

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

August 22, 2023

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Quote and Addendum with Datex Ohmeda, Inc., for Service on Anesthesia Equipment

RECOMMENDATION(S)

Approve Quote No. 0EF71F63 and Addendum (**County Contract No. 23-880**) with Datex Ohmeda, Inc., including non-standard terms, for the provision of service on anesthesia equipment, in the not-to-exceed amount of \$133,365, for the two-year period of October 1, 2023 through September 30, 2025.

(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 \$133,365 is funded by State Medi-Cal, Federal Medicare, private insurance, and other departmental revenue. Funding sources may change in the future pending 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 future recommended budgets.

BACKGROUND INFORMATION

This Quote and Addendum will enable ARMC to obtain service for existing anesthesia equipment from Datex Ohmeda, Inc. (Datex) including, but not limited to corrective maintenance, planned maintenance, replacements parts, software updates for equipment, technical phone support, telephone clinical applications support, and remote diagnostic service. Use of anesthetic services and consumables have increased as a result of ARMC achieving Trauma I Accreditation. As such, ARMC's Operative Services Department requests approval of this Addendum to provide more testing on the anesthesia equipment to meet the needs of its patient population.

Datex was acquired by GE Healthcare (GE), the original equipment manufacturer for the proprietary anesthesia equipment currently onsite at the hospital. GE Service Engineers receive the most up-to-date technical training, allowing them to keep GE equipment in compliance with factory specifications.

The Quote is GE's standard commercial quote. The Addendum amends the terms of the Quote to more closely reflect the County standard contract terms based on negotiations by the parties,

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with the exceptions discussed below. The Quote and the Addendum are, collectively, referred to as the Agreement.

1. The County may not terminate Agreement without cause.
 - The County standard contract gives the County the right to terminate the contract for any reason with 30 days written notice.
 - Potential Impact: The County does not have the ability to terminate the Agreement without cause.
2. The Agreement does not require Datex to meet the County insurance standards.
 - 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 most of the County standard insurance requirements. This means that the County has no assurance that Datex will be financially responsible for claims that may arise, which could result in expenses to the County that exceed the total Agreement amount.
3. Except for claims based on indemnification, gross negligence, willful misconduct, personal injury (including death), and property damage, Datex limits its liability to two times the amount of service fees for the 12 months preceding the action that is the basis for a claim.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Datex caps its liability to the County as discussed above. Claims could exceed the liability cap and the Agreement amount, leaving the County financially liable for the excess.
4. Datex's general indemnity obligation is limited to claims caused by Datex's design or manufacturing defect, the negligent acts, omissions, or willful misconduct of Datex, its employees, and subcontractors, and Datex's material breach of the Agreement.
 - The County 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: Datex's indemnity obligation is more limited to the County standard indemnity obligation. In the event a claim arises that falls outside the scope of Datex's limited indemnity obligation, the County may be solely liable for the costs of defense and damages.
5. The County is required to indemnify Datex for claims for bodily injury or property damage to the extent caused by the County's (1) medical diagnosis or treatment decisions, (2) misuse, modification, or negligent use of Datex products, or (3) a material breach of the Agreement.
 - The County is not contractually required to indemnify the contractor under the County standard contract.
 - Potential Impact: By agreeing to indemnify Datex, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited, or expense limited could be brought against Datex without such limitations and the County would be responsible to defend and

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reimburse Datex for costs, expenses, and damages, which could exceed the total Agreement amount.

ARMC recommends approval of the Quote and Addendum with Datex, including non-standard terms, to ensure that its anesthesia equipment receives the necessary services so that ARMC healthcare providers can meet the safety, health and social services needs of county residents.

PROCUREMENT

This is a non-competitive procurement based on specialized credentials. GE is the original equipment manufacturer for the anesthesia equipment currently in use by ARMC and, as such, GE and Datex are the only authorized vendors able to provide service on the equipment. The Purchasing Department supports this non-competitive procurement.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Charles Phan, Deputy County Counsel, 387-5455) on July 25, 2023; Purchasing (Ariel Gill, Buyer, 777-0722) on July 25, 2023; Risk Management (Victor Tordesillas, Director, 386-3165) on July 27, 2023; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on July 31, 2023; Finance (Jenny Yang, Administrative Analyst, 387-4884) on August 2, 2023; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on August 3, 2023.

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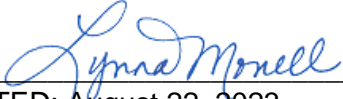
Record of Action of the Board of Supervisors
San Bernardino County

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: August 22, 2023



cc: ARMC - Gilbert w/agree
Contractor - c/o ARMC w/agree
File - w/agree
CCM 08/24/2023