

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

June 2, 2020

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Contract with Aesculap, Inc. for Surgical Asset Management Program Services

RECOMMENDATION(S)

Approve **Contract No. 20-318** with Aesculap, Inc. for surgical asset management program services in order to complete an intensive assessment of surgical instrumentation and assist in improving efficiencies in inventory, in the amount of \$146,200, for the one-year period from June 2, 2020, through June 1, 2021.

(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 \$146,200 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) 2019-20 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

The Sterile Processing and Operative Services Departments at ARMC utilize and manage the surgical instruments, or assets, owned by the hospital. These instruments must be properly sterilized and stored for infection control and managed efficiently as part of the perioperative workflow at the hospital. On average, the value of the inventory of surgical instruments and related equipment for a hospital the size of ARMC can reach \$5 million. Furthermore, if those assets are not properly managed, an additional \$200,000 could be added to annual operating budgets for the purchase of new and replacement surgical instruments. Due to this, Surgical Asset Management (SAM) Programs are implemented to provide the necessary training in best practices in order for hospitals to operate in an efficient and cost-effective manner.

The SAM Program proposed by Aesculap will consist of several components: quantitative verification and qualitative asset analysis, back-up stock analysis, asset optimization and process optimization, which includes training. Through a combination of on-site and remote training, Aesculap will provide ARMC staff with the strategies they need to optimize ARMC's surgical instruments, maintain patient safety and reduce operating costs.

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The County standard agreement was negotiated with Aesculap, Inc. to include the following non-standard terms:

Cancellation payment

The County may cancel the contract without penalty or payment by giving written notice of its intent to cancel at least sixty (60) days prior to the date Aesculap, Inc.'s work is set to commence. If County gives written notice of its intent to cancel with less than 60 days but at least 30 days prior to the scheduled consulting date, County must pay 50% of the consultation. Cancellation with less than 30 days written notice will be invoiced at 100%. Further if County re-schedules any previously cancelled services, County agrees to pay the non-refundable costs and expenses incurred for each re-scheduling, as supported by documentation presented to the County.

- The County standard contract does not include an obligation to pay for services not rendered nor any penalties.
- Potential Impact: If the County cancels all or part of the contracted services with less than 60 days notice and re-schedules such services, it may be obligated to pay more than the total original contract price of \$146,200. ARMC staff must be cognizant of this provision when scheduling and considering cancelation and re-scheduling of services.

Indemnification (scope)

Aesculap, Inc. limits its obligations to defend, indemnify and hold County harmless to the extent third-party claims arise out of the malfeasance or negligent acts or omissions of the Contractor, its employees or agents.

- The County standard contract 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 limitation of indemnification means that claims other than Intellectual property rights claims arising out of the acts, errors or omissions of any other person are excluded from Contractor's indemnity obligation.

Indemnification (notice of indemnification claim)

The County must notify Aesculap, Inc. of any indemnification claim in writing within fourteen (14) days following determination that indemnity may apply to a particular claim.

- The County standard contract does not contain a time period for notification.
- Potential Impact: Although the duty to indemnify and defend County is not excused by County's delay in giving notice of an indemnification claim, ARMC staff should be aware of this provision and confer with appropriate County departments on a protocol to provide timely notice of an indemnification claim.

Insurance:

This contract does not require Aesculap, Inc. to meet the County insurance standards, including adding the County as an additional insured and waiver of subrogation rights.

- The County standard contract requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department.
- Additional Insured: The contract does not include the requirement that all policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies contain additional endorsements naming the County

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and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder.

- Potential Impact: Since Aesculap, Inc.'s insurance policies will not provide direct coverage to County as a named insured, any coverage available to County through the Contractor's policies would likely be limited to vicarious liability. This means the County will likely have to rely on its own insurance and resources for claims of direct liability by Contractor or third parties.
- Waiver of subrogation rights: This contract does not obligate the Contractor to waive its subrogation rights against the County and also does not obligate the Contractor to ensure that the carriers of required coverages waive all rights of subrogation against the County.
- Potential Impact: Without a waiver of subrogation rights, the Contractor's insurers may bring suit against the County.

Limitation of Liability:

Except for its indemnity obligations, which includes third party claims and damage to County's property, Aesculap, Inc.'s liability is limited to \$2,000,000 in the aggregate. County's liability to Aesculap, Inc. is also limited to \$2,000,000.

- The County standard contract does not include a limit on Contractor's liability.
- Potential Impact: Other claims could exceed the \$2,000,000. cap leaving the County liable for the excess.

Warranty Limitation

Aesculap warrants that its services will be performed in a professional, competent and efficient manner and warrants its work for no more than 90 after completion of each service. County's sole remedy for breach of the warranty is to require re-performance of such service at no additional charge.

- The County standard contract does not limit the Contractor's liability for breach of service performance obligations by time or dollar amount.
- Potential Impact: ARMC staff will need to be aware of the need to test the results of each service in a time frame that allows for discovery and notification to Aesculap, Inc. of any deficiencies in the services within 90 days. For non-warranty of service and indemnity claims.

The insurance and indemnification provisions have been reviewed by the County Risk Manager. ARMC recommends approval of this agreement, including the non-standard terms, as the SAM Program will increase the efficiency of sterile processing at the hospital while continuing infection control practices and maintaining the budget for operative services.

PROCUREMENT

The Request for Proposal (RFP) No. MCR19-18 was approved on October 21, 2019, for a Surgical Asset Management Program and was released through the County of San Bernardino's Electronic Procurement (ePro) network. Proposals were due from vendors on November 22, 2019.

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One company submitted a proposal in response to the RFP. The company name and their location is as follows:

Proposer	Location
Aesculap, Inc.	Center Valley, PA

Evaluation of the proposal was completed by a committee comprised of representatives from the ARMC Sterile Processing, Nursing, Fiscal, Operative Services (OR), Epidemiology and Anesthesia Departments. The evaluation committee determined, based on their proposal, that Aesculap, Inc. met the needs of the County.

On December 12, 2019, a tentative award letter was sent to Aesculap, Inc. Purchasing did not receive a protest in response to this RFP.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Fiona Luke/Charles Phan, Deputy County Counsel, 387-5455) on May 1, 2020; Purchasing Department (Jacqueline Ambrose, Lead Buyer, 777-0722) on May 7, 2020; ARMC Finance (Chen Wu, Budget and Finance Officer, 909-580-3165) on May 8, 2020; Finance (Yael Verduzco, Administrative Analyst, 387-5285) on May 15, 2020; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on May 18, 2020.

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

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: June 2, 2020



cc: ARMC- Gilbert w/agree
 Contractor- C/O ARMC w/agree
 File- w/agree
la 06/5/2020