

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

**December 5, 2023**

**FROM**

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

**SUBJECT**

Agreement with BioMérieux, Inc. for the Provision of BioFire Respiratory Virus Rapid Test Kits

**RECOMMENDATION(S)**

Approve **Agreement No. 23-1280** with BioMérieux, Inc. for the purchase of BioFire diagnostic respiratory virus rapid test kits in the not-to-exceed amount of \$3,407,187 for the term of December 5, 2023 through December 4, 2028.

(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 \$3,407,187 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) 2023-24 budget and will be included in future recommended budgets.

**BACKGROUND INFORMATION**

The recommended agreement with BioMérieux, Inc. (BioMérieux) will allow ARMC to continue purchasing the BioFire respiratory virus rapid test kits for the BioFire FilmArray Torch System (System). Each test kit contains 30 individual film arrays, which are cartridges used to perform the diagnostic testing. The System can test for 23 respiratory viruses, including SARS-CoV 2 (COVID-19), providing results within 45 minutes. There has been continuous use of these kits primarily in the Emergency Department for patients who are experiencing respiratory symptoms. In addition, experts are predicting the possibility of an increase in flu cases and Respiratory Syncytial Virus (RSV) in children. The recommended agreement will ensure that ARMC is prepared for sudden surges of viral infections by having a steady supply of rapid testing kits.

Under the recommended agreement, ARMC may also purchase other test kits for use with the System that are available (such as Blood Culture Identification, Gastrointestinal Panel, and Meningitis/Encephalitis Panel), which would enable ARMC to use the System to rapidly identify the causes of other infectious diseases and expedite patient diagnosis and treatment.

The agreement is BioMérieux's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. While the

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parties negotiated certain contract terms to County standards, BioMérieux 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.
  - Potential Impact: The agreement will be interpreted under Delaware law. 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. There is no termination for convenience without penalty.
  - The County standard contract gives the County the right to terminate the contract, for any reason, with a 30-day written notice of termination without any obligation other than to pay amounts for services rendered and expenses reasonably incurred prior to the effective date of termination.
  - Potential Impact: The County can only terminate the agreement during the term for an uncured breach by or bankruptcy of BioMérieux. If the County terminates prior to the end of the term, BioMérieux may adjust the pricing for failure to meet minimum purchase commitments, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.
3. 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: BioMérieux is located in several U.S states. Having no express venue in the agreement means that venue in any of the states where BioMérieux does business could be applied to disputes arising under this agreement, which may result in additional expenses that exceed the amount of the agreement.

ARMC recommends approval of this agreement to ensure that ARMC can continue to acquire the necessary BioFire diagnostic respiratory virus rapid test kits to provide quality medical care to the residents of the County.

**PROCUREMENT**

The Purchasing Department supports the non-competitive procurement of this item based on compatibility of the equipment and systems, as the System can only function with the BioFire tests kits. Also, BioMérieux currently offers the only product on the market that provides an expedited testing method for 23 different respiratory viruses, including COVID-19, flu, and RSV.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on November 2, 2023; Purchasing (Ariel Gill, Supervising Buyer, 386-2070) on November 7, 2023; Finance (Chen Wu, Finance Budget Officer, 580-3165) on November 13, 2023; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on November 15, 2023.

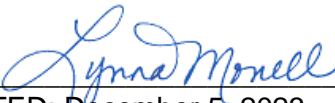
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Record of Action of the Board of Supervisors  
San Bernardino County

**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: December 5, 2023



cc: ARMC - Gilbert w/agree  
Contractor - c/o ARMC w/agree  
File - w/agree  
CCM 12/7/2023