



Legislation Text

File #: 11-0945, **Version:** 1

Chief Administrative Office, Procurement and Contracts Division, recommending the Board:

- 1) Approve non-standard warranty, limitations and release language for Taser International, Inc. for the purchase of Taser stun guns and related products; and
- 2) Authorize the Purchasing Agent to issue purchase orders referencing said terms.

Fiscal Impact/Change to Net County Cost: The act of approving the non-standard language has no fiscal impact; however, the language limits the County's remedies against Taser as described below.

Background: The County has purchased Taser stun guns for several years, and the Sheriff has indicated that Taser is the best quality product available. In addition, the Sheriff would like to continue to purchase Taser brand products because the officers are trained on, and familiar with them.

Reason for Recommendation: Proforce Law Enforcement, the sole distributor for Taser Products in our region, recently began incorporating Taser's Warranty, Limitations and Release language in its quotes for product. This language was not approved by County Counsel because it required the County to release and hold Taser harmless from any and all liability arising not only from the misuse, but from the deployment or use of the Taser product, including release from any claims of damages or injuries of third parties arising from the County's appropriate deployment and use of the weapon. In addition, the terms state that Taser is not liable for the failure of the product to perform, and caps Taser's liability for loss or damage arising from product defects to the purchase price of the product.

Counsel recommended that staff work with Taser to limit the County's release of Taser from liability to only the County's misuse of the products. Procurement and Contracts worked with Taser to modify the terms to remove the County's duty to indemnify Taser; however, Taser maintains that the company should be released from liability even in cases in which injury arises from the County's appropriate use of a Taser. Taser points out that, because a stun gun uses probes to deliver the charge, technically, any time a stun gun is used, injury is inflicted when the skin is broken by the probes. In addition, even if the County is following its approved use of force guidelines and appropriately using a Taser, injury may occur for which Taser is not at fault. For example, a suspect may fall down after being stunned, hitting his or her head in the process. In this case, there may be injury even though appropriate protocols were followed. Taser also makes the point that the proper functioning of a stun gun is dependent upon the County's maintenance and care of the gun, which is out of Taser's control. This is why Taser does not warrant against failure of the product to perform.

Counsel was not able to approve the modified language because, though it removes the County's obligation to indemnify Taser, it prevents the County from cross-complaining against Taser in a third party action, and because the limit on loss or damage arising from a defective product to the purchase price of the equipment is not favorable to the County. Counsel determined that these issues, together with the release of Taser from liability for appropriate use, constitute a policy question for the Board.

Risk Management reviewed the language and recommends that the Board approve the language and allow the purchase of Taser products by departments who have current use of force policies in place. To date, these products have only been purchased by the Sheriff, whose use of force policy has been reviewed and approved by County Counsel and Risk Management. The Probation Department does not use stun guns, and the District Attorney has expressed some interest in stun guns, but is currently working on a use of force policy. The use of Tasers by law enforcement involves risk, as does all use of force. Taser products are an appropriate tool for law enforcement. The County's risk is reduced by ensuring the Taser product is maintained properly, employees who use the product are trained in how and when to use it, and the department has a current use of force policy that provides direction on when to use it. Therefore, Risk Management recommends approval of this language.

Action to be taken following Board approval: Procurement and Contracts will issue purchase orders as needed on behalf of departments who have demonstrated that they have current use of force policies and training processes in place.

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