250,000	2,500,000	7,000,000

DETAILS OF LEGISLATION

This report is based on an Amendment of the Whole that was approved by the Budget and Finance Committee on April 4, 2012.

The proposed amended ordinance would add Chapter 14C, Sections 14C.1 through 14C.3 to the City's Administrative Code in order to provide a four percent bid discount for benefit corporations that submit bids for competitively solicited City contracts. The proposed four percent bid discount is intended to provide a competitive advantage to benefit corporations,

[1] SBA firms are defined by the U.S. Small Business Administration.

whose ability to submit the lowest bids for City contracts may be compromised by their commitment to supporting social and environmental justice. Under the proposed ordinance, the subject discount of four percent would apply to (a) all commodities and professional services contracts between $100,000 and $10,000,000, and (b) all general services contracts between $400,000 and $10,000,000, as established in Chapters 6 and 21 of the City's Administrative Code.

In accordance with the proposed amended ordinance, to be eligible to receive the four percent bid discount, the benefit corporation must (a) not be a subsidiary of a non-benefit corporation, and (b) have been incorporated in California for at least six months prior to receiving the subject discount. In addition, the four percent bid discounts for benefit corporations would not be applicable until 90 days after final approval of the proposed ordinance.

Under the proposed ordinance, the subject four percent bid discounts for benefit corporations would be centrally administered by the City's Human Rights Commission (HRC), which would be responsible for verifying the benefit corporation's current status with the California Secretary of State, and as part of this verification process, HRC may require benefit corporations to submit additional documentation. Additionally, under the proposed ordinance, HRC would be responsible for adopting rules and regulations to require that benefit corporations have received third-party certification of compliance with public benefit goals.

In accordance with the proposed ordinance, individual City department contracting authorities would be required to cooperate with HRC to apply the four percent discount to the applicable benefit corporations. The proposed four percent discount for benefit corporations would only apply if the results of the ranked proposals would not displace a 14B[2] LBE, a non-profit organization or a San Francisco-based business[3] from being the apparent lowest bidder. In addition, under the proposed ordinance, the four percent bid discount could not be combined with any other bid discount – for example, LBEs that are also benefit corporations would only be eligible for the LBE ten percent bid discount, as opposed to a combined 14 percent bid discount. Table 2 below details the proposed bid discount percentages.

Table 2: Bid Discount Amounts

	Current Bid Discount Amount	Benefit Corporation Bid Discount Amount	Total Bid Discount Amount
SBA-LBE	2%	0%	2%
Joint Venture LBE	7.5%	0%	7.5%
Micro/Small LBE	10%	0%	10%
Nonprofit Organization	10%	0%	10%
Non-LBE	0%	4%	4%

[2] "14B LBEs" are LBEs that receive a bid discount when competing for City contracts, according to the Administrative Code Chapter 14B.

[3] "San Francisco business" is defined in the proposed ordinance as a business that is registered with the Office of the Treasurer and Tax Collector's Business Registration records, and maintains an address located within the geographic limits of the City and County of San Francisco.

The proposed ordinance also requires that the HRC, in coordination with the City Controller's Office, conduct biannual evaluations of the impact of the Benefit Corporation Discount on City contracting for the first two years of the effective date of the proposed ordinance. Thereafter, HRC, in coordination with the Controller's Office, would be required to conduct annual evaluations. These evaluations would analyze Benefit Corporation participation levels by reviewing the number of City contracts awarded by size, type and amount of discount, and may provide recommendations to the Board of Supervisors for future amendments.

FISCAL IMPACTS

As noted above, benefit corporation legislation has only been effective in the State of California since January of 2012, and as of March 26, 2012, there were only 21 companies that have filed for benefit incorporation with the California Secretary of State. At this time, it is uncertain as to how many, and what types of, companies will eventually seek benefit corporation status, and of those, which will seek contracts with the City and County of San Francisco.

Therefore, the Budget and Legislative Analyst cannot quantify the actual fiscal impact of the proposed ordinance at this time. However, as a comparison, based on 2011 construction contract award information provided by HRC[4], for construction contracts of less than $10,000,000, in which an LBE was awarded the contract and a bid discount was applied, the total additional cost to the City as a result of granting such LBE bid discounts was $822,172.

In response to inquiries by the Budget and Finance Committee on March 14, 2012, in addition to construction contracts, the Budget and Legislative Analyst has also reviewed 2011 professional services contract award information provided by HRC and individual contract awarding authorities. Because of the more subjective nature of the proposal review process for professional services contracts, where a low bid is only one factor in determining the contract award, it is impossible to quantify the actual increased cost to the City as a result of granting such LBE bid discounts for professional services contracts. Unlike construction contracts which are awarded to the lowest most qualified bidder, professional services contracts are awarded based upon an evaluation of various criteria, of which the cost of services only represent one factor in the contract award process.

In addition, the Budget and Legislative Analyst reviewed a sample of data provided by the Purchasing Department reflecting the City's 2011 purchases in three categories: (a) vehicles, (b) Information Technology (IT) equipment, and (c) transportation equipment. The Budget and Legislative Analyst found that most of these purchases were under the threshold of $100,000 for commodities, as defined by the proposed ordinance, and therefore would not be impacted by the proposed four percent bid discount for benefit corporations. From the sample provided

[4] The data used in this analysis was provided by HRC for the Recreation and Park Department, Public Utilities Commission, Department of Public Works, and the Airport. The total number of construction contracts under $10,000,000 awarded in 2011 was 69, for a total amount of $466,495,034, of which the value of the bid discount was less than one percent.

by the Purchasing Department, vehicles were the only category where a bid discount could have had an impact. On the six bids reviewed pertaining to vehicle purchases, three bids, or 50 percent of the bids reviewed, could potentially have gone to a higher bidder, if that bidder had been eligible for a benefit corporation bid discount. Assuming the proposed benefit corporation bid discount of four percent was applied in those three instances, the additional cost to the City from applying these bid discounts would have totaled a maximum amount of $17,108, or 2.98 percent of the maximum total contract award amount of $575,170.

NOTE

The proposed ordinance was continued for one week by the Budget and Finance Committee pending additional potential amendments to address: (a) a time limited term, such as three years, for the proposed benefit corporation bid discount program; and (b) how the proposed four percent discount for benefit corporations would not disadvantage other local regional businesses.

RECOMMENDATION

Approval of the proposed ordinance is a policy decision for the Board of Supervisors.

Harvey M. Rose

cc: Supervisor Chu
Supervisor Avalos
Supervisor Kim
President Chiu
Supervisor Campos
Supervisor Cohen
Supervisor Elsbernd
Supervisor Farrell
Supervisor Mar
Supervisor Olague
Supervisor Wiener
Clerk of the Board
Cheryl Adams
Controller
Kate Howard