

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

July 14, 2020

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Agreement with Zimmer US, Inc. dba Zimmer Biomet to Procure Total Joint Implants for Patients

RECOMMENDATION(S)

Approve **Agreement No. 20-579** with Zimmer Biomet for the purchase of Total Joint Implants for surgical patients in the amount not to exceed \$400,000 total, for the two-year period of July 14, 2020 through July 13, 2022.

(Presenter: William L. Gilbert, Director, 580-6150)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

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). The total cost of \$400,000 is funded by State Medi-Cal, Federal Medicare, private insurances, and other departmental revenue. Funding sources may change in the future pending any legislative activity related to the repeal and/or replacement of the Affordable Care Act. Adequate appropriation and revenue have been included in the Arrowhead Regional Medical Center (ARMC) 2020-21 budget and will be included in future recommended budgets.

The implants will be paid according to the following not-to-exceed amounts:

Year	Not-to-Exceed Payment
Year 1 (July 14, 2020 – July 13, 2021)	\$200,000
Year 2 (July 14, 2021 – July 13, 2022)	\$200,000

BACKGROUND INFORMATION

Approval of the agreement with Zimmer Biomet will allow for the purchase of hip, knee, and shoulder implants, collectively known as "Total Joint Implants," for certain surgical patients at ARMC. ARMC conducts elective and non-elective surgeries. Due to COVID-19, Arrowhead Regional Medical Center suspended elective surgeries. Now that these surgeries are taking place again, demand for procedures that require total joint implants has increased and ARMC needs sufficient supply of products. Zimmer Biomet is a supplier of such products for ARMC.

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The agreement is the County standard contract, with various provisions negotiated by the parties that differ from the standard County contract terms. The non-standard terms include the following:

Payment

The County must pay invoices within 30 days from the date the invoice is received, or within 30 days after the resolution of any billing dispute.

- The standard County term for payment is Net 60 days.
- Potential Impact: The County will only have 30 days from receipt of invoice date to make payment. Notable, there is no penalty provision for late payments.

Indemnification

The County is required to indemnify, defend, and hold harmless Zimmer Biomet from any and all claims, actions, losses, damages, and/or liability from the negligent acts, errors or omissions of the County and its officers, and employees, and agents.

- The standard County contract does not contractually obligate the County from indemnifying the vendor under any circumstances.
- Potential Impact: By agreeing to indemnify Zimmer Biomet, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited, or expense limited could be brought against Zimmer Biomet without such limitations and the County would be responsible to defend and reimburse Zimmer Biomet for costs, expenses, and damages, which could exceed the total contract amount. It should be noted that Zimmer Biomet is similarly obligated to defend, indemnify, and hold harmless the County.

Limitations of Liability

Except for claims for bodily injuries or death to a third-party, Biomet Zimmer's liability to the County for any claims will not exceed the greater of (1) ten times the total price of products ordered by the County for the year the claim arose, or (2) \$2,000,000. Neither party will be liable to the other for any indirect, special, incidental, exemplary, punitive, consequential or similar damages.

- The standard County contract contains no limitations of liability.
- Potential Impact: Zimmer Biomet caps its liability to the County at the higher of \$2,000,000 or ten times to total price of products ordered by the County during the year the claim arose. Claim could exceed the liability cap and the contract amount leaving the County financially liable for the excess. It should be noted County's liability to Zimmer Biomet is similarly limited.

ARMC recommends approval of this agreement, including all non-standard terms, to ensure the hospital will continue to have sufficient supply of total joint implants to conduct surgical procedures that meet the healthcare needs of County residents.

PROCUREMENT

Purchasing approves this procurement based on an existing three-year term agreement that was secured via RFP. In 2017, the County on behalf of ARMC conducted a RFP for total joint implant products. Zimmer Biomet was one of four vendors who were awarded contracts to provide implants. Zimmer Biomet is utilized as they maintain multiple implant systems that give ARMC a variety of products to choose from for surgical operations.

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The Purchasing Agent for ARMC executed the first agreement with Zimmer Biomet on January 9, 2018. Per County policy, agreements can carry a term of up to five years. Therefore, the vendor has agreed to a new two-year agreement for total joint implants with the County.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Charles Phan, Deputy County Counsel, 387-5455) on July 2, 2020; Purchasing Department (Michelle Churchill, Supervising Buyer, 387-2070) on June 30, 2020; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on July 2, 2020; Finance (Yael Verduzco, Administrative Analyst, 387-5285) on July 7, 2020; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on July 6, 2020.

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Record of Action of the Board of Supervisors
County of San Bernardino

APPROVED (CONSENT CALENDAR)

Moved: Robert A. Lovingood Seconded: Josie Gonzales
Ayes: Robert A. Lovingood, Janice Rutherford, Curt Hagman, Josie Gonzales
Absent: Dawn Rowe

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: July 14, 2020



cc: ARMC- Gilbert w/agree
 Contractor- C/O ARMC w/agree
 File- w/agree
la 07/16/2020