



San Bernardino County

Legislation Text

File #: 4097, Agenda Item #: 30

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

May 4, 2021

FROM

LEONARD X. HERNANDEZ, Chief Executive Officer, County Administrative Office

SUBJECT

Ratification Actions in Response to the Novel Coronavirus Pandemic

RECOMMENDATION(S)

Ratify the Chief Executive Officer's exercise of the authority granted by the Board of Supervisors initially on March 24, 2020 (Item No. 67), and extended on May 19, 2020 (Item No. 105), June 23, 2020 (Item No. 124), July 28, 2020 (Item No. 72), August 25, 2020 (Item No. 71), September 29, 2020 (Item No. 79), October 27, 2020 (Item No. 96), November 17, 2020 (Item No. 99), December 15, 2020 (Item No. 80), January 26, 2021 (Item No. 67), February 9, 2021 (Item No. 75), March 9, 2021 (Item No. 53), and April 6, 2021 (Item No. 51), and on November 17, 2020 (Item No. 98), January 26, 2021 (Item No. 68), February 9, 2021 (Item No. 76), March 9, 2021 (Item No. 54), and April 6, 2021 (Item No. 52) for non-standard contract terms for purchases, in approving the following actions in response to the worldwide health threat related to the Novel Coronavirus, or COVID-19:

1. Approve Amendment No. 1 to Master Agreement between the California Department of Public Health and Abbott Laboratories, that designates Arrowhead Regional Medical Center as a System Member and binds the County to the terms of the Master Agreement, for Arrowhead Regional Medical Center to purchase reagents for ID NOW COVID-19 rapid test kits at the prices negotiated by the California Department of Public Health, for an amount not to exceed \$405,150, effective upon execution through December 15, 2021, executed by the Chief Executive Officer on April 12, 2021.
2. Approve the Law and Justice Group's Grant Agreement with the California Board of State and Community Corrections in the amount of \$2,158,476.30 (Award 5227-BSCC11720), for the provision of support for its detained and re-entry population in response to COVID-19, for the period of March 31, 2021 through January 31, 2022, executed by the Chief Executive Officer on April 9, 2021.
 - a. Adopt Resolution, as required by the California Board of State and Community Corrections, authorizing the Chief Executive Officer, or their designee, to submit the grant proposal and sign the Grant Agreement with the California Board of State and Community Corrections, including any amendments thereof, and make additional attestations regarding use of awarded funds and compliance with terms and conditions of the Grant Agreement.
 - b. Authorize the Chair of the Law and Justice Group, or their designee, as required by the California Board of State and Community Corrections, to electronically submit all documents and forms required for acceptance of the Coronavirus Emergency Supplemental Funding Program grant.
 - c. Direct the Chair of the Law and Justice Group, or their designee, to transmit all documents and amendments in relation to the Grant Agreement to the Clerk of the Board of Supervisors within 30 days of execution.

- d. Authorize the Auditor-Controller/Treasurer/Tax Collector to post the necessary budget adjustments to the Law and Justice Group's 2020-21 Budget to establish budget authority to fund the costs associated with Recommendation No. 2 for the Coronavirus Emergency Supplemental Funding Program grant, as detailed in the Financial Impact section (Four votes required).

(Presenter: Leonard X. Hernandez, Chief Executive Officer, 387-5417)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Promote the Countywide Vision.

Create, Maintain and Grow Jobs and Economic Value in the County.

Improve County Government Operations.

Operate in a Fiscally-Responsible and Business-Like Manner.

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

Provide for the Safety, Health and Social Service Needs of County Residents.

Pursue County Goals and Objectives by Working with Other Agencies.

FINANCIAL IMPACT

Approval of the recommendations will not result in the use of additional Discretionary General Funding (Net County Cost), as detailed below. Sufficient appropriation, if necessary, as detailed below, will be included in the respective department's future recommended budgets.

Recommendation No. 1

Approval of this recommendation will not result in the use of Discretionary General Funding (Net County Cost). Adequate appropriation for the not to exceed amount of \$405,150 is included in the Arrowhead Regional Medical Center's (ARMC) 2020-21 budget and will be included in future recommended budgets. The department, in coordination with County Finance and Administration, will monitor the potential availability of other funding sources, including the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and the American Rescue Plan Act of 2021, to potentially offset the cost of this Agreement.

Recommendation No. 2

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). Upon award of funding, the County will receive a direct payment from the California Board of State and Community Corrections (BSCC) in the amount of \$2,158,476.30, which does not require a match. Approval of this item authorizes the Auditor-Controller/Treasurer/Tax Collector to post the following budget adjustments necessary to authorize expenditures, as detailed below:

Cost Center	Commitment G/L	Description	Action	Amount
1130002377	55405012	Transfers Out	Increase	\$2,158,476.30
1130002377	40509094	Federal Grants	Increase	\$2,158,476.30

BACKGROUND INFORMATION

The COVID-19 virus originated in Wuhan, China in late 2019 and began spreading, initially, within China and then to other countries. On January 30, 2020, the World Health Organization declared the outbreak to be a "public health emergency of international concern". This was followed on January 31, 2020 by the United States Human Services Secretary declaring a public health emergency.

On March 4, 2020, the State of California declared a state of emergency as a result of the COVID-19 outbreak due to the rising number of confirmed cases and anticipated complications for those infected, including potential deaths. On March 10, 2020, the County Public Health Officer declared a local health emergency to help ensure county government and the public were prepared for the possibility that COVID-19 would appear within the county. On March 10, 2020 (Item No. 75), the Board of Supervisors (Board) proclaimed the existence of a local emergency within San Bernardino County resulting from COVID-19, which causes

infectious disease resulting in symptoms of fever, coughing and shortness of breath with outcomes ranging from mild to severe illness and in some cases, death.

In order to promote a coordinated and efficient response to needs that may arise from the COVID-19 pandemic, on March 24, 2020 (Item No. 67), the Board authorized the Chief Executive Officer (CEO) to execute or approve various actions related to purchases, contracts, donations, budget, including the approval of adoption of resolutions, through May 31, 2020, subject to ratification by the Board at the next available Board meeting. Due to the continued threat of COVID-19, on May 19, 2020 (Item No. 105) and later on June 23, 2020 (Item No. 124), July 28, 2020 (Item No. 72), August 25, 2020 (Item No. 71), September 29, 2020 (Item No. 79), October 27, 2020 (Item No. 96), November 17, 2020 (Item No. 99), December 15, 2020 (Item No. 80), January 26, 2021 (Item No. 67), February 9, 2021 (Item No. 75), March 9, 2021 (Item No. 53), and April 6, 2021 (Item No. 51) the Board extended this authority of the CEO through June 30, 2020, July 31, 2020, August 31, 2020, September 30, 2020, October 31, 2020, November 30, 2020, December 31, 2020, January 31, 2021, February 28, 2021, March 31, 2021, April 30, 2021, and May 31, 2021 respectively, subject to ratification by the Board at the next available Board meeting. The recommended actions will ratify the authority exercised by the CEO.

Recommendation No. 1

Approval of the Agreement will allow ARMC to purchase reagents for ID NOW COVID-19 rapid test kits from Abbott Laboratories' as a System Member in the agreement between California Department of Public Health (CDPH) and Abbott Laboratories. This agreement will allow ARMC to purchase the test kits at a lower negotiated rate as a system member. Abbott's ID NOW COVID-19 rapid test kits offers a portable, molecular test that can provide results in 15 minutes. Having the option to offer such rapid tests to County residents will improve the efficiency of point-of-care testing at ARMC. Furthermore, the price is reasonable with a cartridge, which contains 24 tests, at a cost of \$37 per test for a total of \$888.

County Counsel reviewed Amendment No. 1 to the Agreement between the CDPH and Abbott Laboratories and it was signed by the County CEO on April 12, 2021, which approves ARMC's use of the system member designation.

Through the purchase of the test kits, the County is bound to the standard terms and conditions of the Agreement between the State of California Department of Public Health and Abbott Laboratories, including non-standard County terms. Per County Policy 11-05, non-standard contract language must be approved by the Board. The following differ from the standard County contract terms:

Payment

Payment terms are Net 30 days with late payment interest of the greater of 1.5% per month or the maximum amount permitted under Illinois law.

- 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 of invoice will result in a material breach to the agreement, which would allow Abbott to terminate the agreement and seek other legal remedies, including charging the County interest at the rate of 1.5% per month.

Limitation of Liability

Abbott disclaims any liability for any punitive, special, indirect, incidental, or consequential damages, and caps its aggregate liability to the amount paid by the County for the products that give rise to a claim.

- The County standard contract does not include a limitation of liability.
- Potential Impact: Abbott caps its potential liability to the County at the amounts paid by the County for

the product that causes injury or damages, and the limits the County's ability to recover the specified damages discussed above. Claims could exceed the liability cap and the contract amount, leaving the County financially liable for the excess.

Governing Law and Venue

The Agreement is governed by Illinois law and subject to the dispute resolution provision in the agreement, any lawsuit must be brought in the federal court of the Northern District of Illinois, or if there is no federal court, then in the state courts of Lake County, Illinois.

- The County standard contract provides that the venue of any action arising out of the contract will be the San Bernardino County Superior Court.
- Potential Impact: The agreement will be interpreted under Illinois law and any lawsuit must be brought in the specified court in Illinois. If a dispute arises out of the agreement, the County may be required to retain outside counsel in Illinois and proceed with the lawsuit in Illinois, which may result in fees to the County that exceed the total contract amount.

Binding Arbitration

Any dispute arising out of the Agreement must be resolved by binding arbitration.

- The County standard contract does not require the County to undergo binding arbitration.
- Potential Impact: The County waives the right to seek remedies in Court for any dispute arising under the Agreement, and the decision of the arbitrator is binding and non-appealable.

Termination for Convenience

There is no termination for convenience.

- 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 products purchased prior to the termination date.
- Potential Impact: There is no termination for convenience. If the County terminates the contract prior to the expiration of the term, the County will be breaching the agreement.

Attorney's Fees

Attorney's fees are awardable in arbitration based on the determination of the arbiter in a way that bears a reasonable relationship to the outcome of the arbitration, with the party prevailing on more issues recovering a relatively larger share of its legal fees and expenses.

- The County standard contract requires each party to bear their own attorney's fees and costs in any dispute.
- Potential Impact: If either party institutes arbitration related to the Agreement, the prevailing party may be entitled to recover reasonable attorneys' fees, which could exceed the total contract amount.

Indemnification

The Agreement does not contractually require Abbott to indemnify the County for any claims including for intellectual property infringement claims.

- The standard contract provision for intellectual property indemnity is: Contractor will indemnify, defend, and hold harmless County and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services. 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: Abbott is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from Abbott's negligent or intentional acts and

intellectual property infringement. If the County is sued for any claim, including intellectual property infringement based on its use of Abbott's products, the County may be solely liable for the costs of defense and damages, which could exceed the total contract amount. County Counsel cannot advise on whether and to what extent Illinois law may allow the County to require Abbott to defend or indemnify it absent an express provision in the agreement.

Insurance

The Agreement does not require Abbott to meet the County 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: Potential Impact: The Agreement does not include County standard insurance requirements. This means that the County has no assurance that Abbott will be financially responsible for claims that may arise from the Agreement, which could result in expenses to the County that exceed the total contract amount.

Debarment and Suspension

Abbott does not expressly certify that it is not debarred or suspending from participation in the transaction by any federal department or agency.

- The County's standard contract requires contractors to expressly certify that they are not debarred, suspended, or proposed to be debarred, or voluntarily excluded from participation in the transaction by any federal department or agency.
- Potential Impact: Potential Impact: Without such certification, the County has no assurance that Abbott is not debarred or suspended from participation in the transaction by any federal department or agency.

Recommendation No. 2

The Coronavirus Emergency Supplemental Funding Program (CESF) is administered by the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (BJA), to fund approaches that prevent, prepare for, and respond to the Coronavirus. In Spring 2020, BJA released a federal CESF solicitation to states and allocated funding to cities and counties through a separate process; the County of San Bernardino was awarded \$204,217 directly. The total CESF allocation to California was \$93,684,166. On July 16, 2020, the BSCC awarded \$15,000,000 in funding to the California Department of Corrections and Rehabilitation to help expedite the emergency housing needs of people being released from state prisons. Of that award, \$2,158,476.30 has been allocated for County of San Bernardino regional efforts.

The Request for Applications (solicitation) from BSCC was released on November 20, 2020. The County application was submitted on February 1, 2021 under the delegated authority of the CEO. The County received the BSCC Grant Agreement for the full award on April 2, 2021, with the requirement that it be signed and submitted by April 9, 2021.

The grant project will be administered by Law and Justice Group Administration and will primarily fund services within the departments of Behavioral Health, Probation, the Sheriff/Coroner/Public Administrator, and a community-based organization to be contracted by Behavioral Health. There is also a Local Advisory Committee for the project, as required.

The County grant proposal expands upon its broad range of Coronavirus support for its detained and re-entry population through the three law and justice partners and the community-based organization. The Sheriff/Coroner/Public Administrator's Detention and Corrections Bureau provides appropriate sanitation, medical screening, testing, monitoring, and treatment. In addition, County jails have now become vaccination centers. The Probation Department provides proactive measures that would mitigate the potential spread of the COVID-19 virus among its at-risk re-entry and homeless populations in adult community corrections. This includes medication dispensing machines and the purchase and distribution of hygiene and sanitation kits to

clients at Day Reporting Centers. The project will also fund a mobile medical unit used to treat homeless clients. The Department of Behavioral Health and its community-based partner (identified for \$431,700 in pass-through funding, a grant mandated minimum of 20%) propose increased substance use disorder residential treatment, vaccination locations, and isolation/quarantine shelter beds necessary due to COVID-19.

County Counsel reviewed the terms of the Grant Agreement and it was signed by the CEO on April 9, 2021.

PROCUREMENT

Procurement is applicable to Recommendation No. 1. Approval of this Agreement is based on an existing agreement. ARMC will utilize an existing agreement negotiated by the State of California to procure reagents (test cartridges) for use with ARMC's existing Abbott equipment. The Abbott equipment owned by ARMC must utilize Abbott reagents, and the use of the existing state contract will allow ARMC to procure them at a significantly lower rate.

Purchasing approves the non-competitive nature of this procurement.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Michelle Blakemore, County Counsel, 387-5455; Charles Phan, Deputy County Counsel, 387-5465; Katherine Hardy, Deputy County Counsel, 387-5437) on April 26, 2021; Auditor-Controller/Treasurer/Tax Collector (Vanessa Doyle, Chief Deputy Controller, 382-3195) on April 23, 2021; Purchasing Department (Ariel Gill, Buyer II, 777-0722) on April 6, 2021; Finance (Stephenie Shea, Administrative Analyst, 387-4919; Yael Verduzco, Administrative Analyst, 387-5285; Allegra Pajot, Administrative Analyst, 387-5005) on April 23, 2021; and County Finance and Administration (Kelly Welty, Deputy Executive Officer, 387-5423; Matthew Erickson, County Chief Financial Officer, 387-5423) on April 26, 2021.