

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

May 24, 2022

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Agreement with Mentor Worldwide LLC, Inc. for Mammary Products

RECOMMENDATION(S)

1. Approve **Agreement No. 22-355** with Mentor Worldwide LLC, including non-standard terms, for mammary products in the amount not-to-exceed \$300,000 annually, for a total not to exceed \$900,000 for the period of May 24, 2022 through May 23, 2025.
2. Authorize the Purchasing Agent to execute non-financial amendments for product additions or removals to the Agreement with Mentor Worldwide LLC, that do not change the total not to exceed amount of \$900,000 or the contract period of May 24, 2022 through May 23, 2025, subject to review by County Counsel.
3. Direct the Director of Arrowhead Regional Medical Center to transmit all documents in relation to the execution of amendments to the Agreement with Mentor Worldwide LLC, to the Clerk of the Board of Supervisors within 30 days of execution by all parties.
(Presenter: William L. Gilbert, Director, 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 total not-to-exceed cost of \$900,000, or \$300,000 annually, 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) 2021-22 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

Approval of the agreement with Mentor Worldwide LLC. (Mentor) will allow ARMC to purchase mammary products used in breast augmentation and breast reconstruction procedures. The products are utilized for ARMC procedures such as reconstruction after mastectomy, scar revision, and tissue defect procedures. MRI screenings are recommended three years after the initial mammary procedure and then every two years thereafter to detect any complications.

The agreement with Mentor is based on its standard commercial agreement, negotiated by the parties, that include the following non-standard contract terms:

1. Mentor has the right to audit all relevant books and records of the County to verify the County's compliance with its obligations under the Agreement.
 - The County standard contract does not permit a contractor to audit the County's compliance.
 - Potential Impact: If an audit determines that the County's non-compliance with the terms of the agreement, Mentor may seek all remedies available to it to ensure compliance.
2. Except for claims for equitable relief, infringement of intellectual property, or a claim where the dispute is for less than \$10,000, a dispute between the parties that cannot be resolved through informal negotiations must be submitted to mediation.
 - The County standard contract does not require either parties to pursue mediation in an attempt to resolve a dispute.
 - Potential Impact: In the event of a dispute with Mentor, prior to filing a lawsuit, the County must attempt to resolve the matter through mediation, which, if unsuccessful, can result in fees and costs that would not have to be incurred without this alternative dispute resolution requirement.
3. Except for any indemnification claims or claims based on gross negligence, willful misconduct, or violations of law, Mentor caps its liability to the County at \$5 million.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: The County's claims against Mentor could exceed the liability cap, leaving the County financially liable for the excess.
4. Payment terms are Net 30 days.
 - 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 will result in a material breach for the agreement, which would allow Mentor to terminate the agreement and seek other legal remedies. However, there is not late payment penalty in the agreement.
5. Mentor is only required to indemnify the County for claims alleging intellectual property infringement or that defects in its products resulted in bodily injury. Additionally, Mentor is not contractually obligated to defend or indemnify the County in any claims arising out of the negligence or willful misconduct of the County, misuse or alteration of Mentor's products, or the breach of any obligation by the County.
 - 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: The indemnity provision in this agreement is more limited than the standard County indemnity provision. In the event a claim arises that falls outside the scope of this indemnity provision, the County could be solely responsible for the cost of defense and payment of any resulting settlement/judgment.

There are times when the vendor will add or remove products from the contract product list. However, these changes do not result in a change to the contract's not to exceed amount or the

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contract term. Therefore, Recommendation No. 2 is requested to ensure expedited processing of simple product list changes.

ARMC recommends approval of the agreement, including the non-standard terms, to provide for the health and safety of County residents by ensuring the hospital has access to necessary mammary products for use in patient care.

PROCUREMENT

Purchasing supports this non-competitive procurement based on functional specifications as they meet performance and quality requirements while other mammary product lines lack one or more of the required material specifications.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Charles Phan, Deputy County Counsel, 387-5455) on April 28, 2022; Purchasing (Ariel Gill, Buyer III, 777-0722) on May 6, 2022; Risk Management (Victor Tordesillas, Director, 386-8623) on April 8, 2022; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on May 4, 2022; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer, 387-5423) on May 6, 2022.

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Curt Hagman Seconded: Janice Rutherford
Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: May 24, 2022



cc: ARMC - Gilbert w/agree
Contractor - C/O ARMC w/agree
File - w/agree
CCM 05/26/2022