



Board Report

File #: 2024-0992, **File Type:** Contract

Agenda Number: 20.

**OPERATIONS, SAFETY, AND CUSTOMER EXPERIENCE COMMITTEE
NOVEMBER 21, 2024**

**SUBJECT: COVERED CONTRACTORS/SUBRECIPIENTS DRUG & ALCOHOL COMPLIANCE
OVERSIGHT SERVICES**

ACTION: APPROVE CONTRACT AWARD

RECOMMENDATION

AUTHORIZE the Chief Executive Officer to award a firm fixed unit rate Contract No. PS123023000 to Byrnes & Associates to provide Workplace Drug & Alcohol Testing Program compliance oversight services in the Not-to-Exceed (NTE) amount of \$676,899 for the three-year base term, and \$225,633 for each of the two, one-year options, for a total combined NTE amount of \$1,128,165, effective February 1, 2025, subject to the resolution of any properly submitted protest, if any.

ISSUE

The current contract providing Workplace Drug & Alcohol Testing Program compliance oversight services expires January 31, 2025. To remain compliant with Federal Transit Administration (FTA) regulations regarding drug and alcohol safety oversight requirements, Metro requires the support services of an independent third-party consultant to administer Metro’s Drug and Alcohol Oversight Program.

BACKGROUND

FTA regulation 49 CFR Part 655.81 states that “a recipient shall ensure that a subrecipient or contractor who receives 49 U.S.C 5307, 5309, or 5311 funds directly from the recipient complies with this part.” Metro, as the direct recipient of FTA funds, is required to ensure that all covered contractors and subrecipients are compliant with FTA regulations 49 CFR Parts 40 and Part 655. Oversight services include reviewing covered contractor/subrecipients’ drug and alcohol policies for FTA compliance, conducting audits for drug and alcohol programs, and ensuring appropriate pre-employment documentation is completed prior to performing safety-sensitive work, quarterly drug and alcohol reporting, annual reporting to the FTA, and various FTA-mandated drug and alcohol training for safety and compliance purposes.

DISCUSSION

On an annual basis, Metro, as the direct recipient of FTA funds, must certify to the FTA Regional Office that their covered contractors and subrecipients are in compliance with FTA regulation 49 CFR Part 40 and 655.81 requirements.

In addition to the annual certification, Metro must submit to FTA an annual Drug and Alcohol Management Information System Report for each covered contractor and subrecipient, which details the Department of Transportation/FTA authority drug and alcohol tests conducted throughout the prior calendar year. Further, Metro's covered contractor and subrecipient oversight contracts are subject to FTA's Triennial Review, FTA's National Drug and Alcohol Program audit, as well as other state or federal audits. Failure to maintain sufficient covered contractor and subrecipient oversight would result in findings and/or suspension of FTA funding.

Currently, Metro's Grants Management and Oversight staff oversees 20 subrecipients that are also subject to these FTA regulations. In addition, Metro's Well-Being Services' Drug and Alcohol Program staff currently oversees 23 covered contractors, with other covered contracts currently in the solicitation process. Additional procurements are anticipated to be released in the coming years that will further increase the number of covered contractors requiring oversight.

In order to ensure compliance with the FTA, a work plan was established that will allow the recommended consultant to focus on eight areas of significant concern with the administration and management of Metro's covered contractors and subrecipients' drug and alcohol testing programs:

1. Conduct annual FTA-look-alike audit for each covered contractor/subrecipient
2. Review the covered contractor/subrecipients' drug and alcohol policy for DOT & FTA compliance
3. Conduct audits of covered contractor/subrecipients' drug and alcohol programs
4. Ensure pre-employment documentation is provided before the first performance of a safety-sensitive function
5. Prepare quarterly Drug and Alcohol Management Information System look-alike reports
6. Prepare FTA's annual Drug and Alcohol Management Information System reporting
7. Ensure that the covered contractor/subrecipient conduct FTA-mandated trainings, such as Reasonable Suspicion and Drug Awareness
8. Provide a beginner Drug and Alcohol Program Manager Training

DETERMINATION OF SAFETY IMPACT

Award of this contract will allow Metro to remain compliant with federal regulation 49 CFR Parts 40 and 655 which ensure safety, not only to Metro employees, but to Metro customers and the public at large.

FINANCIAL IMPACT

FY25 funding in the amount of \$95,000 for this service is included in the FY25 budget in cost center 4440 (Grants Management and Oversight) under project 500002, task 49.01, Regional Grantee - FTA Administration, and funding in the amount of \$100,000 is included in cost center 2311 (HEAR & Well Being Services), under project 100001, General Overhead.

Since this is a multi-year, multi-department contract, the cost center managers, Chief People Officer, and Chief Planning Officer will be accountable for budgeting the cost in future years, including any option exercised.

Impact to Budget

The source of funds for project 500002, task 49.01 is a general fund of collected fees eligible for the administration of FTA subrecipient oversight, while project 100001 comes from various federal, state and local fund sources. Metro continues to enter into funding agreements with subrecipients, acting as the pass-through agency for organizations not able to directly apply for and receive federal funds. These pass-through funding agreements include a required administrative fee that is 5% of the federal award. The fee is invoiced and collected as agreements are executed.

EQUITY PLATFORM

The services provided by the contractor will ensure Metro maintains consistent oversight of all covered contractor and subrecipients' federally mandated drug and alcohol testing programs. Metro's covered contractors provide various disciplines of service -that help Metro to safely continue delivering world-class transit service throughout Los Angeles County, also supporting those in Equity Focus Communities , who rely on public transit for their daily needs. As Metro prepares for expansion efforts and for upcoming regional events, all newly procured covered contractors and subrecipients performing safety-sensitive work for Metro will be subject to the oversight services mentioned in this report.

The Diversity and Economic Opportunity Department did not establish a Small Business or Disabled Veteran's Business Enterprise goal for this solicitation due to the lack of small businesses that perform this service. ..Implementation_of_Strategic_Plan_Goals

IMPLEMENTATION OF STRATEGIC PLAN GOALS

This Board action supports Strategic Goal 5: Provide responsive, accountable, and trustworthy governance within the Metro organization. The award of this contract will ensure that all covered contractors and subrecipients performing safety-sensitive functions for Metro are compliant with federal regulations Parts 40 and 655.

ALTERNATIVES CONSIDERED

The Board may choose not to approve the recommendation to award the contract for Workplace Drug and Alcohol Testing Program compliance oversight services.

An option is to move the oversight responsibility in-house; however, this is not recommended as

Metro does not have a sufficient volume of staffing with expert-level regulatory knowledge needed to ensure compliance with drug and alcohol testing oversight as required by the FTA. Additionally, most transit agencies comparable in size to Metro contract this function out to a third party for efficiency and compliance purposes.

Additionally, staff does recommend award of this contract to ensure Metro's continued compliance with federal regulation 49 CFR Part 655, which requires that any covered contractor or subrecipient maintains a compliant drug and alcohol testing program. Also, because Metro is required to certify compliance on an annual basis, failure to comply with these regulations may impact Metro's receipt of federal funding.

NEXT STEPS

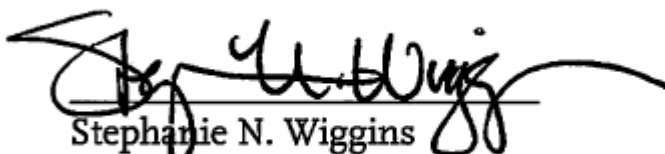
Upon Board approval, staff will execute Contract No. PS123023000 with Byrnes & Associates to provide Workplace Drug and Alcohol Testing Program compliance oversight services, effective February 1, 2025.

ATTACHMENTS

Attachment A - Procurement Summary
Attachment B - DEOD Summary

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