

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

February 11, 2020

**FROM**

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

**SUBJECT**

Agreement with Nuance Communications, Inc.

**RECOMMENDATION(S)**

Approve **Agreement No. 20-70** with Nuance Communications, Inc. for clinical medical dictation and voice recognition services at Arrowhead Regional Medical Center in the amount of \$3,589,932, for the period of February 21, 2020 through February 20, 2025.  
(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 the recommendation will not result in the use of Discretionary General Funding (Net County Cost) as the total cost of \$3,589,932 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. Sufficient appropriation and revenue are included in the Arrowhead Regional Medical Center (ARMC) 2019-20 budget and will be included in future recommended budgets.

**BACKGROUND INFORMATION**

The agreement with Nuance Communications, Inc. (Nuance) will provide voice recognition services utilized daily by practitioners throughout ARMC inpatient and outpatient settings for documentation of patient encounters into patient's medical record. It also provides the option to use medical dictation/transcription services as a backup during system downtimes or emergencies. The voice recognition product will allow practitioners to view and edit documents immediately, rather than dictating at one time and waiting to review the document once it is completed. This service provides for the safety, health and social service needs of County residents by improving the availability of a completed patient medical record, which also allows for efficient and accurate treatment, payment and operations.

The contract is the County standard professional services contract as negotiated between the parties and contains terms that differ from the standard County contract. The non-standard terms include the following:

1. Termination for convenience is not permitted during the first year of the contract, and thereafter the County may only terminate the Contract without cause if the State of

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California does not appropriate sufficient funds to the County to pay the fees due under the Order, with a ninety (90) day written notice of termination.

- The County standard contract gives the County the right to terminate the Contract, for any reason, with a thirty (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 cannot terminate the contract and will be liable for all contract amounts for the full term of the contract, except for an uncured breach by Nuance or lack of funding from the State of California after the first year.
2. Payment terms are Net 30 and there is a late payment interest penalty of 1.5% per month on past due amounts.
- County standard payment terms are be Net 60 days with no interest or late payment penalties.
  - Potential Impact: County standard processing time is 60 days or more. Failing to pay within 30 days will result in a material breach of the contract, which would allow Nuance to terminate the contract and seek other legal remedies, including charging the County interest at a rate of 1.5% per month (18% annually), which would exceed the contract amount.
3. Except for Nuance's liability for (i) fraud or fraudulent misrepresentation; (ii) intentional or criminal misconduct; or (iii) death, personal injury, tangible property damage caused by Nuance's negligence, neither party's total liability under the Contract shall exceed the total contract amount.
- The County standard contract does not include a limitation of liability.
  - Potential Impact: Claims could exceed the liability cap and the contract amount leaving the County financially liable for the excess, which could exceed the contract amount.
4. Nuance's indemnity obligations under the Business Associate Agreement are conditioned on the breach resulting from Nuance's negligence and limited to a maximum of \$500,000.
- The County standard Business Associate Agreement requires the Business Associate to indemnify, defend and hold the County harmless from claims caused by the acts or omissions of the Business Associate with respect to the use, access, maintenance or disclosure of County's PHI, including any Breach of PHI or expenses incurred by County in providing required Breach notifications.
  - Potential Impact: The limit of the indemnification obligation to Nuance's negligence means that any claim cause by other than Nuance's negligence is excluded from Nuance's indemnification obligations, and Nuance's maximum liability for any claim is capped at \$500,000, leaving the County financially liable for any excess, which could exceed the contract amount.

ARMC recommends approval of the contract with Nuance, including the non-standard terms, as Nuance, through a competitive process, was chosen to perform clinical medical dictation and voice recognition services at ARMC. The conclusion was derived based on the criteria of qualification and experience, financial position, technical expertise, references, and cost.

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**PROCUREMENT**

The Request for Proposal (RFP) No. MCR19-04 was approved by the County Administrative Office on July 25, 2019 for clinical medical dictation and voice recognition services and was released through the County of San Bernardino's Electronic Procurement (ePro) network, on the same date. Proposals were due from vendors on August 29, 2019.

Two companies' submitted proposals and the company name, location for each is provided below.

Proposer	Location
3M M*Modal	Pittsburgh, PA
Nuance	Burlington, MA

Evaluation of the proposals was completed by a committee comprised of representatives from different divisions within ARMC including Administration, Information Management, and Medical Records and Medical Imaging. Both vendors, 3M M\*Modal, and Nuance, were requested to provide presentations on September 23 and 24, 2019 respectively.

All proposals were evaluated based on the criteria of qualification and experience, financial, technical, references, presentation and cost. The evaluation committee determined based on the depth of knowledge in their presentation and familiarity with the proposal that the top ranked vendor Nuance Communications, Inc. met the needs of ARMC.

On October 2, 2019, a tentative award letter was sent to Nuance Communications, Inc., and on the same day the unsuccessful agency was notified in writing that they may protest the qualification review by submitting a formal protest letter to ARMC within 10 calendar days of the date of the non-selection letters. No protests were received.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Bonnie Uphold, County Counsel, 387-5455) on January 31, 2020; Purchasing Department (Jackie Ambrose, Lead Buyer, 387-2463) on February 3, 2020. Finance (Amanda Trussell, Principal Administrative Analyst, 387-4773) on January 31, 2020; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer) on February 3, 2020.

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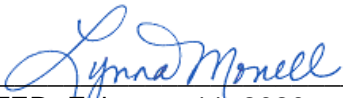
Record of Action of the Board of Supervisors  
County of San Bernardino

**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: February 11, 2020



cc: ARMC- Urquiza w/agree  
Contractor- C/O ARMC w/agree  
File- w/agree  
la 02/14/2020