



San Bernardino County

Legislation Text

File #: 7948, Agenda Item #: 51

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

May 9, 2023

FROM

SHANNON D. DICUS, Sheriff/Coroner/Public Administrator

SUBJECT

Ratification Actions in Response to Sheriff/Coroner/Public Administrator's Network Connectivity Disruption

RECOMMENDATION(S)

1. Ratify the following non-competitive purchases of equipment and services directly related to the restoration of Sheriff/Coroner/Public Administrator network connectivity:
 - a. Seven Dell PowerEdge servers from The Dala Project Inc., dba The Redesign Group, in the total amount of \$244,421.
 - b. Two Hitachi HCP Gateway Appliances from Consiliant Technologies, LLC, in the total amount of \$393,989.
 - c. Hosted and technical services in the amount of \$224,715, for the period of April 17, 2023 through April 16, 2024, from Alan McClintock, dba Mobile Wireless.
 - d. End User License Agreement, including non-standard terms, and Data Processing Agreement, with TeamViewer Germany GMBH, for remote access software, in the amount of \$14,050, for a 12-month period effective upon installation of the software, and renewing annually until either party terminates use of the software with notification at least 28 days prior to the end of the initial term or any renewal term.
2. Authorize the Chief Executive Officer or County Chief Operating Officer to approve any service, commodity, or equipment purchase required for the restoration of Sheriff/Coroner/Public Administrator network connectivity that would normally require Board of Supervisors approval under current laws, regulations, or County policies until June 30, 2023, subject to ratification by the Board of Supervisors at the next available meeting.

(Presenter: Ernie Perez, Deputy Chief, 387-3760)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

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 may result in the use of additional Discretionary General Funding (Net County Cost). The costs associated with restoring network connectivity are not fully known at this time. Sufficient appropriation to purchase the items in Recommendation No. 1 is included in the Sheriff/Coroner/Public Administrator's (Department) 2022-23 budget (4420001000).

BACKGROUND INFORMATION

On April 7, 2023, the Department encountered a disruption in network connectivity resulting in an immediate need to procure services and equipment. Pursuant to County Policy 11-04, approval of Recommendation No. 1 ratifies the non-competitive purchases of equipment and professional services critical to restore network connectivity to its original state. The acquired equipment and software will be used on a continued basis by the Department.

The End User License Agreement (EULA), as noted in Recommendation No. 1(d), is TeamViewer Germany GMBH's (TeamViewer) standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standards. The non-standard and missing terms include the following:

1. The EULA requires the Department to pay TeamViewer's attorney fees in the event it is a prevailing party in a lawsuit against the County.
 - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: The County is required to pay TeamViewer's reasonable expenses and attorney, consultant, or other professional fees in a legal action.
2. The EULA term is 12 months and renews automatically for subsequent periods of 12 months unless either party notifies the other party no less than 28 days prior to the end of the initial term or subsequent renewal term.
 - County Policy 11-06SP does not permit indefinite or automatically renewing contracts unless approved by the Board of Supervisors (Board).
 - Potential Impact: There is no end term to the EULA and the County is indefinitely bound by the terms and conditions of the EULA until either party terminates the EULA with required notice.
3. Governing law is the state of New York.
 - The County standard contract requires California governing law.
 - Potential Impact: The EULA will be interpreted under New York law. Any questions, issues, or claims arising under the EULA will require the County to hire outside counsel competent to advise on and practice New York law, which may result in fees that exceed the total amount paid for the EULA.
4. The County is required to indemnify TeamViewer against third party claims related to the Department's use of the software or breach of any representation, warranty, covenant, or obligation of the Department under the EULA.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify TeamViewer, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, or are time or expense limited, could be brought against TeamViewer without such limitations and the County would be responsible to defend and reimburse TeamViewer for costs, expenses, and damages, which could exceed the total EULA amount.
5. The EULA does not require TeamViewer to meet the County's insurance standards as required pursuant to County Policy 11-07.
 - County Policy requires contractors to carry appropriate insurance limits and under conditions determined by the County's Risk Management Department as set forth in the County standard contract.
 - Potential Impact: The County has no assurance that TeamViewer will be financially responsible

for claims that may arise from the County's use of the software, which could result in expenses to the County that exceed the total EULA amount.

6. TeamViewer's limitation of liability is limited to the lower of the fees the Department paid for the software or services during the six-month period immediately prior to the event giving rise to the claim, or the equivalent of EUR 12,500 Euro, and only if damages were caused intentionally by, or via the gross negligence of, TeamViewer or have been caused by TeamViewer's slight negligence and are due to breaches of contractual obligations.
 - The County standard contract does not permit the Contractor to limit its liability in the performance of the contract.
 - Potential Impact: Claims could exceed the liability cap and the EULA amount leaving the County financially liable for the excess.
7. Payment terms are Net 45 and overdue payments accrue interest at the rate provided by applicable law.
 - County standard payment terms are Net 60 with no interest or late payment penalties.
 - Potential Impact: Failing to pay within 45 days of the invoice date will result in a material breach of the EULA if the Department does not cure the breach within 15 days of receiving notice from TeamViewer. This would allow TeamViewer to either terminate the EULA or suspend services at TeamViewer's discretion.
8. There is no termination for convenience. The County may only terminate the EULA by notification no less than 28 days prior to the end of the initial term or subsequent renewal term, or if termination is based on TeamViewer's non-performance, they have been given enough opportunities to eliminate the defects and have failed to do so, or the subsequent performance was unsuccessful.
 - The County standard contract gives the County the right to terminate a contract for any reason with a 30-day advanced written notice of termination, without any obligation other than to pay amounts for services rendered and expenses reasonably incurred prior to the effective date of termination.
 - Potential Impact: The County may be liable for payments to TeamViewer if notification is not made as required by the EULA, and the Department may be required to utilize deficient software while TeamViewer attempts to remedy any potential defects.
9. Venue to address legal actions related to the EULA is the state and federal courts in New York County, New York.
 - The County standard contract requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: Having a venue in New York County, New York may result in additional expenses that exceed the amount of the EULA.

The Department recommends approval of the EULA with TeamViewer, including the non-standard terms, as this allows for the use of remote desktop software to assist with restoration of the Department's network connectivity.

Approval of Recommendation No. 2 will authorize the Chief Executive Officer or County Chief Operating Officer to act on specific purchasing matters necessary for the continuation of Department and County operations, should these matters require an urgent response. These matters will be presented to the Board for ratification at the next available Board meeting.

The recommended actions will provide the ability to restore network connectivity expeditiously to ensure the safety of County residents and improve efficiency within the Department.

PROCUREMENT

County Policy 11-04, Procurement of Goods, Supplies, Equipment and Services requires the Department to seek Board approval for the non-competitive purchases of equipment and services listed in Recommendation No. 1 due to the urgent need to restore network connectivity for the Department.

The EULA as noted in Recommendation No. 1(d), including non-standard terms, will be used to accompany future purchase orders to be approved, as necessary, per County Policy 11-04.

The Department is presenting this item for ratification by the Board as required by policy.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Richard D. Luczak, Deputy County Counsel, 387-5455) on April 20, 2023; Purchasing (Michael Candelaria, Lead Buyer, 387-0321) on April 19, 2023; Risk Management (Victor Tordesillas, Director, 396-8621) on April 20, 2023; Finance (Erika Rodarte, Administrative Analyst, 387-4919) on April 23, 2024; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on April 23, 2024.