



San Bernardino County

Legislation Text

File #: 5132, Agenda Item #: 17

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

November 16, 2021

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Authorization for Execution of Lease Agreement and Addenda for the Lease and Installation of Trailers and Related Accessories with Williams Scotsman, Inc. in Response to the Novel Coronavirus Pandemic

RECOMMENDATION(S)

Authorize the Purchasing Agent, subject to review by County Counsel, to execute any new lease agreements and addenda with Williams Scotsman, Inc., for the provision of trailers and related accessories, with no changes to the identified non-standard terms and within the Purchasing Agent's \$200,000 signing authority, for use in response to the novel coronavirus pandemic, for the term of January 1, 2022 through December 31, 2022.

(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.

Pursue County Goals and Objectives by Working with Other Agencies.

FINANCIAL IMPACT

Approval of the item will not result in the use of Discretionary General Funding (Net County Cost). The additional costs are 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 appropriation and revenue adjustments are not requested at this time, but will be included in a future quarterly countywide budget report presented to the Board of Supervisors (Board) for approval, if necessary.

Each lease agreement, including all addenda, will be within the \$200,000 limit of the Purchasing Agent's signing authority.

BACKGROUND INFORMATION

This item will ensure ARMC will be able to expediently lease new trailers and accessories with Williams Scotsman, Inc. (Willscot), or amend or extend existing lease agreements with the vendor, for trailers and accessories used for patient screening and containment of novel coronavirus (COVID-19). At present, ARMC is using one trailer at the Arrowhead Family Health Center - Westside clinic for COVID-19 vaccinations, and another trailer on the ARMC campus at the ambulance bay. The lease for the trailer at the ambulance bay on the ARMC campus expires in March 2022, while the trailer for Arrowhead Family Health Center - Westside

clinic has already expired and is on a month-to-month lease. Due to the evolving nature of COVID-19, ARMC cannot presently determine if additional trailers will be needed through 2022, however, seeks to remain prepared should the need arise.

On August 25, 2020 (Item No. 8), the Board approved the Purchasing Agent, for the period of August 25, 2020 through August 25, 2021, to enter into new lease agreements and addenda, subject to review by County Counsel, within the Purchasing Agent's monetary authority with the non-standard contract terms referenced below. This allowed ARMC to lease and install trailers with accessories (such as ADA ramps) at the ARMC campus, alternative care sites, and the Family Health Clinics (FHCs), to address unexpected COVID-19 surges which could not reasonably await Board approval due to the urgent needs of the community in light of the COVID-19 pandemic. From August 26, 2021 through December 31, 2021, a purchase order was issued to ensure accessibility to lease trailers. This purchase order was utilized to procure the trailer currently being used at the ARMC ambulance bay for patients suspected of being COVID-19 positive. It allows for temporary separation until COVID-19 tests are conducted and it is determined that the patient can safely enter the hospital among the general population.

As the calendar year comes to an end, COVID-19 cases continue to fluctuate leading to uncertainty regarding ARMC's needs for trailers and related accessories. Thus, ARMC requests that the Board authorize the Purchasing Agent, subject to review by County Counsel, to continue to execute any new lease agreements and addenda with Willscot for the provision of trailers and related accessories, with no changes to the identified non-standard terms and within the Purchasing Agent's \$200,000 signing authority, for use in response to the COVID-19 pandemic for the period of January 1, 2022 through December 31, 2022.

In accordance with the Board's approval, each lease agreement and addendum will fall within the Purchasing Agent's monetary authority of up to \$200,000 per fiscal year per vendor per scope of service, and contain only the following non-standard contract terms, which are anticipated to be in any future lease agreements and addendum subject to this Board item:

1. The County agrees to release, indemnify, defend and hold harmless Willscot, its agents and employees, from and against any and all losses, claims, fines, attorney's fees, and expenses related to the death, illness, or injury to, or damage to property or persons, arising from the use of the leased equipment, or the County's failure to strictly comply with regulatory guidelines, or to comply with any applicable laws. The County also agrees to defend and indemnify the vendor from any claims, damages, or losses arising out of or related to COVID-19 in connection with any cleaning services provided, regardless of whether the cause is the sole, joint, comparative, or concurrent negligence of the vendor.
 - The County's standard contract does not require the County to indemnify the vendor under any circumstances.
 - Potential Impact: By agreeing to defend and indemnify Willscot, 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 the vendor without such limitations and the County would be responsible for defending and reimbursing the vendor for costs, expenses, and damages which could exceed the contract amount.
2. The County agrees to name Willscot as an additional insured on its policies of insurance providing applicable coverage for losses, and requires the County to waive subrogation in favor of the vendor on general liability and workers' compensation policies. The contracts are silent on any insurance obligations of the vendor.
 - The County's standard contract does not require the County to name its vendor as an additional insured or to waive subrogation rights. The County's standard contract also requires the vendor to carry appropriate insurance at limits and under conditions determined by the County's Risk

Management Department.

- **Potential Impact:** By adding Willscot as an additional insured, Willscot would be able to go directly to the County's insurance for resolution of a claim, but given that the County is self-insured, this will have no material impact on the transaction. By requiring the County to waive subrogation, the County's insurers, to the extent applicable, would not be able to pursue any claims directly against Willscot. Because lease agreement and addendum do not include all of the County's standard insurance requirements, this means the County has no assurance of an insurance company to support Willscot's financial responsibilities relating to certain claims that may arise, which may result in expenses to the County that exceed the total contract amount.
3. The lease agreement and addendum are silent on Willscot's ability to assign the contracts.
- The County's standard contract prohibits the vendor from assigning the contract without the consent of the County.
 - **Potential Impact:** Willscot may assign the contracts to a third-party without the County's approval or notice. This could allow the contracts to be assigned to a business with which the County is legally prohibited from doing business with due to issues of federal debarment or suspension and conflict of interest.

By approving this recommendation, the Board will be authorizing the Purchasing Agent, for the period of January 1, 2022 through December 31, 2022, to enter into new lease agreements and addenda, subject to review by County Counsel, within the Purchasing Agent's monetary authority with the stated non-standard contract terms. To the extent any future agreements or addenda with Willscot contain other non-standard contract terms or exceed Purchasing's monetary authority, ARMC will seek Board approval, as required by County policy.

ARMC recommends approval of the recommendation, and acceptance of the non-standard terms, as this will allow ARMC to expeditiously lease and install trailers and related accessories for patient screening and containment of COVID-19 by timely responding to very fluid circumstances as they arise for patient care. Approval of this recommendation will help ensure the safety, health and social service needs of County residents by allowing ARMC to provide a separate area for testing patients and ensuring that they are not COVID-19 positive when entering the hospital among general population. It also offers residents a location away from the hospital to obtain drive-through COVID-19 vaccinations.

PROCUREMENT

Not Applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Charles Phan, Deputy County Counsel, 387-5455) on October 7, 2021; County Purchasing (Michelle Churchill, Supervising Buyer, 387-2070) on October 12, 2021; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on October 13, 2021; Risk Management (Victor Tordesillas, Director, 386-8631) on November 3, 2021; Finance (Yael Verduzco, Administrative Analyst, 387-5285) on October 29, 2021; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer, 387-5423) on October 29, 2021.