

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

January 14, 2025

FROM

ANDREW GOLDFRACH, ARMC Chief Executive Officer, Arrowhead Regional Medical Center

SUBJECT

Multiple Product Purchase Agreement with Integra LifeSciences Sales LLC for Neurological Products and Supplies

RECOMMENDATION(S)

Approve Multiple Product Purchase **Agreement No. 25-04** with Integra LifeSciences Sales LLC, including non-standard terms, for neurological products, supplies and equipment accessories, in the not-to-exceed amount of \$3,500,000, for the contract period of January 14, 2025 through January 13, 2028, with the option to extend for two additional one-year terms. (Presenter: Andrew Goldfrach, ARMC Chief Executive Officer, 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 \$3,500,000 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) 2024-25 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

The Multiple Product Purchase Agreement (Agreement) with Integra LifeSciences Sales LLC (Integra) will allow for the purchase of neurological grafts, disposable pressure monitoring catheters and related supplies utilized by ARMC Operative Services during surgeries and patient after care. Neurological procedures are utilized in urgent and emergency trauma situations, as well as elective spinal and neurological cases to fix identified issues.

The Agreement is Integra's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. While the parties negotiated certain contract terms to County standards, Integra would not agree to all County standard terms. The non-standard and missing terms include the following:

1. Governing law is the State of Delaware.
 - The County standard contract requires California governing law.

**Multiple Product Purchase Agreement with Integra LifeSciences Sales
LLC for Neurological Products and Supplies
January 14, 2025**

- Potential Impact: The Agreement will be interpreted under Delaware Statelaw. Any questions, issues or claims arising under this Agreement will require the County to hire outside counsel competent to advise on Delaware law, which may result in fees that exceed the total Agreement amount.
2. Integra may assign the Agreement without notice to the County and without the County's approval.
 - The County standard contract requires that the County must approve any assignment of the contract.
 - Potential Impact: Integra could assign the Agreement to a third party or business with which the County is legally prohibited from doing business due to issues of Federal debarment or suspension and conflict of interest, without the County's knowledge. Should this occur, the County could be out of compliance with the law until it becomes aware of the assignment and terminates the Agreement. County Counsel cannot advise on whether and to what extent Delaware law may permit or restrict a party's right to assign without an express provision in the Agreement.
 3. There is no provision in the Agreement addressing each party's responsibility for paying attorneys' fees.
 - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: County Counsel cannot advise on, whether and to what extent, Delaware law may affect a party's requirement to pay the prevailing party's attorneys' fees and costs in a legal action where no specific provision is provided in the Agreement.
 4. The County is required to indemnify Integra against any liability arising out County's negligence, failure to use the products in accordance with the package labeling or the requirements of the warranty, or failure to perform its contractual obligations, including the failure to comply with applicable law.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify Integra, 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 Integra without such limitations and the County could be responsible to defend and reimburse Integra for costs, expenses, and damages, which could exceed the total Agreement amount. County Counsel cannot advise on, whether and to what extent, Delaware law may limit or expand this Agreement term.
 5. The Agreement includes modified standard County insurance requirements, including limiting the waiver of subrogation to only the obligations assumed by Integra under the Agreement.
 - 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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January 14, 2025**

- Potential Impact: The limitation of the waiver of subrogation may allow Integra's insurer to bring suit against the County, which could result in expenses that exceed the total Agreement amount.
6. Integra's maximum liability to the County is limited to two times the value of the products purchased by the County in the calendar year in which the liability arises but excluding third party claims, claims for gross negligence, willful misconduct, violations of law, breach of confidentiality and Integra's indemnification obligations.
- The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the Agreement amount, leaving the County financially liable for the excess. County Counsel cannot advise on, whether and to what extent, Delaware law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
7. There is no stated venue in the Agreement.
- County Policy 11-05 requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: Integra is located in Mercer County, New Jersey. Having no express venue in the Agreement means that Mercer County, New Jersey venue could be applied to disputes arising under this Agreement, which may result in additional expenses that exceed the amount of the Agreement.

ARMC recommends the approval of the Agreement, including non-standard terms, with Integra as it will allow ARMC to perform neurological procedures in the care of patients with traumatic brain injuries.

PROCUREMENT

The Purchasing Department supports this non-competitive justification procurement based on proprietary products. The neurological grafts, disposable pressure monitoring catheters, and related supplies are proprietary to and supplied by Integra. ARMC owns Integra neurological monitoring equipment, and the equipment is only compatible with these sole source products.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on December 16, 2024; Purchasing (Veronica Pedace, Buyer III, 387-2464) on December 16, 2024; Risk Management (Grogory Ustaszewski,, Staff Analyst II, 386-9008) on December 17, 2024; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on December 17, 2024; Finance (Jenny Yang, Administrative Analyst, 387-4884) on December 19, 2024; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on December 19, 2024.

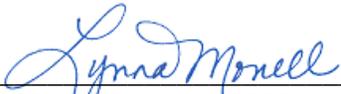
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: January 14, 2025



cc: ARMC - Goldfrach w/agree
Contractor - c/o ARMC w/agree
File - w/agree

CCM 01/15/2025