

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

May 7, 2024

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Agreement with Sanofi Pasteur, Inc. for the Purchase of Influenza Vaccines

RECOMMENDATION(S)

Approve an **Agreement No. 24-353** with Sanofi Pasteur, Inc., including non-standard terms, for the purchase of influenza vaccines in an amount not-to-exceed \$350,000, effective May 7, 2024 through December 31, 2024.

(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 \$350,000 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 the 2024-25 recommended budget.

BACKGROUND INFORMATION

This Agreement will allow ARMC to ensure county residents have access to the influenza (flu) vaccine. Sanofi Pasteur, Inc. (Sanofi) is able to provide vaccine doses through the Vizient Group Purchasing Organization (GPO), which provides discounted group pricing. Sanofi is the only vendor that accepts additional vaccines orders following the initial order, as needed, and allows for the return of unused vaccines for a rebate credit. These flu vaccines are provided to patients, including children six months of age and older, adults of any age, and staff, to prevent infection and spread of the flu virus within the hospital and community.

Under the recommended Agreement, Sanofi has reserved 200 Units of the Fluzone High-Dose Influenza Vaccine, which will provide a total of 2000 doses of this specific vaccine, and 1200 Units of the Fluzone Influenza Vaccine for a total of 12,000 doses of this vaccine. In addition to these vaccines reserved for ARMC, Sanofi offers ARMC the ability to request additional doses, if needed, as well as an option to return unopened units for a rebate credit. Due to the expiration timeframe of flu vaccines, Sanofi only offers limited term agreements and requires a new agreement annually.

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The purchase of the vaccines from Sanofi is primarily governed by the terms and conditions of Sanofi's supplier agreement with Vizient, and the Agreement with Sanofi, which includes the following non-standard contract terms:

1. All claims and disputes arising under or relating to the Agreement are to be exclusively and finally determined by binding arbitration in New York, or another location mutually agreeable to the parties.
 - The County standard contract does not require arbitration.
 - Potential Impact: The Agreement requires binding arbitration for all disputes between the parties. Disputes that might otherwise be settled in small claims court would incur arbitration costs that would exceed the costs of a small claims action. Arbitration decisions are not appealable. Requiring the arbitration to occur in New York would result in fees and costs to the County that may total Agreement amount.
2. The Agreement will be governed by Pennsylvania law.
 - The County standard contract requires California governing law.
 - Potential Impact: The Agreement will be interpreted under Pennsylvania law. Any questions, issues or claims arising under this Agreement will require the County to hire outside counsel competent to advise on Pennsylvania law, which may result in fees that exceed the total Agreement amount.
3. The prevailing party is entitled to attorney's fees and costs.
 - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: If either party pursues arbitration of a dispute related to the Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees, which could exceed the total Agreement amount.
4. Payment terms are Net 30 days with late payment interest of 1.5% per month.
 - 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 Agreement, which would allow Sanofi to terminate the Agreement and seek other legal remedies, including charging the County interest at a rate of 1.5% per month, which would exceed the Agreement amount.

ARMC recommends approval of the Agreement, including non-standard terms, which will provide for the safety, health and social service needs of county residents by ensuring availability of the flu vaccine.

PROCUREMENT

The Board of Supervisors approved Vizient as the primary Group Purchasing Organization (GPO) on December 7, 2021 (Item No. 46), for five years, based on the Request for Proposals (RFP) No. AGENCY21-PURC-4090. Vizient negotiates competitive agreements by leveraging the collective buying power of its client base to secure lower pricing than individual entities could achieve alone. Awards are based on RFPs evaluated using the American Bar Model Procurement Code, which is in compliance with County Procurement Policy. Vizient allows ARMC access to an extensive catalog of competitive, pre-negotiated agreements for various medical supplies and services.

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The Purchasing Department supports this procurement based on Vizient Contract No. RX5900. Sanofi is a manufacturer of flu vaccines and the only vendor that accepts new orders for additional vaccine doses, as well as the return of unused vaccines for a rebate credit.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Charles Phan, Supervising Deputy County Counsel, 387- 5455) on April 4, 2024; Purchasing Department (Veronica Pedace, Buyer III, 387- 2464) on April 24, 2024; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on April 15, 2024; Finance (Jenny Yang, Administrative Analyst, 387-4884) on April 16, 2024; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387- 5423) on April 18, 2024.

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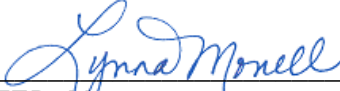
Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY



DATED: May 7, 2024



cc: ARMC - Gilbert w/agree
Contractor - c/o ARMC w/agree
File - w/agree

CCM 05/8/2024