

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

**June 25, 2024**

**FROM**

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

**SUBJECT**

Pricing Agreement with Smith & Nephew, Inc. for Purchase of Disposable Endoscopic Surgical Supplies

**RECOMMENDATION(S)**

Approve **Pricing Agreement No. 24-559**, including non-standard terms, with Smith & Nephew, Inc. for the purchase of disposable, endoscopic surgical supplies, in the not-to-exceed amount of \$100,000, for the term of July 1, 2024 through June 30, 2025.  
(Presenter: Andrew Goldfrach, ARMC Chief Executive Officer, 580-6150)

**COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Operate in a Fiscally-Responsible and Business-Like Manner.  
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 \$100,000 for disposable supplies will be 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.

**BACKGROUND INFORMATION**

Approval of the Pricing Agreement with Smith & Nephew, Inc. (Smith & Nephew) will allow ARMC to purchase disposable, endoscopic surgical supplies that are used with the hospital-leased, ArthroCare ENT Coblator II Surgery System (Coblator System). The Coblator System, including the proprietary disposable supplies, are used in ear, nose and throat (ENT) procedures at the hospital.

The Pricing Agreement with Smith & Nephew is its standard commercial agreement, negotiated by the parties, which includes terms that differ from the standard County contract and omits certain County standard contract terms. The non-standard and missing terms include the following:

1. Smith & Nephew limits its general indemnity obligations to defects in its products and their negligence or willful misconduct, except to the extent the claim arises out of the County's gross negligence or willful misconduct.

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June 25, 2024**

- 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: Smith & Nephew'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 Smith & Nephew's limited Indemnity obligation, the County could be financially responsible for the defense of the claim and any resulting judgment/settlement.
2. The Pricing Agreement does not include certain standard County insurance requirements.
- 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 County insurance provisions, the County has no reassurance that Smith & Nephew 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 Pricing Agreement amount, leaving the County financially liable for the claims.
3. Except for claims based on indemnification, gross negligence, breach of the confidentiality provision, fraud, or willful misconduct, Smith & Nephew caps its total liability at the total purchase price paid for the applicable provide involved in the claim during the year in which the claim arose.
- The County standard contract does not include a limitation of liability.
  - Potential Impact: Claims could exceed the liability cap and the Pricing Agreement amount leaving the County financially liable for the excess.

ARMC recommends approval of the Pricing Agreement, including the non-standard terms, to support the County goal of providing for the safety and health of County residents through effective ENT surgical procedures.

**PROCUREMENT**

The Purchasing Department supports the non-competitive procurement of the Smith & Nephew disposable, endoscopic surgical supplies based on equipment compatibility. ARMC currently leases the Coblator System, and no other surgical supplies can be used with the system other than Smith & Nephew.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Charles Phan, Supervising Deputy County Counsel, 387-5455) on May 15, 2024; Purchasing (Veronica Pedace, Buyer III, 387-2464) on May 16, 2024; Risk Management (Victor Tordesillas, Director, 386-8623) on January 17, 2024; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on May 31, 2024; Finance (Jenny Yang, Administrative Analyst, 387-4884) on June 6, 2024; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on June 7, 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: June 25, 2024



cc: ARMC - Goldfrach w/agree  
Contractor - c/o ARMC w/agree  
File - w/agree  
CCM 07/5/2024