

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

March 28, 2023

**FROM**

**WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center**

**SUBJECT**

Agreement with Sanofi Pasteur, Inc. for the Purchase of Influenza Vaccines

**RECOMMENDATION(S)**

Approve **Agreement No. 23-209**, including non-standard terms, with Sanofi Pasteur, Inc., for the purchase of influenza vaccines, for the not-to-exceed amount of \$300,000, effective March 31, 2023 through December 31, 2023.

(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) as the cost of \$300,000 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) 2022-23 budget and will be included in 2023-24 recommended budget.

**BACKGROUND INFORMATION**

This Agreement will allow ARMC to ensure County residents have access to influenza (flu) vaccines. Sanofi Pasteur, Inc. (Sanofi) is able to provide additional vaccine doses through the Vizient Group Purchasing Organization (GPO). ARMC is a member of the GPO as it benefits the County by granting access to lower pricing, complete bids, and possible rebates. Flu vaccines are provided to patients older than six months of age, as well as made available to staff in an effort to prevent infection and spread of the flu virus within the hospital.

The purchase of the vaccines from Sanofi is primarily governed by the terms and conditions of Sanofi's supplier Agreement with Vizient, and include the following non-standard contract terms:

1. All claims and disputes arising under or relating to the Agreement are to be exclusively and finally determined by binding arbitration in New York, or another location mutually agreeable to the parties.
  - The County standard contract does not require arbitration.
  - **Potential Impact:** The Agreement requires binding arbitration for all disputes between the parties. Disputes that might otherwise be settled in small claims court would incur arbitration costs that would exceed the costs of a small claims action. Arbitration

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decisions are not appealable. Requiring the arbitration to occur in New York would result in fees and costs to the County that may exceed the total Agreement amount.

2. The Agreement will be governed by Pennsylvania law.
  - The County standard contract requires California governing law.
  - Potential Impact: The Agreement will be interpreted under Pennsylvania law. Any questions, issues or claims arising under this Agreement will require the County to hire outside counsel competent to advise on Pennsylvania law, which may result in fees that exceed the total Agreement amount.
3. The prevailing party is entitled to attorney's fees and costs.
  - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
  - Potential Impact: If either party pursues arbitration of a dispute related to the Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees, which could exceed the total Agreement amount.
4. Payment terms are Net 30 days with late payment interest of 1.5% per month.
  - County standard payment terms are to be Net 60 days with no interest or late payment penalties.
  - Potential Impact: County standard processing time is 60 days or more. Failing to pay within 30 days will result in a material breach of the contract, which would allow Sanofi to terminate the Agreement and seek other legal remedies, including charging the County interest at a rate of 1.5% per month, which would exceed the contract amount.

ARMC recommends approval of the Agreement, including the non-standard terms, which will provide for the safety, health and social service needs of County residents by ensuring availability of the flu vaccine.

**PROCUREMENT**

The Board approved Vizient as the primary Group Purchasing Organization (GPO) on December 7, 2021 (Item No. 46), for five years, based on the Request for Proposals (RFP) No. AGENCY21-PURC-4090. Vizient offers competitive agreements based on RFPs evaluated using the American Bar Model Procurement Code which, is in compliance with County Procurement Policy. Vizient allows ARMC access to an extensive catalog of competitive, pre-negotiated agreements for various medical supplies and services.

After reviewing the options with Vizient, Sanofi was selected as it is the only vendor that accepts new orders for additional vaccine doses, which may be needed depending on the severity of the flu season. The Purchasing Department supports this competitive procurement based on Vizient Agreement No. RX80240.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Charles Phan, Deputy County Counsel, 387-5455) on February 8, 2023; Purchasing Department (Ariel Gill, Buyer, 777-0722) on February 9, 2023; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on March 7, 2023; Finance (Jenny Yang, Administrative Analyst, 387-4884) on March 9, 2023; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387- 5423) on March 9, 2023.

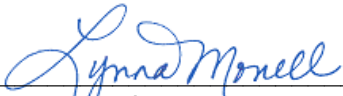
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Record of Action of the Board of Supervisors  
San Bernardino County

**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: March 28, 2023



cc: ARMC- Gilbert w/agree  
Contractor- C/O ARMC w/agree  
File- w/agree  
LA 03/29/2023