

**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

Amendment to the Supplement to the Master Products Agreement with Siemens Healthcare Diagnostics; Rental Agreement with Leasing Associates of Barrington, Inc. for Equipment for Urinalysis Testing; and Service Agreement with Siemens Healthcare Diagnostics

RECOMMENDATION(S)

1. Approve Amendment No. 2 to Agreement No. 15-289 with Siemens Healthcare Diagnostics, Inc. to increase the contract amount by \$177,712 from \$317,601 to \$495,313; and extend the contract term for the performance of urinalysis testing from September 11, 2020 through September 10, 2022.
2. Approve Rental Agreement ~~No. 15-290~~ with Leasing Associates of Barrington, Inc. for an amount not to exceed \$19,608, for lease of urinalysis equipment, for the two-year term of September 11, 2020 through September 10, 2022.
3. Approve Service Agreement with Siemens Healthcare Diagnostics, Inc. in the amount of \$35,998, for service of urinalysis equipment from September 11, 2020 through September 28, 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 the two agreements and one amendment is \$233,318 and 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.

Although the Board of Supervisors approved the original agreements on June 2, 2015; Siemens Healthcare Diagnostics (Siemens) and Leasing Associates of Barrington, Inc. (LA Barrington) recognize the original contract term as September 11, 2015 to September 10, 2020. This term is in accordance with the provisions of the contracts that state that the term begins when installation and training are complete. Therefore, the payment for Year 1 shown below has been adjusted to be sufficient through September 10, 2021. The agreement amendments and service agreement will be paid according to the following schedule:

Year	Reagents	Service	Lease	Cost
Year 1 (6/30/20 to 9/10/21)	\$104,356	\$17,999	\$9,804	\$132,159
Year 2 (9/11/20 to 9/10/22)	\$73,356	\$17,999	\$9,804	\$101,159
Total				\$233,318

BACKGROUND INFORMATION

Approval of these recommendations will provide for the health and safety of San Bernardino County residents through the continued performance of patient urinalysis testing that is required for patient diagnosis and treatment. The AUWi Pro Urinalysis System tests the urine chemistry by dipstick and completes a microscopic examination of the urine in one process. Urinalysis testing is used for routine screening. Additionally, patient urinalysis testing provides clinicians with information about renal function and other disease states, including urinary tract infections, to determine and monitor treatment.

In addition to approving Amendment No. 2 for reagents and supplies, the leasing agreement is needed to continue to lease the Siemens urinalysis equipment. Siemens utilizes Leasing Associates of Barrington (LA Barrington) to serve as a third-party lessor of their equipment. Furthermore, the service agreement is needed to ensure the continued functionality of the Siemens urinalysis equipment. In years past, the reagents and equipment service were included in one agreement, but now Siemens offers product and service separately.

The Service Agreement with Siemens is its standard commercial agreement, with terms and conditions that Siemens was unwilling to negotiate on. Its standard Service Agreement contains several non-standard contract terms, including the following:

- **Governing Law and Venue:** The Service Agreement is governed and construed in accordance with the laws of the State of Illinois, and is silent on the venue of any action.
 - The County's standard contract provides that the contract is governed by the laws of California, and that any action shall be brought in the San Bernardino County Superior Court.
 - **Potential Impact:** The Agreement will be interpreted under Illinois law, and the venue of an action brought under the Agreement may potentially be in Illinois. Any questions, issues, or claims arising under the Agreement may require the County to retain outside counsel competent to advise on Illinois law, which may result in fees that exceed the total contract amount.
- **Insurance:** The Agreement does not require Siemens to meet the County's insurance standards, including adding the County as an additional insured and waiver of subrogation rights.
 - The County has an extensive list of insurance requirements relating to various insurance coverage and limits, and requires vendors to add the County as an insured and waive subrogation rights.
 - **Potential Impact:** The Agreement is silent on any insurance requirements. This means the County has no assurance that Siemens will have the financial support of an insurance company for any claims that may arise under the Agreement, which could result in the County bearing financial responsibility if Siemens is unable to fulfill its obligations. Additionally, to the extent Siemens has the proper insurance coverage, the policy will not provide direct coverage to the County as a named insured. Lastly, without a waiver of subrogation, Siemens' insurers may bring suit against the County.
- **Assignment:** Siemens may assign the Agreement without notice to the County and without the County's approval.
 - Under the County's standard contract, any assignment by the vendor must be approved by the County.
 - **Potential Impact:** Siemens may assign the contract to a third-party without notice to the County and without the County's approval. This could allow the contract to

be assigned to a vendor with which the County is legally prohibited from doing business with due to issues of federal debarment or suspension and conflict of interest, without the County's knowledge.

- Warranty Limitation: Siemens disclaims the implied warranties of merchantability and fitness for a particular purpose.
 - The County standard contract provides that the vendor fully warrants its services and products.
 - Potential Impact: The liability of Siemens is limited by this disclaimer of warranty, meaning that the County will be unable to make any claims against Siemens for breach of warranty of merchantability or fitness for a particular purpose.
- Limitations of Liability: Siemens's liability for any claim by the County is limited to the purchase price paid to Siemens, except this limitation does not apply to claims based on intentional misbehavior and personal injury. Siemens will not be liable for any loss of use, revenue, or anticipated profits, cost of substitute service, or loss of stored, transmitted or recorded data, and neither party will be liable to the other for any indirect, incidental, unforeseen, special punitive, exemplary or consequential damages.
 - The County standard contract does not limit a vendor's liability to the County.
 - Potential Impact: The liability of Siemens is limited by this provision, and any claims that may arise may exceed the price paid to Siemens under this Agreement, resulting in the County bearing the financial burden of any loss.
- Indemnification: Under the Agreement, each party is required to indemnify and hold the other party harmless against any third-party claims for bodily injuries or damage to property to the extent the claim arises out of the negligent or wrongful acts or omissions of the indemnifying party, provided that the indemnitee provides prompt notice of the claim.
 - The County standard contract does not require the County to indemnify the vendor under any circumstances.
 - Potential Impact: By agreeing to indemnify Siemens, 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 Siemens without such limitations and the County would be responsible to defend and reimburse Siemens for costs, expenses, and damages, which could exceed the total contract amount.

ARMC recommends approval of the contract amendments with Siemens and LA Barrington and the Service Agreement with Siemens, including the non-standard terms, as their approval will enable ARMC to continue to perform essential testing for San Bernardino County residents.

PROCUREMENT

This is a competitive procurement approved by Purchasing based on an existing agreement that was competitively bid through the County's Group Purchasing Organization (GPO), Vizient. The Vizient Contract number is LB0582.

On June 2, 2015 (Item No. 22), the Board of Supervisors (Board) approved Master Products Agreement (MPA) No. 15-289 with Siemens Healthcare Diagnostics, Inc. and Rental Agreement No. 15-290 with Leasing Associates of Barrington, Inc. for the rental, reagents, supplies, and service of the Siemens AUWi Pro Automated Urinalysis system in the amount of \$317,601 for the five-year period of July 1, 2015 through June 30, 2020. As stated in the Financial Impact, Siemens and LA Barrington recognize the original contract term as September 11, 2015 to September 10, 2020, as installation and training did not conclude until September 2015.

On June 2, 2015 (Item No. 22), the Board approved the first Amendment to the Supplement to the MPA which revised the terms of the MPA to include terms more favorable to the County and to include a provision relating to the return of equipment.

A two-year contract extension is now needed due to the current transition of the hospital from the Meditech electronic healthcare record (EHR) system to EPIC. In addition to ensuring there is no gap in services for testing during the transition period, the contract extension will have an estimated annual cost savings of \$22,343 due to change in the reagent cost per the Vizient GPO contract and reduction in lease payment.

A Request for Proposals for new urinalysis equipment will be timed to coincide with the completion of the EPIC transition. Therefore, ARMC recommends approval of this procurement as a continuation of vital services and cost savings will be realized through the amendment.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Charles Phan, County Counsel, 387-5455) on June 23, 2020; Purchasing Department (Jacqueline Ambrose, Lead Buyer, 777-0722) on June 29, 2020; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on June 24, 2020; Finance (Yael Verduzco, Administrative Analyst, 387-5285) on June 25, 2020; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on June 28, 2020.