



San Bernardino County

Legislation Text

File #: 3066, Agenda Item #: 7

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

October 27, 2020

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Contract with Abiomed, Inc. for the Purchase of the Impella CP® Pump Set

RECOMMENDATION(S)

Approve Contract with Abiomed Inc. for the purchase of the Impella CP® Pump Set for the Arrowhead Regional Medical Center Cardiovascular Program in the amount of \$75,000.
(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 \$75,000 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) 2020-21 budget.

BACKGROUND INFORMATION

ARMC's new Cardiovascular Program requires the purchase of the Impella CP® Pump Set. The Impella CP® Pump Set will assist in pumping blood during heart surgeries. The purchase of this item is consistent with the County's goal in providing for the safety and health needs of County residents.

The Contract is Abiomed Inc.'s standard commercial contract, negotiated by the parties with the following non-standard terms:

Venue and Governing Law

The Contract is governed by Delaware law, and any lawsuit relating to the Contract must be brought in Delaware.

- The standard County contract requires California governing law and any action to be brought in the San Bernardino County Superior Court.
- **Potential Impact:** This Contract will be governed by Delaware law and any lawsuit would need to be brought in Delaware. Any questions, issues or claims arising under this Contract would require the

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County to hire outside counsel licensed and competent to advise on Delaware law, which may result in fees that exceed the total contract amount.

Modified Statute of Limitations Period

Any lawsuit against Abiomed Inc. (Abiomed) must be brought within four years after the claim arises.

- The County standard contract does not modify the limitations period in which a claim may be brought.
- Potential Impact: By agreeing to this provision, the County is waiving the statute of limitations provided by Delaware law, and the County must file any lawsuit against Abiomed within four years after the claim arises, or the claim will be time-barred.

Limitations of Liability

Neither party will be liable for incidental or consequential damages, and except for third-party indemnification claims for personal injury or property damage, Abiomed's liability for nonconforming products is limited to repair, replacement, or a credit.

- The County's standard contract does not limit the vendor's liability.
- Potential Impact: If the County sustains any incidental or consequential damages due to any defects of Abiomed's products, those damages would not be recoverable. Except for claims based on person injury and property damage, the County's sole recourse for any defects in Abiomed's products is repair, replacement, or a credit for the cost of the product.

Payment

The Contract provides that the County is to pay within 45 days of an invoice.

- The County's standard contract payment term is Net 60 days.
- Potential Impact: ARMC administration must be mindful of this provision and ensure payment is made in timely manner. Notably, there are no provisions providing for any interest or penalty payments if payment is not made within 45 days.

Warranty

Abiomed disclaims any implied warranties or express warranties not stated in the Contract, including any warranties of merchantability or fitness for a particular purpose.

- The County standard contract requires vendors to fully warrant their products.
- Potential Impact: The County waives the right to make any implied warranty claim against Abiomed and any express warranty claims beyond those stated in the Contract.

ARMC recommends approval of the Contract with Abiomed, including the non-standard terms, to provide for the safely, health and social service needs of County residents.

The Statements of Economic Interest, Form 700, on file at Arrowhead Regional Medical Center have been reviewed by the ARMC Compliance Department and no conflicts of interest were noted.

PROCUREMENT

The procurement of the Impella CP® Pump Set is non-competitive. The new Cardiovascular Program is on a tight timeline, anticipated as early as January 2021. Training has been contracted with Loma Linda Physician Group (Loma Linda) so that ARMC can meet this timeline. Loma Linda is training ARMC personnel at their location using the Impella CP® Pump Set stems which is their proven, existing equipment. Procuring the same equipment provides for a safer more efficient, timely and cost-effective transition for ARMC personnel. Purchasing supports this non-competitive procurement.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Charles Phan, Deputy County Counsel, 387-5455) on

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September 18, 2020; Purchasing Department (Michelle Churchill, Supervising Buyer, 387-2070) on October 2, 2020; ARMC Finance (Chen Wu, Budget and Finance Officer, 909-580-3165) on October 1, 2020; Finance (Amanda Trussell, Principal Administrative Analyst, 387-5423) on October 5, 2020; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on October 9, 2020.