

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

September 24, 2024

FROM

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

SUBJECT

Sales Pricing Agreement with Endologix, LLC for the Provision of Percutaneous Arterial Bypass Graft and Endovascular Products

RECOMMENDATION(S)

Approve Sales Pricing **Agreement No. 24-934**, including non-standard terms, with Endologix, LLC for the provision of percutaneous arterial bypass graft and endovascular products, in an amount not to exceed \$480,000, for the period of September 24, 2024 through May 31, 2026. (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 \$480,000 is funded by the 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 the 2025-26 recommended budget.

BACKGROUND INFORMATION

The Agreement with Endologix, LLC (Endologix) will allow ARMC to purchase the Detour System and the ALTO Abdominal Stent Graft System (Products). The Products will allow physicians to treat superficial femoral artery disease, and abdominal aortic aneurysms, respectively.

When clinicians and other healthcare personnel request the procurement of new products and services, items are vetted through the Value Analyst Committee (VAC). The VAC is a multidisciplinary group from ARMC, consisting of 21 members representing physicians, nurses, other healthcare representatives, compliance, supply chain, finance, information management, facilities, biomedical engineering, and healthcare operations. Through a hands-on assessment and discussion guided by ARMC's mission, the VAC's objective is to gain a balanced decision, supporting innovation, process improvement, waste reduction, and standardization. The VAC approved the Products to expand service by providing care for patients who need these types of treatment.

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The Agreement was negotiated by the parties and includes the following non-standard contract terms or omits standard County contract terms as follows:

1. The County may terminate the Agreement without cause with at least 60 days written notice.
 - The County's standard contract permits either party to terminate the contract for convenience with 30 days written notice.
 - Potential Impact: The County will need to be mindful of the extended notice period in the event it seeks to terminate the Agreement without cause.
2. Payment terms are Net 30 days from date of invoice.
 - County standard payment terms are 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 would result in the County breaching the terms of the Agreement. This would enable Endologix to terminate the Agreement and seek any other remedies available under California law.
3. Except for claims based on indemnification, personal injury (including death), property damage, gross negligence, willful misconduct, or violations of law, Endologix caps its liability at the purchase price paid for the purchase order for the product which gave rise to the claim.
 - The standard County contract contains no limitations of liability.
 - Potential Impact: Except for certain claims as discussed above, Endologix caps its liability to the County at price of the purchase order for the product which gave rise to the claim. Claims could exceed the liability cap and the contract amount leaving the County financially liable for the excess. It should be noted County's liability to Zimmer Biomet is similarly limited.
4. Endologix limits its general indemnity obligations to claims that arise out of any defects in its products or its negligent acts or omissions or its intentional misconduct.
 - The County standard contract general indemnity provision requires the contractor to indemnify, defend, and hold County harmless from third party claims arising out of the acts, errors or omissions of any person.
 - Potential Impact: Endologix's indemnity obligation is more limited compared to the standard County general indemnity obligation. In the event a claim arises that falls outside the scope of Endologix's limited indemnity obligation, the County could be financially responsible for the defense of the claim and any resulting judgment/settlement.
5. Venue is in the state or federal courts of California.
 - The standard County contract requires any lawsuit to be brought in the San Bernardino County Superior Court, San Bernardino District.
 - Potential Impact: Endologix appears to be based in Orange County. In the event a claim arises, Endologix may file a lawsuit in Orange County rather than San Bernardino County. This potentially could result in expenses to the County that might not have been incurred if the lawsuit was filed in San Bernardino County.
6. The Agreement does not include certain County standard insurance requirements.

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- The County standard contract requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department.
- Potential Impact: Without all of the standard provisions addressed above, the County has no reassurance that Endologix will maintain adequate and sufficient insurance to provide coverage to the County in the event of a claim. Insufficient coverage could result in expenses that exceed the total contract amount, leaving the County financially liable for the claims.

ARMC recommends approval of the Agreement, including the non-standard terms, as the purchase of the Products will provide for the safety and health needs of County residents by providing the Products needed to treat superficial femoral artery disease and abdominal aortic aneurysms which may reduce patient length of stay, infection and other morbidity, and ensure proper care is provided to ARMC patients.

PROCUREMENT

Purchasing supports this non-competitive procurement due to the manufacturer direct nature of these products. The Products are only manufactured and distributed by Endologix and are not available from any other vendor. ARMC physicians have also already been trained on, and are familiar with, the ALTO Abdominal Stent Graft System.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Charles Phan, Supervising Deputy County Counsel, 387- 5455) on August 21, 2024; Purchasing (Veronica Pedace, Buyer III, 387-2464) on August 29, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst, 386-9008) on August 29, 2024; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on August 29, 2024; Finance (Jenny Yang, Administrative Analyst, 387-4884) on August 29, 2024; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387- 5423) on August 29, 2024.

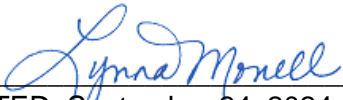
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY _____
DATED: September 24, 2024



cc: ARMC - Goldfrach w/agree
 Contractor - c/o ARMC w/agree
 File - w/agree
CCM 09/27/2024