

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

June 13, 2023

FROM

SHANNON D. DICUS, Sheriff/Coroner/Public Administrator

SUBJECT

Agreement with Evident Scientific, Inc., for the Purchase of Pathology Microscopes

RECOMMENDATION(S)

Approve **Agreement No. 23-549** with Evident Scientific, Inc., and associated Terms and Conditions for Sale of Products, including non-standard terms, for the purchase of two BX46 Pathology Microscopes in a total amount not to exceed \$25,000.

(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 will not result in the use of additional Discretionary General Funding (Net County Cost). The cost of \$25,000 for two BX46 Pathology Microscopes (BX46 Microscope) will be funded within the Sheriff/Coroner/Public Administrator's (Department) existing 2022-23 budget allocation (4430001000).

BACKGROUND INFORMATION

The Department's Coroner Division (Coroner) is responsible for investigating all deaths that occur within the county. This includes determining the cause of death and clarifying all circumstances surrounding or pertaining to the manner of death of a decedent. Coroner's personnel currently utilize microscopes manufactured by Evident Scientific, Inc., (Evident), formerly known as Olympus Scientific Solutions Americas Corporation, during daily assignments and forensic investigations. The Coroner will hire two additional Forensic Pathologists in the next couple of months and the BX46 Microscopes will allow them to examine samples related to assigned forensic pathology cases.

The purchase of the BX46 Microscopes requires agreeing to Evident's Terms and Conditions for Sale of Products (TACSOP). The TACSOP is Evident's standard contract for the sale of any product and/or service they provide, which includes terms that differ from the standard County contract and omits certain County standards. The non-standard terms include the following:

1. Payment terms are Net 30 days from receipt of invoice and overdue payments shall become due immediately and accrue interest at the rate of 1.5% per month on the unpaid balance.

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- County standard payment terms are Net 60 with no interest or late payment penalties.
 - Potential Impact: Failing to pay within 30 days of the invoice date will result in the Department being required to immediately pay any unpaid balance plus interest, and may result in Evident removing, or holding, the equipment until the payment obligation is satisfied.
2. Governing Law is the United States 7 District Court for the District of Massachusetts.
- The County standard contract requires California governing law.
 - Potential Impact: The TACSOP will be interpreted under Massachusetts law. Any questions, issues, or claims arising under the TACSOP will require the County to hire outside counsel competent to advise on, and practice, Massachusetts law, which may result in fees that exceed the total amount of the agreement.
3. The TACSOP does not require Evident 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 Evident will be financially responsible for claims that may arise from the County's use of the equipment, which could result in expenses to the County that exceed the total agreement amount.
4. Evident's limitation of liability on all claims of any kind shall not exceed the price of the specific product or service giving rise to the claim, and Evident's liability terminates upon the expiration of the applicable warranty period, provided that the Department enforces a claim of such liability accruing during the applicable warranty period by an action timely commenced in accordance with the applicable statute of limitation and/or statute of repose, but in no event greater than one-year after the expiration of such warranty period.
- 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 agreement amount leaving the County financially liable for the excess.
5. The County, if applicable, is required to indemnify, defend, and hold Evident harmless against any and all claims made by any subsequent user of services provided by Coroner, for loss or damage arising out of the performance or non-performance of the BX46 Microscopes provided under the agreement between the County and Evident.
- The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify Evident, 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 Evident without such limitations and the County would be responsible to defend and reimburse Evident for costs, expenses, and damages, which could exceed the total agreement amount.

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The Sheriff's Department recommends approval of this item, as it will authorize the non-competitive agreement with Evident and associated TACSOP, including non-standard terms, for the purchase of two BX46 Microscopes to assist Coroner personnel with death investigations. County Counsel and Risk Management have reviewed the TACSOP and provided input and approval.

PROCUREMENT

On April 4, 2022, Evident became a wholly owned subsidiary of Olympus Scientific Solutions, dedicated to the continued manufacturing and sale of "Olympus" branded microscopes and accessories. Evident is the only authorized seller for "Olympus" and "Evident" branded Life Science Microscopes, including BX46 Microscopes, and related products within the state of California. The purchase of the additional BX46 Microscopes will maintain equipment compatibility and eliminate the need and associated costs for the Coroner's staff to be trained on a different manufacturer's product. Purchasing concurs with the Department's non-competitive procurement justification as Evident is the only authorized seller and is in line with County Policy 11-04.

County Policy 11-05 Non-Standard Contract Language requires the Department to seek Board of Supervisor's approval for contracts to purchase goods and services that include deviations from the County's standard contract language.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Richard D. Luczak, Deputy County Counsel, 387-5455) on May 11, 2023; Purchasing (Michael Candelaria, Lead Buyer, 387-0321) on May 11, 2023; Risk Management (Victor Tordesillas, Director, 396-8621) on May 16, 2023; Finance (Erika Rodarte, Administrative Analyst, 387-4919) on May 26, 2023; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on May 26, 2023.

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Curt Hagman
Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: June 13, 2023



cc: Sheriff - Welty w/ agree
Contractor c/o Sheriff w/ agree
File w/ agree
JLL 06/29/2023