



San Bernardino County

Legislation Text

File #: 2427, Agenda Item #: 12

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

June 23, 2020

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Agreement with MoreDirect, Inc. dba Connection, for a fully integrated Help Desk and Change Management Solution

RECOMMENDATION(S)

1. Approve the MoreDirect, Inc. dba Connection Statement of Work, to provide services in support of the ServiceNow platform implementation project in the amount of \$938,736, for the period beginning July 1, 2020, through the June 30, 2025.
2. Approve the non-financial ServiceNow Order Form - Product Use and Definitions and Subscription Service Agreement, for the period beginning July 1, 2020, through the June 30, 2025.
3. Designate the Hospital Director as the authorized official to sign non-financial documents as they pertain to changes to the Statement of Work and support services, subject to review by County Counsel, so long as such documents do not increase the total contract amount or modify the terms.
4. Direct the Hospital 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

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). The cost of \$938,736 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. Sufficient appropriation and revenue are included in the Arrowhead Regional Medical Center (ARMC) 2020-21 recommended budget and will be included in future recommended budgets.

The estimated annual cost for each year is as follows:

Year	Fiscal Year	Estimated Annual Amount
1	20-21	\$ 381,520
2	21-22	\$ 139,304

3	22-23	\$ 139,304
4	23-24	\$ 139,304
5		\$ 139,304

BACKGROUND INFORMATION

MoreDirect, Inc. dba Connection (Connection) is an authorized reseller of the ServiceNow, Inc. (ServiceNow) platform. In March 2019, discussions began with Connection, to address the need for a new internal ARMC Help Desk and Change Management System that would integrate into Epic and the new Electronic Health Record system, providing expansion capabilities that include Asset, Operations and Business Management application as well as the ability to build applications.

On March 12, 2020, the World Health Organization declared COVID-19 a pandemic. On March 13, 2020, the President of the United States declared a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak. To provide for the safety, health and social needs of the community, ARMC's Information Technology Department immediately began researching ways to implement a web-based, self-reporting and self-scheduling platform that would benefit the public and provide a dashboard and tracking system that administrators could utilize to investigate COVID-19 exposures and conduct expedient outbreak investigations. The ServiceNow platform not only provided all of the necessary Help Desk and Change Management requirements but was able to provide the web-based, self-reporting, and self-scheduling and dashboard needed for the pandemic.

The Connection Statement of Work (SOW) is its standard commercial SOW, as negotiated by the County, which contains terms that differ from the standard County contract. The non-standard terms include the following:

1. The prevailing party is entitled to recover attorneys' fees and costs.
 - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: If either party institutes any legal proceedings related to the Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees, which could exceed the total contract amount.
2. The SOW is silent on venue.
 - The County standard contract requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: Connection is located in Boca Raton, Palm Beach County, Florida. Having no express venue in the contract means that Palm Beach County venue could be applied to this contract, which may result in additional expenses that exceed the amount of the contract.
3. The SOW does not require Connection to indemnify the County.
 - The County standard contract general 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: Connection is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from Connection's negligent or intentional acts and intellectual property infringement. If the County is sued for any claim arising from the implementation services provided by Connection, the County may be solely liable for the costs of defense and damages, which could exceed the total contract amount.
4. The SOW does not require Connection to meet the County's insurance standards.

- The County standard contract requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department.
 - Potential Impact: The County has no assurance that Connection will be financially responsible for claims that may arise from the provision of professional services.
5. Liability of Connection to the County is limited to the actual price paid to Connection by the County for the computer products, hardware or software, parts or service, whichever is less.
- The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the SOW amount leaving the County financially liable for the excess. In addition, the County's liability under the SOW is not similarly limited.
6. Payment terms are Net 30 with late payment interest of 1.5% per month and failure to pay may result in suspension or termination of the SOW.
- County standard payment terms are be Net 60 days with no interest or late payment penalties.
 - Potential Impact: Failing to pay within 30 days will result in a material breach fo the SOW, which would allow Connection to terminate the SOW and seek other legal remedies, including charging the County interest at a rate of 1.5% per month (18% annually), which would exceed the contract amount.
7. No termination for convenience during the initial term.
- 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 without penalty. The County remains liable for payment of the full contract amount, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.

The ServiceNow Order Form - Product Use and Definitions and Subscription Service Agreement is its standard commercial terms, as negotiated by the County, which contains terms that differ from the standard County contract. The non-standard terms include the following:

1. The County is required to defend ServiceNow and ServiceNow Affiliates alleging that County Data, Technology, or a modification to any ServiceNow Core Technology made to County's specifications infringes any patent, copyright, or trademark, misappropriates any third-party trade secret, or violates any third- party privacy rights and pay any settlement amount or any court-ordered award of damages.
 - The County standard contract does not include any indemnification or defense by the County of a Contractor.
 - Potential Impact: By agreeing to indemnify ServiceNow, 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 ServiceNow without such limitations and the County would be responsible to defend and reimburse ServiceNow for costs, expenses, damages, settlement amounts and/or judgment amounts, which could exceed the total contract amount. In addition, the County's indemnification obligations are not subject to any limitation of liability.
2. Venue is in Santa Clara County, California.
 - 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 Santa Clara County, California may result in additional

expenses that exceed the amount of the contract.

3. The cumulative liability of both ServiceNow and the County is limited to the amounts paid by the County for use of the products or provision of the services giving rise to the claim during the 12-month period preceding the first event giving rise to liability. The limitation does not apply to: (a) the County's obligation to pay for products, services or taxes; (b) either party's indemnity obligations; and (c) infringement by a party of the other party's Intellectual Property Rights.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the SOW amount leaving the County financially liable for the excess. In addition, the County's liability under the SOW is not similarly limited.
4. The term of the contract is indefinite.
 - County Policy 11-06SP does not permit indefinite term or automatically renewing contracts unless approved by the Board.
 - Potential Impact: There is no end term to the contract and the County is indefinitely bound to the terms and conditions of the contract.
5. No termination for convenience while there are any Use Authorizations in effect.
 - 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 without penalty. The County remains liable for payment of the full contract amount, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.

ARMC recommends approval of the Connection SOW and the ServiceNow, including the non-standard terms, and recommends utilizing Connection-ServiceNow platform.

PROCUREMENT

This is a competitive procurement through the group purchasing organization, Vizient, serving San Bernardino County departments. The Connect-MoreDirect (IT0033) contract is effective through December 31, 2021. Vizient secured this contract through a competitive bid RFP process. Purchasing approves with the RFP process as meeting county guidelines.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, County Counsel, 387-5455) on May 22, 2020; Purchasing Department (Jackie Ambrose, Lead Buyer, 387-2463) on June 1, 2020; ARMC Finance Budget Officer (Chen Wu, ARMC Finance Budget Officer, 580-3165) on June 2, 2020; Finance (Yael Verduzco, Administrative Analyst, 387-5285) on June 4, 2020; and County Finance and Administration (Matthew Erickson, Chief Financial Officer, 387-5423) on June 7, 2020.