

City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

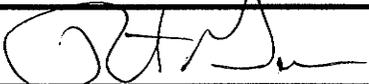
Item # 2Ordinance/Resolution# 14-15-079For Meeting of _____
(Ordinance First Reading Date)For Meeting of January 20, 2015
(Adoption Date)

Please check box that applies to this item:

 QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING AN INDEFINITE COST, INDEFINITE QUANTITY PRICE AGREEMENT FOR OCCUPATIONAL MEDICAL SERVICES TO WORKMED, INC. OF LAS CRUCES, NM FOR A TERM OF UP TO FIVE (5) YEARS CONDITIONED UPON ANNUAL RENEWALS AND APPROVED BUDGETS.

PURPOSE(S) OF ACTION: Approve service agreement.

| | | |
|--|---|---------------------------|
| COUNCIL DISTRICT: N/A | | |
| Drafter/Staff Contact: Jessica Garrick | Department/Section: Human Resources/Workers' Compensation | Phone: 528-3100 |
| City Manager Signature: |  | |

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On August 29, 2014 the City of Las Cruces' contracted occupational medical provider, Desert Healthcare, exercised their option to end its contract with the City. Since that time the City has been under an emergency contract with WorkMed, Inc. of Las Cruces, NM. In November 2014 the City's purchasing department solicited bids for a new occupational medical provider. On December 9, the Selection Advisory Committee (SAC) determined that WorkMed, Inc. be recommended for contract award.

The contract for occupational medical services establishes a localized point of contact for the City's Occupational Medicine, Drug and Alcohol Testing, Worker's Compensation, and all other areas covered under state and federal laws. Occupational medical service providers are tasked with assisting in complying with Occupational Safety and Health Administration (OSHA), Department of Transportation, and Federal Transportation Administration, Workers' Compensation and the National Fire Protection Association policies and regulations. The services also provide physical examinations and immunizations for the Police and Fire Departments. By awarding the Professional Services contract with WorkMed, Inc., the City will continue to serve the occupational medical needs of its employees in a cost effective manner.

SUPPORT INFORMATION:

1. Resolution.

(Continue on additional sheets as required)

2. Exhibit "A", Purchasing Manager's Request to Contract (PMRC).
3. Exhibit "B", Service Agreement.

SOURCE OF FUNDING:

| | | | |
|---|-----------------------------------|-------------------------------------|---|
| Is this action already budgeted? | Yes | <input checked="" type="checkbox"/> | See fund summary below |
| | No | <input type="checkbox"/> | If No, then check one below: |
| | <i>Budget Adjustment Attached</i> | <input type="checkbox"/> | Expense reallocated from: _____ |
| | | <input type="checkbox"/> | Proposed funding is from a new revenue source (i.e. grant; see details below) |
| | | <input type="checkbox"/> | Proposed funding is from fund balance in the _____ Fund. |
| Does this action create any revenue? | Yes | <input type="checkbox"/> | Funds will be deposited into this fund: _____ in the amount of \$ _____ for FY _____. |
| | No | <input checked="" type="checkbox"/> | There is no new revenue generated by this action. |

BUDGET NARRATIVE

No significant change in budget is anticipated at this time as the proposal closely matches previous contract costs.

FUND EXPENDITURE SUMMARY:

| Fund Name(s) | Account Number(s) | Expenditure Proposed | Available Budgeted Funds in Current FY | Remaining Funds | Purpose for Remaining Funds |
|--------------|-------------------|----------------------|--|-----------------|-----------------------------|
| Various | Various | Various | Various | Various | Various |

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the service agreement with WorkMed, Inc.
2. Vote "No"; this will result in the City having to acquire occupational medical services under other provisions of the Procurement Code.
3. Vote to "Amend"; this could modify the service agreement with WorkMed, Inc. to reflect the wishes of the City Council.

REFERENCE INFORMATION:

N/A

RESOLUTION NO. 14-15-079**A RESOLUTION APPROVING AN INDEFINITE COST, INDEFINITE QUANTITY PRICE AGREEMENT FOR OCCUPATIONAL MEDICAL SERVICES TO WORKMED, INC. OF LAS CRUCES, NM FOR A TERM OF UP TO FIVE (5) YEARS CONDITIONED UPON ANNUAL RENEWALS AND APPROVED BUDGETS.**

The City Council is informed that:

WHEREAS, on August 29, 2014 the City of Las Cruces' contracted occupational medical provider, Desert Healthcare, exercised their option to end its contract with the City; and

WHEREAS, in November 2014 the City's purchasing department solicited bids for a new occupational medical provider; and

WHEREAS, on December 9, 2014 the Selection Advisory Committee (SAC) determined that WorkMed, Inc. be recommended for contract award; and

WHEREAS, the contract for occupational medical services establishes a localized point of contact for the City's Occupational Medicine, Drug and Alcohol Testing, Worker's Compensation, and all other areas covered under state and federal laws. Occupational medical service providers are tasked with assisting in complying with Occupational Safety and Health Administration (OSHA), Department of Transportation, and Federal Transportation Administration, Workers' Compensation and the National Fire Protection Association policies and regulations. The services also provide physical examinations and immunizations for the Police and Fire Departments; and

WHEREAS, by awarding the Professional Services contract with WorkMed, Inc., the City will continue to serve the occupational medical needs of its employees in a cost effective manner.

NOW, THEREFORE, be it resolved by the governing body of the City of Las

Cruces:

(I)

THAT the Purchasing Manager is hereby authorized to contract with WorkMed, Inc., Las Cruces, NM, as outlined in Exhibit "A", attached hereto.

(II)

THAT the service agreement with WorkMed, Inc., Las Cruces, NM, attached hereto as Exhibit "B", is hereby approved.

(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the above.

DONE AND APPROVED on this _____ day of _____, 20__.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

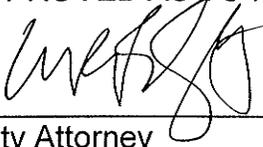
VOTE:

| | |
|----------------------|-------|
| Mayor Miyagishima: | _____ |
| Councillor Silva: | _____ |
| Councillor Smith: | _____ |
| Councillor Pedroza: | _____ |
| Councillor Small: | _____ |
| Councillor Sorg: | _____ |
| Councillor Levatino: | _____ |

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to be 'M. J. [unclear]', written over a horizontal line.

City Attorney

28
CITY OF LAS CRUCES

PURCHASING MANAGER'S REQUEST TO CONTRACT

For Meeting of: January 20, 2015

Resolution No.: 14-15-079

**Contract Purchase For
Occupational Medical Services**

The Las Cruces City Council is provided the following information concerning this request:

RFP SOLICITATION INFORMATION:

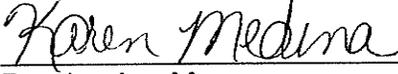
- | | |
|----------------------------------|--|
| 1. RFP No./ Due Date: | RFP No. 14-15-079 / November 21, 2014 |
| 2. Description: | Occupational Medical Services |
| 3. Using Department: | Human Resources |
| 4. Number of Reponses Solicited: | Twenty-seven (27) |
| 5. Number of Responses Accepted: | Three (3) |
| 6. Award Recommendation To: | WorkMed, Inc. of Las Cruces, NM |
| 7. Total Award Amount: | Indefinite Cost, Indefinite Quantity |
| 8. Contract Duration: | 5 years conditioned upon annual renewals and approved budgets |

LOCAL PREFERENCE FACTOR

| | | | |
|--|-----|---|--|
| Local Preference Factor Applied Per LCMC §24-100 | No | | LCMC §24-100 not applicable to this solicitation |
| | Yes | X | Made A Difference To Awards(s) |
| | | X | Made No Difference To Bid Award(s) |

PROCUREMENT CODE COMPLIANCE:

The City of Las Cruces Procurement Code was administered in the conduct of this procurement and approval to purchase is hereby requested pursuant to **Section 24-92**.


 Purchasing Manager

1/2/30/14
 Date

CONFIRMATION OF FUND ENCUMBRANCE:

| | |
|---------------------------------------|------------|
| REQUISITION or PURCHASE ORDER NUMBER: | TBD |
|---------------------------------------|------------|



PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on _____, 2014 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and WorkMed, Inc., of 2525 S. Telshor, 16-108, Las Cruces, NM 88011 hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

Occupational Medical Services

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES, as proposed in response to the CITY'S RFP No.14-15-079, incorporated herein by reference and attached as Exhibit A and made a part of this Agreement.

The CONTRACTOR is authorized to extend the same terms and conditions of this Agreement to other governmental entities conditioned upon the procurement laws and regulations of those entities. The CITY shall not be a party nor have any liability relating to such extensions.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement as proposed in response to the CITY'S RFP No.14-15-079, plus applicable taxes.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of work as required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on January 31, 2015 for a term of one year and pending mutual written agreement, may be extended annually thereafter for up to five (5) more years.

CONTRACTOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR.

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, CONTRACTOR shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR,

consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR's employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

- a. Professional Liability: \$1,000,000 per claim

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused solely by, resulting solely from, or arising solely out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement.

20. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

21. DISPUTE RESOLUTION

In the event that a dispute arises between CITY and CONTRACTOR under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

22. NOTIFICATION

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO CITY: City of Las Cruces
PO Box 20000
Las Cruces, NM 88004
ATTENTION: Project Manager

With Copies to: City Attorney
Purchasing Manager

TO CONTRACTOR: WorkMed, Inc.
2525 S. Telshor, 16-108
Las Cruces, NM 88011
ATTENTION: Dr. Gallardo

23. SCOPE OF AGREEMENT

This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings have been merged into this written agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

WORKMED, INC.

CITY OF LAS CRUCES

BY: _____
Benito Gallardo
President

BY: _____
Karen Medina
Purchasing Manager

Date

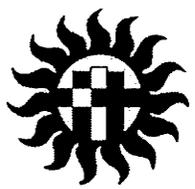
Date

APPROVED AS TO FORM

City Attorney

EXHIBIT A

WorkMed, Inc. Proposal



City of Las Cruces®

PEOPLE HELPING PEOPLE

2

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of January 20, 2015
(Adoption Date)

TITLE: A RESOLUTION APPROVING AN INDEFINITE COST, INDEFINITE QUANTITY PRICE AGREEMENT FOR OCCUPATIONAL MEDICAL SERVICES TO WORKMED, INC. OF LAS CRUCES, NM FOR A TERM OF UP TO FIVE (5) YEARS CONDITIONED UPON ANNUAL RENEWALS AND APPROVED BUDGETS.

Purchasing Manager's Request to Contract (PMRC) {Required?} Yes No

| DEPARTMENT | SIGNATURE | PHONE NO. | DATE |
|-----------------------------|--------------------------------|-----------|----------|
| Drafter/Staff Contact | <i>J. Garrick</i> | x2758 | 12/30/14 |
| Department Director | <i>P. Kim A.M.</i> | | |
| Other | | | |
| Assistant City Manager /CAO | <i>[Signature]</i> | 541-2078 | 12/30/14 |
| Management & Budget Manager | <i>[Signature]</i> | x2106 | 12/30/14 |
| Assistant City Manager/COO | <i>[Signature]</i> | - 2271 | 1/6/15 |
| City Attorney | <i>[Signature]</i> | ext 2128 | 6 JAN 15 |
| City Clerk | <i>Walter Martinez-Sanchez</i> | x2115 | 1/8/15 |