



Council Meeting: June 28, 2011

SUBJECT: Award of Contract to Provide Third Party Workers' Compensation Claims Administration Services for the Department of Human Resources (F1001-68)

BACKGROUND

Approval is requested for the award of a three-year contract in an amount not-to-exceed \$757,238, to York Risk Services Group, Inc. of Concord, to provide third party workers' compensation claims administration services with an option to renew for one additional one-year period provided service and costs are acceptable to the City.

The City utilizes a State-licensed third party administrator (TPA) to manage workers' compensation claims of injured workers. The services provided consist of interpreting the labor code with respect to workers' compensation, paying benefits to injured workers as prescribed by the laws of the State of California, communicating with injured employees and physicians to monitor the status of the employee's medical condition, working with nurse case managers and attorneys who may be assigned to workers' compensation claims, monitoring work restrictions and work status of injured workers, looking for opportunities to close claims, maintaining accurate loss and financial data related to the workers' compensation claims, and pursuing recovery from third parties when they are responsible for injuries to City employees. The Department of Human Resources is responsible for managing the contract with the third party administrator.

The current contract was awarded by City Council on December 2, 2003 (RTC 03-420 and Council approved contract extensions through June 30, 2011 (RTC 08-150 and RTC 10-093).

DISCUSSION

Request for Proposals No. F1001-68 was developed by Finance and Human Resources staff. The Request for Proposals (RFP) process was selected because, unlike an Invitation for Bids, it allows for consideration of factors in addition to cost to select an alternative that provides the best overall value to the City. In this instance, staff determined that proposals would be evaluated based upon the following criteria:

- Adherence to Requirements, 5 points
- Depth of Relevant Experience, 20 points

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- Approach and Ability to Perform the Services, 40 points
- Capabilities of Claims Management System, 10 points
- Financial Stability, 5 points
- Total Cost to the City, 20 points

The RFP was issued on March 4, 2011 and directly distributed to nine firms known to have participated in similar projects. In addition, the RFP was advertised on the City's website and notification of the project was distributed to other potential consultants through the Onvia DemandStar public procurement network. Fifteen firms requested proposal documents.

On March 30, 2011 ten responsive proposals were received, as follows:

<u>Proposer</u>	<u>Cost for Three Year Period</u>
Corvel Corporation, Irvine, California	\$435,000
JT2 Integrated Resources, Pleasanton, California	\$671,345
Keenan & Associates, Torrance, California	\$724,680
AIMS, Sacramento, California	\$785,341
York Risk Services Group, Roseville, California	*\$791,788
Pegasus Risk Management, Modesto, California	\$800,164
Tristar Risk Management, Santa Ana, California	\$818,100
Innovative Claim Solutions, Rancho Cordova, California	\$840,120
Gallagher Bassett, Orange, California	\$1,008,000
Athens Administrators, Concord, California	\$1,014,356
*York Risk Services Group cost is original proposed cost. After contract negotiations cost was reduced to \$757,238, a reduction of \$34,550.	

The evaluation committee was led by the Purchasing Division and included representatives of the Departments of Human Resources, Finance, Public Works and Public Safety.

Following a comprehensive review of the written proposals, three proposers were selected to attend an onsite interview to discuss their proposals. York was the top-rated proposer among the three selected to interview. The interview panel included evaluation committee representatives from the Departments of Human Resources and Public Safety, as well as a Risk Manager from another public agency. Based on evaluation of the written proposals and subsequent interviews, the evaluation committee concluded that the proposal submitted by York offers the best value to the City for the following reasons:

- York has extensive experience working with public entities in California, working for more than 1,000 public agency clients, including 240 individual cities and city risk-sharing pools.
- York demonstrated a strong understanding of public safety workers' compensation claims and the need for cost containment in this area.
- York understands the City's commitment to early return to work efforts and is uniquely situated to continue partnering with the City to get injured employees back to work as quickly as possible.
- York's focused approach to reducing the overall cost of workers' compensation risk closely aligns with the City's short and long-term goals.

Based upon the information presented above, staff recommends award of contract to the firm of York Risk Services Group to provide third party workers' compensation claims administrative services.

It should be noted that York's proposed pricing represents an annual reduction in cost of approximately \$18,000 from the current contract without any service impact.

FISCAL IMPACT

The three year contract amount is \$757,238 which shall represent the following services: computer input of all open claims, orientation and onsite department training, monthly loss information and special quarterly and annual reports, trust account (excluding check and bank charges), and online access to claim information for three users. Funds for the contract are available in the Department of Human Resources Workers' Compensation Operating Budget.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk.

RECOMMENDATION

It is recommended that Council:

1. Award a contract, in substantially the same form as the attached draft and in the amount of \$757,238, to York Risk Services Group to provide third party workers' compensation claims administrative services for a three year period.

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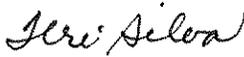
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2. Delegate authority to the City Manager to exercise an option to extend the contract for one additional one year period, provided that pricing and service remain acceptable to the City.

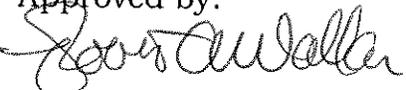
Reviewed by:


Grace K. Leung, Director of Finance
Prepared by: Pete Gonda, Purchasing Officer

Reviewed by:


Teri Silva
Director, Human Resources

Approved by:


for Gary M. Luebbers
City Manager

Attachments

- A. Draft Services Agreement

**ATTACHMENT A
DRAFT**

**SERVICE AGREEMENT BETWEEN THE CITY OF SUNNYVALE
AND YORK RISK SERVICES GROUP, INC.
FOR
THIRD PARTY WORKERS' COMPENSATION CLAIMS ADMINISTRATIVE SERVICES**

THIS AGREEMENT dated _____ is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and YORK RISK SERVICES GROUP, INC., a California corporation ("ADMINISTRATOR").

WHEREAS, CITY is in need of specialized services in relation to the administration of CITY's Workers compensation claims; and

WHEREAS, ADMINISTRATOR possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Contract Documents

The complete Contract consists of the following documents: Request for Proposal No. F1001-68, consisting of a Notice Inviting Proposals, Instructions to Proposers, Specifications, Terms and Conditions, ADMINISTRATOR's completed Proposal and any negotiated documents. These documents are all incorporated by reference. The documents comprising the complete contract are collectively referred to as the Contract Documents.

Any and all obligations of the CITY and the ADMINISTRATOR are fully set forth and described therein.

All of the above documents are intended to cooperate so that any work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all documents.

2. Time for Performance

The term of this Agreement shall be from July 1, 2011, through June 30, 2014, unless otherwise terminated. Agreement may be extended for one additional one-year period at the option of CITY provided that pricing and service remain acceptable to the City.

3. Duties of CITY

CITY shall supply any documents or information available to City required by ADMINISTRATOR for performance of its duties. Any materials provided shall be returned to CITY upon completion of the work.

4. Compensation

CITY agrees to pay ADMINISTRATOR the annual amounts set forth in Exhibit "B", which is attached and incorporated herein by this reference. Total compensation shall not exceed Seven Hundred Fifty Seven Thousand, Two Hundred Thirty Eight and no/100 Dollars (\$757,238) for the period of July 1, 2011 through June 30, 2014.

5. Ownership of Documents

CITY shall have full and complete access to ADMINISTRATOR's working papers, drawings and other documents during progress of the work. All documents of any description prepared by ADMINISTRATOR shall become the property of the CITY at the completion of the project and upon payment in full to the ADMINISTRATOR. ADMINISTRATOR may retain a copy of all materials produced pursuant to this Agreement.

6. Conflict of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement ADMINISTRATOR shall not accept employment or an obligation which is inconsistent or incompatible with ADMINISTRATOR's obligations under this Agreement.

7. Confidential Information

ADMINISTRATOR shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which ADMINISTRATOR may become aware in the performance of its services.

8. Compliance with Laws

- (a) ADMINISTRATOR shall not discriminate against or engage in the harassment of any City employee or volunteer or any employee of ADMINISTRATOR or applicant for employment because of an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, cancer or HIV/AIDS-related medical condition, genetic characteristics, and physical or mental disability (whether perceived or actual). This prohibition shall apply to all of ADMINISTRATOR's employment practices and to all of ADMINISTRATOR's activities as a provider of services to the City.
- (b) ADMINISTRATOR shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

9. Independent ADMINISTRATOR

ADMINISTRATOR is acting as an independent ADMINISTRATOR in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and ADMINISTRATOR. ADMINISTRATOR is responsible for paying all required state and federal taxes.

10. Indemnity

ADMINISTRATOR shall indemnify and hold harmless CITY and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of ADMINISTRATOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of CITY.

11. Insurance

ADMINISTRATOR shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "A" attached and incorporated by reference, and shall provide all certificates or endorsements as specified in Exhibit "A."

12. CITY Representative

Anthony Giles, Human Resources Risk Manager, as the City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement, other than invoices for payment as referenced in Section 14, below. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

13. ADMINISTRATOR Representative

Marcus Beverly shall represent ADMINISTRATOR in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of ADMINISTRATOR pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the ADMINISTRATOR representative.

14. Notices

All notices required by this Agreement, other than invoices for payment which shall be sent directly to Accounts Payable, shall be in writing and shall be personally delivered, sent by first class with postage prepaid, or sent by commercial courier, addressed as follows:

To CITY: Anthony Giles, Risk Manager
Human Resources
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale CA 94088-3707

To ADMINISTRATOR: Marcus Beverly, CPCU, AIC, ARM-P
Client Relations Director
York Risk Services Group, Inc.
1101 Creekside Ridge Drive, Suite 100
Roseville, CA 95678

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of two days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

15. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

16. Termination

If ADMINISTRATOR defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to ADMINISTRATOR. If CITY fails to pay ADMINISTRATOR, ADMINISTRATOR at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) after written notification of failure to pay.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to ADMINISTRATOR. In the event of such termination, ADMINISTRATOR shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. ADMINISTRATOR shall present CITY with any work product completed at that point in time.

17. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

18. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM:

("ADMINISTRATOR")

By _____
City Attorney

By _____

Name and Title

BY _____

Name and Title

**EXHIBIT A
INSURANCE REQUIREMENTS**

ADMINISTRATOR shall obtain, at its own expense and from an admitted insurer authorized to operate in California, the insurance coverage detailed below and shall submit Certificate(s) of Insurance to the City of Sunnyvale, Purchasing Division, 650 West Olive Ave, PO Box 3707, Sunnyvale, CA 94088-3707; fax (408) 730-7710.

ADMINISTRATOR shall take out and maintain during the life of the contract **Workers' Compensation and Employer's Liability Insurance** for its employees. The amount of insurance shall not be less than \$1,000,000 per accident for bodily injury or disease.

ADMINISTRATOR shall take out and maintain during the life of the contract such **Commercial General Liability Insurance** as shall protect ADMINISTRATOR, CITY, its officials, officers, directors, employees and agents from claims which may arise from services performed under the contract, whether such services are performed by ADMINISTRATOR, by CITY, its officials, officers, directors, employees or agents or by anyone directly or indirectly employed by either. The amount of insurance shall not be less than the following: Single Limit Coverage Applying to Bodily and Personal Injury Liability and Property Damage: \$1,000,000.

The liability insurance shall include, but shall not be limited to:

- Protection against claims arising from bodily and personal injury and damage to property, resulting from ADMINISTRATOR's or CITY's operations and use of owned or non-owned vehicles.
- Coverage on an "occurrence" basis.
- Broad form property damage liability. Deductible shall not exceed \$5000 without prior written approval of CITY.
- Notice of cancellation to CITY's Purchasing Division at least thirty (30) days prior to the cancellation effective date.

The following endorsements shall be attached to the liability insurance policy, and copies shall be submitted with the Certificate(s) of Insurance:

- The policy must cover complete contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property damage must be eliminated.
- CITY must be named as additional named insured with respect to the services being performed under the contract. *Simply indicating on the certificate that the certificate holder is named as additional insured is not acceptable; an endorsement must be provided.*
- The coverage shall be primary insurance so that no other insurance effected by CITY will be called upon to contribute to a loss under this coverage.

EXHIBIT "B"

FEE SCHEDULE

REVISED MAY 19, 2011

Presented To The

CITY OF SUNNYVALE

CLAIMS SERVICES	
WORKERS' COMPENSATION CLAIMS ADMINISTRATION	
PROGRAM YEAR	ANNUAL FEE
Year 1	\$250,741
Year 2	\$250,741
Year 3	\$255,756
PRICING NOTES	
<p>The annual flat fee proposed contemplates handling all claims activity in a 12-month period (claims already open at the beginning of the 12-month term and any new claims reported during the 12-month term). The flat annual fee includes all services detailed in this proposal including, but not limited to, the ancillary services listed below.</p> <p>York's annual flat fee proposed does not include Managed Care services paid as an allocated cost to the claims file (pricing detailed below); Injury Triage or Field Investigation to determine issues such as AOE/COE and 3rd party liability (subrogation). Cases requiring field investigations will be referred to an outside vendor with the City's approval.</p>	
ANCILLARY SERVICES included in flat annual fee	
Claims Administration Telephone Investigation Subrogation Management Excess Reporting Account Management Data Management Trust Account (Excluding Check and Bank Charges) Management Attendance at Claim Review Meetings MMSEA Reporting Requirements	Monthly Computer Loss Information Special Quarterly and Annual Reports Claim Reporting (fax, telephonic) On-Line 5020 Reporting Preparation of 1099's Annual Stewardship Report Standard Reporting Requirements Customized programmed reports can be developed on an as needed basis for additional fees agreed upon between York and the City.



OTHER SERVICES	FEE
RMIS Access Software/Support	Waived- 3 licenses are included. Each additional license is \$1,400 per year, per license.
OPTIONAL SERVICES *	FEE
Injury Triage Services	Should the City be interested in the Injury Triage Services, there would be additional costs that would be negotiated based on the desired scope of services.
Safety and Loss Prevention Services	York charges \$125.00 per hour, plus expenses for safety and loss prevention services through our Risk Control Department, and we usually work within an approved budget based on estimates of time required for the requested services.

MANAGED CARE SERVICES	
DETAIL	FEE
BILL REVIEW	
Fee Per Bill	\$9.50 per Bill (no per line fee)
Network Fees	
PPO and Other Negotiated Savings	20% of Savings
MEDICAL CASE MANAGEMENT	
Telephonic Case Management	\$98.00 per Hour
Field Case Management	\$98.00 per Hour, plus Mileage
Life Care Plan	\$150.00 per Hour
Medical Cost Projection	\$98.00 per Hour
UTILIZATION REVIEW	
Procedure Rate	\$145 per UR Event
PEER REVIEW	
Medical Director	\$220.00 per Hour
Peer Reviews	\$200 - \$400 per Hour (based on specialty)
MEDICAL PROVIDER NETWORK	
Medical Provider Network (MPN)	\$1,500 for Application (Waived) \$60.00 per Claim Access (for the life of contract) WellComp Managed Care Services 50/50 share of the negotiated contracted reductions below fee schedule



ALLOCATED LOSS ADJUSTMENT EXPENSES

- Fees of outside counsel for claims in suit, coverage opinions and litigation and for representation at hearings or pretrial conferences;
- Fees of court reporters;
- All court costs, court fees and court expenses;
- Fees for service of process;
- Costs of undercover operatives and detectives;
- Costs for employing experts for the preparation of maps, professional photographs, accounting, chemical or physical analysis, diagrams;
- Costs for employing experts for the advice, opinions or testimony concerning claims under investigation or in litigation or for which a declaratory judgment is sought;
- Costs for independent medical examination or evaluation for rehabilitation;
- Costs of legal transcripts of testimony taken at coroner's inquests, criminal or civil proceeding;
- Costs for copies of any public records or medical records;
- Costs of depositions and court reported or recorded statements;
- Costs and expenses of subrogation;
- Costs of engineers, handwriting experts or any other type of expert used in the preparation of litigation or used on a one-time basis to resolve disputes;
- Witness fees and travel expenses;
- Costs of photographers and photocopy services;
- Costs of appraisal fees and expenses (not included in flat fee or performed by others);
- Costs of indexing claimants;
- Services performed outside our normal geographical regions;
- Costs of outside investigation, signed or recorded statements;
- Out of the ordinary expenses incurred in connection with an individual claim or requiring meeting with the City;
- Costs associated with Medicare Set-Aside analysis and submission or Medicare Conditional Lien negotiation
- Any other extraordinary services performed by us at the City's request;
- Investigation of possible fraud including SIU services and related expenses;
- Any other similar cost, fee or expense reasonably chargeable to the investigation, negotiation, settlement or defense of a claim or loss or to the protection or perfection of the subrogation rights of the City.

