



Los Angeles County Registrar-Recorder/County Clerk

DEAN C. LOGAN  
Registrar-Recorder/County Clerk

**ADOPTED**

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

June 12, 2018

22 June 12, 2018

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

CELIA ZAVALA  
ACTING EXECUTIVE OFFICER

Dear Supervisors:

**APPROVE CONTRACT WITH SMARTMATIC USA CORPORATION  
FOR PRIME CONTRACTOR IMPLEMENTATION SERVICES  
UNDER THE VOTING SOLUTIONS FOR ALL PEOPLE (VSAP) PROJECT**

**(ALL SUPERVISORIAL DISTRICTS)  
(3 VOTES)**

**CIO RECOMMENDATION: APPROVE (X) APPROVE WITH MODIFICATION ( )  
DISAPPROVE ( )**

**SUBJECT**

The Registrar-Recorder/County Clerk (RR/CC) requesting Board approval of a new Contract (#18-003) with Smartmatic USA Corporation (Smartmatic) to manufacture (hardware and software) and implement new custom-designed ballot marking devices (BMDs) in collaboration with Los Angeles County (County) under the Voting Solutions for All People (VSAP) Project; and (ii) delegation of authority to the RR/CC to amend the Contract. The resulting VSAP solution will go through testing and Secretary of State certification for full implementation for the 2020 Presidential Election cycle.

**IT IS RECOMMENDED THAT THE BOARD:**

1. Delegate authority to the RR/CC, or designee, to execute a Contract with Smartmatic to provide prime contractor services described under VSAP, substantially similar to Attachment I, effective June 12, 2018, through March 31, 2027 with three, 2-year optional extensions through March 31, 2033, for a maximum dollar amount of \$282,097,321, including extensions.
2. Delegate authority to the RR/CC, or designee, to execute future amendments to extend the

“and/or” rather than “either/or”) and (vii) “Section”, “Subsection”, “Paragraph” and “Subparagraph”, when used in reference to any part of this Contract, shall have the same meaning no matter which term is used.

## **1.4 INTEGRATION**

This Contract and the Exhibits hereto constitute the complete and exclusive statement of understanding between the Parties, and supersede all previous agreements, written and oral, and all communications between the Parties relating to the subject matter of this Contract. No change to this Contract shall be valid unless prepared pursuant to Section 8.1 (Change Notices and Amendments) and signed by both Parties.

## **2.0 OWNERSHIP AND INTELLECTUAL PROPERTY**

### **2.1 INTELLECTUAL PROPERTY**

**2.1.1** Contractor understands and agrees that, except for Pre-Existing Rights, anything developed, designed and/or provided by Contractor in the course of providing the Services, including but not limited to, the VSAP Solution, and all works based thereon, incorporated therein, or derived therefrom, shall be the sole property of County and subject to Paragraph 2.1.4 of the Contract. The VSAP Solution, including any aspects, parts or components of it, in any form prepared, assembled or encountered by or provided to Contractor in connection with the provision of the Services under the Contract, is owned exclusively by County. For avoidance of doubt, the provisions of Subparagraphs 2.1.1 and 2.1.2 do not apply to COTS hardware components.

**2.1.2** Contractor and County intend that, to the extent permitted by law and except for Pre-Existing Rights, the VSAP Solution and its subcomponents are conclusively deemed “works made for hire” within the meaning and purview of Article 101 of the United States Copyright Act, 17 U.S.C. §101 et seq. To the extent that the VSAP Solution does not qualify as a “work made for hire,” Contractor hereby, subject to County’s payment of amounts due hereunder, irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to County, its successors and assigns, all right, title and ownership interest in and to the VSAP Solution and the intellectual property rights embodied thereby, including copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals for them, and other tangible or intangible IP embodied in or pertaining to the VSAP Solution prepared for County under the Contract, and all goodwill relating to them, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law; provided, however, that Pre-Existing Rights shall be excluded from such assignment to County. Contractor will execute all documents and perform all acts that County may reasonably request in order to assist County in perfecting its rights in and to the IP relating to VSAP Solution, at the sole expense of County. If

Contractor fails or refuses to execute any such documents, Contractor hereby appoints the County as Contractor's attorney-in-fact (this appointment to be irrevocable and a power coupled with an interest) to act on Contractor's behalf and to execute such documents. Contractor hereby forever waives and agrees never to assert against the County, its successors or licensees any and all "moral rights" or rights of authorship or attribution Contractor may have in the VSAP Solution or related IP even after expiration or termination of this Contract, including with respect to Pre-Existing Rights. Contractor further represents and warrants that it has current invention assignment agreements with each of its employees and its Subcontractors' employees who will perform work under this Contract requiring each such employee's assignment and transfer of all the IP rights, title, and interests described in this paragraph such that Contractor can legally convey the same to the County.

- 2.1.3** Contractor must deliver or cause to be delivered to County the VSAP Solution, including, without limitation, all hardware and software components (e.g., the BMD, BMG, ASC, BCS, and ISB), code (executable and source), reports, profiles, analyses, programs, recommendations, guidelines, notes, documentation and memoranda related to the VSAP Solution and Services promptly in accordance with the time limits prescribed in the Contract, and if no time limit is specified, then upon reasonable demand for them or upon termination or completion of the Contract. In the event of the failure by Contractor to make such delivery upon demand, then and in that event, Contractor must pay to County any damages County may sustain by reason of Contractor's failure.

At no additional charge to the County, the Contractor shall also provide or make available to the County all documentation or other written instructions related to the VSAP Solution, including, without limitation, its software as is reasonably necessary for the County to use and take advantage of the full functionality of the VSAP Solution. Such documentation will be supplied to the County by the Contractor in electronic form via the Project Information Library. Such documentation may be updated periodically by the Contractor, at no additional cost to the County, as upgrades, revisions, or other material changes or modifications are made to the VSAP Solution.

The County may, at any time, reproduce copies of all documentation and other materials provided or made available by the Contractor, distribute such copies without restriction (to include to County personnel, County designees, licensees and users of the VSAP Solution), and incorporate such copies into its own technical and user manuals.

- 2.1.4 Pre-Existing Rights.** Rights in the VSAP Solution may include Contractor's proprietary information, methodologies, software (including third-party IP and open source software), firmware, designs, components, materials, concepts, or project tools developed without any connection or

reference to the Services or related to the Contract (“**Pre-Existing Materials**”); provided, however, that Contractor shall notify County in advance of such inclusion. Contractor may also incorporate any Contractor Pre-Existing Materials, including COTS hardware components, into the VSAP Solution by providing prior written notice thereof to County, which notice shall include copies of the license under which such third-party (including open source) software and COTS hardware components are made available to County.

**2.1.5** To the extent any Contractor Pre-Existing Rights or Pre-Existing Materials are incorporated into the VSAP Solution, Contractor hereby grants to County a fully-paid, royalty-free, irrevocable, perpetual, non-exclusive, transferable in whole or in part (including right to sublicense through multiple tiers), right and license to use the Pre-Existing Materials; provided, however, that such transference includes the entire VSAP Solution or a significant part of the VSAP Solution that includes such Pre-Existing Rights. For avoidance of doubt, the County acknowledges that notwithstanding any license or right granted by Contractor the Pre-Existing Rights are not transferable individually or separate and apart from VSAP Solution and any transference permitted herein shall also include this restriction. To the extent any third-party IP (other than open source software, which is subject to Subparagraph 2.1.5.1) is incorporated into the VSAP Solution, Contractor shall obtain and provide to County a fully-paid, royalty-free, irrevocable, perpetual, non-exclusive, transferable (including right to sublicense through multiple tiers), right and license to use the third-party IP from such third party, provided, with respect to the transferability, that third-party IP shall be subject to the same restriction applicable to Pre-Existing Rights. County grants to Contractor a limited, nonexclusive, non-transferable, revocable right and license to use County IP for the sole purposes of performing its obligations under the Contract.

**2.1.5.1** Use of Open Source Software. Except with respect to open source software provided or made available to Contractor by County (or except further to the extent Contractor was otherwise directed by County to use open source software), Contractor represents and warrants that: (a) the performance of any Services, the delivery of any deliverables pursuant to this Contract, or the use of the VSAP Solution will not cause County to be in violation of any open source licenses or otherwise require the publication of any software pursuant to the terms of such open source licenses; and (b) provided that County uses the VSAP Solution in accordance with the applicable licenses and/or notices given to County by Contractor, including, without limitation, providing appropriate licenses and/or notices with any distribution of the VSAP Solution, in the form and to the extent such licenses and/or notices were provided by Contractor to County, County’s use of the VSAP Solution under this Contract does not, or will not with the passage

of time, violate any open source licenses or otherwise require the publication of any software pursuant to the terms of such open source licenses. As County's exclusive remedy for a breach of this Sub-paragraph 2.1.5.1, Contractor will either obtain a license for County's use (as permitted under this Contract) of the affected open source software without publication, or provide a functionally equivalent replacement that would not cause a breach of this Sub-paragraph 2.1.5.1 or publication of such software. For the avoidance of doubt, the immediately preceding sentence does not limit any obligations of Contractor in respect of third-party claims and losses under Sub-paragraph 8.23 (Indemnification).

## **2.2 USE OF PRE-EXISTING MATERIALS AND PRE-EXISTING RIGHTS FOLLOWING TERMINATION FOR CONVENIENCE.**

In the event that this Contract is terminated by County for Convenience pursuant to Section 8.42 below prior to the expiration of the Initial Contract Term, then in addition to payments due to the Contractor pursuant to Section 8.48 below, County shall pay to Contractor an amount (the "**Early Termination Payment**") to equal to the then net present value of the Allocated License Fee, discounted at ten percent (10%), that would have been payable between the effective date of termination and the date on which the Initial Contract Term would have expired. As used herein, the term "**Allocated License Fee**" means the amount of nine hundred thousand dollars (\$900,000.00) per twelve (12) month period of Maintenance and Support during the Initial Contract Term.

## **2.3 OWNERSHIP OF MATERIALS**

**2.3.1** Except for the exceptions in this Section for Pre-Existing Rights and third-party IP, County shall be the sole owner of all right, title and interest, including copyright, in and to all software, plans, diagrams, facilities, documentation, and tools, which are originated or created through Contractor's and its Subcontractor's work pursuant to this Contract. Contractor, for valuable consideration herein provided, shall execute all documents necessary to assign and transfer to, and vest in the County necessary to assign and transfer to, and vest in the County all Contractor's and its Subcontractor's right, title and interest in and to such original materials, including any copyright, patent and trade secret rights which arise pursuant to Contractor's and its Subcontractor's work under this Contract.

**2.3.2** County IP is and shall be the property of the County. In addition, other than the Pre-Existing Materials, all VSAP Solution data that is (a) provided to or by or made accessible to or by the County to the Contractor, (b) generated by the VSAP Solution or (c) the product of the VSAP Solution provided by the Contractor hereunder is and shall be the property of the County. For the avoidance of doubt, except as licensed to County hereunder, nothing in this Contract shall impair or limit the rights of

Contractor to use the Pre-Existing Materials for purposes other than the VSAP Solution or other than for performance of this Contract.

## **2.4 USE OF VSAP SYSTEM BY THE CONTRACTOR**

- 2.4.1** Effective upon achievement of deliverable 2.3.1.11 (Hardware Tooling – DVT) from the Statement of Work, the County hereby grants the Contractor a, perpetual, fully paid up, sublicenseable (through multiple tiers), non-transferrable (except pursuant to Section 8.2) license, at no cost to the Contractor, to use all plans, diagrams, documentation, and tools relating to the Hardware components of the VSAP Solution, as developed, modified, maintained and supported by Contractor in accordance with the terms of this Contract (collectively, the “**VSAP Hardware**”) for the purpose of providing voting system solutions to other voting jurisdictions. All software used by the Contractor in connection therewith shall be developed independently by the Contractor. Subject to any third-party confidentiality restrictions, the Contractor shall disclose no less than annually and hereby grants County an irrevocable, perpetual, non-exclusive, sublicenseable (through multiple tiers), fully paid up, and transferrable license to any improvements to the VSAP Hardware, including all plans, diagrams and documentation relating to such improvements. Such disclosure obligation shall expire upon the expiration of the Initial Contract Term. The County shall have a right to request that such improvements be implemented as Additional Work in accordance with this Contract.
- 2.4.2** During the Initial Contract Term, in the event that the County elects to make the VSAP Solution (or any portion of the software, code, plans, diagrams, and/or other documentation delivered hereunder) available in an open source format, it shall be a condition to the license and use of any such intellectual property that if the licensee thereof decides to use the VSAP Hardware in connection with the VSAP Solution, then to the extent such licensee engages (or intends to engage) third parties for such VSAP Hardware implementation, such licensee shall be required to engage the Contractor in connection with the design, manufacture, procurement and maintenance and support of such VSAP Hardware.
- 2.4.3** In the event that the County either (a) desires to distribute the VSAP Solution (excluding the VSAP Hardware prior to the end of the Initial Contract Term) on a for-profit basis (e.g., not as open source software or freeware); or (b) has not established its nonprofit program by the second anniversary of the Final Acceptance, the parties shall meet and confer in good faith and discuss reasonable terms and conditions upon which the Contractor may be permitted to distribute the VSAP Solution (excluding the VSAP Hardware prior to the end of the Initial Contract Term) on a for-profit basis. Contractor acknowledges that there is no guaranty that an agreement will result from such discussions or that any such discussions will be continued for any defined period of time.