

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

August 6, 2019

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

License and Support Agreement with Epic Systems Corporation for Electronic Health Records System

RECOMMENDATION(S)

1. Approve **Agreement 19-557** with Epic Systems Corporation with an estimated 5-year cost not to exceed \$29,738,425 beginning August 6, 2019 with no termination date, for the purchase, installation and maintenance of a fully integrated Electronic Health Records system at Arrowhead Regional Medical Center.
 2. Designate the Director as the authorized official to approve and sign non-financial documents as they pertain to changes to or confirmation of the scope of work of the project, subject to review by County Counsel, so long as such documents do not increase the amount of \$29,738,425 or change the duration of the contract.
 3. Direct the Director to transmit copies of all documents in relation to these agreements to the Clerk of the Board of Supervisors within 30 days of execution.
- (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 the recommendation will not result in the use of Discretionary General Funding (Net County Cost), as the annual cost not to exceed \$9,703,938 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. Approval of the necessary budget adjustments to the Arrowhead Regional Medical Center (ARMC) 2019-20 budget is not requested at this time, but will be included in a future quarterly countywide budget report presented to the Board of Supervisors for approval.

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The estimated annual cost for each year is as follows:

Year	Fiscal Year	Estimated Annual Amount
1	FY 19-20	\$9,703,938
2	FY 20-21	\$7,615,924
3	FY 21-22	\$4,874,386
4	FY 22-23	\$4,890,071
5	FY 23-24	\$2,654,106
6 forward	FY 24-25 forward	\$1,096,024 with possible 2% increase each year

BACKGROUND INFORMATION

Approval of the recommendation will allow ARMC to replace the current outdated and soon to be unsupported Electronic Health Record (EHR) system, which has been in place since 2001. ARMC currently uses an older version of the MediTech suite for its EHR. MediTech is due for a major system upgrade which is similar in cost to a new EHR implementation.

The delegated authority will authorize the Director to sign future documents to change or confirm the scope of work of the contracted services with Epic Systems Corporation (Epic), as needed, so long as such documents do not increase the total contract amount or change the duration of the contract. This is intended to expedite the process to implement services from Epic to avoid potential delays. Future documents are unknown and not expected at this time.

The new Epic system will provide ARMC with a single, intuitively integrated EHR system to unify providers across all patient care areas, help improve performance for achieving and reporting quality and efficiency metrics and give ARMC flexibility to achieve a “One Person-One Record” vision with the patient engagement tools of online and mobile services, telemedicine, self-scheduling, payment options, and remote monitoring. The new system will improve patient safety by allowing handoff of instantly queued information between hospital, patient’s provider group and outpatient clinics, which will increase the overall patient and provider satisfaction. ARMC will be using the industry’s top rated software, as Healthcare organizations rate Epic’s software #1 in accordance to the 2017 Best In KLAS software and services report.

Epic’s License and Support Agreement is its standard commercial license as negotiated by ARMC, which contains terms that differ from the standard County contract. The non-standard terms include the following:

1. The contract term continues until terminated by either party for uncured material breach or by the County for its convenience on ninety days’ written notice.
 - County Policy 11-04 does not permit indefinite term or automatically renewing contracts unless approved by the Board.
2. Limitations of liability to the County of the greater of \$750,000 or the fees paid by the County in the 9 months preceding the date the last such claim was filed, and excluding third party claims for personal injury or property damage, and Epic’s indemnification obligations.
 - The County standard contract does not include a limitation of liability.

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3. County's right to bring legal claims is limited to the later of 24 months after the cause of action first arises or the third anniversary of the contract.
 - The County standard contract does not include a limit on the time to bring action.
4. County is obligated not to disclose the information claimed by Epic to be its confidential information, including not disclosing the non-redacted versions of the contract.
 - The County standard contract does not require the County to maintain the confidentiality of a contractor's information.
5. County will indemnify Epic for any patient or third party claim arising out of care or outcomes, except for Epic's sole negligence with respect to a program error.
 - The County standard contract does not include indemnification by the County.
6. Venue is San Bernardino County if Epic institutes the legal action and in Dane County, Wisconsin if the County institutes legal action.
 - The County standard contract requires venue for all disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
7. The Business Associate Agreement is Epic's standard agreement, as negotiated between the parties and does not include indemnification for the disclosure or misuse of protected health information.
 - The County standard Business Associate Agreement requires the contractor to indemnify the County for claims regarding the use, access, maintenance or disclosure of Protected Health Information, including expenses incurred in complying with notifications.

Potential impacts of these non-standard provisions include:

1. Epic's maximum liability to the County is the greater of \$750,000 or the fees paid by the County in the 9 months preceding the date the last such claim was filed. Claims could exceed the liability cap and the contract amount leaving the County financially liable for the excess. In addition, the County's liability under the contract is not similarly limited.
2. Limiting the County's ability to bring suit to the later of 24 months after the cause of action first arises or the third anniversary of the contract amounts to a waiver of the Statute of Limitations for claims and shortens the period of time in which the County may file a lawsuit under the contract.
3. The County is obligated to maintain the confidentiality of information that Epic deems confidential, including certain terms of the contract. The County may incur liability from failing to disclose information pursuant to a California Public Records Act request or open public meetings requirements (Brown Act and County Sunshine Ordinance). This liability may be offset by the indemnification obligations that Epic has agreed to undertake. In addition, the County could be deemed in breach of contract and incur liability to Epic for disclosure of Epic's information, including non-redacted versions of the contract, regardless of whether the disclosure is intentional or inadvertent, which could exceed the contract amount.

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4. By agreeing to indemnify Epic for any patient or third party claim arising out of care or outcomes, 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 Epic without such limitations and the County would be responsible to defend and reimburse Epic for costs, expenses, and damages, which could exceed the total contract amount.
5. Venue in Dane County, Wisconsin for claims filed by the County against Epic may result in additional expenses that exceed the amount of the contract.
6. The Business Associate Agreement is Epic's standard agreement, as negotiated between the parties and does not include indemnification for the disclosure or misuse of protected health information. As a result, any liability that the County may incur from a data breach exposing protected health information, or the misuse of protected health information would be subject to the limitation of liability cap of \$750,000 or the fees paid by the County in the 9 months preceding the date the last such claim was filed, which could exceed these limits and the contract amount leaving the County financially liable for the excess.

After review of responses to RFP, an evaluation committee identified Epic as the vendor with the highest score based on the criteria and the demonstration/presentation. ARMC recommends approval of this contract, including the non-standard terms, and recommends utilizing Epic's EHR system.

PROCUREMENT

On April 25, 2017, the RFP No. MCR16-03 for a new Electronic Health Record System at ARMC was released through the County of San Bernardino Electronic Procurement (ePro) network. Seven (7) companies submitted proposals, of which only three (3) were determined to meet the minimum qualifications required by the RFP. The average annual cost presented in the RFP over a 10-year period of the three vendors are:

Vendor Name	City, State	RFP Average Annual Cost
Cerner	Kansas City, MO	\$2,865,500
Epic	Verona, WI	\$3,845,900
MediTech	Rockville, MD	\$3,537,100

Evaluation of the proposals was completed by a committee comprised of the following representatives, as follows: Hospital Director, Associate Hospital Administrator of Compliance, Quality & Accreditation, Associate Hospital Administrator of Support Services, Chief Financial Officer, Medical Director, President of Medical Staff and Chairman of Medical Executive Committee (MEC), President Elect of Medical Staff and Vice-Chairman of MEC, Associate Medical Director of Ambulatory and Medical Services, IT Director, Chief Nursing Officer, Associate Chief Nursing Officer, Associate Administrator of Ambulatory Services, and representatives from the Information Services Department.

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All proposals were evaluated based on the criteria of cost, RFP response, vendor's financial position and percentage spent on research and development/improvement, number of clients using the vendor's proposed version who are paperless or close to being paperless, and references. The evaluation committee determined that three (3) of the seven (7) proposals met the minimum system requirements. The three vendors were invited to provide demonstration and presentation of their systems, on the following dates: Cerner - May 7, 2018 and May 15, 2018; Epic – May 14, 2018 and May 15, 2018, and MediTech – May 16, 2018 and May 17, 2018.

The evaluation committee selected the vendor with the highest score based on the criteria and the demonstration/presentation. Epic's responses to the RFP were complete and provided increased functionality needed for complying with anticipated state and federal regulatory and financial requests. Epic is either currently installed or being installed in five (5) counties in California with public hospitals, as well as the five (5) University of California Medical Centers. Epic was selected and an award letter was sent May 15, 2019 and on the same day the unsuccessful agencies were notified in writing that they may protest the qualification review by submitting a formal protest letter to the County of San Bernardino Purchasing department within 10 calendar days of the date of the non-selection letters. No protests were received.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, County Counsel, 387-5455 on July 10, 2019; Purchasing Department (Leo Gomez, Purchasing Manager, 387-2060) on May 22, 2019; Information Services Department (Martin Perez, Division Chief, 388-0517) on May 22, 2019; Finance (Amanda Trussell, Principal Administrative Analyst, 580-4773) on July 23, 2019; and County Finance and Administration (Katrina Turturro, Deputy Executive Officer, 387-5423) on July 23, 2019.

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Record of Action of the Board of Supervisors
County of San Bernardino

DEFERRED/APPROVED

Moved: Josie Gonzales Seconded: Janice Rutherford
Ayes: Robert A. Lovingood, Janice Rutherford, Dawn Rowe, Curt Hagman, Josie Gonzales

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: August 6, 2019



cc: ARMC- Gilbert w/agree
 Contractor- C/O ARMC w/agree
 File- w/agree
 File- Confidential files w/agree
la 08/9/2019