

**REPORT/RECOMMENDATION TO THE BOARD OF DIRECTORS
OF THE SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT
AND RECORD OF ACTION**

June 23, 2020

FROM

DAN MUNSEY, Fire Chief/Fire Warden, San Bernardino County Fire Protection District

SUBJECT

Information Technology Contracts

RECOMMENDATION(S)

Acting as the governing body for the San Bernardino County Fire Protection District (SBCFPD), authorize the Purchasing Agent to approve contracts, which include non-standard terms, with the following Information Technology (IT) vendors to renew subscriptions for IT products that assist SBCFPD in providing professional and modern fire protection and advanced life support services:

1. Renewal Order Form with Accela, Inc. in the amount of \$91,499.37 for Envision Connect Remote Annual License, CERS EDT Annual License, Maintenance and Support, Envision and PACT Annual License and Support for the period of July 1, 2020 through June 30, 2021.
2. Sales, Software License and Services Agreement with Kronos Incorporated for the following Telestaff services:
 - a. Software support services in the amount of \$28,741 for the renewal period of October 1, 2019 through September 30, 2020.
 - b. Hosting services in the amount of \$21,152 for the renewal period of January 21, 2020 through January 20, 2021.

(Presenter: Dan Munsey, Fire Chief/Fire Warden, 387-5779)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Improve County Government Operations.

Provide for the Safety, Health and Social Service Needs of County Residents.

FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost) as the costs of these IT contracts are funded by SBCFPD revenue. Sufficient appropriation for these contracts is included in SBCFPD's annual budget.

BACKGROUND INFORMATION

To aid in the mission of protecting the public it serves, SBCFPD uses multiple IT products to provide professional and modern fire protection and advanced life support services. The recommended contracts all play a vital role in assisting SBCFPD with providing these services.

Pursuant to County Policy 11-06, contracts that contain non-standard contract language require approval by the Board of Directors (Board). The delay in bringing the contract with Kronos Incorporated to the Board is the result of prolonged contract negotiations. To avoid future delays, SBCFPD will be requesting terms and conditions at least 120 days before expiration of any IT agreement to ensure a timely review, negotiation period and, if necessary, an agenda item approving any non-standard terms.

Accela, Inc.

On July 9, 2013 (Item No. 51), the Board approved a contract with Decade Software Company, LLC. (Decade Software) for the licensing, support and use of proprietary Envision Connect software. Envision Connect is designed to automate and manage SBCFPD's reporting, cost recovery, permitting and inspection processes in accordance with the Unified Program Agency (UPA) requirements found in the Health and Safety Code. In 2014, Accela, Inc. (Accela) acquired the assets and liabilities of Decade Software. The acquisition by Accela included the proprietary Envision Connect software currently being utilized by SBCFPD. The contract with Accela for this purpose expired on June 30, 2019. However, on January 7, 2020 (Item No. 38), the Board approved a contract extension with Accela for 2019-20.

The recommended Renewal Order Form with Accela will renew the Envision Connect Remote Annual License, CERS EDT Annual License, Maintenance and Support, Envision and PACT Annual License and Support in the amount of \$91,499.37 for a period of one year, July 1, 2020 through June 30, 2021. The non-standard contract terms of the contract include, but are not limited to, the following:

- Accela's disclaimer of warranties.
- A provision in the contract that provides that notwithstanding anything to the contrary in the contract, Accela's cumulative liability under the contract shall not exceed \$200,000. Accela's only obligation under the warranties is to cause the programs to operate substantially in accordance with the license materials or correct the materials at Accela's sole discretion.
- A non-binding dispute resolution (arbitration) process.
- Confidentiality provision.

Potential impacts of these non-standard provisions are the following:

- In terms of the limitations of liability provision, claims could exceed the liability cap leaving SBCFPD financially liable for the excess. In addition, SBCFPD's liability under the contract is not similarly limited.

Notwithstanding the non-standard provisions, SBCFPD is recommending that the Board authorize the Purchasing Agent to approve the Renewal Order Form with Accela because it will allow SBCFPD to continue to utilize software that automates and manages the reporting, cost recovery, permitting and inspection processes in accordance with the UPA requirements found in the Health and Safety Code.

Kronos Incorporated

SBCFPD uses Telestaff software from Kronos Incorporated (Kronos) to track staffing and provide educational support services (e.g. online tutorial videos on the purchased product). The recommended Sales, Software License and Services Agreement (Agreement) with Kronos will renew the Telestaff software support and hosting services for use of the software. The software support services are from October 1, 2019 through September 30, 2020, while the software hosting services are from January 21, 2020 through January 20, 2021. Both services are retroactive due to continued negotiations between SBCFPD and Kronos. Ultimately, the two parties could not agree on all terms, thus resulting in the Agreement having non-standard terms.

The non-standard terms of the Agreement include, but are not limited to, the following:

- The limitation of liability provision ~~does not expressly exclude Kronos' gross negligence, willful misconduct or violations of the law. In addition, liability is capped at the order amount~~ Kronos' liability under the contract to the contract amount.
- SBCFPD indemnifies and holds harmless Kronos for all damages or liability caused by SBCFPD's failure to comply with the contractual restrictions imposed on SBCFPD in using object code form only and complying with all laws when exporting the product to other countries.

- Kronos' insurance terms do not include the County's standard additional insured and waiver of subrogation provisions.
- The Agreement is silent on whether Kronos may assign it without SBCFPD's consent.

Potential impacts of these non-standard provisions include, but are not limited to, the following:

- The limitation of liability reduces the type and amount of claims the SBCFPD may pursue against Kronos.
- SBCFPD will be responsible for all damages or liability caused by SBCFPD's failure to comply with the contractual restrictions imposed on SBCFPD in using object code form only and complying with all laws when exporting the product to other countries.
- Kronos could assign the agreement without SBCFPD's consent.
- Without SBCFPD's standard additional insured provision, Kronos' insurance policies do not extend to SBCFPD. Also, without SBCFPD's standard waiver of subrogation clause, Kronos' insurance carrier is not prohibited from seeking to recover money it pays on a claim from SBCFPD.

Notwithstanding the non-standard provisions, SBCFPD is recommending that the Board authorize the Purchasing Agent to approve the Sales, Software License and Services Agreement with Kronos, along with the two order forms associated with software support and hosting services for Telestaff because of the preexisting relationship between the CONFIRE CAD software and the Kronos software. It will allow SBCFPD and CONFIRE to exchange data related to staffing throughout the department.

PROCUREMENT

Accela

Since 2014, SBCFPD has contracted with Accela as the sole provider of Envision Connect proprietary software. This software continues to be the only product available that meets State reporting requirements and is a cost effective solution for ensuring compliance with all criteria mandated under 1993 Senate Bill 1082 concerning the management of various hazardous material and hazardous waste programs.

Kronos

Telestaff software from Kronos was originally procured by CONFIRE. SBCFPD assumed management of the information technology systems from CONFIRE in 2018. SBCFPD desires for the continued use of this software. Therefore, SBCFPD must continue to purchase its own licenses and support from Kronos.

Purchasing concurs with the non-competitive justification for each agreement.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Scott Runyan, Deputy County Counsel, 387-5455) on June 5, 2020; Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on June 5, 2020; Finance (Tom Forster, Administrative Analyst, 387-4635) on June 5, 2020; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on June 8, 2020.