

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

July 9, 2024

FROM

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

SUBJECT

Product Supply Agreement and Riders with Linde Gas & Equipment Inc. for the Provision of Bulk Medical Gases, Medical Gas Cylinders, and Site Gas Services

RECOMMENDATION(S)

Approve the Product Supply **Agreement No. 24-643** and Riders, including non-standard terms, with Linde Gas & Equipment Inc., for the delivery of bulk medical gases, medical gas cylinders, and the provision of an onsite manager for site gas services, in an amount not-to-exceed \$2,400,000, for the period of July 9, 2024 through July 8, 2029.
(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 Costs). The cost of \$2,400,000 is funded by State Medi-Cal, Federal Medicare, private insurances, and other departmental revenues. 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 future recommended budgets.

BACKGROUND INFORMATION

The recommended agreement (Agreement), which includes Riders with additional terms and conditions for each specific product and service procured, allows ARMC to purchase all bulk medical gases and medical gas cylinders, and receive the services of an onsite manager from Linde Gas & Equipment Inc. (Linde). Medical gas cylinders delivered by Linde are distributed throughout ARMC and the affiliated Family Health Centers and include oxygen tanks for patient transport and crash carts, compressed air utilized for oxygen at a patient's bedside, and various specialty gases for anesthesia and procedural use. Bulk supply systems provide all of the compressed air and oxygen lines that enter ARMC facilities and are made available at the patient's bedside for use as needed. The onsite manager is responsible for ensuring adequate supply of medical gases, delivering cylinders to all use points, retrieving all empty cylinders from ARMC and promptly returning to Linde, and serving as the single point of contact between ARMC and Linde. ARMC has utilized medical gases and associated services from Linde, formerly known as Praxair, since 1999.

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The Agreement was negotiated by the parties and includes the following non-standard terms:

1. Except for claims based on indemnity, personal injury (including death), property damage, gross negligence, willful misconduct, or violations of law, Linde limits its cumulative liability for claims to the amount of the purchase price paid for the product for the 12-month period prior to the claim.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Linde caps its liability to the County at the price paid for the product for the 12 months prior to the claim arising for all claims except indemnity, personal injury (including death), property damage, gross negligence, willful misconduct, and violations of law. Claims could exceed the liability cap and the Agreement amount leaving the County financially liable for the excess.
2. Linde limits its indemnity obligation to claims that arise from injury, illness, or death that is related to any activities performed by Linde, its employees, and agents and any defects in its products.
 - The County general indemnity provision requires the contractor to indemnify, defend, and hold the County harmless from third party claims arising out of the acts, errors or omissions of any person.
 - Potential Impact: Linde'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 the limited indemnity obligation, the County could be financially responsible for the defense of the claim and any resulting settlement/judgment.
3. The County may terminate the Agreement without cause with 90 days written notice.
 - 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: ARMC will need to be mindful of the extended notice period when terminating the Agreement without cause.
4. The 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: The Agreement does not include all of the County standard insurance requirements. This means that the County has no assurance that Linde will be financially responsible for claims that may arise, which could result in expenses to the County that exceed the total Agreement amount.
5. The Agreement includes a payment term of Net 45 days.
 - County standard contract includes a payments term of 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 45 days of the date of invoice may result in a material breach of the Agreement, which could allow Linde to terminate the Agreement and seek other legal remedies.

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6. The Agreement indicates that the venue for any disputes is in the State of California.
 - The County standard contract requires the venue for disputes be the Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: Without a contractual provision limiting venue to the San Bernardino District, Linde could file a lawsuit in another county, which could result in expenses to the County that it might not otherwise incur if the case venue were in San Bernardino County.

ARMC recommends approval of the Agreement, including the non-standard terms, to allow for the provision of the required and necessary bulk medical gases, medical gas cylinders and site gas services.

PROCUREMENT

This is a non-competitive procurement based on specialized credentials, training, and expertise. Linde owns all the underground storage containers, gas delivery systems, and piping throughout ARMC. Linde is the only authorized vendor to utilize its equipment for the distribution of gasses. The Purchasing Department supports this non-competitive procurement.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Charles Phan, Supervising Deputy County Counsel, 387-5455) on April 23, 2024; Purchasing (Veronica Pedace, Buyer III, 387-2464) on April 15, 2024; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on June 13, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst II, 386-9008) on April 16, 2024; Finance (Jenny Yang, Administrative Analyst, 387-4884) on June 20, 2024; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on June 20, 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: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: July 9, 2024



cc: ARMC - Goldfrach w/ agree
Contractor c/o ARMC w/ agree
File w/ agree
JLL 07/19/2024