

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Fire

AGENDA DATE: 11/16/10

CONTACT PERSON/PHONE: Carlos Carmona - 771-1000

DISTRICT(S) AFFECTED: At Bruce D. Collins, Purchasing Manager, 541-4313

SUBJECT:

Services Agreement for Mission-Center Solutions, Inc.

BACKGROUND / DISCUSSION:

This is an agreement for MCS to provide specialized leadership training services for Homeland Security matters and preparation of emergency response teams.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

No

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

This will be funded using State HomeLand Security Project Grant Funding (SHSP)

\$48,000 will be paid from 22150024/G220903/07189/502214

\$48,000 will be paid from 22150024/G221016/07192/502214

The balance will be coming from the FY 10 SHSP Grant Project.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____

FINANCE: (if required) _____

DEPARTMENT HEAD: _____

(Example: ~~if RCA is initiated by Purchasing, client department should sign also~~)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA: _____

CITY MANAGER: _____

DATE: _____

PROJECT FORM

DATE: November 8, 2010

PROJECT: Leadership Training Services DEPARTMENT: Fire
FUNDING SOURCE: State Homeland Security Project Grant
REFERENCE NO.: 2011-089
REPRESENTATIVE DISTRICT(S): All

RECOMMENDATION: Vendor: Mission-Centered Solutions, Inc.
Franktown, Co.
Item: All
Estimated Amount: \$120,000.00

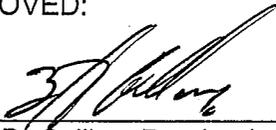
That the City Manager be authorized to sign a Services Agreement by and between the City of El Paso and Mission-Centered Solutions Inc. for Leadership Training Services for a temporary interim period not to exceed seven (7) months, commencing August 16, 2010. The total contract amount is not to exceed \$120,000. The City Manager will have the option to extend the contract term for up to an additional two (2) months without further approval from City Council.

TOTAL RECOMMENDED AWARD: \$120,000.00

COUNCIL APPROVED REJECTED MUNICIPAL CLERK _____

APPROVED:

COUNCIL MEETING DATE: November 16, 2010



Bruce D. Collins, Purchasing Manager
Financial Services Department, Purchasing Division

STATE OF TEXAS)
)
COUNTY OF EL PASO)

**SERVICES AGREEMENT FOR
MISSION-CENTERED SOLUTIONS, INC.**

This Services Agreement (hereinafter "Agreement") is entered into this _____ day of November, 2010, by and between the **City of El Paso**, a Texas municipal corporation located in El Paso, Texas, referred to in this Agreement as "CITY," and **Mission-Centered Solutions, Inc.**, a Colorado corporation authorized to do business in Texas, referred to in this Agreement as "CONTRACTOR."

RECITALS

WHEREAS, the Consultant has provided specialized leadership training services to the El Paso Fire Department in August/September 2009 and April 2010 in an aggregate amount not to exceed \$50,000 for homeland security matters and preparation of emergency response teams; and

WHEREAS, the Texas Local Government Code Section 252.022(a)(2) permits the CITY to contract for these services because it is necessary to preserve or protect the public safety of the municipality's residents; and

WHEREAS, City and Contractor desire to continue the Contractor services on a temporary interim basis.

THEREFORE, in consideration of the promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties hereby agree to the following terms and conditions:

ARTICLE 1. TERM OF AGREEMENT

Section 1.1 Term. This Agreement will be in effect for a period not to exceed seven (7) months, commencing August 16, 2010. By a written instrument signed by the City Manager, the City may extend the term of this contract for a period up to two (2) additional months if the City Manager in his/her own discretion determines that it is necessary to extend the services for the City's convenience, without further approval of the City Council.

Section 1.2 Termination. Either party may terminate this Agreement at any time, with or without cause, by providing at least thirty (30) days advance written notice of the termination date to the other party. Such termination will have no effect upon the rights and obligations resulting from any transactions occurring prior to the effective date of the termination.

ARTICLE 2. RESPONSIBILITIES OF CONTRACTOR

Section 2.1 Services. CONTRACTOR will provide the leadership training services, more specifically described in Exhibit A, Scope of Services, attached hereto and incorporated into this Agreement for all purposes. The contract is non-exclusive, as the City reserves the right to contract with other entities for these or similar services.

The remaining session shall be held prior to April 16, 2011 at a time and date to be mutually agreed upon by the City and Contractor.

Section 2.2 Insurance. CONTRACTOR shall provide and maintain insurance in full force and effect at all times during the term of this Agreement as forth in Exhibit C, attached hereto and incorporated into this Agreement for all purpose. CITY shall be provided with certificates of insurance evidencing the required insurance prior to the commencement of this Agreement and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of any such policies.

Section 2.3 Use of Independent Contractors and Subcontractors. Personnel provided to CITY are employees of CONTRACTOR and are subject to CONTRACTOR'S standard screening process, as well as additional qualifications as required in this Agreement. If CONTRACTOR deems it necessary to obtain the services of a subcontractor to fulfill its requirements under this Agreement, CONTRACTOR will notify CITY in writing of its intent to use subcontractors and will obtain written approval from CITY. CONTRACTOR will ensure that any subcontractor will comply with all applicable terms of this Agreement. CONTRACTOR will provide written notification to CITY if it becomes necessary for CONTRACTOR to utilize independent contractors to fulfill its staffing obligations to CITY. Any Personnel provided to CITY by an independent contractor will be subject to the same qualifications as CONTRACTOR employees.

Section 2.4 Employment and Taxes. CONTRACTOR will follow its standard employment policies and procedures to verify that all Personnel meet all applicable employment legal requirements. CONTRACTOR, or its subcontractor if applicable, will maintain direct responsibility as employer for the payment of wages and other compensation, and for any applicable mandatory withholdings and contributions such as federal, state, and local income taxes, social security taxes, worker's compensation, and unemployment insurance.

ARTICLE 3. MUTUAL RESPONSIBILITIES

Section 3.1 Non-discrimination. Neither CONTRACTOR nor CITY will discriminate on the basis of age, race, color, national origin, religion, sex, disability, being a qualified disabled veteran, being a qualified veteran of the Vietnam era, or any other category protected by law.

ARTICLE 4. COMPENSATION

Section 4.1 Invoicing. CONTRACTOR will supply Personnel under this Agreement at the rates listed in Exhibit B, Compensation. CONTRACTOR will submit invoices to CITY every week for Personnel provided to CITY during the preceding week. Invoices shall be submitted to the following address:

El Paso Fire Department
8600 Montana
El Paso, Texas 79925
ATTN: Administrative Services Manager

Section 4.2 Payment. The Contractor shall be paid for the services under this Agreement a total amount not to exceed ONE HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS (\$120,000.00) as set forth in the fee schedule attached hereto as Attachment B.

All amounts due to CONTRACTOR are due and payable within thirty (30) days from date of invoice. CITY will send all payments to the address set forth on the invoice.

All payments by the CITY under this Agreement are payable only out of current City of El Paso revenues. In the event that funds relating to this Agreement do not become available, such as by City Council not appropriating the funds, the CITY shall have no obligation to pay or perform any services related herein to CONTRACTOR for the City's fiscal year during which time such funding is not available or appropriated. Should CITY experience a funding unavailability, either party may choose to terminate the Agreement subject to Section 1.2 above.

Section 4.3 Late Payment. Any payment not paid to CONTRACTOR within said period will incur a late payment fee equal to five percent of the amount past due and will accrue interest in an amount equal to the rate computed pursuant to the provisions of Texas Government Code Section 2251.025 (Payment of Goods and Services) which governs the City of El Paso.

ARTICLE 5. GENERAL TERMS

Section 5.1 Independent Contractors. CONTRACTOR and CITY are independent legal entities. Nothing in this Agreement shall be construed to create the relationship of employer and employee, or principal and agent, or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the terms of this Agreement. Neither CONTRACTOR nor CITY nor any of their respective agents or employees shall control or have any right to control the activities of the other party in carrying out the terms of this Agreement.

Section 5.2 Assignment. Neither party may assign this Agreement without the prior written consent of the other party, and such consent will not be unreasonably withheld. No such consent will be required for assignment to an entity owned by or under common control with assignor or in connection with any acquisition of all of the assets or capital stock of a party; provided however, the assigning party will provide notice of such transaction to the other party and remain fully responsible for compliance with all of the terms of this Agreement.

Section 5.3 Indemnification. **BY ACCEPTANCE OF THIS AGREEMENT, THE CONTRACTOR AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES, FROM ANY AND ALL CLAIMS FOR INJURIES OR DAMAGES TO PERSONS OR PROPERTY (INCLUDING DEATH) ALLEGED TO HAVE BEEN RECEIVED OR SUFFERED AS A RESULT OF OR ARISING OUT OF THE OPERATIONS OF THE CONTRACTOR OR ITS AGENTS, SUBCONTRACTORS, CONSULTANTS AND EMPLOYEES, OR IN THE PERFORMANCE OF THIS AGREEMENT.**

Section 5.4 Intellectual Property. The contents, processes, and supporting materials used in the training remain the intellectual property of Contractor and are duly protected under applicable copyright and intellectual property laws. No transfer of rights or license is implied.

Section 5.5 Notices. Any notice or demand required under this Agreement will be in writing; will be personally served or sent by certified mail, return receipt requested, postage prepaid, or by a recognized overnight carrier which provides proof of receipt; and will be sent to the addresses below. Either party may change the address to which notices are sent by sending written notice of such change of address to the other party.

Section 5.6 Headings. The headings of sections and subsections of this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.

Section 5.7 Entire Contract; Counterparts. This Agreement constitutes the entire contract between CITY and CONTRACTOR regarding the services to be provided hereunder. Any agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. This Agreement may be executed in any number of counterparts, each of which will be deemed to be the original, but all of which shall constitute one and the same document. No amendments to this Agreement will be effective unless made in writing and signed by duly authorized representatives of both parties except as provided in Section 6.9.

Section 5.7 Compliance with Laws. CONTRACTOR agrees that all services provided pursuant to this Agreement shall be performed in compliance with all applicable federal, state, and/or local rules and regulations. In the event that applicable federal, state or local laws and regulations or applicable accrediting body standards are modified, CONTRACTOR reserves the right to notify CITY in writing of any modifications to the Agreement in order to remain in compliance with such law, rule or regulation.

Section 5.8 Severability. In the event that one or more provision(s) of this Agreement is deemed invalid, unlawful and/or unenforceable, then only that provision will be omitted, and will not affect the validity or enforceability of any other provision; the remaining provisions will be deemed to continue in full force and effect.

Section 5.9 Governing Law, Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to its principles of conflict of laws.

(Signature Page to follow)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

**SERVICES AGREEMENT FOR
MISSION-CENTERED SOLUTIONS, INC.**

(Signature page)

IN WITNESS WHEREOF, the parties have hereunto set their hands this _____
day of _____, 2010.

CITY OF EL PASO

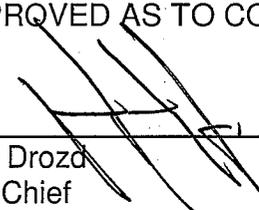
Joyce Wilson
City Manager

APPROVED AS TO FORM:



Bertha A. Ontiveros
Assistant City Attorney

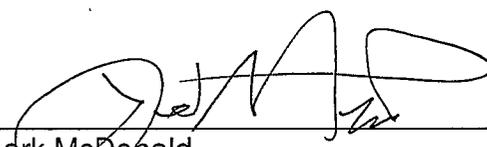
APPROVED AS TO CONTENT:



Otto Drozd
Fire Chief

CONTRACTOR

MISSION-CENTERED SOLUTIONS, INC



Lark McDonald
Chief Executive Officer

EXHIBIT A

Scope of Work

Product Description

1. Leadership training and consulting services, including 3 training session(s) of the *At the Point of the Spear: Fire Service Leadership* program, based upon the current version 12.1.2. This is a leader-of-people level course, and is suitable for use with engine module leaders, engine captains, and other fire leaders. This program and supporting training personnel have been certified to meet the requirements of CA-002-PREV and NWCG L-380. The session(s) will be 5 days in length. The daily training schedule can be found at the MCS Client Support Web Site described in Attachment A.

For more information regarding the NWCG Leadership (L) Curriculum, please refer to the Wildland Fire Leadership Development Program website at: <http://www.fireleadership.gov/>.

2. Each session class size is limited to 24 participants. Leadership team members and unit overhead should attend together if possible to leverage the program for maximum effectiveness.

Services/Items Included

1. Three MCS program trainers for duration of each Fire Service Leadership session – with specific experience in human factors psychology, operations, and military leadership and doctrine. All facilitators will be on-site the entire duration of each session.
2. All instructional materials (instructor and student materials, classroom and exercise support materials, case study prework, graduation certificates, etc.).
3. NWCG graduation certificates can be provided upon request at no additional charge.
4. Registration or coordination services as requested by EPFD.
5. Lodging and per diem for MCS personnel while on site.
6. MCS personnel travel to and from training site.
7. MCS expenses while on site.
8. Transportation of all program materials and MCS equipment to the training site.
9. Presentation computer and projector.
10. In-program and post-program evaluation activities and reports as negotiated.

Services/Items NOT Included

1. Salary, travel, per diem and other related costs associated with EPFD site logistics support personnel, participants, or other non-MCS personnel assisting or participating at the EPFD's behest. Details of the support schedule, equipment requirements and classroom facilities can be found at the MCS Client Support Site at: <http://www.mcsolutions.com/>
2. Any facilities costs, including costs for providing flips charts and presentation screen.
3. Transportation costs for participants to and from field exercises.
4. Field equipment required by the participants, such as two-way radios, for use in field exercises. (Unconventional materials specific to the exercises will be provided by MCS.)
5. Compensation (overtime, comp time, etc.) needed to enable students to participate in the after hours training exercise.

EXHIBIT B

Contractor Rates/Compensation

The Contractor will be paid for the services on a per session basis at the rate of \$24,000.00 per session (for 5 sessions) for a total amount of compensation under this Agreement of \$120,000.00. The compensation for these sessions include a \$900 discount per session for payment using electronic funds transfer or check.

The remaining sessions shall be held before April 16, 2011 at times and locations to be mutually agreed upon by the City's Fire Chief and Contractor.

EXHIBIT C

Insurance Requirements

The Contractor shall provide and maintain the following insurance in full force and effect at all times during the term of this Agreement. City shall be provided with certificates of insurance evidencing the required insurance prior to the commencement of this Agreement and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of any such policies.

A. Liability Insurance. For the duration of this Agreement and any extension thereof, the Contractor shall carry, in a solvent company authorized to do business in the State of Texas, public liability insurance to: a) cover the Contractor and its employees in the minimum amount of One Million Dollars (\$1,00,000.00); and, b) protect the general public and the City in the minimum amounts of Three Million Dollars (\$3,000,000.00) per occurrence for bodily injury or wrongful death and One Million Dollars (\$1,000,000) per occurrence for property damage.

B. Workers Compensation. A third-party policy of Workers' Compensation insurance coverage providing Statutory Benefits according to the Workers Compensation Act of the State of Texas and/or any other state or federal law as may be applicable to the work and shall cover all of the persons engaged in the work.

C. Auto Liability. Automobile Liability Insurance covering all owned, hired, and non-owned motor vehicles used by Contractor, its employees, contractors or agents, in connection with the work being performed under this Agreement with limits of liability not less than Five Hundred Thousand Dollars (\$500,000.00) for each occurrence Combined Single Limit for Bodily Injury and Property Damage.

D. Form of Policies. The insurance required herein may be in one or more policies of insurance, the form of which must be approved by the City's Risk Manager. City prefers that the general liability and auto liability coverages be provided by either the same insurance carrier or the same insurance group.

E. Issuers of Policies. The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas. Each issuer must be responsible, reputable, and have financial capability consistent with the risks covered. Each issuer shall be subject to approval by the City's Risk Manager in his sole discretion as to conformance with these requirements.

- H. Insured Parties. Each policy, except those for Workers' Compensation, must name the City of El Paso (and their elected and appointed officials, officers, agents and employees) as Additional Insured parties on the original policy and all renewals or replacements during the term of this Agreement.
- I.
- J. Deductibles. A policy may contain deductible amounts only if the City's Risk Manager approves the amount and scope of the deductible. The Contractor shall assume and bear any claims or losses to the extent of such deductible amount and waives any claim it may ever have for the same against the City of El Paso, their officers, agents or employees.
- K. Material Change in Policy(ies). Prior to any material change in any policy required herein, City will be given thirty (30) days advance written notice by registered mail. Further, City will be immediately notified of any reduction or possible reduction in aggregate limits of any such policy where such reduction, when added to any previous reductions, would exceed twenty-five percent (25%) of the aggregate limits.
- L. Cancellation. Each policy must expressly state that it may not be canceled or non-renewed unless thirty (30) days advance notice of cancellation or intent not to renew is given in writing to the City's Purchasing Manager (as Sun Metro's representative) by the insurance company.
- M. Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, their elected and appointed officials, officers, agents or employees.
- N. Endorsement of Primary Insurance. Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to the Additional Insured with respect to claims arising hereunder and that the insurance applies separately to each insured.