

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

July 27, 2021

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Participation Agreement with the Society of Thoracic Surgeons for Adult Cardiac Surgery National Database Access

RECOMMENDATION(S)

Approve Participation Agreement **County Contract No. 21-582**, including non-standard terms, with the Society of Thoracic Surgeons, for access to an adult cardiac surgery national database of cardiothoracic procedures, in an amount not to exceed \$5,000, for the period of July 27, 2021 through December 31, 2021, automatically renewing January 1st on an annual basis.
(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 cost of \$5,000 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

The Participation Agreement will provide access to the Society of Thoracic Surgeons (STS) National Database for benchmarking purposes and to find opportunities for continuous quality improvement in cardiothoracic procedures. The STS National Database was established in 1989 as an initiative for quality improvement and patient safety in cardiothoracic surgery. The STS has become the gold standard for clinical registries. This Agreement will allow ARMC to measure the quality and patient safety of the cardiothoracic surgery program, by having the ability to benchmark against 3,800 participating physicians and over 6.5 million cardiac surgery procedure records in the STS National Database.

The Participation Agreement is STS' standard contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. The non-standard and missing terms include the following:

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1. Governing law is the State of Illinois.
 - The County standard contract requires California governing law.
 - Potential Impact: The contract will be interpreted under Illinois law. Any questions, issues or claims arising under this contract will require the County to hire outside counsel competent to advise on Illinois law, which may result in fees that exceed the total contract amount.
2. County agrees to indemnify and hold STS harmless from direct losses and damages as a result of County's breach of its obligations under the Agreement. In addition, County agrees to indemnify and hold harmless STS and the independent data warehouse service provider from claims arising from County's use of data obtained through the national database absent the gross negligence or willful misconduct of STS or the independent data warehouse.
 - The County standard contract does not include any indemnification or defense by the County of a Contractor.
 - Potential Impact: By agreeing to indemnify STS and its third party data warehouse service provider, 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 STS or the data warehouse service provider without such limitations and the County would be responsible to defend and reimburse STS and its third party data warehouse service provider for costs, expenses, and damages, which could exceed the total contract amount. County Counsel cannot advise on, whether and to what extent, Illinois law may limit or expand this contract term.
3. The Agreement does not require STS to meet the County's insurance standards as required pursuant to County Policy 11-07.
 - The County Policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and set forth in the County standard contract.
 - Potential Impact: The contract does not include County standard insurance requirements. This means that the County has no assurance that STS will be financially responsible for claims that may arise from the County's use of the software, which could result in expenses to the County that exceed the total contract amount.
4. Fees are payable annually in advance by January 1.
 - 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 by January first will result in a material breach of the contract, which would allow STS to block County's access to the data and to terminate the contract and seek other legal remedies, which would exceed the contract amount.
5. The term of the Agreement is through December 31, 2021, then automatically renews on an annual basis until terminated with written notice on or before December 1 prior to the renewal year.

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- County Policy 11-06SP does not permit indefinite term or automatically renewing contracts unless approved by the Board of Supervisors.
 - Potential Impact: There is no end term to the contract and the County is indefinitely bound to the terms and conditions of the contract.
6. There is no termination for convenience during any annual period. The County may only cancel the automatic renewal by providing notice of non-renewal on or before December 1st of each annual period.
- The County standard contract gives the County the right to terminate the contract, for any reason, with a thirty (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: There is no termination for convenience. Any termination by either party regardless of cause could result in payment liability where no funds are available due to lack of allocation or loss of funding.
7. Venue is in federal and state courts of Cook County, Illinois, and if an action is brought in any other forum, the party bringing the action will pay all expenses, damages and costs, including attorneys' fees of the other party.
- The County standard contract requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: Having a venue in Cook County, Illinois may result in additional expenses that exceed the amount of the contract.

ARMC recommends approval of the Agreement with STS as it will provide for the safety, health, and social services needs of County residents by providing a mechanism by which to evaluate and compare ARMC's cardiothoracic surgery program against other physicians and surgical outcomes. Having a vehicle to identify opportunities for continuous quality improvement will help ARMC to achieve its mission to provide high quality, compassionate care.

PROCUREMENT

Purchasing has approved this non-competitive procurement based on the specialized credentials that STS has regarding clinical registries for cardiothoracic surgery. This registry will allow the hospital to measure the clinical quality and safety of the cardiac surgery program. There is no other clinical registry available with as many participants and procedures for benchmarking.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Deputy County Counsel, 387-5455) on May 27, 2021; Purchasing (Ariel Gill, Buyer III, 777-0722) on June 4, 2021; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on April 27, 2021; Finance (Yael Verduzco, Administrative Analyst, 387-5285) on July 6, 2021; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on July 11, 2021.

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: July 27, 2021



cc: ARMC - Gilbert w/agree
 Contractor - C/O ARMC w/agree
 File - w/agree
CCM 08/3/2021