



San Bernardino County

Legislation Text

File #: 759, Agenda Item #: 10

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

Consultant Agreements with Impact Advisors, LLC and Santa Rosa Consulting

RECOMMENDATION(S)

1. Approve fixed-rate contracts with the following vendors on an as-needed, fee-for-service basis for implementation services related to the new Electronic Health Record (EHR) system at Arrowhead Regional Medical Center in the total aggregate amount of \$10,000,000 for the three year period of July 9, 2019 through July 8, 2022:
 - a. Impact Advisors, LLC
 - b. Santa Rosa Consulting
 2. Authorize Arrowhead Regional Medical Center to execute scope of work orders under the contracts for implementation services.
- (Presenter: William L. Gilbert, Director, 580-6150)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Improve County Government Operations.

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 total aggregate cost of \$10,000,000 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. Approval of the necessary budget adjustment's to the Arrowhead Regional Medical Center's 2019-20 budget is not requested at this time, but will be included on a future quarterly countywide budget report presented to the Board of Supervisors for approval.

BACKGROUND INFORMATION

ARMC is preparing to implement a comprehensive Electronic Health Record (EHR) system for improved patient data records management. Approval of the implementation services contracts will allow ARMC to immediately use the project manager to assist with the implementation preparedness work, which is assisting with development of plan for implementation of the new EHR system. The project manager has been tentatively selected from Impact Advisors. There will be no duplication of work. Two vendors were selected to provide ARMC with a greater pool of qualified resources to pull from during the implementation. As the needs arise, scope of work will be asked of companies based on the need at that time. Work will be divided based on

the need and qualified candidates.

In addition, the selected vendors will provide ARMC with technical and clinical consultants and temporary staff with qualifications, experience, and certification in large scale hospital information technology development services, including program management, clinical application development and support, analysis, programming, architecture, data management, reporting, quality assurance, optimization services, workflow design and optimization, and project management. With the exception of the project manager, ARMC will not engage with clinical consultants and temporary staff until the build out of the new system process begins. ARMC will receive framework software which the hospital must build the data and workflows. This requires specialized certifications that the current ARMC team does not have, and the contractor with the specialized certifications will supplement and assist ARMC during the build process, as needed. ARMC requires the use of consultants with health information technology experience and certification to meet project deadlines and deliverables and handle increased workloads necessary to implement the new EHR system.

The County standard agreement was negotiated with Impact Advisors to include the following non-standard terms:

1. Limitation of liability of Impact Advisors to the County for Contractor's liability with respect to any claim by County based on County's dissatisfaction with services or noncompliance with the specifications hereunder shall not exceed the fees paid by County with respect to such allegedly non-conforming services.

- The County standard contract does not include a limitation of liability.

Potential impact of this non-standard provision includes:

1. Impact Advisors limits its liability to the County, if the County seeks to recover damages, costs and/or fees based on its dissatisfaction with the services or failure of the services to meet the specifications, to the amount paid by the County for the non-compliant services, could exceed the liability cap and the contract amount.

The County standard agreement, including the County standard Business Associate Agreement, was negotiated with Santa Rosa Consulting to include the following non-standard terms:

1. Santa Rosa Consulting limits its indemnification obligations in both the contract and the Business Associate Agreement to claims arising from their negligent acts and willful misconduct, and its indemnity obligations will not extend to claims that arise from the negligent acts, errors or omissions, or willful misconduct of the County.
- The County standard indemnification provision is: The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Contractor indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.
 - The County standard Business Associate Agreement (BAA) indemnification provision is: Business Associate (BA) agrees to indemnify, defend and hold harmless Covered Entity (CE) and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, penalties, injuries, costs and expenses (including costs for reasonable attorney fees) that are caused by or result from acts or omissions of BA, its officers, employees, agents and subcontractors, with respect to the use, access, maintenance or disclosure of CE's Public Health Information (PHI), including without limitation, any Breach of PHI or any expenses incurred by CE in providing required Breach notifications.

2. Limitations of liability for all claims by and against the County to US\$1,000,000, but excluding Santa Rosa Consulting's indemnity obligations, breach of confidentiality and non-disclosure, violations of law, breach of the BAA, and gross negligence or willful misconduct.
 - The County standard contract does not include a limitation of liability.
3. County is liable for costs and expenses incurred by Santa Rosa Consulting for assisting the County in the performance of its obligations under the BAA to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the County based upon a claimed violation of Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act), the Privacy Rule, the Security Rule, or other laws relating to security and privacy.
 - The County standard contract does not require the County to cover these costs.

Potential impact of this non-standard provision includes:

1. The limit of the indemnification obligation to Santa Rosa Consulting's negligence or willful misconduct means that any claim that does not require these conditions, such as breach of contract, intellectual property indemnity or strict liability, are excluded from Santa Rosa Consulting's indemnification obligations. In addition, such claims would be subject to the limitation of liability.

2. Santa Rosa Consulting caps its liability to the County to US\$1,000,000, for all claims except its indemnity obligations, breach of confidentiality and non-disclosure, violations of law, breach of the BAA, and gross negligence or willful misconduct, which could exceed the liability cap. In addition, the County's liability under the contract is not similarly limited.

ARMC recommends approval of the contracts with Impact Advisors and Santa Rosa Consulting, including the non-standard terms, as both, based on their Request for Proposal (RFP) responses, will provide the best quality implementation services and support for the hospitals new Electronic Health Record. It is to the County's benefit to pursue a means of leveraging the Impact Advisors and Santa Rosa Consulting as they have the qualifications and experience in implementing Electronic Health Record systems based on industry best practices and within budget.

PROCUREMENT

The RFP was approved by the CAO's office on December 14, 2018 and the RFP No. MCR18-27 for Electronic Health Record System Implementation Services was released through the County of San Bernardino's Electronic Procurement (ePro) network, on the same date. Proposals were due from vendors on January 11, 2019.

Twenty-one companies submitted proposals and the company name, location and amount for each is provided in Attachment A of this Board item. Evaluation of the proposals was completed by a committee comprised of representatives from ARMC Administration, Information Management, and Medical Records.

All proposals were evaluated based on the criteria of qualification and experience, strategy and plan review, costs, and references. The evaluation committee determined based on the depth of knowledge and familiarity with the proposal that the top two ranked vendors, Impact Advisors, LLC and Santa Rosa Consulting met the needs of ARMC. Each vendor proposed cost included an hourly rate ranging from as low as \$130 per hour to \$280 per hour for various positions. Impact Advisors, LLC and Santa Rosa Consulting were selected for their overall ordinal ranking positions of number one and number two.

On April 24, 2019, a tentative award letter was sent to Impact Advisors, LLC and Santa Rosa, 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 ARMC 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 May 14, 2019; Purchasing Department (Jason Cloninger, Lead Buyer, 387-2060) on May 17, 2019; Finance (Amanda Trussell, Principal Administrative Analyst, 387-4773) on July 19, 2019; and County Finance and Administration (Katrina Turturro, Deputy Executive Officer, 387-5423) on July 19, 2019.