



San Bernardino County

Legislation Text

File #: 6691, Agenda Item #: 72

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

September 13, 2022

FROM

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

SUBJECT

Non-Financial Information Technology Agreements with Citrix Systems, Inc. for Software Licenses and Services

RECOMMENDATION(S)

Acting as the governing body of the San Bernardino County Fire Protection District, approve the following non-financial agreements with Citrix Systems, Inc., including non-standard terms, for software services associated with ADC VPX 200, Citrix Virtual Apps and Desktops, and Citrix Hypervisor, which shall remain in effect for as long as the San Bernardino County Fire Protection District continues to access or use the underlying software, or until terminated in accordance with the provisions of the agreements:

1. Citrix License Agreement; and
2. Citrix End User Services Agreement.

(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 these agreements will not result in the use of Discretionary General Funding (Net County Cost). These Information Technology (IT) agreements are non-financial in nature and do not commit the San Bernardino County Fire Protection District (SBCFPD) to make any purchases. If future purchases are made in conjunction with these IT agreements, SBCFPD will adhere to purchasing policies and return to the Board of Directors (Board) for approval, if necessary.

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 and to improve its operations by managing a virtual desktop environment for the staff.

Citrix Systems, Inc. (Citrix) is virtualization software that allows SBCFPD fire station users access to a virtual desktop. The users access a virtual desktop using "Windows 10" via this environment to perform payroll, email, review staffing assignments, and complete required training to renew certifications in order to provide

modern fire protection and advanced life support services. Instead of a typical computer or laptop, this environment accesses a virtual desktop via a thin client/dumb terminal at each fire station.

The software license provides access licenses based on the concurrent number of users to the system. It also licenses SBCFPD firewall/VPX appliances, and SBCFPD's hypervisor servers that provide the resources for all the virtual desktops.

The Citrix License Agreement and Citrix End User Services Agreement (Citrix Agreements) are its standard commercial terms. The Citrix Agreements will govern any future purchase or renewal of the software services associated with ADC VPX 200, Citrix Virtual Apps and Desktops, and Citrix Hypervisor.

Pursuant to Policy 11-05, contracts that contain non-standard contract language require Board approval. The Citrix Agreements include terms that differ from the standard SBCFPD contract and omit certain SBCFPD standard contract terms.

The non-standard and missing terms include the following:

- 1) Governing law is the State of Florida.
 - The SBCFPD standard contract requires California governing law.
 - Potential Impact: The Citrix Agreements will be interpreted under Florida law. Any questions, issues or claims arising under this contract will require SBCFPD to hire outside counsel competent to advise on Florida law, which may result in fees that exceed the total contract amount. County Counsel cannot advise on the contract.
- 2) Citrix may assign the Citrix Agreements to a successor in interest, or pursuant to a merger or a sale or transfer of all of substantially all of its assets, to any affiliate or third party acquiring or otherwise assuming part of the business of Citrix or any of its affiliates without notice to the SBCFPD.
 - The SBCFPD standard contract requires SBCFPD approve any assignment of the contract.
 - Potential Impact: Citrix may assign the Citrix Agreements to a third party or business with which the SBCFPD is legally prohibited from doing business due to issues of Federal debarment or suspension and conflict of interest, without the SBCFPD's knowledge.
- 3) Except for the Citrix infringement indemnification provision, the Citrix Agreements are silent on attorneys' fees.
 - The SBCFPD standard contract requires each party to bear its own costs and attorneys' fees, regardless of who is the prevailing party.
 - Potential Impact: County Counsel cannot advise on, whether and to what extent, Florida law may affect a party's requirement to pay the prevailing party's attorneys' fees and costs in a legal action where no specific provision is provided in the Citrix Agreements.
- 4) The Citrix Agreements do not require Citrix to meet the SBCFPD's insurance standards.
 - The SBCFPD standard contract requires contractors to carry appropriate insurance at limits and under conditions determined by the SBCFPD's Risk Management Department.
 - Potential Impact: The Citrix Agreements do not include SBCFPD standard insurance requirements. This means that the SBCFPD has no assurance that Citrix will be financially responsible for claims that may arise from the SBCFPD's use of the software, which could result in expenses to the SBCFPD that exceed the total Citrix Agreements amount.
- 5) The Citrix Agreements includes a broad limitation of liability in favor of Citrix, as well as limits the total aggregate liability of Citrix, its affiliates, suppliers or authorized distributors shall not exceed the amount paid for the relevant product, during the relevant term of subscription (or for 12 months preceding the incident), the relevant maintenance term or the consulting deliverable, excluding its indemnification

obligations and to the extent permitted by applicable law.

- The SBCFPD standard contract does not include a limitation of liability.
- Potential Impact: Claims that fall within the broad limitation of liability or claims that exceed the liability cap and the Citrix Agreements amount may leave SBCFPD financially liable for the excess. County Counsel cannot advise on, whether and to what extent, Florida law may limit or expand the exclusion of limits to the extent prohibited by applicable law.

6) Venue is Broward County, Florida.

- The SBCFPD standard contract provides that state court venue is in San Bernardino, California.
- Potential Impact: Court venue will be in Venue is Broward County, Florida.

7) The License Agreement shall remain in effect for as long as SBCFPD continues to access or use the software, or until terminated in accordance with the provisions of the License Agreement. SBCFPD may terminate the agreement at any time by removing the software from the computers and destroying all copies, and then providing written notice to Citrix with the serial numbers of the licenses removed. The Citrix End User Services Agreement remains in effect for the period described in any subscription/order.

- Policy 11-05 does not permit indefinite term or automatically renewing contracts unless approved by the Board.
- Potential Impact: SBCFPD is bound to the terms and conditions of the Citrix Agreements while the software/subscription/order is in use by SBCFPD or until the contract is terminated in accordance with the provisions of the contract. Software license agreements are for a one-year period and SBCFPD has the option of renewing the License Agreement each year or discontinuing the use of the product at any time by notifying Citrix in writing and discontinuing all use of and access to the software.

Notwithstanding the non-standard provisions, SBCFPD is recommending that the Board approve the Citrix Agreements associated with Citrix ADC VPX 200, Citrix Virtual Apps and Desktops, and Citrix Hypervisor as it will allow SBCFPD to continue to receive virtualization software support needed to maximize the Citrix systems presently in use.

PROCUREMENT

The Citrix Agreements, including non-standard terms, will be used to accompany future purchase orders to be approved, as necessary, per County Policy 11-04 Procurement of Goods, Supplies, Equipment and Services.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Scott Runyan, Principal Assistant County Counsel, 387-5455) on September 8, 2022; Risk Management (Victor Tordesillas, Director, 386-8623) on August 22, 2022; Finance (Tom Forster, Administrative Analyst, 387-4635) on August 19, 2022; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer, 387-5423) on August 23, 2022.