

PURCHASING & LICENSING COMMITTEE

13-0021R

RESOLUTION AUTHORIZING A POTENTIAL FIVE-YEAR AGREEMENT WITH ESSENTIA HEALTH FOR THE ADMINISTRATION OF CONFIDENTIAL OCCUPATIONAL MEDICAL TESTS AND SERVICES RELATED TO CITY EMPLOYMENT FOR AN ANNUAL AMOUNT NOT TO EXCEED \$52,000 IN YEAR 2013.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into a potential five-year agreement with Essentia Health, said agreement to be substantially in the form of Public Document No. _____ on file in the office of the city clerk, to administer a variety of confidential occupational medical tests and services related to city employment for an annual amount not to exceed \$52,000 in each contract year of 2013, 2014, 2015, 2016, and 2017, a total contract amount not to exceed \$260,000; with \$52,000 for year 2013 to be paid from General Fund 110, Dept./Agency 700 (Transfers and Other Functions), Div. 1431 (Benefits Admin./Citywide HR), Object 5310 (Contract Services).

Approved:



Department Director
Purchasing Agent DS

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

HR/PRCH JA:DS:le 01/05/2013

STATEMENT OF PURPOSE: This resolution authorizes an agreement with Essentia Health for the administration of confidential occupational medical tests and

services related to city employment for an amount not to exceed \$52,000 in year 2013. The first contract period runs January 1, 2013, through December 31, 2013, with four one-year renewal options.

The purchasing division posted a request for bids December 6, 2012, on the city's website, sent requests to two medical facilities, St. Luke's Occupational Medicine and Essentia Health Occupational Medicine, and received one response from Essentia Health by the closing date.

Requisition 13-0001

**AGREEMENT FOR PROFESSIONAL SERVICES
ESSENTIA HEALTH
AND
CITY OF DULUTH**

THIS AGREEMENT, effective as of the date of attestation by the City Clerk (the "Effective Date"), by and between the **CITY OF DULUTH**, a municipal corporation, hereinafter referred to as "City," and **ESSENTIA HEALTH**, located at 400 East 3rd Street, Duluth, Minnesota 55805, a nonprofit corporation (domestic) under the laws of Minnesota, hereinafter referred to as "Service Provider," for the purpose of rendering services to the City.

WHEREAS, City desires to utilize Service Provider's skill and professional services in administering confidential occupational medical tests and services related to city employment; and

WHEREAS, Service Provider has represented that it is qualified and willing to perform services set forth in its Proposal submitted on or about December 7, 2012, attached hereto as **Exhibit A** (the "Proposal").

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

I. Services to be Performed.

Service Provider will provide the services described in the Proposal (Exhibit A). Service Provider agrees that it will provide its services in cooperation with the City's Manager of Human Resources. In the event of any conflict between the terms of the Proposal and this Agreement, the terms and conditions of this Agreement shall be deemed to be controlling.

II. Fees.

It is agreed between the parties that Service Provider's maximum fee for the term of this contract shall not exceed the sum of **Fifty-Two-Thousand and 00/100 dollars (\$52,000.00)** for year 2013, payable from General Fund 110, Dept./Agency 700 (Transfers and Other Functions), Div. 1431 (Benefits Admin./Citywide HR), Object 5310 (Contract Services). Service Provider will not incur additional fees and expenses without prior written authorization from the City. All bills for services rendered shall be submitted monthly to the Manager of Human Resources, or his/her designee and shall be accompanied by such documentation as the City shall reasonable expect. Upon receipt of said request and appropriate documentation, the City shall reimburse Service Provider up to the amount set forth above.

III. General Terms and Conditions.

1. Amendments. Any alterations, variations, modifications or waivers of terms of this

Agreement including contract price shall be binding upon the City and Service Provider only upon being reduced to writing and signed by a duly authorized representative of each party.

2. Assignment. Service Provider represents that it will utilize only its own personnel in the performance of the services set forth herein; and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the City.
3. Data and Confidentiality.
 - a. The City agrees that it will make available all pertinent information, data and records under its control for Service Provider to use in the performance of this Agreement, or to assist Service Provider wherever possible to obtain such records, data and information.
 - b. All reports, data, information, documentation and material given to or prepared by Service Provider pursuant to this Agreement will be confidential and will not be released without prior authorization from the City, if as required by applicable law, without employee/patient consent.
 - c. Records shall be maintained by Service Provider in accordance with requirement prescribed by the City and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement. Service Provider will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
 - d. Service Provider shall be responsible for furnishing to the City records, data, and information as the City may require pertaining to matters covered by this Agreement.
4. Service Provider Representation and Warranties.

Service Provider represents and warrants that:

 - a. Service Provider and all personnel to be provided by it hereunder have sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.
 - b. Service Provider and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner in the best

interests of the City and in accordance with the then current generally accepted standards of the profession for the provisions of services of this type.

- c. Service Provider has complied or will comply with all legal requirements applicable to it with respect to this Agreement. Service Provider will observe all applicable laws, regulations, ordinances and orders of the United States, State of Minnesota and agencies and political subdivisions thereof.
- d. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the Service Provider is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Service Provider contrary to the terms of any instrument or agreement.
- e. There is no litigation pending or to the best of the Service Provider's knowledge threatened against the Service Provider affecting its ability to carry out the terms of this Agreement or to carry out the terms and conditions of any other matter materially affecting the ability of the Service Provider to perform its obligations hereunder.
- f. The Service Provider will not, without the prior written consent of the City, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.

5. Agreement Period and Notice of Termination.

- a. Notwithstanding the date of execution, the term of this agreement shall commence on January 1, 2013, and continue until December 31, 2013, unless terminated earlier as provided for herein.
- b. It is agreed that the City may exercise its option to execute four additional one-year renewal periods, each term beginning January 1 and ending December 31.
- b. The City may, by giving thirty days written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause.

6. Independent Contractor.

- a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Service Provider as an agent,

representative or employee of the City for any purpose or in any manner whatsoever. Service Provider and its employees shall not be considered employees of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Service Provider's employees while so engaged, and any and all claims whatsoever on behalf of Service Provider 's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in Section II of this Agreement, Service Provider's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, City shall in no way be responsible to defend, indemnify or save harmless Service Provider from liability or judgments arising out of Service Provider 's intentional or negligent acts or omissions of Service Provider or its employees while performing the work specified by this Agreement.

- b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.
- c. Service Provider expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

7. Indemnity.

Service Provider shall defend, indemnify and hold City and its employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from the Service Provider's a) breach of this agreement or b) its negligence or misconduct or that of its agents or contractors in performing the Services hereunder or c) any claims arising in connection with Service Provider's employees or contractors, or d) the use of any materials supplied by the Service Provider to the City unless such material was modified by City and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

8. Insurance.

- a. Service Provider shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of

Minnesota.

- (1) Workers' compensation insurance in accordance with the laws of the State of Minnesota.
- (2) Public Liability and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; shall be in a company approved by the city of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.
- (3) Professional Liability Insurance in an amount not less than **\$1,500,000** Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made," insurance, 60 days notice prior to any cancellation or modification shall be required; and in such event, Service Provider agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the City, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.
- (4) **City of Duluth shall be named as Additional Insured** under the Public Liability and Automobile Liability, or as an alternate, Service Provider may provide Owners-Contractors Protective policy, naming himself and City of Duluth. Service Provider shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance. Service Provider to provide Certificate of Insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provisions included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Service Provider's interests and liabilities.
- (5) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said

certificate and shall further provide that failure to give such notice to City will render any such change or changes in said policy or coverages ineffective as against the City.

- (6) The use of an "Acord" form as a certificate of insurance shall be accompanied by two forms – 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by the Duluth City Attorney's Office.
- b. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Service Provider, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Service Provider, its employees, agents and representatives in the negligent performance of work covered by this Agreement.
- c. Certificates showing that Service Provider is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.

9. Notices.

Notice to the City or Service provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

<u>City</u>	<u>Service Provider</u>
City of Duluth Human Resources	Essentia Health
411 West First Street, #313	400 East Third Street
Duluth, MN 55802	Duluth, MN 55805
Attention: Manager, Human Resources	Attention: Program Manager

10. Civil Rights Assurances

Service Provider, as part of the consideration under this Agreement does hereby covenant and agree that:

- a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to

discrimination with regards to services provided pursuant to this Agreement.

- b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974 as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

11. Laws, Rules and Regulations.

Service Provider agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

12. Applicable Law.

This Agreement, together with all of its paragraphs, terms and provisions, is made in the state of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. All proceedings related to this Agreement shall be venued in Duluth, Minnesota.

13. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

14. Entire Agreement

It is understood and agreed that the entire agreement of the parties including all exhibits are contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any Amendment to this agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

15. Counterparts

This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

CITY OF DULUTH

ESSENTIA HEALTH

By

By

Mayor

Representative

Attest:

Its

City Clerk

Title of Representative

Date:

Date: _____

Approved as to form:

City Attorney

Department Director

Purchasing Agent

EXHIBIT A
PROPOSAL



REQUEST FOR BID
Date: 11/28/12
Bid 12-26DS

Page 1
RETURN BY OPENING TIME TO:
Purchasing Division
RM 100 City Hall
411 West 1st Street
Duluth, MN 55802

Occupational Medical Services

Buyer: Dennis Sears
Phone: 218-730-5003
Fax: 218-730-5922

BID OPENING, RM 100 AT 2:00 PM ON Thursday, December 13, 2012

Note: All bids must be written, signed, and transmitted in a sealed envelope, plainly marked with the bid number, subject matter, and opening date. The City of Duluth reserves the right to split award where there is substantial savings to the city, waive informalities and to reject any and all bids. Bidder should state in proposal if bid is based on acceptance of total order. Sales tax is not to be included in the unit price. Bidder to state freight charges if, proposal is F.O.B. shipping point, freight not allowed. Low bid will not be the only consideration for award of bid. All pages must be signed or initialed by authorized bidder's representative as indicated at the bottom of the page(s) of the request for bid.

OFFICIAL SEALED BID

Designated F.O.B. Point

Tax: Federal Excise Tax Exemption
Account No. 41-74-0056 K

Item No.	Qty	U/OM	Description	Unit Price	Total Price
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Please provide quotes for the Occupational Medical services described in the attached specifications, descriptions and tests. Attach a cost sheet according to each required test or an hourly rate for Doctor exams for each type exam or service described.

Contract for one (1) year with four (4) possible one (1) year renewals.
Contract year: January 1, 2013 to December 31, 2013

Vendor E-mail Address _____ Freight Charges N/A

Name Essentia Health
Addr 400 E 3rd St.
Duluth, MN 55805

Total Bid Price _____
(To include any additional pages)

Payment Terms _____

By: Sara Bryki, Program Manager

F.O.B. Point Dest.

(print title)
Sara Bryki 218-786-3392
(signature) (tele#)

Delivery Date N/A

2013 OCCUPATIONAL MEDICINE SERVICES

Contract valid: January 1 through December 31, 2013
Options: Four (4) one (1) year renewal periods

SCOPE OF WORK

The City of Duluth employs approximately 825 regular employees plus 60 seasonal employees. In 2012, the City of Duluth has required approximately 60 pre-employment medical exams, 50 back evaluations only, 30 pre-employment NIDA drug screens and 100 non-NIDA drug screens; and 108 FMSCA random drug and alcohol tests and 48 PHMSA random drug tests. In addition, alcohol testing will be required for all pre-employment hires in 2013 and beyond.

Vendors shall respond using the information in this bid and the vendor's ability to comply with the requirements outlined within this bid. Please include information regarding appointment access each week, including drug and alcohol testing during business hours and after hours.

1. Drug & Alcohol Testing Services (Bidder must provide a cost in order for each with their bid: ie, 1a, 1b, etc as an attachment)

All City of Duluth employees are subject to drug and alcohol testing for reasonable suspicion and post-accident situations. Only safety-sensitive employees are subject to random testing. Currently, the City of Duluth is required to perform (#/month) random drug & alcohol tests for employees covered by the FMSCA and (#/month) random drug tests for employees covered by the PHMSA.

- a. Conduct urine specimen analysis and breath alcohol or blood alcohol tests for pre-employment testing under Minnesota Statute 181.950-181.957.
- b. Conduct urine specimen analysis and breath alcohol tests for random, post-accident reasonable suspicion, return-to-work and follow up testing under DOT guidelines established in 49 CFR Part 40, 49 CFR Part 382 and 49 CFR Part 100; and under Minnesota Statutes 181.950-181.957.
- c. Comply with all DOT and state regulations.
- d. Priority attention provided to any employee(s) brought in for reasonable suspicion and/or post-accident testing.
- e. Under normal circumstances, results shall be provided within 24 hours (one day) and not to exceed 72 hours (3 days).
- f. Must conduct a second, separate drug and/or alcohol test on any safety sensitive employee who tests positive, in compliance with the City of Duluth Drug Free Workplace/Drug & Alcohol Testing Policy (attached).
- g. Must address how drug testing will be conducted and tracked, and results protected, per DOT guidelines and MN statutes.
- h. Shall establish and maintain clear, well-documented accessing, quality control and confidentiality procedures.
- i. Must identify your Medical Review Officer and Substance Abuse Professional.
- j. Must coordinate return-to-work and follow-up testing.

2. Occupational Medicine Services

The City of Duluth typically schedules up to 75 pre-employment physicals per year , approximately 50 back evaluations without physicals, and up to 10 fitness for duty examinations per year, and an annual on-site flu vaccine clinic. In addition, up to 100 employees have required medical attention for work related injuries. The City of Duluth also relies on Occupational Medicine physician to work with the city to seek clarification of employee medical conditions.

Physical Exams Vendor to provide cost of each in order. Ie: 1a, 2a, 4 etc.

1. Pre-employment exams shall include the following tests:
 - a. Medical/occupational history
 - b. Vitals
 - c. Laboratory height, weight, etc.
 - d. Audiograms, vision tests and back evaluations as required by job description
2. Fitness for Duty Exams
 - a. Provide fitness for duty exams upon request to determine an employee's ability to perform the essential job functions. A description of the position will be provided to indicate the physical requirements and working conditions of the position.
3. Post-injury exams and treatment
 - a. Provide examinations and appropriate medical treatment and/or referrals for employees injured on the job.
4. Ergonomic evaluations as requested
5. Other tests and medical services shall include, but are not limited to respirator testing as requested, hearing tests as requested, hepatitis B inoculations, DPT vaccinations, rabies vaccinations, and annual on-site flu shots.

Vendor shall provide exam results to the City of Duluth within one business day of exam whenever possible.

Invoicing.

All invoices for test/exam services shall be billed within 30 days of service. Please state the billing cutoff date. Ie: February 15th cutoff covers timeframe of January 15th to February 15th. Absolutely no invoices will be paid if not billed within 60 days of test/exam date (two month billing cycle).

All invoice must be sent to Accounts Payable.



Essentia Health

Here with you

December 7, 2012

City of Duluth
Purchasing Division
RM 100 City Hall
411 W. 1st Street
Duluth, MN 55802

Re: Request for Bid for Occupational Medicine Services

Thank you for giving Essentia Health the opportunity to bid on fulfilling your Occupational Medicine needs. I have included as part of this response the fees associated with the services needed. Please note, services do not need to be accepted in total for us to provide them. We will provide any and all services listed you may need.

Section 1 and 2:

We provide pre-employment drug and alcohol testing services Monday-Friday between the hours of 8:00-12:00 and 1:00-3:00. Random and post-accident drug and alcohol testing is done anytime during the clinic hours of 8:00-4:30. After hours testing is provided through our emergency department and provided by a mobile collection service. All collections are done in DOT compliant facilities by certified collectors and technicians and all DOT requirements are met. Results are typically received by the employer from our contracted MRO within 48 to 72 hours. Our MRO services are provided by Advanced Drug Testing in Williston, ND. Their contact number is 701-577-0498.

Fees for Drug and Alcohol services:

5 panel Urine Drug screen collected at an Essentia facility	\$55
5 panel Urine Drug screen collected at a non-Essentia facility	\$75
10 panel Urine Drug screen collected at an Essentia facility	\$85
10 panel Urine Drug screen collected at a non-Essentia facility	\$105
Breath Alcohol screening test	\$25
Breath Alcohol confirmation test	\$25
Blood Alcohol test	\$75

Physical Exam services:

Basic pre-employment exam	\$72
Intermediate pre-employment exam	\$143
Complex pre-employment exam	\$210
Vitals	Price included in exam
Back evaluation – basic	\$50
Back evaluation – complex	\$100
Fitness for Duty exam – routine	\$210
Fitness for Duty exam – complex	\$500/hr
Physician time for record review	physician time \$500/hr
Ergonomic evaluations	\$100/hr

Other services:

Respirator testing (spirometry)	\$37
Audiogram	\$32
Hep B vaccinations	\$93
TDap vaccinations	\$67
Flu vaccinations – on site	\$28

We look forward to providing your employees with exceptional care and meeting your Occupational Medicine needs. If there are services not listed you would like pricing on, please let me know and I will get that to you as soon as possible. Should you need any additional information, don't hesitate to contact me either through email at sara.bryki@essentiahealth.org or by phone at 218-786-8348.

Respectfully,



Sara Bryki
Program Manager, Occupational Medicine