

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

315



FROM: Riverside County Regional Medical Center

SUBMITTAL DATE:
February 18, 2010

SUBJECT: Approval of Arobella Medical, LLC, as the Sole Source Vendor to provide one (1) Quoustic Wound Therapy System™

RECOMMENDED MOTION: Move that the Board of Supervisors:

Approve and authorize the Sole Source purchase of one (1) Quoustic Wound Therapy System™ from Arobella Medical, LLC, for a total amount of \$38,272.90, without securing competitive bids, in accordance with Ordinance 459.4.

BACKGROUND: Riverside County Regional Medical Center's (RCRMC) Rehabilitation Services Department treats approximately 2,900 patients per year with 30% being treated with the proposed equipment. The purchase of the Quoustic Wound Therapy System™ will allow the Rehabilitation Service Department to provide a more efficient and increased effectiveness of the wound therapy provided to patients. Research conducted by the RCRMC Purchasing Department confirmed Arobella Medical, LLC, is the sole source for the proposed equipment.

PRICE REASONABLENESS: The County will receive discounts equal to other comparable customers, Arobella Medical, LLC, provides the only system of this kind. This system will reduce the amount of time and increase effectiveness of the debridement provided to patients.

Douglas D. Bagley

Douglas D. Bagley, Hospital Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 38,272.90	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$	Budget Adjustment:	No
	Annual Net County Cost:	\$	For Fiscal Year:	09/10

SOURCE OF FUNDS: Enterprise Funds	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Debra Cournoyer*
Debra Cournoyer

County Executive Office Signature

- Consent
- Policy
- Consent
- Policy

Dept's Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.: | District: | Agenda Number:

3.35

Purchasing: Billy Cornett
 BY: NEAL R. KIPNIS
 APPROVED COUNTY COUNSEL
 DATE: 2/18/10
 Departmental Concurrence



Memorandum

February 18, 2010

To: Riverside County Board of Supervisors
From: Douglas D. Bagley, Hospital Director
Via: Riverside County Purchasing Agent
Subject: **Sole Source Procurement: Request for Qoustic Wound Therapy System™**

The below information is provided in support of my Department requesting approval for a sole source. Please note that outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole source.

Supply/Service being requested: Qoustic Wound Therapy System™

Supplier being requested: Arobella Medical, LLC

Alternative suppliers that can or might be able to provide supply/service: Arobella Medical is currently the only provider of this type of medical equipment

Extent of market search conducted: Internet and Peer Reviewed article research for Qoustic Wound Therapy System™ was used. Google was the research repository utilized.

Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide: The Qoustic Wound Therapy System™, patented and patent pending, uses ultrasonic energy for the selective dissection and fragmentation of tissues, wound debridement (acute and chronic wounds, burns, diseased or necrotic tissue) and cleansing saline irrigation of the site for the removal of debris, exudates, fragments, and other matter.

Reasons why my department requires these unique features and what benefit will accrue to the county: Currently wound care selective debridement is manual and requires significant periods of time devoted to the patient by a single provider. Time constraints limit the care provider from being as thorough as the Qoustic Wound Therapy System™ will allow, thus there is greater risk of incomplete debridement and potential for harm to healthy tissue and possible destruction of granulation tissue.

Price Reasonableness: Arobella Medical Qoustic Wound Therapy System™ is the only system of it's kind. It will reduce the amount of time and increase the effectiveness of the debridement RCRMC is able to provide to the patients.

Does moving forward on this product or service further obligate the county to future similar contractual arrangements? No. Our total purchase price with shipping is \$38,272.90.



Department Head Signature



Date

Purchasing Department Comments:

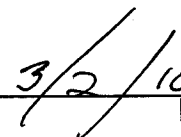
Approve

Approve with Condition/s

Disapprove



Purchasing Agent



Date

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Customer Quote

Customer: Rehabilitation Services
 Riverside County Regional Medical Center
 26520 Cactus Ave
 Moreno Valley, CA 92555
 (951)486-4243

Sales Contact: Danielle Watkins
 Customer Service and Sales Coordinator
 Cell: 952-217-9834
 Office: 952-288-2810
 d Watkins@arobella.com

Quote Date	Quote #	Quote Valid Until
2/9/10	QT09-0101, Rev 3	March 31, 2010
Terms	Expected Ship Date	Ship Via
Net 30	2-4 Weeks ARO	FedEx Ground

Catalog #	Description	Qty	Unit Price	Amount
AR1000-SYS	QOUSTIC WOUND THERAPY SYSTEM includes:	1	\$35,000.00	\$35,000.00
AR1000-GEN	QOUSTIC GENERATOR	1		
AR1000-HP	QOUSTIC HANDPIECE	2		
AR1000-QT1	TYPE 1 QURETTE-10MM FULL	10		
AR1000-EXT	QURETTE EXTENDER	2		
AR1000-PND	TYPE PL SHROUD – PLASTIC FOR USE WITHOUT DISPOSABLE	5		
AR1000-PWD	TYPE P SHROUD – PLASTIC FOR USE WITH DISPOSABLE	5		
AR1000-DSF	QOUSTIC DISPOSABLE-FULL SHIELD PACKAGED	10		
AR1000-CRT	QOUSTIC CART	1		
AR1000-PED	FOOT PEDAL	1		
AR1000-CRD/NA	AC POWER CORD – NORTH AMERICA	1		
AR1000-DOC	IFU QOUSTIC WOUND THERAPY SYSTEM INSTRUCTIONS FOR USE	1		
AR1000-GUIDE	QOUSTIC WOUND THERAPY SYSTEM QUICK SET UP GUIDE	1		
	SHIPPING AND HANDLING	1	\$145.00	\$145.00
	TAX - To be determined at the time of sale.			
			TOTAL	\$35,145.00

The indicated quote number must appear on all correspondence, invoices, returns, bills of lading and acknowledgements relating to this quote.

ATTACHED ARE THE TERMS AND CONDITIONS OF SALE.

Please contact Customer Service at 1-866-WOUNDS-Ø (1-866-968-6370) with any questions or concerns.
 5929 Baker Road, Suite 470, Minnetonka, MN 55345, Phone: (952) 345-6840, Fax: (952) 345-6841

Thank you for your business!



5929 Baker Road, Suite 470 • Minnetonka, Minnesota 55345 • (952) 345-6840 • Fax (952) 345-6841

TERMS AND CONDITIONS OF SALE

Effective September 1, 2009

These terms and conditions (this "Agreement") govern all sales of the Qoustic Wound Therapy System which includes the Generator, Hand Piece, Power Cord, Foot Pedal, Cart, Qoustic Qurette tips, Extender and Shroud (each separately and collectively, as applicable, the "System") by Arobella Medical, LLC ("Seller") and constitute an integral part of the contract between Seller and the purchaser of the System ("Buyer"). Each and every quotation, agreement, acknowledgement and each offer or acceptance of Seller is expressly subject to this Agreement. Seller expressly rejects any other terms and conditions which are additional to or different from the exact terms stated herein and these terms and conditions herein shall prevail over any contrary terms or conditions except as agreed to in a written agreement signed by an authorized officer of Seller. Delivery of the System does not constitute acceptance of any additional or different terms.

1. **QUOTES.** Unless otherwise specified in a writing signed by Seller, Seller's quotations may only be accepted by Seller's receipt of a written acceptance from the addressee within ninety (90) days after the date of Seller's quotation. Such acceptance must be unconditional and without any change or addition to the quotation terms. Unless otherwise stated in the quotation, acceptance is for immediate manufacture and shipment of the System pursuant to Seller's standard order processing procedures.

2. **PRICES.** Unless otherwise expressly stated in a writing signed by Seller, if an order is not for immediate shipment of the System, Seller reserves the right to change the price for the System to the Seller's price in effect at the time of the shipment of the System. Prices do not include sales, use, excise, or other taxes or governmental charges due in connection with the sale, delivery or installation of the System, excluding taxes due on Seller's net income.

3. **TERMINATION AND SUSPENSION.** Buyer may terminate or suspend its order for any or all of the System provided that Buyer gives Seller reasonable advance written notice of such termination or suspension and reimburses Seller for all direct and indirect losses, damages, costs and expenses arising from such termination or suspension.

4. **TERMS OF PAYMENT.** Unless otherwise expressly stated in a writing signed by Seller, payment of the price shall be due in full within thirty (30) days from the date of invoice. All payments shall be paid in United States currency or negotiable paper immediately collectible at its face value in United States funds at the location indicated on the Seller's invoice.

A. **Disputed Invoices.** Buyer waives the right to assert offsets or counterclaims with respect to undisputed portions of such invoices regardless of disputes relating to other invoices. Buyer shall promptly notify Seller's customer service personnel of any disputed invoice and confirm such notice in a writing delivered to such person. Invoices issued by Seller for partial shipments of the System shall be promptly paid by the Buyer.

B. **Late Payment.** In the event of delay of payment, Seller shall have the right to suspend deliveries, or require full or partial payment in advance, or cancel orders until full payment is received. Buyer agrees to pay all legal and other collection costs incurred by Seller to collect any amounts owed by Buyer. Amounts not paid when due will be subject to a late payment fee computed daily at a rate equal to the lower of 1.5% per month or the highest rate permissible by applicable law. Seller may alter or revoke credit terms without notice.

C. **Insecurity and Security Interest.** All orders are subject to credit check and approval prior to shipment. If, in Seller's sole judgment, Buyer's financial condition or any other circumstance causes Seller to be insecure with respect to Buyer's performance of any obligation, Seller may conduct a credit check on buyer, accelerate and demand immediate payment of any amounts owed Seller, suspend performance or cancel the agreement. Seller reserves a security interest in the System until paid and is authorized to file financing statements thereon.

FORM APPROVED BY COUNTY COUNSEL
BY: *[Signature]* 3/1/10
NEAL R. KIPNIS DATE

5. SHIPMENT, DELIVERY, LIMITATIONS ON USE, AND TERMS OF ACCEPTANCE.

A. Shipment. Unless otherwise expressly stated in a writing signed by Seller, all shipments and deliveries shall be F.O.B. point of shipment. If Seller arranges for transportation, the carrier shall be deemed to be Buyer's agent, Buyer shall pay all charges due to the carrier, and Buyer shall make all claims with respect to damage in transit against the responsible carrier. Absent written instructions from Buyer, Seller may, but shall not be required to, obtain insurance on the System shipped.

B. Title/Risk of Loss. Title to and all risk of loss concerning the System shall pass to Buyer upon the delivery of the System to the Buyer, or to any common or private carrier acting as an agent of the Buyer. Buyer's rejection of any System shall not shift such risk until the System is returned to Seller, freight prepaid, pursuant to Seller's written authorization. Seller shall have no obligation to hold or resell the System rejected by Buyer for Buyer's account.

C. Delivery Schedule. Specified delivery and performance dates are estimates only and Seller's failure to meet the same shall not be deemed a breach.

D. Inspection. Buyer shall inspect all shipments of the System within forty-eight (48) hours after arrival or completion and notify Seller in writing within two (2) days of any shortages or other conformance failures which are then reasonably discoverable. Buyer shall allow Seller a reasonable opportunity to inspect such System to enable Seller to verify the alleged nonconformity. Buyer's failure to timely notify Seller in writing of any alleged nonconformity of the System or Services shall constitute an immediate and irrevocable acceptance of the System and an acknowledgment by Buyer that the System are conforming.

E. Cure of Imperfect Tender. Buyer hereby grants Seller the right to cure any imperfect tender of the System or Services by tendering the same within twenty (20) days from the date Buyer delivers written notice of such imperfect tender to Seller.

F. Force Majeure. Seller shall not be liable to Buyer for any delay or failure of delivery of the System or performance of Services caused in whole or part by any contingency or event beyond Seller's reasonable control, including, without limitation, acts of any government or any agency or subdivision thereof, war, riots, acts of terrorism, fire, accident, acts of God, labor trouble, machinery breakage, any shortage of or inability to secure labor, transportation facilities, fuel, energy, raw materials, supplies, or machinery at reasonable prices or from regular sources.

G. Limitations on Use. Purchase of the System from Seller provides Buyer with a limited license to use the System solely for the purpose of administering wound therapies and solely as described in the accompanying "Instructions for Use" (IFU), but does not provide a license to use the System for any additional purposes. Licenses for purposes other than use as described in the IFU must be separately obtained from Bacoustics, LLC, who is not a party to this contract.

6. LIMITED WARRANTY, DISCLAIMERS AND LIMITATION OF LIABILITY.

A. Limited Warranty. Subject to the limitations contained in this Agreement including this Section and Section 9 below, Seller provides to Buyer the following limited warranty:

i. Should any part of the System fail to function within normal use due to defect in materials or workmanship within a period of one (1) year commencing with the delivery of the System to the Buyer, Seller at its option:

(a) will repair or replace the applicable part of the System;

(b) issue a credit to Buyer as defined in Section 6 (A) (ii); or

(c) provide a functionally comparable replacement part of the System at no charge.

ii. If the Seller chooses to issue credit to Buyer, the credit shall be the lesser of: the net invoiced price of the original part, or the current functionally comparable part, or replacement part of the System.

iii. In order to qualify for the limited warranty set forth in Section (A) (i), the following conditions must be met: the System must be returned to Seller within thirty (30) days after discovery of defect at Seller's cost and the System must not have been repaired or altered outside of Seller's facility or in any way which in the sole opinion of Seller impacts the System's stability and reliability. Furthermore, defects arising in whole or part as a result of normal wear and usage, improper or inadequate maintenance, interruptions or unsuitable power or communication sources or connectivity, environmental conditions, accident, misuse, abuse, improper installation, modification, repair, storage or handling, or any other cause not the fault of Seller are not covered by this limited warranty, and Buyer shall be liable to Seller for expenses incurred in connection with diagnosing and repairing the same.

iv. Seller's choice of one of the remedies set forth in Section 6 (A) (i) shall be Buyer's sole remedy for breach of warranty.

B. **DISCLAIMERS AND LIMITATION OF LIABILITY.** The limited warranty is limited to its express terms. In particular:

i. EXCEPT AS EXPRESSLY PROVIDED BY THE LIMITED WARRANTY IN SECTION 6 (A), SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY, WITH RESPECT TO SYSTEM AND GOODS, INCLUDING BUT NOT LIMITED TO, IMPLIED CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE OR ANY OTHER MATTER. NO AGENT, EMPLOYEE OR REPRESENTATIVE OF SELLER HAS ANY AUTHORITY TO BIND SELLER TO ANY AFFIRMATION, REPRESENTATION OR WARRANTY EXCEPT AS STATED IN A WRITTEN DOCUMENT SIGNED BY AN AUTHORIZED OFFICER OF SELLER.

ii. The limited warranty is made only to Buyer of the System. AS TO ALL OTHERS, SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WHETHER ARISING FROM STATUTE, COMMON LAW, CUSTOM OR OTHERWISE. NO EXPRESS OR IMPLIED WARRANTIES EXTEND TO PATIENTS OR OTHER USERS OF THE SYSTEM. THIS LIMITED WARRANTY IS THE EXCLUSIVE REMEDY AVAILABLE TO ANY PERSON.

iii. SELLER IS NOT RESPONSIBLE FOR ANY DIRECT, INCIDENTAL, CONSEQUENTIAL DAMAGES BASED ON ANY DEFECT, FAILURE OR MALFUNCTION OF THE EQUIPMENT, WHETHER THE CLAIM IS BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE. SELLER SHALL HAVE NO LIABILITY TO ANY PERSON FOR, AND BUYER HEREBY EXPRESSLY WAIVES, ALL REMEDIES AND DAMAGES RELATING TO INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY DESCRIPTION, WHETHER ARISING OUT OF WARRANTY OR OTHER CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, RESCISSION, DIFFERENCE IN VALUE DAMAGES, FORESEEABLE BUSINESS LOSSES, LOSS OF PROFITS AND RELIANCE DAMAGES. THE PARTIES EXPRESSLY AGREE THAT THE LIMITATIONS TO INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL AND PUNITIVE DAMAGES SET FORTH HEREIN ARE AGREED ALLOCATIONS OF RISK AND SHALL SURVIVE THE DETERMINATION OF ANY COURT OF COMPETENT JURISDICTION THAT ANY REMEDY PROVIDED HEREIN FAILS OF ITS ESSENTIAL PURPOSE. UNDER NO CIRCUMSTANCES SHALL SELLER'S LIABILITY HEREUNDER FOR ANY CAUSE EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE GOODS AND SERVICE FEES PAID FOR UP TO TWELVE MONTHS.

iv. THE EXCLUSIONS, DISCLAIMERS, AND LIMITATIONS SET FORTH HEREIN ARE NOT INTENDED TO, AND SHALL NOT BE CONSTRUED AS TO, CONTRAVENE MANDATORY PROVISIONS OF ANY APPLICABLE LAW OR REGULATION. IF ANY PART OF SECTION 6 IS HELD TO BE ILLEGAL OR UNENFORCEABLE BY A COURT OF COMPETENT JURISDICTION, THE PART SHALL BE MODIFIED SO AS TO BE ENFORCEABLE TO THE MAXIMUM EXTENT POSSIBLE. IF THE PART CANNOT BE MODIFIED, THEN THAT PART MAY BE SEVERED AND THE OTHER PARTS OF THE LIMITED WARRANTY SHALL REMAIN IN FULL FORCE AND EFFECT.

7. **BUYER SUPPLIED DATA.** To the extent that Seller has relied upon any specifications, information, representation of operating conditions or other data or information supplied by Buyer to Seller in the selection or design of the System and the preparation of Seller's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer and relied upon by Seller, any warranties or other provisions which are affected by such conditions shall be null and void, unless otherwise mutually agreed upon in writing.

8. **INDEMNIFICATION.** Buyer agrees to indemnify and hold harmless Seller and its affiliates and their respective officers, directors, employees, agents, insurers, successors, and assigns, against any claims or actions by a third party for any direct and indirect claims, actions, damages, liability, costs and expenses (including reasonable attorneys' fees), that arise from Buyer's, including Buyer's employees, contractors and agents misuse or use of the System that doesn't follow labeling, indications, warnings or instructions on the System.

9. GENERAL PROVISIONS. This Agreement, including any documents incorporated by reference, constitutes the entire agreement between Buyer and Seller in regards to the System. Buyer shall not assign its rights or obligations related hereto without Seller's prior written consent. No action, regardless of form or type, arising out of the sale of the System by Seller (or its suppliers or subcontractors) may be brought by either party more than two (2) years after the cause of action has accrued. Any modification of this Agreement must be set forth in a written instrument signed by an authorized officer of Seller. The validity, performance and construction this Agreement between Seller and Buyer shall be governed by the laws of the State of California, without application of any choice of law considerations. Any claim, cause of action, suit or demand allegedly arising out of or related to the agreement between Seller and Buyer, or the relationship of the parties, must be brought exclusively in the state or federal courts sitting in Riverside California, and the parties irrevocably consent to the jurisdiction and venue of such courts. The parties expressly waive any right to a jury trial in any action, proceeding, or counterclaim brought in connection with this agreement. The 1980 United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. If any provision of the Agreement is invalid under any statute or rule of law, such provision, to that extent only, shall be deemed to be omitted without affecting the validity of the remainder of the agreement.