



San Bernardino County

Legislation Text

File #: 7321, Agenda Item #: 10

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

January 10, 2023

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Agreement with MedOne Capital Funding, LLC and Innovative Product Achievements, LLC for ScrubEx® Scrub Dispensing Machines Subscription, Rental and Support

RECOMMENDATION(S)

Approve Linen Control Subscription Agreement, including non-standard terms, with MedOne Capital Funding, LLC doing business as IPA One, and with Innovative Product Achievements, LLC doing business as IPA, LLC, for rental of ScrubEx® Scrub Dispensing Machines automated distribution service for surgical attire and linen with web based management software, one-time onsite implementation, and ongoing remote training and support, in the not-to-exceed amount of \$500,000 for a period of 60 months from the date of execution, automatically renewing month to month at the rate of \$8,284 thereafter unless terminated by either party. (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) as the amount of \$500,000 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 are included in the Arrowhead Regional Medical Center (ARMC) 2022-23 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

The ScrubEx® Scrub Dispensing Machine distributes surgical attire (scrubs) necessary for medical staff and nurses. Innovative Product Achievements, LLC doing business as IPA, LLC (IPA) is the leading manufacturer of surgical scrub automation and linen dispensing equipment, protecting clean scrub attire from contamination during transport from the laundry facility to the practice setting. IPA's services also help prevent physical damage and minimize potential contamination from the external environment. MedOne Capital Funding, LLC doing business as IPA One (IPA One) is the accounting branch of IPA that acts as the service fee payment manager, which receives and processes all payments under the Linen Control Subscription Agreement (Agreement) from the County.

ARMC currently has the following equipment installed at its Pepper Avenue facilities in Colton:

- Two ScrubEx® LV Dispenser w/ Touchscreen - SE-20003
- Two ScrubEx® LV Remote Receiver w/ Touchscreen - SE-20093
- Three ScrubEx® MV Dispenser/Receiver Unit w/ Touchscreen - SE-23003

The web-based management software, clearView, is hosted by IPA, and runs and administers all the ScrubEx® units. It is accessible to appropriate staff who are granted permission by a system administrator within ARMC. All of the users within ScrubEx® have profiles that include scrub sizes and credits. The software tracks and time stamps every transaction that is completed within the units. This allows for very comprehensive reporting as to inventory and tracking. Any issues with the units can also be reviewed within this software, which also provides the real-time live data and reporting. Remote training is provided by IPA, at no cost, to any staff within the hospital system that require training. ARMC also has access to webinars that cover all aspects of the software and reporting.

This Agreement provides ARMC's Operating Room and Delivery Departments, as well as the Sterile Processing and Burn Units, with the use of the scrub dispensing machines as an exchange system for employee scrubs. Employees are assigned a swipe card which is preloaded with a certain number of scrubs for use from the ScrubEx® machine. When the dirty scrubs are returned, the machine either dispenses clean scrubs or provides a credit for accessing clean scrubs at another time. The use of an access card system helps to decrease the number of lost scrubs by tracking the scrubs received and distributed. This subscription for scrub dispensing machines at ARMC will increase productivity, support infection control efforts, and provide tangible cost savings by reducing replacement and processing costs.

The Agreement is IPA and IPA One's (IPA/IPA One) standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. While the parties negotiated some contract terms to County standards, IPA/IPA One would not agree to certain County standard terms. The non-standard and missing terms include the following:

1. IPA/IPA One may assign the proceeds of the Agreement or grant a security interest in the goods and services provided under the Agreement without notice to the County and without the County's approval.
 - In the County standard contract the County must approve any assignment of the contract.
 - Potential Impact: IPA/IPA One could assign the Agreement to a third party or business with which the County is legally prohibited from doing business due to issues of Federal debarment or suspension and conflict of interest, without the County's knowledge. Should this occur, the County would be out of compliance with the law until it becomes aware of the assignment and terminates the Agreement.
2. If any legal action is instituted to enforce any Party's rights hereunder, each party shall be entitled to reimbursement of its costs and attorney fees.
 - 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 Agreement amount.
3. The Agreement does not require IPA/IPA One to indemnify the County, as required by County Policy 11-07, including for intellectual property infringement claims.
 - The County standard contract 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. The standard contract provision for intellectual property indemnity is that the

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.

- Potential Impact: IPA/IPA One is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from IPA/IPA One'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 IPA/IPA One's equipment, software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total Agreement amount.
4. The County agrees to indemnify, defend, and hold IPA/IPA One harmless from and against all costs, expenses, obligations, and liabilities relating to or arising as a result of the County's use of the equipment.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify IPA/IPA One, 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 IPA/IPA One without such limitations and the County would be responsible to defend and reimburse IPA/IPA One for costs, expenses, and damages, which could exceed the total Agreement amount.
 5. The Agreement does not include certain standard County insurance requirements, including the waiver of subrogation.
 - 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: No waiver of subrogation may allow IPA/IPA One's insurer to bring suit against the County, which could result in expenses that exceed the total Agreement amount.
 6. IPA/IPA One disclaims all liability to the County.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the Agreement amount leaving the County financially liable for the excess.
 7. Payment terms are Net 30 with late payment interest fee of 5%. In addition, if the County fails to make timely payments, IPA/IPA One is entitled to all available legal and equitable remedies including without limitation: (i) all remedies provided in the applicable version of the Uniform Commercial Code; (ii) reimbursement of all costs of collection and enforcement, including reimbursement for reasonable attorney's fees; (iii) all accrued and unpaid payments; and (iv) to accelerate all payments remaining under the term whether or not the Agreement is terminated. All payments are absolute, unconditional, non-cancelable, and not subject to offset or adjustment of any kind.
 - County standard payment terms are Net 60 days with no interest or late payment penalties.
 - Potential Impact: The County standard processing time is 60 days or more. Failing to make timely payments will result in a material breach of the Agreement, which would allow IPA/IPA One to terminate the Agreement and seek other legal remedies, including charging the County interest at a rate of 5% and other costs and expenses as well as require the County to pay the remain Agreement amount, which would exceed the Agreement amount.
 8. The term of the Agreement is automatically renewing on a month-to-month basis once the original term of 60 months expires.
 - County Policy 11-06SP does not permit indefinite term or automatically renewing contracts

unless approved by the Board of Supervisors.

- Potential Impact: There is no end to the Agreement and the County is indefinitely bound to the terms and conditions of the Agreement until the County gives notice of non-renewal no less than 90 days prior to the end of the term.

9. The County may not terminate the Agreement during the 60-month term. All payments are absolute, unconditional, non-cancelable, and not subject to offset or adjustment of any kind.

- The County standard contract gives the County the right to terminate the Contract, for any reason, with a 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: Any attempted termination by the County without cause would result in payment liability for the full Agreement 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 this Agreement with IPA/IPA One for the continued safety, health, and social services needs of County residents as it will ensure that medical staff has clean scrubs, preserving the integrity of the sterile environments in all medical areas of the hospital.

PROCUREMENT

The Purchasing Department supports this non-competitive procurement due to the functional specifications as the scrub dispensing machines have the capacity to meet the needs of a hospital the size of ARMC. The associated exchange system and uniform management software can service multiple hospital departments, including the Operating Room and Delivery Departments, as well as the Sterile Processing and Burn Units. Additionally, the equipment for this vendor is already installed at ARMC and switching to a new vendor would significantly increase the cost specifically for construction expenses related to installation and set-up charges.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on November 29, 2022; Purchasing (Ariel Gill, Buyer, 777-0722) on December 12, 2022; Risk Management (Victor Tordesillas, Director, 386-8623) on October 28, 2022; ARMC Finance (Chen Wu, Finance Budget Officer, 580-3165) on December 13, 2022; Finance (Jenny Yang, Administrative Analyst, 387-4884) on December 14, 2022; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on December 14, 2022.