

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

October 27, 2020

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Equipment Purchase Agreement with Baxter Healthcare Corporation for Cardiovascular Equipment

RECOMMENDATION(S)

Approve Equipment **Purchase Agreement No. 20-1059** with Baxter Healthcare Corporation for Purchase of the Prismax System in the total amount of \$47,000.00.
(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 cost of \$47,000.00 for the Prismax System was included in the approved 2020-21 budget, 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.

BACKGROUND INFORMATION

Approval of this recommendation will allow ARMC to purchase the Prismax Critical Care System from Baxter Healthcare Corporation (Baxter) to be used in ARMC's new Cardiovascular Program. The Prismax System is designed to assist healthcare professionals in the delivery of continuous renal replacement therapy (CRRT), which is used to treat acute kidney injury and may benefit patients with multiple organ dysfunction or sepsis. The equipment is also used for therapeutic plasma exchange (TPE) therapies in which the plasma is removed from the blood and replaced with another fluid, similar to what happens in kidney dialysis. This equipment is part of a larger set of purchases to implement the Cardiovascular Program and upgrade ARMC to a Level I trauma center.

The Statement of Economic Interest, Form 700, filed by physicians who will be using these products have been reviewed by the ARMC Compliance Department and no conflicts of interest were noted.

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The Agreement is Baxter's standard commercial agreement with terms negotiated by the parties, including the following non-standard terms:

Payment and Late Payment

Payment is due within 30 days of receipt of invoice. There is a service charge of 1.5% per month for all amounts past due.

- The County's standard contract payment term is Net 60 days.
- Potential Impact: ARMC must be mindful of timely payment of the invoice within 30 days or ARMC will be subject to a late charge.

Indemnification

Aside from indemnification for intellectual property claims, Baxter limits its obligation to defend and indemnify the County only to claims arising out of or caused by the failure of the equipment to perform in accordance with their published specifications and any specific warranty provided by Baxter.

- The County's standard indemnification clause obligates the vendor to indemnify and defend the County for all claims that arise from the vendor's provision of goods to the County regardless of cause as long as it is not due to the County's sole negligence or willful misconduct.
- Potential Impact: Baxter limits its indemnification obligations with this language only to the specified circumstances. Baxter would not be contractually obligated to defend or indemnify the County under any other circumstances, which could result in fees and costs incurred by the County that exceed the contract amount.

The County is obligated to defend and indemnify Baxter for any claims that result from the County's breach of the Agreement or the County's storage, handling, or use of the equipment.

- The County's standard contract does not require the County to indemnify the vendor for any claims.
- Potential Impact: By agreeing to indemnify Baxter, 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 Baxter without such limitations and the County would be responsible to defend and reimburse Baxter for costs, expenses, and damages, which could exceed the total contract amount.

Limitations of Liability

Baxter disclaims any implied warranties of merchantability, quality, and fitness for a particular purpose, disclaims liability for any incidental or consequential damages arising from the Agreement.

- The County's standard contract does not limit a vendor's liability.
- Potential Impact: The County is waiving any right to make a claim for breach of implied warranties of merchantability, quality, and fitness for a particular purpose against Baxter, and waives the right to recover any incidental or consequential damages, leaving the County liable for such damages if sustained.

Insurance

The Agreement does not include any of the standard County insurance requirements, including the waiver of subrogation and naming the County as an additional insured.

- The County's standard contract requires contractors to carry certain insurance coverage as determined by the County's Department of Risk Management, and for contractors to add the County as an insured in their policies and to waive the right to subrogation.

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- Potential Impact: The Agreement does not include County standard insurance requirements. This means that the County have contractual assurance that Baxter will have all the standard insurance policies necessary to protect the County against claims, which could result in expenses to the County that exceed the total contract amount. No waiver of subrogation may allow Baxter or its insurers, if any, to bring suit against the County. Not being added as an insured to Baxter's insurance policies means that the County cannot directly turn to Baxter's insurers in pursuing a claim.

Assignment

Provided that Baxter provides the County with ten days notice, Baxter may assign the Agreement without the consent of the County where the assignment is due to the result of a corporate reorganization, consolidation, merger, or sale of all of its assets.

- The County's standard contract prohibits a vendor from assigning a contract without the consent of the County.
- Potential Impact: Baxter may assign the Agreement to a third-party without the County's approval under certain circumstances. This could allow the Agreement to be assigned to a business with which the County is legally prohibited from doing business with due to issues of federal debarment or suspension and conflict of interest.

Venue

The Agreement is silent on the venue of any legal action arising under the Agreement.

- The County's standard contract requires that the venue of any legal action to be in the San Bernardino County Superior Court.
- Potential Impact: A lawsuit that is filed in relation to the Agreement is not limited to being venued in San Bernardino County, or even California. If Baxter brings a lawsuit for claims arising under the Agreement, it may file it in Illinois. As a result, the County may be required to retain attorneys licensed to practice in Illinois to defend the lawsuit, which could exceed the contract amount.

ARMC recommends approval of this Agreement, including the non-standard terms, as the new Cardiovascular Program will help ARMC to move to a Level I Trauma Center and provide for the health and social services needs of County residents.

PROCUREMENT

Purchasing has approved this non-competitive procurement based on functional specifications as well as specialized training. ARMC is starting a new Cardiovascular Program and has a very short timeline for implementation, which is anticipated for January 2021. Training for the new program is being provided to ARMC personnel by the Loma Linda Physician Group at their location using their equipment. To ensure an efficient, timely and cost-effective transition for ARMC staff to implement the program, ARMC is purchasing the same equipment on which our personnel are currently being trained. The purchase of this system will enable ARMC staff to serve County patients safely and meet their healthcare needs.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Charles Phan, Deputy County Counsel, 387-5455) on October 2, 2020; Purchasing Department (Ariel Gill, Buyer, 777-2070) on October 2, 2020; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on October 2, 2020; Finance (Amanda Trussell, Principal Administrative Analyst, 387-5423) on October 5, 2020; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on October 9, 2020.

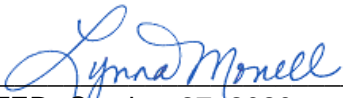
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Record of Action of the Board of Supervisors
County of San Bernardino

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: October 27, 2020



cc: ARMC - Gilbert w/agree
Contractor - C/O ARMC w/agree
File - w/agree

CCM 11/2/2020