



Board Report

File #: 2024-0093, File Type: Contract

Agenda Number: 33.

OPERATIONS, SAFETY, AND CUSTOMER EXPERIENCE COMMITTEE MARCH 21, 2024

**SUBJECT: FAMILY MEDICAL LEAVE ACT/CALIFORNIA FAMILY RIGHTS ACT PROGRAM
THIRD-PARTY ADMINISTRATOR SERVICES**

ACTION: APPROVE CONTRACT AWARD

RECOMMENDATION

AUTHORIZE the Chief Executive Officer to award a firm fixed unit rate Contract No. PS112527000 to Total Administrative Services Corporation (TASC) to support the centralization of the management and administration of the Family Medical Leave Act and the California Family Rights Act (FMLA, CFRA or collectively, "FMLA/CFRA") in the not-to-exceed (NTE) amount of \$1,959,320 for the four-year base term, with two, two-year options in the amount of \$996,160 for each option, for a total NTE amount of \$3,951,640, effective May 1, 2024, subject to resolution of any properly submitted protest, if any.

ISSUE

Award of the contract provides the capability for Metro to move the complex functions associated with FMLA/CFRA leave management and administration from the divisions and departments and centralize it within the Short-Term Disability Compliance Team, through the use of a Third-Party Administrator. Doing so will allow Metro to properly navigate the rules and regulations governing state and federal FMLA/CFRA-protected leaves. The proper management and administration of FMLA/CFRA is critical to ensure Metro meets current state and federal requirements and to reduce overall absenteeism by actively monitoring for abuse of or inappropriate designation or use of such leaves.

BACKGROUND

Requests for leave under FMLA/CFRA, including a review of the medical certification and other eligibility criteria, are currently managed and administered by the employee's immediate division or departmental management team. This oversight also includes ensuring proper tracking in payroll and attendance systems, and verification that the employee is taking their approved leave in a manner that is consistent with what is prescribed and documented by their personal healthcare provider on the employee's medical certification form, as well as monitoring for signs of misuse and abuse, and requesting a re-certification when needed. Understandably, Metro's division and departmental

management teams are not properly trained on the complexities of the ever-changing FMLA/CFRA laws, which means that the current management and administration of these protected leaves is lacking a consistent application agency-wide, scrutiny, and enforcement, which in turn increases the agency's overall employee absenteeism rate. The complexities that these laws carry, and the work involved in properly administering such leaves is substantial and requires constant oversight and review.

In addition, not all FMLA/CFRA leaves are initiated by an employee submitting specific request forms. FMLA/CFRA designations could be initiated by the agency based off a pattern of sick time usage and other factors, which management may not be fully aware of. The lack of proper management and administration of these protected leaves creates vulnerability and subjects the agency to liability for potentially violating these state and federal statutes. Protected medical leaves are for an employee's serious health condition but can also expand to an employee's eligible family member. As of 2023, some protected leaves fall under both FMLA/CFRA, while other leaves, specific to an employee's extended family members, only fall under CFRA, further convoluting the proper administration.

DISCUSSION

Data from FY20 through FY22 indicates that approximately 22.2% of Metro's workforce was absent on any given day. This is 18% higher than the national average for public sector employers. Additionally, Metro's lost work time rate averaged 7.99% from FY20 through FY22, compared to all U.S. workers over the age of 16, which was 2.1%.

As such, centralizing the management and administration of FMLA/CFRA leaves, through the use of a Third-Party Administrator, to the Chief People Office, specifically the Short-Term Disability Compliance Team within Well-Being Services, will provide improved and consistent support and service to Metro employees seeking protected medical leaves and help reduce potential liability and corresponding costs. Additionally, this project also intends to significantly reduce the administrative burden of FMLA/CFRA management and oversight practice currently in place at each work location/division/department cost center, as this ensures accurate and compliant administration of the FMLA/CFRA function and decreases absenteeism.

DETERMINATION OF SAFETY IMPACT

This contract award will centralize the management and administration of FMLA/CFRA and will not impact the safety standards for Metro customers and employees. In addition, it will assist in avoiding staff shortages which will increase the reliability of service to our patrons.

FINANCIAL IMPACT

The funding of \$300,000 is allocated in the FY24 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 funds, comprised of federal, state, and local funds, which include Operating eligible funds.

EQUITY PLATFORM

The services provided by the contract will ensure Metro provides consistent application, oversight, management, and administration of state and federal leave enactment requirements by moving the management and administration of these leaves from the division and departmental level to the Chief People Office. This will allow for a centralized, consistent, and fair process for all Metro employees. This work will advance workplace equity by ensuring that Metro is reasonably accommodating employees with temporary or permanent disabilities as required by the Americans with Disabilities Act (ADA) and The California Fair Employment and Housing Act (FEHA), or employees who need leave to provide care for a qualifying family member, by providing them with job protected leave which allows them to maintain their livelihood.

The Diversity and Economic Opportunity Department (DEOD) did not establish a Disadvantaged Business Enterprise (DBE) goal for this solicitation due to lack of subcontracting opportunities.

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 not approve the contract and instead rely solely on Metro's internal division and departmental management teams to perform the services required. This is not recommended since the current management and administration of FMLA/CFRA subjects the agency to potential violation, liability, and litigation due to the inconsistent approach. Further the Chief People Office is not equipped to inherit the full centralization of FMLA/CFRA management administration without the tools, services, and support of a Third-Party Administrator.

NEXT STEPS

Upon Board approval, staff will execute Contract No. PS112527000 with Total Administrative Services Corporation to support the centralization of Family Medical Leave Act and the California Family Rights Act within the Chief People Office, effective May 1, 2024.

ATTACHMENTS

Attachment A - Procurement Summary
Attachment B - DEOD Summary

Prepared by: Mary Ahumada, Director, Human Resources (Interim)

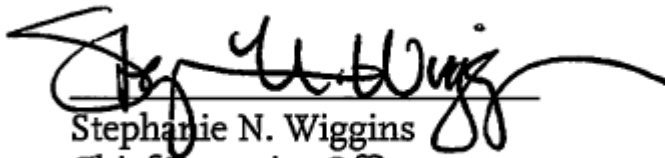
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Stephanie N. Wiggins
Chief Executive Officer

PROCUREMENT SUMMARY

**FAMILY MEDICAL LEAVE ACT/CALIFORNIA FAMILY RIGHTS ACT PROGRAM
THIRD-PARTY ADMINISTRATOR SERVICES / PS112527000**

1.	Contract Number: PS112527000	
2.	Recommended Vendor: Total Administrative Services Corporation	
3.	Type of Procurement (check one): <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.	Procurement Dates:	
	A.Issued: September 6, 2023	
	B.Advertised/Publicized: September 9, 2023	
	C.Pre-Proposal Conference: September 13, 2023	
	D.Proposals Due: October 12, 2023	
	E.Pre-Qualification Completed: December 13, 2023	
	F.Ethics Declarations Form Submitted to Ethics: October 12, 2023	
	G.Protest Period End Date: March 26, 2024	
5.	Solicitations Picked up/Downloaded: 8	Bids/Proposals Received: 1
6.	Contract Administrator: Ricardo E. Narvaez	Telephone Number: (213) 418-3158
7.	Project Manager: Marylynn Ahumada	Telephone Number: (213) 922-7172

A. Procurement Background

This Board Action is to approve the award of Contract No. PS112527000 to provide third-party administration services for all aspects of leave requests under the Family Medical Leave Act and California Family Rights Act (FMLA/CFR) for approximately 12,000 Metro employees. Board approval of contract awards are subject to resolution of any properly submitted protest.

On September 6, 2023, Request for Proposal (RFP) No. PS112527 was issued as a competitive procurement in accordance with Metro's Acquisition Policy and the contract type is a firm fixed price. The Diversity & Economic Opportunity Department (DEOD) did not recommend a Disadvantaged Business Enterprise (DBE) goal for this procurement due to the lack of subcontracting opportunities.

Two (2) amendments were issued for this RFP:

- Amendment No. 1, issued on September 13, 2023, provided "Exhibit 15 – Metro's Security Requirements", which was inadvertently omitted when the RFP was issued.
- Amendment No. 2, issued December 19, 2023, revised the Scope of Services and Schedule of Quantities and Prices to reclassify some basic

services to as-needed services and clarified the anticipated frequency requirements for these services.

The solicitation was available for download from Metro's website and advertised to notify potential proposers of this solicitation. Further, Metro notified potential proposers identified by the Project Office as well as firms from Metro's vendor database based on applicable North American Industry Classification System (NAICS) codes.

A total of 8 firms downloaded the RFP and were included on the planholder's list. A virtual pre-proposal conference was held on September 13, 2023, and was attended by 6 participants representing 5 firms. There were five questions asked and responses were released prior to the proposal due date.

One proposal was received from Total Administrative Services Corporation (TASC) by the proposal due date of October 12, 2023.

Metro staff conducted a market survey of the firms on the planholder's' list to determine why there were no other proposals received. The following is a summary of the market survey responses:

- Limited capability to provide all required services,
- Can provide the services but price may not be competitive; and
- Not having the required expertise to provide the services.

The market survey revealed that the decisions not to propose were based on individual business considerations. Therefore, the solicitation can be awarded as a competitive award.

B. Evaluation of Proposal

A Proposal Evaluation Team (PET) consisting of staff from Metro's H.E.A.R. & Wellness Program Office, Employee Labor Relations Office, and the Operations, Central Oversight & Analysis Department was convened and conducted a comprehensive technical evaluation of the proposal received.

The proposal was evaluated based on the following evaluation criteria:

Phase 1 – Minimum Qualification Evaluation: This is a pass/fail criteria. To be responsive to the RFP minimum qualification requirements, the proposer must meet the following at the time of the proposal submittal:

1. The physical address of the proposer's office(s) where work identified in the Scope of Services (SOS) will be performed must be located within the United States.
2. Certify that the proposer will not subcontract any portion of the SOS to firms located outside of the U.S.

3. Certify that the proposer has a 24/7 toll-free call center service and has the capabilities and experience in providing services similar to that required in the SOS such as information on call history and calls connecting employees to an FMLA coordinator.
4. Certify that the proposer has an online/cloud-based portal for both employee and management use and that it will comply with Metro's IT Security Requirements.
5. Prime Contractor must have five years of relevant experience providing FMLA/CFRA third-party administrative services similar in scope and complexity to that provided in the SOS. Relevant projects/contracts should include one of the following: (i) public sector organizations; (ii) unionized workforce; or (iii) other transit agencies.

Phase II Evaluation: Proposers that meet the Phase I Minimum Qualification requirements were evaluated based on the following evaluation criteria and weights:

- Qualifications of Firm/Team 15%
- Management Plan/Approach 40%
- Quality Control 10%
- Training 10%
- Implementation & Mobilization 10%
- Price Proposal 15%

The evaluation criteria are appropriate and consistent with criteria developed for other similar procurements. Several factors were considered in developing these weights, giving the greatest importance to the management plan/approach.

During the period of October 20, 2023 to December 7, 2023, the PET independently evaluated and scored the technical proposal. At the conclusion of the evaluation, the PET determined that TASC met the requirements of the RFP and was technically qualified to perform the work.

The following is a summary of the PET scores:

1	Firm	Average Score	Factor Weight	Weighted Average Score	Rank
2	Total Administrative Services Corporation				
3	Qualifications of Firm/Team	76.67	15.00%	11.50	
4	Management Plan/Approach	84.40	40.00%	33.76	
5	Quality Control	83.30	10.00%	8.33	
6	Training	83.30	10.00%	8.33	
7	Implementation & Mobilization	85.60	10.00%	8.56	
8	Price Proposal	100.00	15.00%	15.00	
9	Total		100.00%	85.48	1

C. Price Analysis

The recommended amount has been determined to be fair and reasonable based on the independent cost estimate (ICE), price analysis using comparable rates, technical analysis, fact finding and negotiations. During fact-finding and negotiations, Metro staff issued an amendment to the RFP to clarify the requirements for the basic and as-needed services and successfully negotiated a cost savings of \$8,038,760.

Proposer Name	Proposal Amount	Metro ICE	Recommended Amount
Total Administrative Services Corporation	\$11,990,400	\$4,452,936	\$3,951,640

The variance between the recommended amount and ICE is due to Metro using a conservative approach based on market research of estimated costs for similar services as this is the first time Metro will be outsourcing this service.

D. Background on Recommended Contractor

The recommended firm, Total Administrative Services Corporation (TASC), located in Madison, Wisconsin, was founded in 1975. TASC has provided third-party benefits administration services, specializing in designing and administering a broad suite of account-based benefit plans, trust-funded healthcare savings, reimbursement programs, and compliance solutions to brokers, consultants, financial service firms, health plans, and employer clients across the United States.

Existing clients include The Hard Rock Hotel & Casino, Roseland Community Hospital, Cleveland Metroparks, Cellular Sales of Knoxville, Inc., Growmark, Inc., and Polk County Schools.

DEOD SUMMARY

FMLA CFRA PROGRAM 3RD PARTY ADMINISTRATOR SERVICES / PS112527000

A. Small Business Participation

The Diversity and Economic Opportunity Department (DEOD) did not establish a Disadvantaged Business Enterprise (DBE) participation goal for this procurement due to lack of subcontracting opportunities. Total Administrative Services Corporation did not make a commitment. It is expected that the services of this contract will be performed with their own workforce.

B. Local Small Business Enterprise (LSBE) Preference

LSBE preference is not applicable to federally funded procurements. Federal law (49 CFR § 661.21) prohibits the use of local procurement preferences on FTA-funded projects.

C. Living Wage and Service Contract Worker Retention Policy Applicability

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

D. Prevailing Wage Applicability

Prevailing wage is not applicable to this contract.

E. Project Labor Agreement/Construction Careers Policy

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