



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.

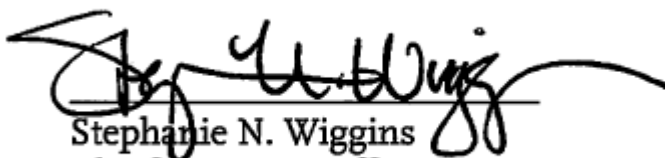
ATTACHMENTS

Attachment A - Procurement Summary

Attachment B - DEOD Summary

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Stephanie N. Wiggins
Chief Executive Officer

PROCUREMENT SUMMARY

COVERED CONTRACTORS/SUBRECIPIENTS DRUG & ALCOHOL COMPLIANCE OVERSIGHT SERVICES/PS123023000

1.	Contract Number: PS123023000	
2.	Recommended Vendor: Byrnes & Associates	
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: July 02, 2024	
	B. Advertised/Publicized: July 02, 2024	
	C. Pre-Proposal Conference: July 11, 2024	
	D. Proposals Due: August 01, 2024	
	E. Pre-Qualification Completed: In process	
	F. Ethics Declaration Forms submitted to Ethics: August 16, 2024	
	G. Protest Period End Date: November 27, 2024	
5.	Solicitations Picked up/Downloaded: 9	Bids/Proposals Received: 1
6.	Contract Administrator: Annie Duong	Telephone Number: (213) 418-3048
7.	Project Manager: Marisa King	Telephone Number: (213) 922-2734

A. Procurement Background

This Board Action is to approve Contract No. PS123023000 to provide Workplace Drug & Alcohol Testing Program compliance oversight services. Board approval of contract award is subject to the resolution of any properly submitted protest(s), if any.

On July 2, 2024, Request for Proposal (RFP) No. PS123023 was issued as a competitive procurement in accordance with Metro’s Acquisition Policy and the contract type is a firm fixed unit rate. The Diversity and Economic Opportunity Department (DEOD) did not recommend a Small Business Enterprise (SBE)/ Disabled Veteran Business Enterprise (DVBE) participation goal for this procurement.

Two amendments were issued during the solicitation phase of this RFP:

- Amendment No. 1, issued on July 23, 2024, updated the list of subrecipients providing service with FTA-funded buses included in the Scope of Services.
- Amendment No. 2, issued on July 29, 2024, revised the Scope of Services to incorporate additional well-being services.

A total of nine individuals representing eight firms downloaded the RFP and were included on the planholders list. A virtual pre-proposal conference was held on July 11, 2024, and was attended by one participant representing one firm. There were two questions received and responses were issued prior to the proposal due date.

One proposal was received from Byrnes & Associates by the proposal due date of August 1, 2024.

Since only one proposal was received, staff conducted a market survey of the planholders to determine why no other proposals were submitted. Responses were received from three firms and they included the following reasons:

- lacking the local resources to do business in California
- lacking the capability to fulfill the technical requirements of the RFP
- lacking resources to prepare the proposal

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 Countywide Planning and Development, Transportation Planning, and Helping Employees Access Resources (H.E.A.R.) and Well Being Services departments was convened and conducted a comprehensive technical evaluation of the proposal received.

The proposal was evaluated based on the following evaluation criteria:

Phase 1 Evaluation – Minimum Qualifications (Pass/Fail): To be responsive to the RFP minimum qualification requirements, the proposer must meet all of the following:

- Proposer must be a nationally certified substance abuse program administrator (C-SAPA) and said certification must be valid and active at the time of proposal submittal.
- Key personnel responsible for conducting audits, policy reviews, training or other functions related to 49 Code of Federal Regulation (CFR) Parts 40 and 655 must, at a minimum, be a nationally certified drug and alcohol program administrator with a specialty in transit (CDAPA-T) and must hold a current and valid certification in good standing.
- Proposer must have at least three years of experience serving as an instructor for the United States Department of Transportation's (DOT) Transportation Safety Institute for trainings related to 49 CFR Parts 40 and 655.

- Proposer has at least five years of relevant experience overseeing drug and alcohol testing programs mandated by the DOT and Federal Transit Administration (FTA) as an external consultant.
- Key personnel responsible for conducting audits, policy reviews, training or other functions, related to 40 CFR Parts 40 and 655, must have at least three years of relevant experience working with drug and alcohol testing regulations 49 CFR Parts 40 and 655.

Phase 2 Evaluation - Weighted Technical Evaluation. The proposer met the Minimum Qualifications (Pass/Fail) Criteria and was further evaluated based on the following evaluation criteria and weights:

- Experience and Qualifications of Firm/Team and Key Personnel 30%
- Training Conducted by Proposer/Key Personnel 30%
- Implementation/Planned Approach 20%
- Price Proposal 20%

Several factors were considered in developing these weights, giving the greatest importance to experience and qualifications of firm/team and key personnel and training conducted by proposer/key personnel.

From September 10, 2024, through September 23, 2024, the PET independently evaluated and scored the technical proposal. At the conclusion of the evaluation, the PET determined that Byrnes & Associates met all RFP requirements 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	Byrnes & Associates				
3	Experience and Qualifications of Firm/Team and Key Personnel	98.33	30.00%	29.50	
4	Training Conducted by Proposer/Key Personnel	90.83	30.00%	27.25	
5	Implementation/Planned Approach	91.10	20.00%	18.22	
6	Price Proposal	100.00	20.00%	20.00	
7	Total			94.97	1

C. Price Analysis

The recommended amount has been determined to be fair and reasonable based on a price analysis, Independent Cost Estimate (ICE), fact-finding, and technical analysis. Metro staff successfully negotiated a cost savings of \$35,328.

	Proposer Name	Proposal Amount	Metro ICE	Recommended Amount
1.	Byrnes & Associates	\$1,163,493	\$1,307,078	\$1,128,165

The variance between the recommended amount and the ICE is due to the proposer using single flat-rate pricing for the entire five-year contract term, inclusive of a three-year base term and two, one-year options; whereas, Metro's ICE included a 5% annual escalation rate for the base term and option years.

D. Background on Recommended Contractor

Byrnes & Associates, headquartered in New Port Richey, Florida, was established in 2013. It monitors transit agency compliance with FTA and DOT drug and alcohol testing regulations and provides various drug and alcohol testing and training programs for DOT, FTA, and Federal Motor Carrier Safety Administration covered employees.

Byrnes & Associates is a certified substance abuse program administrator and its subcontractor is a certified drug and alcohol program administrator with a specialty in transit.

Relevant transit agency clients include the USDOT and the Florida Department of Transportation. Currently, Byrnes & Associates is a subcontractor to the current administrator of Metro's Transportation Workplace Drug and Alcohol Testing Program and has been providing onsite and offsite drug and alcohol compliance audit services to Metro since 2019. Performance has been satisfactory.

DEOD SUMMARY

COVERED CONTRACTORS/SUBRECIPIENTS DRUG & ALCOHOL COMPLIANCE
OVERSIGHT SERVICES/PS123023000

A. Small Business Participation

The Diversity and Economic Opportunity Department (DEOD) did not recommend a Small Business Enterprise (SBE)/Disabled Veteran Business Enterprise (DVBE) participation goal for this procurement due to the lack of small businesses that perform these services. Byrnes & Associates listed one non-certified firm to perform the services of this contract.

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.

Covered
Contractors/Subrecipients
Drug & Alcohol Testing
Program Compliance Oversight
Services



Operations, Safety, and Customer Experience Committee

Staff 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.

Evaluation Criteria and Evaluation Score – Single Proposer



Single Proposer Byrnes & Associates	Evaluation Criteria Factor Weight	Weighted Average Score
Experience and Qualifications of Firm/Team and Key Personnel	30.00%	29.50%
Training Conducted by Proposer/Key Personnel	30.00%	27.25%
Implementation/Planned Approach	20.00%	18.22%
Price Proposal	20.00%	20.00%
Total	100%	94.97%

Background

- As a direct recipient of FTA funds, Metro is required to ensure that all covered contractors and subrecipients are compliant with FTA regulations 49 CFR Parts 40 and Part 655
- Therefore, Metro must certify covered contractors/subrecipients for regulatory compliance on an annual basis
- Metro's covered contractors/subrecipients contracts are subject to:
 - ✓ Annual Drug & Alcohol Management Information System (DAMIS) reporting to the FTA
 - ✓ State/Federal agency audits:
 - ✓ CPUC
 - ✓ CHP
 - ✓ FTA Triennial Team
 - ✓ FTA National D&A Team
- Non-compliance can result in Metro's loss of federal funding

Compliance Oversight Services



Metro's Compliance Workplan ensures the following activities occur:

- Review of Metro procurements to determine safety-sensitive status for contractors
- Conduct annual FTA audit simulation
- Review of drug & alcohol policies/programs for regulatory compliance
- Receive & review “pre-employment” documentation, prior to first performance of safety-sensitive function
- Review of quarterly DAMIS simulation reports to ensure appropriate testing & spread
- Review annual DAMIS report, prior to FTA-submission