



## Board Report

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Agenda Number: 22.

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### OPERATIONS, SAFETY, AND CUSTOMER EXPERIENCE COMMITTEE FEBRUARY 16, 2023

**SUBJECT: DRUG TESTING LABORATORY SERVICES**

**ACTION: APPROVE CONTRACT AWARD**

#### **RECOMMENDATION**

AUTHORIZE the Chief Executive Officer to award a five-year, firm fixed unit rate Contract No. PS75883000 to Phamatech, Inc. (Phamatech) to provide drug testing laboratory analysis services in an amount not-to-exceed \$377,025 for a base term of three years, plus \$135,675 for each of the two, one-year option terms for a combined not-to-exceed amount of \$648,375, effective April 1, 2023, subject to the resolution of any timely protest(s), if any.

#### **ISSUE**

The existing contract for drug testing laboratory services expires on March 31, 2023. Approval of this contract award will allow drug testing laboratory services to continue the administration of Metro's substance abuse testing program, which includes drug testing laboratory analysis.

#### **BACKGROUND**

The substance abuse testing program is a requirement of the regulations set forth under the U.S. Department of Transportation (DOT) 49 CFR Part 40 (Part 40) and the Federal Transit Administration (FTA) 49 CFR Part 655 (Part 655). FTA requires the following drug tests to be administered to all safety-sensitive employees: pre-employment, post-accident, random, reasonable suspicion, return-to-duty and follow-up testing. Random testing is the most utilized drug test as the FTA requires that Metro test a minimum of 50% of the safety-sensitive work force each calendar year. Random selections are conducted using a scientifically valid method that gives each safety-sensitive employee an equal chance of being selected each time a selection is made. Management has no discretion regarding selection. Additionally, the substance abuse testing program conducts additional testing, outside of the DOT and FTA regulations, under Metro's Drug & Alcohol-Free Work Environment Policy (HR-46). The tests authorized under the authority of HR-46 include post-accident, post-incident, periodic, reasonable suspicion return-to-duty and follow-up. For consistency testing conducted under the authority of HR-46 follows the same analysis protocols as described in the regulations.

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Failure to comply with the requirements of DOT and FTA regulations may result in suspension of Metro's eligibility to receive FTA funding.

## **DISCUSSION**

Metro, as a public transit agency, conducts drug testing of safety-sensitive employees (approximately 8,130 out of approximately 11,180) and job candidates in order to promote and increase safety. Safety-sensitive employees/candidates are those who perform safety-sensitive functions within the scope of their job. These functions include, but not limited to, operating a revenue service vehicle, maintaining a revenue service vehicle, controlling dispatch or movement of a revenue service vehicle, carrying a firearm for security purposes, etc. Additionally, under the authority of

HR-46, Metro conducts additional testing of safety-sensitive and non-safety-sensitive employees using the same analysis protocols as described in the regulations.

Under DOT and FTA regulations, drug testing must be performed using the procedures outlined in Part 40, which require that collected specimens be processed by laboratories certified by the U.S. Department of Health and Human Services (HHS), of which there are only 18 nationwide. A laboratory participating in DOT drug testing must comply with the requirements in the HHS Mandatory Guidelines for Federal Workplace Drug Testing, as amended, and Part 40, as amended, as well as all other applicable HHS requirements.

DOT and FTA mandated drug testing numbers and results must be reported to the FTA for review on an annual basis, by calendar year. Additionally, the Drug & Alcohol Program is subject to various state and federal audits including California Highway Patrol, California Public Utilities Commission, FTA Triennial Audits, FTA National D&A Program audits.

## **DETERMINATION OF SAFETY IMPACT**

These services are necessary to ensure Metro continues to remain in compliance with DOT and FTA regulations, which promotes safety for our passengers, the public at large, as well as our workforce. Additionally, compliance with these regulations allows Metro to continue receiving FTA funding.

## **FINANCIAL IMPACT**

The funding of \$150,000 is allocated in the FY23 Budget within cost center 2311, Helping Employees Access Resources & Well Being Services Office under the Chief People Office, Account 50316, under Project 100001. The cost center manager and the Chief People Officer will be responsible for budgeting the cost in future years, including any options exercised.

### **Impact to Budget**

The source of funds for this contract is Project 100001 General Overhead and is comprised of

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Federal, State, and local funds. These funds are eligible for these services.

### **EQUITY PLATFORM**

The services provided by the contract will ensure Metro's continued compliance with DOT and FTA regulations pertaining to drug testing laboratory analysis, which promotes safety for our passengers, the public at large, as well as our workforce. Additional benefits of drug testing include enhanced health of our employees, increased productivity and decrease absenteeism. All safety-sensitive employees are subject to drug testing as required under DOT and FTA regulations. Additionally, all Metro employees are subject to testing under HR-46; no employee is exempt from drug testing.

The Diversity and Economic Opportunity Department (DEOD) did not establish a Disadvantaged Business Enterprise (DBE) goal for this solicitation.

### **IMPLEMENTATION OF STRATEGIC PLAN GOALS**

The Board action supports **Strategic Goal 5**: Provide responsive, accountable, and trustworthy governance within the Metro organization. Providing these services will ensure that Metro maintains and nurtures a diverse, inspired, and high-performance workforce.

### **ALTERNATIVES CONSIDERED**

The Board may decline to approve the contract; however, this is not recommended as this alternative would result in Metro's non-compliance with DOT and FTA regulations and would impact funding received from the FTA.

### **NEXT STEPS**

Upon approval by the Board, staff will execute Contract No. PS75883000 with Phamatech, Inc. to provide drug testing laboratory analysis services.

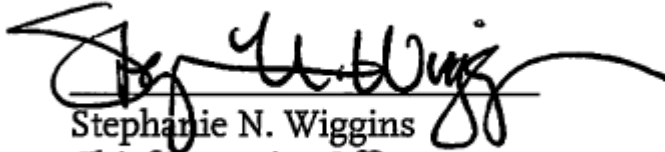
### **ATTACHMENTS**

Attachment A - Procurement Summary

Attachment B - DEOD Summary

Prepared by: Mary Ahumada, Manager, Human Resources (213) 922-7172  
Dawn Jackson-Perkins, Deputy Executive Officer, Human Resources (Interim)  
(213) 418-3166  
Debra Avila, Deputy Chief Vendor/Contract Management Officer (213) 418-3051

Reviewed by: Robert Bonner, Chief People Officer (213) 922-3048



Stephanie N. Wiggins  
Chief Executive Officer

## PROCUREMENT SUMMARY

## DRUG TESTING LABORATORY SERVICES/ PS75883000

1.	<b>Contract Number: PS75883000</b>	
2.	<b>Recommended Vendor:</b> Phamatech, Inc.	
3.	<b>Type of Procurement (check one):</b> <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP <input type="checkbox"/> RFP-A&E <input type="checkbox"/> Non-Competitive <input type="checkbox"/> Modification <input type="checkbox"/> Task Order	
4.	<b>Procurement Dates:</b>	
	<b>A. Issued:</b> April 15, 2022	
	<b>B. Advertised/Publicized:</b> April 15, 2022	
	<b>C. Pre-Proposal Conference:</b> April 26, 2022	
	<b>D. Proposals Due:</b> May 13, 2022	
	<b>E. Pre-Qualification Completed:</b> January 11, 2023	
	<b>F. Conflict of Interest Form Submitted to Ethics:</b> December 27, 2022	
	<b>G. Protest Period End Date:</b> February 20, 2023	
5.	<b>Solicitations Picked up/Downloaded:</b> 17	<b>Bids/Proposals Received:</b> 1
6.	<b>Contract Administrator:</b> Marc Margoni	<b>Telephone Number:</b> (213) 922-1304
7.	<b>Project Manager:</b> Mary Ahumada	<b>Telephone Number:</b> (213) 922-7172

**A. Procurement Background**

This Board Action is to approve the award of Contract No. PS75883000 to Phamatech, Inc., to provide as-needed drug laboratory testing services for safety-sensitive employees and job candidates in accordance with Federal Transit Administration (FTA) regulations 49 CFR Part 655. Board approval of contract award is subject to resolution of all properly submitted protest(s).

Request for Proposal (RFP) No. PS75883 was issued as a lowest price, technically acceptable procurement in accordance with Metro's Acquisition Policy and the contract type is a firm fixed unit rate. Metro did not establish a Race Conscious Disadvantaged Business Enterprise (RC DBE) goal for this contract.

No amendments were issued during the solicitation phase of this RFP.

The solicitation was available for download from Metro's website. Advertisements were placed in four leading publications within Los Angeles County (i.e. Los Angeles Daily News, La Opinion, Watts Times, and the Asian Journal) to notify potential proposers of this solicitation. Metro also notified proposers from the Metro's vendor database based on applicable North American Industry Classification System (NAICS) codes.

A virtual pre-proposal conference was held on April 26, 2022.

A total of 17 firms downloaded the RFP and were included on the planholders list. No questions were received regarding the solicitation.

Only one proposal was received on May 13, 2022.

Metro staff canvassed firms on the planholders list to determine why no other proposals were received. Of the 17 firms on the planholders list, only five (5) firms are laboratories that provide drug testing services. Of the five (5) potential proposers, only the incumbent contractor, Phamatech, Inc., is certified by the Department of Health and Human Services (HHS) to conduct urine drug testing and meets the Department of Transportation's (DOT) drug and alcohol testing requirements. As of January 3, 2023, there are only 18 HHS-certified laboratories approved to perform urine drug testing in the US.

## **B. Evaluation of Proposals**

A Proposal Evaluation Team (PET) consisting of staff from Human Resources, HEAR & Wellness Program, and Employee & Labor Relations was convened and conducted a comprehensive technical evaluation of the single proposal received from Phamatech, Inc. (Phamatech) based on the lowest price, technically acceptable selection process.

On June 21, 2022, the PET met to review the evaluation criteria package, process confidentiality and conflict of interest forms, and take receipt of the proposal to initiate the evaluation phase.

Evaluations were conducted from June 21, 2022, through July 26, 2022, based on the pass/fail evaluation criteria stated in the RFP, which considered the following:

1. Location of the laboratory facility;
2. Years of experience of the lead certifying scientist analyzing and certifying urine specimens under DOT drug testing regulations;
3. Certification with the Department of Health and Human Services (HHS) under the National Laboratory Certification Program (NLCP);
4. Computer and technical capabilities of the laboratory to provide secure and confidential electronic transmission of results;
5. Ability to meet the requirements of the scope of services including timeframes for processing DOT specimens; and
6. Availability to provide as needed subject matter consultation and expert witness testimony.

The evaluation criteria are appropriate and consistent with criteria developed for similar drug testing laboratory services procurements. After evaluation of the proposal, the PET determined Phamatech to be technically acceptable to perform the required services as outlined in the Scope of Services and is the lowest price.

### **C. Cost/Price Analysis**

The recommended fully burdened rates have been determined to be fair and reasonable based on historical costs, technical evaluation, price analysis and the independent cost estimate (ICE). Metro's ICE is slightly lower than the negotiated amount since it did not consider escalation rates for the second and third year of the base term and the option years.

Staff successfully negotiated \$58,500 in cost savings from Phamatech's proposal.

	<b>Proposer Name</b>	<b>Proposal Amount</b>	<b>Metro ICE</b>	<b>Award Amount</b>
1.	Phamatech, Inc.	\$706,875	\$634,200	<b>\$648,375</b>

### **D. Background on Recommended Contractor**

The recommended firm, Phamatech, Inc. (Phamatech), founded in 1991, is headquartered in San Diego, CA. It is a licensed toxicology laboratory with the Substance Abuse and Mental Health Administration (SAMHSA), College of American Pathologists (CAP) and Clinical Laboratory Improvement Amendments (CLIA) certifications. Phamatech is also registered with the U.S. Food and Drug Administration (FDA) and certified by the International Organization for Standardization (ISO) as a manufacturer of 510K approved and CLIA waived QuickScreen instant urine drug testing devices.

Phamatech operates a state-of-the-art facility located in San Diego where all laboratory testing is performed. Phamatech specializes in high-volume screening tests using EMIT II analyzer and confirmation testing methods using Gas Chromatography/Mass Spectrometry (GC/MS) and Liquid Chromatography tandem-Mass Spectrometry (LC-MS/MS).

Existing clientele include the County of Los Angeles, the Broward County Sheriff's Office in Florida, Amazon, Walgreens, the United States Federal Bureau of Prisons, Los Angeles County Department of Children and Family Services, U.S. Customs & Border Protection, California Department of Corrections and Rehabilitation, and Fulton County Juvenile Court.

Phamatech, Inc. is a registered Minority-Owned Business Enterprise, certified by The Pacific Southwest Minority Supplier Development Council. Phamatech believes in promoting diversity within the community and makes every effort to and has successfully utilized minority-owned, women-owned, and veteran-owned disadvantaged companies.

Phamatech, Inc. has been providing drug laboratory testing services to Metro since 2015 and performance has been satisfactory.

DEOD SUMMARY

DRUG TESTING LABORATORY SERVICES/ PS75883000

**A. Small Business Participation**

The Diversity and Economic Opportunity Department (DEOD) did not recommend a Disadvantaged Business Enterprise (DBE) participation goal for this procurement due the lack of subcontracting opportunities. Phamatech, Inc., will provide as-needed drug laboratory testing services for safety-sensitive employees and job candidates in accordance with Federal Transit Administration (FTA) regulations 49 CFR Part 655. It is expected the Phamatech will perform these services with its own workforce.

**B. Living Wage and Service Contract Worker Retention Policy Applicability**

The Living Wage and Service Contract Worker Retention Policy is not applicable to this contract.

**C. Prevailing Wage Applicability**

Prevailing wage is not applicable to this contract.

**D. Project Labor Agreement/Construction Careers Policy**

Project Labor Agreement/Construction Careers Policy is not applicable to this Contract. PLA/CCP is applicable only to construction contracts that have a construction related value in excess of \$2.5 million.