

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

July 27, 2021

FROM

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

SUBJECT

VMware Workspace ONE Subscription and Support Services

RECOMMENDATION(S)

Acting as the governing body of the San Bernardino County Fire Protection District:

1. Approve participation in State of California Software License Program contract (SLP-17-70-0025L) with CDW Government, LLC for the purchase of subscription licenses for VMware Workspace ONE Standard (Shared Cloud) in the not to exceed amount of \$23,190 for the term of July 1, 2021 through June 30, 2022.
2. Authorize the Purchasing Agent, subject to review by County Counsel, to execute any documents related to participation in State of California Software License Program contract (SLP-17-70-0025L) for the purchase of subscription licenses for VMware Workspace ONE Standard (Shared Cloud).

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

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Improve County Government Operations.

Operate in a Fiscally-Responsible and Business-Like Manner.

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 Discretionary General Funding (Net County Cost). This purchase, in the amount not to exceed \$23,190, will be funded by the San Bernardino County Fire Protection District (SBCFPD). Sufficient appropriation for this purchase is available in SBCFPD's 2021-22 budget.

BACKGROUND INFORMATION

To aid in the mission of protecting the public it serves, SBCFPD uses multiple Information Technology products to provide professional and modern fire protection and advanced life support services. The recommended purchase for VMware Workspace ONE Standard subscription licenses plays a vital role in assisting SBCFPD with providing these services in that it allows SBCFPD to remotely manage mobile devices to control and protect information on mobile data computers.

VMware does not enter into agreements directly with customers. Instead, VMware utilizes resellers such as CDW Government, LLC (CDW-G) to sell software, services, and support. CDW-G has entered into a master price agreement for the sale of VMware Workspace ONE Standard subscription licenses and support with the State of California under Software License

Program (SLP) contract (SLP-17-70-0025L) (State SLP Agreement). The State SLP Agreement enables local governments, such as SBCFPD, to participate in the agreement under California State procurement terms. The State SLP Agreement currently expires on July 31, 2022.

SBCFPD previously purchased VMware Workspace ONE Standard subscription licenses and those licenses expired on June 30, 2021. The State SLP Agreement will be the operative contract between SBCFPD and CDW-G for the purchase of subscription licenses for VMware Workspace ONE Standard (Shared Cloud) in the not to exceed amount of \$23,190, for the term of July 1, 2021 through June 30, 2022. Due to the unexpected amount of time required to review and negotiate the agreement with CDW-G, SBCFPD staff were not able to bring an agreement to the Board of Directors for approval prior to expiration of the prior contract on June 30, 2021. To ensure that there would be no lapse in service, SBCFPD reached out to VMware directly and VMware agreed to allow continued use of VMware Workspace ONE Standard subscription licenses through July 30, 2021. As a result, the purchase is retroactive to July 1, 2021. Through the continued use of State SLP agreements, there should be no need for SBCFPD to retroactively purchase VMware Workspace ONE Standard subscription licenses in the future.

Because SBCFPD is participating in the State SLP Agreement, the agreement has non-standard terms, including, but not limited to, the following:

1) Indemnity

- The SBCFPD standard contract indemnity provision requires the vendor to indemnify, defend, and hold SBCFPD harmless from third party claims arising out of the acts, errors or omissions of any person. The standard contract provision for intellectual property indemnity is: Contractor will indemnify, defend, and hold harmless SBCFPD and its officers, employees, agents and volunteers, from any and all third-party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services.
- The State agreement provides some, but not all of SBCFPD's standard indemnification terms.
- Potential Impact: There are some risks associated with the State agreement's more limited indemnification provision; however, the State agreement's terms limit the risks.

2) Insurance

- SBCFPD's standard contract requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department.
- The State agreement provides some, but not all of SBCFPD's standard insurance terms.
- Potential Impact: There are some risks associated with the State agreement's lack of SBCFPD's standard insurance terms which could result in expenses to SBCFPD that exceed the total contract amount; however, the State agreement's terms limit these risks.

3) Warranty

- SBCFPD's standard contract provision is for the contractor to fully warrant its product and services.
- The State agreement provides a limited one-year warranty.

- Potential Impact: There are some risks associated with the warranty provision; however, the State agreement's terms limit the risks.
- 4) Limitations on the amount and type of damages available to SBCFPD.
 - SBCFPD's standard contract does not include a limitation of liability.
 - Subject to certain exceptions, the vendor's liability under the State agreement is limited to the purchase price.
 - Potential Impact: There are some risks associated with the limitation of liability provision; however, the State agreement's terms limit the risks. In the event liability is limited to the purchase price, then claims could exceed the liability cap and the contract amount leaving SBCFPD financially liable for the excess.
- 5) Payments
 - In general, SBCFPD's standard contract provides that payment is net 60 days.
 - The State agreement provides that payment is due 45 days after satisfaction of certain conditions.
 - Potential Impact: Payment must occur as provided in the State agreement.
- 6) Venue
 - SBCFPD's standard contract requires venue for disputes in Superior Court of California, San Bernardino County, San Bernardino District.
 - The State agreement states that venue is in Sacramento, California.
 - Potential Impact: In the event the State agreement terms require disputes to be resolved in state court versus arbitration, court venue would be in Sacramento, California. This may result in additional expenses that exceed the amount of the contract.

Despite the non-standard terms, SBCFPD recommends approval of participation in the State SLP Agreement with CDW-G to purchase VMware Workspace ONE Standard subscription licenses for the term of July 1, 2021 through June 30, 2022, as the agreement includes State of California terms that are favorable to SBCFPD.

PROCUREMENT

On May 4, 2021, SBCFPD released an informal request for quotes for VMware software subscription and support services from VMware authorized resellers. The following quotes were received:

Vendor	Total Cost
CDW-G	\$23,190
Golden Star Technology	\$25,374
SHI International Corp.	\$25,504

However, during contract negotiations with CDW-G and in further consultation with San Bernardino County Purchasing, SBCFPD became aware of the opportunity to contract with CDW-G by participating in the State SLP Agreement (SLP-17-70-0025L). The State SLP offers extensive discounts negotiated with major software publishers that are then passed through SLP agreements established with authorized participating resellers. SLP agreements are established to reduce the need for the State or public entities to conduct repetitive acquisitions for software licenses and software upgrades while taking advantage of large volume discounts offered by the software publishers. The customers that use the State SLP agreements include State departments, cities, counties, and special districts. The State SLP agreements also include contract terms negotiated by the State that are more favorable to the State and

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participating entities than negotiating an agreement directly with the information technology vendors.

On July 22, 2021, SBCFPD received the final quote for the purchase of subscription licenses for VMware Workspace ONE Standard (Shared Cloud) under the State SLP Agreement (SLP-17-70-0025L) from CDW-G for the term of July 1, 2021 through June 30, 2022.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Scott Runyan, Supervising Deputy County Counsel, 387-5455) on July 22, 2021; Purchasing (Cody Leslie, Lead Buyer, 387-2065) on July 20, 2021; Risk Management (Rafael Viteri, Deputy Director, 386-8730) on July 22, 2021; Finance (Tom Forster, Administrative Analyst, 387-4635) on July 20, 2021; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on July 20, 2021.

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Record of Action of the Board of Directors
San Bernardino County Fire Protection District

APPROVED (CONSENT CALENDAR)

Moved: Dawn Rowe Seconded: Col. Paul Cook (Ret.)

Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, SECRETARY

BY 
DATED: July 27, 2021



cc: File- San Bernardino County Fire Protection District w/attach
LA 08/2/2021