

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

July 28, 2020

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Amendment to Pricing Agreement with Haemonetics Corporation for Reagents, Supplies and Software for TEG 6s Analyzer and Service Agreement with Haemonetics Corporation for TEG 6s Platinum Service

RECOMMENDATION(S)

1. Approve **Amendment No. 1** to the Haemonetics **Pricing Agreement No. 20-30**, effective August 5, 2020, increasing the contract amount by \$161,551.02, from \$77,450 to \$239,001.02 to provide reagents, supplies and software, to TEG 6s Analyzers used by the ARMC Laboratory – Blood Bank and extending the term of the Pricing Agreement by two years from August 5, 2019 through August 4, 2022, with the option to extend one additional year
2. Approve Haemonetics **Service Agreement No. 20-605**, effective August 5, 2020, for \$21,300.00, for software support and service of TEG 6s Analyzers for a term of three years, from August 5, 2020 through August 4, 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 these recommendations will not result in the use of Discretionary General Funding (Net County Cost) as the total cost of \$182,851.02 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.

The payment for products and service shall be made as follows:

Years	Product	Service	Total
August 5, 2020 to August 4, 2021	\$79,386.25 (2.5% increase)	\$7,100.00	\$86,486.25
August 5, 2021 to August 4, 2022	\$82,164.77 (3.5% increase)	\$7,100.00	\$89,264.77
August 5, 2022 to August 4, 2023		\$7,100.00	\$7,100.00

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BACKGROUND INFORMATION

Approval of the Pricing Agreement Amendment and the Service Agreement with Haemonetics Corporation (Haemonetics) will allow the ARMC Laboratory Blood Bank Division to continue to purchase reagents and supplies that are proprietary to the hospital's TEG 6s Analyzer to perform specific platelet function tests. Reagents are substances or mixtures used in the chemical analysis of blood. The TEG 6s Analyzer is a highly sensitive testing system that enables ARMC Laboratory staff to determine the ability of clotting for actively bleeding patients in trauma or surgical units. The data provided by the tests can assist physicians in determining the precise treatment to prescribe to patients.

The Pricing Agreement amendment with Haemonetics will extend the term of the original pricing agreement with Haemonetics for an additional two years and lock-in the price of reagents and other supplies at the prices set forth in the amendment. Haemonetics would not agree to amend the Pricing Agreement to three years to coincide with the expiration of the Service Agreement. Approval of Recommendation No. 1 would also authorize the option of a one-year extension in 2022 for the Pricing Agreement so that it would ultimately end contemporaneously with the Service Agreement.

The Service Agreement with Haemonetics will provide software support and maintenance on the TEG 6s Analyzer for three years. Haemonetics only offers a term of one or three years on their service agreements. Accordingly, to lock in the price of service for the analyzers, ARMC has opted to proceed with a three year service term.

Approval of the recommendations with Haemonetics will allow the use of software for physicians to continue to have remote access to real time testing results for patients on the TEG 6s Analyzers and ensure the maintenance of these devices to perform specific platelet function testing for trauma and surgical patients at ARMC for the residents of San Bernardino County.

All contract terms and conditions of the Pricing Agreement, including non-standard terms, were accepted by the Board of Supervisors upon approval of the original pricing agreement on January 28, 2020 (Item No.10). The agreement, as amended, would remain in full force and effect.

The Service Agreement is Haemonetics' standard commercial agreement with terms negotiated by the County, with the following non-standard terms:

Insurance

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

- The County standard contract requires vendors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department, and requires vendors to add the County as an additional insured in their policies and to waive the right to subrogation.
- Potential Implications: By omitting the standard insurance coverage requirements, the County has no assurance that Haemonetic has an insurance policy to support its financial responsibilities relating to certain claims that may arise, which could result in expenses to the County that exceed the total contract amount.

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Without adding the County as an additional insured, the County will be unable to turn to Haemonetic's insurer directly to make a claim under the policy. Additionally, no waiver of subrogation may allow Haemonetic's insurers to bring suit against the County, which could result in expenses that exceed the total contract amount.

Indemnification

The Service Agreement is silent on any indemnification obligations.

- The County standard contract requires the vendor to indemnify and defend the County against third-party claims that arise from the contract.
- Potential Implications: Haemonetics would not be contractually obligated to defend or indemnify the County under any circumstances. This means that if a claim or lawsuit is filed against the County, Haemonetics would not be contractually bound to defend the County or pay any expenses or judgment resulting from the claim/lawsuit.

Limitations of Liability

Haemonetics caps its aggregate liability to the amount actually received by Haemonetics from the County during the applicable contract period and disclaims liability for any consequential damages.

- The County standard contract does not limit the vendor's liability.
- Potential Implications: Haemonetics caps its liability to the County to the amount of money that it receives from the County during the contract period. Claims could exceed the liability cap and the contract amount leaving the County financially liable for the excess. The County would also be waiving any right to recover any consequential damages.

Shortened Statute of Limitations

Any lawsuit against Haemonetics must be brought within one year after the cause of action arises.

- The County standard contract does not modify the statute of limitations for any claims.
- Potential Implications: By agreeing to this provision, the County is waiving the statute of limitations provided by state law, and must file any lawsuit against Haemonetics within one year after the claim arises, or the claim will be time-barred.

Warranty

Haemonetics warrants its materials supplied under the Service Agreement against defects and workmanship for a period of 30 days from date of installation, and disclaims all implied warranties, including warranties of merchantability and fitness for a particular purpose.

- The County standard contract requires vendors to fully warrant its products and services.
- Potential Implications: The County will be unable to make any claims against Haemonetics for breach of implied warranties, and any defects in the materials supplied by Haemonetics beyond 30 days from the date of installation will be the County's responsibility.

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ARMC recommends approval of the Service Agreement, including the non-standard terms, and amendment to the Pricing Agreement with Haemonetics as Haemonetics is the sole provider of reagents, supplies and software for the TEG 6s Analyzer and annual maintenance for TEG 6s Analyzers. It is to the County's benefit and the benefit of ARMC's patients to continue to allow physicians to have remote access to patient test results and ensure the maintenance of the TEG 6s Analyzer.

PROCUREMENT

This is an approved non-competitive justification procurement based on system compatibility. Haemonetics is a sole source provider of TEG Manager Software as well as software support and annual maintenance for TEG 6s Analyzers. Furthermore, Haemonetics is a sole provider of reagents and supplies for the TEG 6s Analyzer. Approval of the amendments to the service and pricing agreements will allow ARMC to perform specific platelet testing for trauma and surgical patients for an additional two years.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Charles Phan, Deputy County Counsel, 387-5455) on July 17, 2020; Purchasing Department (Ariel Gill, Buyer II, 387-2070) on July 10, 2020; Finance (Chen Wu, Finance and Budget Officer, 580-3165) on July 10, 2020; Finance (Yael Verduzco, Administrative Analyst, 387-5285) on July 13, 2020; and County Finance (Matthew Erickson, County Chief Financial Officer, 387-5423) on July 13, 2020.

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

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: July 28, 2020



cc: ARMC- Gilbert w/agree
 Contractor- C/O ARMC w/agree
 File- w/agree
la 07/29/2020