

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

May 24, 2022

**FROM**

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

**SUBJECT**

Agreement with DePuy Synthes Sales, Inc. DBA DePuy Synthes Power Tools for Anspach EG1 High Speed Electric Drills

**RECOMMENDATION(S)**

Approve **Agreement No. 22-356** with DePuy Synthes Sales, Inc. DBA DePuy Synthes Power Tools, including non-standard terms, for the purchase of Anspach EG1 High Speed Electric Drills in the amount of \$151,020, plus applicable sales tax and freight costs, to include a one-year service warranty, effective on the date of invoice.

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

**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 Discretionary General Funding (Net County Cost). The cost of \$151,020 plus applicable sales tax and freight costs 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) 2021-22 budget and will be included in future recommended budgets.

**BACKGROUND INFORMATION**

Approval of the agreement with DePuy Synthes Sales, Inc. DBA DePuy Synthes Power Tools (DePuy) will allow ARMC to trade in some of its existing high speed electric drills and purchase six new Anspach EG1 High Speed Electric Drills and associated accessories. The drills would be used in the ARMC operating room to provide high cutting precision for neuro, spine and neurotology surgical procedures.

The agreement with DePuy is based on its standard quote, negotiated by the parties, with the following terms that differ from the standard County contract terms:

1. The County is contractually obligated to indemnify DePuy in the event that any claim arises from the trade-in equipment that is not properly cleaned and sterilized prior to returning the equipment to DePuy.

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- The standard County contract does not contractually require the County to indemnify the vendor under any circumstance.
  - Potential Impact: By agreeing to indemnify DePuy, 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 DePuy without such limitations and the County would be responsible to defend and reimburse DePuy for costs, expenses, and damages, which could exceed the total contract amount. It should be noted that DePuy is similarly obligated to defend, indemnify, and hold harmless the County.
2. DePuy's indemnification obligation is limited to personal injury and property damage claims that arise out of DePuy's conduct or the use of its products, and any intellectual property infringement claims. Additionally, DePuy will not indemnify the County for any claims that arise out of the County's sole negligence or willful misconduct, use of a product in a manner that is not consistent with its labeling or alteration of the product, or a breach of the agreement by the County.
- The standard County contract for intellectual property indemnity is: Contractor will indemnify, defend and hold harmless County and its officers, employees, agents, and volunteers from any and all third party claims, costs (including without limitations reasonable attorney's fees), and losses for infringement of any United States patent, copyright, trademark, or trade secret (Intellectual Property Rights) by any goods or services. The County standard contract general indemnity provision requires the Contractor to indemnify, defend, and hold the County harmless from third party claims arising out of the acts, errors, or omissions of any person.
  - Potential Impact: If a claim arises that is outside the scope of the indemnification provision as stated above, the County may be financially responsible for the cost of defense and any settlement or judgments that may arise.
3. Except for actions for equitable relief, infringement of intellectual property, or for enforcement of the alternative dispute provision of the agreement, or disputes concerning an amount less than \$10,000, all disputes between the parties must be resolved through binding arbitration.
- The County standard contract does not require arbitration.
  - Potential Impact: The County will be waiving its right to a trial in court for those disputes that fall within the scope of the arbitration provision.
4. County is required to notify DePuy prior to any legally required disclosure in response to a Public Records Act request.
- The County standard contract does not require notice.
  - Potential Impact: The County will need to be aware of its obligation to notify DePuy prior to any disclosure in response to a Public Records Act request.
5. The agreement does not include certain standard County insurance requirements, including the provisions relating to severability of interests, carrier, insurance review, and the waiver of subrogation provision is more limited than the standard County provision.
- The County standard contract requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department.

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- Potential Impact: Without all of the standard provisions addressed above, the County has no reassurance that DePuy will maintain adequate and sufficient insurance to provide coverage to the County in the event of a claim. Insufficient coverage could result in expenses that exceed the total contract amount, leaving the County financially liable for the claims.

ARMC recommends approval of the agreement, including the non-standard terms, to provide for the health and safety of County residents by ensuring the hospital has industry standard equipment to conduct procedures in neurosurgery, neurotology surgery, skull base surgery and spinal surgery.

**PROCUREMENT**

Purchasing supports this non-competitive procurement based on equipment and system compatibility. The new drills are compatible with existing system components used at ARMC and the drills can be sterilized using ARMC's automated washers and sterilization processes.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Charles Phan, Deputy County Counsel, 387-5455) on April 22, 2022; Purchasing (Ariel Gill, Buyer III, 777-0722) on April 27, 2022; Risk Management (Victor Tordesillas, Director, 386-8623) on May 5, 2022; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on May 3, 2022; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer, 387-5423) on May 4, 2022.

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Record of Action of the Board of Supervisors  
San Bernardino County

**APPROVED (CONSENT CALENDAR)**

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

Lynna Monell, CLERK OF THE BOARD

BY   
DATED: May 24, 2022



cc: ARMC - Gilbert w/agree  
Contractor - C/O ARMC w/agree  
File - w/agree  
CCM 05/27/2022