

Contract

THIS CONTRACT is made this 23rd day of May, 2005, by and between CONCENTRA MEDICAL CENTERS and the STATE OF MARYLAND, acting through the DEPARTMENT OF BUDGET & MANAGEMENT.

IN CONSIDERATION of the promises and the covenants herein contained, the parties agree as follows:

1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 "Contract Manager" means Margaret Embardino of the Department of Budget and Management.
- 1.2 "Contractor" means Concentra Medical Centers, whose principal business address is 989 Corporate Blvd., Suite A Linthicum, MD 21090 and whose principal office in Maryland is located at same.
- 1.3 "Department" or "DBM" means the Department of Budget and Management
- 1.4 "Financial Proposal" means the Contractor's Best and Final Offer Dated April 20, 2005.
- 1.5 "Procurement Officer" means Susan S. Woomer of the Department.
- 1.6 "RFP" means the Request for Proposals for SMD and Occupational Medical Services for Maryland State Agencies, Project No. F10R5200145 dated February 15, 2005.
- 1.8 "State" means the State of Maryland.
- 1.9 "Technical Proposal" means the Contractor's Technical Proposal, dated March 23, 2005.

2. Scope of Work

- 2.1 The Contractor shall provide the services as outlined within the RFP, Section 3 "Scope of Work".

These services shall be provided in accordance with this Contract and the following exhibits, which are attached and incorporated herein by reference. If there is any conflict between this Contract and the exhibits, the terms of the Contract shall govern. If there is any conflict among the exhibits, the following order of precedence shall determine the prevailing provision:

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Exhibit A – RFP – Project No. F10R5200145.

Exhibit B – Contractor's Technical Proposal, dated March 23, 2005.

Exhibit C – Contractor's Best and Final Offer, dated April 20, 2005.

Exhibit D – Contractor's signed Contract Affidavit, dated 5/5/2005.

- 2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope stated in the RFP (Section 3 "Scope of Work"). No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for the performance of, any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within 30 days after receipt of the written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause, Section 11 below. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

3. Time for Performance

Unless this Contract is terminated earlier in accordance with its terms, the Contractor shall provide the services described in the RFP (Section 3 "Scope of Work") during the base term of approximately five (5) years, commencing on the date that the State executes the Contract and terminating on May 31, 2010. The Contractor shall begin providing services upon receipt of a Notice to Proceed from the Contract Manager.

4. Consideration and Payment

- 4.1 In consideration of satisfactory performance of the requirements of this Contract, the State shall pay the Contractor in accordance with the rates established in Exhibit C, in no event to exceed \$7,702,500 without the express written approval of the Procurement Officer and subject to any other State approval requirements. The Contractor shall notify the Contract Manager, in writing, at least sixty (60) days before payments reach the specified amount.
- 4.2 Payments shall be made to the Contractor, following the State's acceptance of the work, no later than 30 days after the State receives an invoice from the Contractor, and pursuant to the conditions outlined in this Section. Each invoice for services rendered must include the Contractor's Federal Tax Identification Number, which is [REDACTED] charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended, are prohibited. Invoices should be submitted to the referring agency with a copy to the Contract Manager.

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- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until the Contractor meets performance standards established by the Procurement Officer.
- 4.4 At least fifteen (15) days prior to the contract anniversary date, and as provided within the RFP, the Contractor may submit a request to adjust the contract services rates then in effect. Any such adjustment shall be based upon a change in the Consumer Price Index (CPI), as described in Section 1.5.2 of the RFP.
- 4.5 Electronic funds transfer will be used by the State to pay Contractor under this Contract, and for any other State payments due to the Contractor, unless the State Comptroller's Office grants the Contractor an exemption.

5. Rights to Records

- 5.1 The Contractor agrees that all documents and materials, including but not limited to software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor solely for purposes of this Contract with and delivered to the State shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 5.2 The Contractor agrees that, at all times during the term of this Contract and thereafter, works created as deliverables under this Contract, and services performed under this Contract, shall be "works made for hire," as that term is interpreted under U.S. copyright law. To the extent that any products created as deliverables under this Contract are not works for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to such products, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- 5.3 The Contractor shall report to the Procurement Officer, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor may not affix any restrictive markings upon any data or materials provided under this Contract, and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

Contract (contd.)

6. Patents, Copyrights, Intellectual Property

- 6.1 If the Contractor furnishes any design, device, material, process, or other item, that is covered by a patent or copyright or that is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item.
- 6.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, copyright, or trade secret. If a third party claims that a product infringes that party's patent or copyright, the Contractor will defend the State against that claim at the Contractor's expense and will pay all damages, costs, and attorney fees that a court finally awards, provided the State (i) promptly notifies the Contractor in writing of the claim; and (ii) allows the Contractor to control, and cooperates with the Contractor in, the defense and any related settlement negotiations. The obligations of this Section 6.2 are in addition to those stated in Section 6.3 below.
- 6.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: a) procure for the State the right to continue using the applicable item; b) replace the product with a non-infringing product substantially complying with the item's specifications; or c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

7. Confidentiality

Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) such party is required to disclose by law.

Contract (contd.)

8. Loss of Data

In the event of loss of any State data or records where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Procurement Officer. The Contractor shall ensure that all data is backed up and recoverable by the Contractor.

9. Indemnification

9.1 The Contractor shall indemnify the State against liability for any costs, expenses, loss, suits, actions, or claims of any character arising from or relating to the performance of the Contractor or its subcontractors under this Contract.

9.2 The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

9.3 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

9.4 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to the Contractor's performance under this Contract.

10. Non-Hiring of Employees

No official or employee of the State, as defined in State Government Article, § 15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

Contract (contd.)

11. Disputes

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland, as from time to time amended, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days after the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

12. Maryland Law

This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

13. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, sexual orientation, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a) above in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post, and to cause subcontractors to post, in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

14. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson or commercial selling agency working for the Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson or commercial selling agency, any fee or other consideration contingent on the making of this Contract.

Contract (contd.)

15. Non-Availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

16. Termination for Cause

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

17. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12 A (2).

Contract (contd.)

18. Delays and Extensions of Time

The Contractor agrees to perform this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances from any cause whatsoever during the progress of the work specified in this Contract.

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

19. Suspension of Work

The Procurement Officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

20. Pre-Existing Regulations

In accordance with Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

21. Financial Disclosure

The Contractor shall comply with Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall, within 30 days after the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

Contract (contd.)

22. Political Contribution Disclosure

The Contractor shall comply with Election Law Article, §§14-101 to 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

23. Retention of Records

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three years after final payment by the State under this Contract or until the expiration of any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times.

24. Warranties

The Contractor hereby represents and warrants that:

- A. It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- C. It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract;
- D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

Contract (contd.)

25. Cost and Price Certification

By submitting cost or price information, the Contractor certifies, to the best of its knowledge, that the information submitted is accurate, complete, and current as of the date of the Contractor's offer.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information that, as of the date of its offer, was inaccurate, incomplete, or not current.

26. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the State, nor may the Contractor assign this Contract or any of its rights or obligations hereunder without the prior written approval of the State. Any such subcontract or assignment shall include the terms of Sections 10 and 12 through 25 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to any subcontractor or assignee.

27. Liquidated Damages

Time is an essential element of this Contract and it is important that the work be vigorously prosecuted until completion. For each day that any work remains uncompleted beyond the time(s) specified elsewhere in the Contract, the Contractor shall be liable for liquidated damages. The Contractor shall deliver to each DAC the results of the services requested within the time specified in Section 3, Scope of Work, of this RFP. **Failure to comply will result in liquidated damages of \$155.00 per day per employee.**

The employee is the employee who is referred for an examination or evaluation. As determined by the DAC and/or the Contract Manager, the DAC will deduct \$155.00 per day from the amount charged by the Contractor each time the final written report is not received within the time specified in the RFP. The amount will be deducted each day until the report is received. Financial damages will be deducted from the Contractor's bill for services provided on the subsequent month's payment.

The imposition of financial damages begins on the date (as determined by the DAC and/or Contract Manager) when the Contractor has all of the information and documentation deemed necessary to make a determination, but the Contractor is late in delivering a final written report. Allowances will be made for Acts of God and forces majeure (i.e., electrical outages, weather emergencies) that are truly beyond the Contractor's control, as determined by the DAC and/or the Contract Manager.

Contract (contd.)

Time is computed in accordance with Article 1, §36 of the Annotated Code of Maryland. For the purposes of this contract, the time period ends at 5:00 p.m. (the close of business) on the fifth working day after the service is provided.

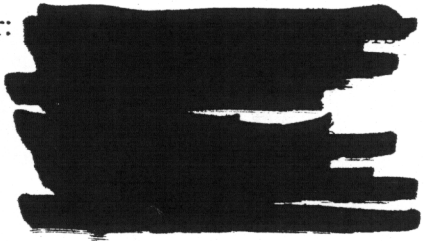
28. Administrative

28.1 Contract Manager. The work to be accomplished under this Contract shall be performed under the direction of the Contract Manager. All matters relating to the interpretation of this Agreement shall be referred to the Procurement Officer for determination.

28.2 Notices. All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid as follows:

If to the State: Margaret Embardino, Contract Manager (per RFP 1.7)
 DBM
 Medical Services Unit
 301 W. Preston Street, Room 508
 Baltimore, MD 21201
 Office: 410-767-4483
 Fax: 410-333-5440
 E-mail: membardi@dbm.state.md.us


If to the Contractor:



Contract (contd.)

IN WITNESS HEREOF, the parties have executed this Contract as of the date set forth at the top of the first page hereof.

CONTRACTOR


By _____ Date 4-29-05
(Printed or typed name & title)

Edward H. Beckman
Senior Vice President of Operations

MARYLAND DEPARTMENT OF BUDGET & MANAGEMENT


By _____ Date May 23, 2005
Deputy Secretary

Approved for form and legal sufficiency this 20 day of May, 2005.


Assistant Attorney General

APPROVED BY BPW: 5-11-05
(Date)

F10B5200051
(BPW Item # 3-5)