



San Bernardino County

Legislation Text

File #: 3014, Agenda Item #: 10

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

October 6, 2020

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Purchase Agreement with LivaNova USA, Inc. for two S5 Heart Lung Perfusion Systems

RECOMMENDATION(S)

Approve Purchase Standard Terms and Conditions with LivaNova USA, Inc. for the purchase of two S5 Heart Lung Perfusion Systems used for cardiovascular procedures, in the total amount of \$467,000.

(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 \$467,000 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

Approval of this recommendation will allow ARMC to purchase two of the S5 Heart Lung Perfusion Systems used in open heart surgeries. This equipment allows the physician to divert the patient's blood circulation away from the heart during heart surgery which then allows the heart surgeon to safely perform the heart surgery. This purchase is an indispensable component for ARMC's new cardiothoracic open-heart surgery program. This will provide ARMC the ability to perform coronary artery bypass graft (CABG) and upgrade its designation to a level one trauma center.

The LivaNova USA Inc., Standard Terms and Conditions (modified) are its standard commercial terms, modified as negotiated by the parties, which includes terms that differ from the County standard contract terms and omits certain County standard contract terms. The non-standard and missing terms are as follows:

1. Payment terms are Net 30.
 - 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 within 30

days will result in a material breach of the contract, which would allow LivaNova to terminate the contract and seek other legal remedies.

2. The contract does not include certain standard County insurance requirements.
 - 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: LivaNova's failure to maintain or provide insurance, as the County requires of its vendors and contractors, will not result in a breach of the contract that would permit the County to pursue recovery of claims against LivaNova or under any LivaNova policy of insurance.
3. Governing law is Texas
 - The County standard contract requires California governing law.
 - Potential Impact: The contract will be interpreted under Texas law. Any questions, issues or claims arising under this contract will require the County to hire outside counsel competent to advise on Texas law, which may result in fees that exceed the total contract amount.
4. There is no stated venue in the contract.
 - The County standard contract requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: Contractor is located in Houston, Harris County, Texas. Having no express venue in the contract means that Harris County venue could be applied to this contract, which may result in additional expenses that exceed the amount of the contract.
5. The contract does not address 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: There is no provision in the contract addressing each party's responsibility for paying attorneys' fees. County Counsel cannot advise on, whether and to what extent, Texas law may affect a party's requirement to pay the prevailing party's attorneys' fees and costs in a legal action where no specific provision is provided in the contract.

ARMC recommends approval of this contract, including the non-standard terms, as this will allow for the purchase of the two S5 Heart Lung Perfusion Systems and provide for the health and social services 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 two S5 Heart Lung Perfusion Systems stem from a non-competitive bid. The new Cardiovascular Program is on a tight timeline for implementation. Training has been contracted with Loma Linda Physician Group so that ARMC can meet this timeline. Loma Linda is training ARMC personnel at their location using their proven, existing equipment, which provides for an efficient, timely and cost-effective transition for ARMC personnel. In purchasing and using the same equipment, ARMC personnel will also be able to serve our patients both safely and efficiently. Purchasing supports this non-competitive procurement.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Deputy County Counsel, 387-4600) on

September 11, 2020; Purchasing Department (Michelle Churchill, Supervising Buyer, 777-2070) on September 11, 2020; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on September 11, 2020; Finance (Yael Verduzco, Administrative Analyst, 387-5285) on September 21, 2020; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on September 22, 2020.