

# Memorandum

MIAMI-DADE  
COUNTY

**Date:** July 11, 2007

**To:** Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners

**From:** George M. Burgess  
County Manager

B&F  
Agenda Item No. 3 (L)

**Subject:** Approval to Reject all Proposals for RFP 516: Emergency Medical Transport Billing and Collection Services, waiving competitive bids and the bid protest process and awarding the contract to Advanced Data Processing Inc.

## RECOMMENDATION

It is recommended that approval be granted to reject all proposals for RFP 516, approve the issuance of a bid waiver to the highest ranked firm resulting from the competition in the form of a negotiated best value contract; waive the bid protest process, and authorize the execution of a Contract with Advanced Data Processing Inc. This recommendation rescinds my earlier recommendation of award dated November 30, 2006.

RFP NO: RFP 516

RFP TITLE: Emergency Medical Transport Billing and Collection Services.

DESCRIPTION: Miami-Dade Fire Rescue (MDFR) is seeking to enter into an agreement with a responsive and responsible firm to provide emergency medical billing and collection services in a timely and cost effective manner.

PROJECT MANAGER: Scott Mendelsberg, Miami-Dade Fire Rescue Department

APPROVAL TO ADVERTISE: March 16, 2006

TERM: Five years with two, five-year options-to-renew, at the County's sole discretion.

COST ESTIMATE: \$2,000,000 Service Fee

FUNDING SOURCE: Operating Revenue

METHOD OF AWARD: An open competitive Request for Proposals (RFP) process was used for this award.

VENDORS RECOMMENDED FOR AWARD: Advanced Data Processing, Inc. (Local)  
Doug Shamon, President  
500 NW 165th ST, Suite 102  
Miami, FL 33169

VENDORS NOT RECOMMENDED FOR AWARD: Southwest General Services

Intermedix Inc.  
Per-Se Technologies  
Ardem Corporation  
TC Billing and Services Corp  
Diversified Ambulance Billing  
Advanced Physician Billing

USING/MANAGING AGENCY: Miami-Dade Fire Rescue Department

CONTRACT MEASURES: A Small Business Enterprise (SBE) Preference was applied to the solicitation but did not affect the outcome of the award.

LIVING WAGE: Not Applicable

UAP: This is a revenue generating contract. The User Access Program provision does not apply.

LOCAL PREFERENCE: Applied in accordance with the applicable ordinances but did not affect the outcome.

ESTIMATED CONTRACT COMMENCEMENT DATE: Not Applicable

**BACKGROUND**

The County issued RFP 516 under full and open competition on March 16, 2006, for Emergency Medical Transport Billing and Collection services for the Miami-Dade Fire Rescue Department (MDFR). The solicitation was structured to achieve the highest revenue for the County with performance measures. The solicitation was advertised on March 17, 2006, and the Pre-Proposal Conference was held on March 29, 2006. Addendums were posted to address questions submitted as a result of the Pre-Proposal Conference. The solicitation was opened on May 5, 2006, and eight proposals were received. Proposals were presented to the selection committee for consideration on May 12, 2006. The selection committee evaluated the proposals by following the procedures of an open and competitive process.

Following the evaluation of proposals, the selection committee submitted its recommendation. The County Manager filed a recommendation to award to the highest-ranked firm, Advanced Data Processing Inc. (ADPI) on November 30, 2006. On December 14, 2006, the second-ranked firm, PerSe Technologies, filed a protest, citing discrepancies in the price evaluation formula used for the price calculation and assignment of price points.

The RFP required that proposers provide the Net Revenue collection that their firms will be able to collect on behalf of the County on an annual basis. According to the price formula in the RFP, the firm that proposed to collect the highest Net Revenue for the County earned the maximum of 35 allocated price points. All other vendors were assigned lower price points based on their proposed Net collections as dictated by the price formula detailed in the RFP. The County recognizes that the price formula used in the RFP may have resulted in "Projected Revenue" instead of actual revenue that a vendor offered to

collect. ADPI's projected revenue was the highest amongst all proposals. Based on the RFP guidelines, ADPI was awarded the maximum (35) price points.

This bid waiver will provide for **award** of a negotiated best-value contract to the highest ranked firm, Advanced Data Processing Inc. resulting from the competition. The negotiated agreement provides the County with a valuable contract addressing the operational needs of MDRR.

The negotiated agreement locks the County's fee to the vendor for the billing service to a maximum of 5.5% for the term of the contract, including the options to renew. The contract provides for a monthly collection rate of 65% in order to receive the maximum 5.5% fee. If this is not met, penalties will be imposed on the vendor on a sliding scale. Additionally, air-transportations have been included in the contract and will provide for an additional revenue stream. The agreement currently in place does not provide for performance measures. The fees charged are a flat rate percentage of 5.25%, independent of the collections obtained. This contract will provide the County with substantial revenue throughout the term of the agreement. Additionally, the performance measures included in the recommended contract are an effective tool in holding the vendor accountable to the agreement.

Staff conducted market research of other governmental agencies of similar size and scope to determine the best value of this contract. The results of the market research listed below, clearly substantiates the value that this agreement will bring to the County:

Entity	Base Fee Paid to Vendor
San Francisco City & County	7 %
Orange County, FL	6.25 %
Palo-Alto City, CA	7 %
Tamarac, FL	7 %
Fort Lauderdale, FL	5.25 %
Miami-Dade County Proposed	5 % to 5.5 %

The previous contract was approved for a one year term to allow staff additional time to develop a new long-term contract agreement through an open and competitive Request for Proposals (RFP) process. The Board of County Commissioners approved the extension of this contract on a month-to-month basis for twelve months, allocating \$50,000 per month for the continuation of EMS billing services under the existing contract. The existing contract was extended for an additional six months by the Board in February 2007. The contract expires on September 30, 2007.

It is recommended that competitive bidding process be waived and a contract be executed with Advanced Data Processing Inc. It is also recommended as being in the best interest of Miami-Dade County in the form of substantially low negotiated base fee, guaranteed higher revenue collection, zero ramp up time, and the time invested in this RFP process, that the bid protest process associated with the rejection decision be waived.



Assistant County Manager



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners

**DATE:** June 5, 2007

**FROM:** Murray A. Greenberg  
County Attorney

**SUBJECT:** Agenda Item No.

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved \_\_\_\_\_ Mayor

Agenda Item No.

Veto \_\_\_\_\_

Override \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION REJECTING ALL PROPOSALS RECEIVED IN RESPONSE TO REQUEST FOR PROPOSALS NO. 516 FOR EMERGENCY MEDICAL TRANSPORT BILLING AND COLLECTION SERVICES; WAIVING THE BID PROTEST PROCESS; AUTHORIZING THE WAIVER OF FORMAL COMPETITIVE BIDDING PURSUANT TO SECTION 4.03(D) OF THE HOME RULE CHARTER AND SECTION 2-8.1 OF THE COUNTY CODE BY A TWO-THIRDS (2/3S) VOTE OF THE BOARD MEMBERS PRESENT; AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO EXECUTE AN AGREEMENT WITH ADVANCED DATA PROCESSING IN. (APHID) TO OBTAIN EMERGENCY MEDICAL TRANSPORT BILLING AND COLLECTION SERVICES, FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS, AND TO EXERCISE ALL OTHER RIGHTS CONTAINED THEREIN

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board authorizes the rejection of all proposals received in response to Request for Proposal No. 516 for emergency medical transport billing and collection services; waives the bid protest process set therein in Section 2-8.4 of the Code of Miami-Dade County and waives formal competitive bidding pursuant to Section 4.03(D) of the Home Rule Charter and Section 2-8.1 of the County Code by a two-thirds (2/3s) vote of the Board members present; and authorizes the County Mayor or his designee to execute an agreement with



Advanced Data Processing Inc. (ADPI) in substantially the form attached hereto and made a part hereof, for and on behalf of Miami-Dade County and to exercise any cancellation and renewal provisions and any other rights contained therein.

The foregoing resolution was and offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

	Bruno A. Barreiro, Chairman	
	Barbara J. Jordan, Vice-Chairwoman	
Jose "Pepe" Diaz		Audrey M. Edmonson
Carlos A. Gimenez		Sally A. Heyman
Joe A. Martinez		Dennis C. Moss
Dorrin D. Rolle		Natacha Seijas
Katy Sorenson		Rebeca Sosa
Sen. Javier D. Souto		

The Chairperson thereupon declared the resolution duly passed and adopted this 5<sup>th</sup> day of June, 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

1001

**Emergency Medical Transport Billing and Collection Services**

Contract No. RFP 516

THIS AGREEMENT made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ by and between Advanced Data Processing, Inc. , a corporation organized and existing under the laws of the State of Delaware, having its principal office at 520 NW 165<sup>th</sup> Street, Suite 201 Miami, Florida (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide EMS billing services that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. 516 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated May 5, 2006, hereinafter referred to as the "Contractor's Proposal" which is incorporated by reference herein; and,

WHEREAS, the County desires to procure from the Contractor such EMS billing services for the County, in accordance with the terms and conditions of this Agreement;

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

**ARTICLE 1. DEFINITIONS**

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), RFP No. 516 and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.

- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative.
- d) The word "Contractor" to mean Advanced Data Processing, Inc. and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- h) The words "Change Order" or "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- i) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Contract.
- k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- l) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- m) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.
- n) The term "EMS" to mean Emergency Medical Services.
- o) The term "Modified Net Collections" to mean total monthly EMS deposits minus the refunds and the deposits received from the Florida Medicaid.
- p) The term "Billing Month" is equivalent to any calendar month.
- q) The words "Vendor" or "Contractor" to mean Advanced Data Processing Inc. (ADPI)

- r) The term "Dollars Billed" to mean total dollar amount billed by the Vendor for EMS collection.

## **ARTICLE 2. ORDER OF PRECEDENCE**

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Price Schedule (Appendix B), 3) the Scope of Services (Appendix A), 4) the Miami-Dade County's RFP No. 516 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

## **ARTICLE 3. RULES OF INTERPRETATION**

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

## **ARTICLE 4. NATURE OF THE AGREEMENT**

- a) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- b) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- c) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- d) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor

agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

#### **ARTICLE 5. CONTRACT TERM**

The Contract shall become effective on the date set forth above and shall be for duration of five (5) years. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for two (2) additional five-year terms. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

#### **ARTICLE 6. NOTICE REQUIREMENTS**

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

##### **(1) to the County**

###### a) to the Project Manager:

Miami-Dade County Fire Rescue Department  
9300 NW 41<sup>st</sup> Street  
Miami, Florida 33178

Attention: Nirhmala Lucas, Purchasing Manger  
Phone: (786) 331-4241  
Fax: (786) 331-4245

and,

###### b) to the Contract Manager:

Miami-Dade County  
Department of Procurement Management  
111 N.W. 1<sup>st</sup> Street, Suite 1300  
Miami, FL 33128-1974

Attention: Adil Khan, Procurement Contracting Officer  
Phone: (305) 375-1436  
Fax: (305) 375-5668

##### **(2) To the Contractor**

Advanced Data Processing Inc.  
520 NW 165<sup>th</sup> Street # 201  
Miami, FL 33169

Attention: Brad Williams  
Phone: (305) 459 - 0658  
Fax: (305) 521 - 0778  
E-mail: [bwilliams@emsclaims.com](mailto:bwilliams@emsclaims.com)

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

#### **ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED**

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in accordance with Appendix B. The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

With respect to travel costs and travel related expenses, the Contractor agrees to adhere to CH. 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

#### **ARTICLE 8. PRICING**

Pricing shall be in conformance with Price Schedule (**Appendix B**).

#### **ARTICLE 9. METHOD AND TIMES OF PAYMENT**

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor pursuant to Appendix B – Price Schedule. All invoices shall be taken from the books of account kept by the Contractor, Collection Reports, or documents reasonably required by the County and shall show the County's contract number. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be

made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County Fire Rescue Department  
9300 NW 41<sup>st</sup> Street  
Miami, FL 33178

Attention: Finance Bureau.

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

#### **ARTICLE 10. INDEMNIFICATION AND INSURANCE**

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

Upon County's notification, the Contractor shall, furnish to Miami-Dade County, Department of Procurement Management, Technical Services Division, 111 N.W. 1<sup>st</sup> Street, Suite 1300, Miami, Florida 33128-1974, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.

2. Public Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of the Department of Procurement Management, as the certificate holder, must appear on the certificate of insurance.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
4. Professional Liability Insurance in an amount not less than \$250,000 with a deductible per claim not to exceed ten percent (10%) of the limit of liability.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

**Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.**

**NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.**

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after County notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty

(20) calendar days after County notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of fifteen (15) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

#### **ARTICLE 11. MANNER OF PERFORMANCE**

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.

- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

#### **ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR**

*All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.*

#### **ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP**

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

To the extent necessary to fulfill its billing and collection efforts under this Contract, the Contractor is authorized to sign in an administrative capacity for the County for the following types of standard forms and correspondences: probate matters; letters to patients and patient representatives; verification of tax-exempt status of the County, and; third party payer forms and filings. This authority is granted at the County's sole discretion and can be withdrawn at any time the County deems necessary. The Contractor will be notified in writing of the withdrawal of this authority.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

#### **ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER**

- a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of

- the Scope of Services; and claims for damages, compensation and losses.
- b) The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
  - c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
  - d) In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises.
  - e) The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

#### **ARTICLE 15. MUTUAL OBLIGATIONS**

- a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

#### **ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING**

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope Of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

#### **ARTICLE 17. AUDITS**

The Contractor agrees that the County or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, and shall only address those transactions related to this Agreement.

The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

#### **ARTICLE 18. SUBSTITUTION OF PERSONNEL**

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

#### **ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT**

The Contractor shall not assign, transfer, convey or otherwise dispose of this

Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

#### **ARTICLE 20. SUBCONTRACTUAL RELATIONS**

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b.) Contractor shall not allow its Subcontractors to provide offshore labor without the consent of the County.

#### **ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS**

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

#### **ARTICLE 22. SEVERABILITY**

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

#### **ARTICLE 23. TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK**

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

- d) The Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
- i. stop work on the date specified in the notice ("the Effective Termination Date");
  - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
  - iii. cancel orders;
  - iv. assign to the County and deliver to any location designated by the County any noncancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
  - v. take no action which will increase the amounts payable by the County under this Agreement; and
- e) In the event that the County exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:
- i. portion of the Services completed in accordance with the Agreement and the Work Order up to the Effective Termination Date; and
  - ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and Work Order and has been specifically developed for the sole purpose of this Agreement Work Order but not incorporated in the Services.
- f) All compensation pursuant to this Article are subject to audit.

#### **ARTICLE 24. EVENT OF DEFAULT**

- a) An Event of Default shall mean a breach of this Agreement by the Contractor.

Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:

- i. the Contractor has not delivered Deliverables on a timely basis.
  - ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;
  - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
  - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
  - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
  - vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;
  - vii. the Contractor has failed in the representation of any warranties stated herein.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the time frame set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:
- i. treat such failure as a repudiation of this Agreement;
  - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

#### **ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION**

If an Event of Default occurs, in the determination of the County, the County will notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured within a reasonable time frame; not to exceed ninety (90) days from the time of the Default Notice or, this Agreement with the

County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

#### **ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT**

If an Event of Default occurs, provided that the Contractor has been afforded the opportunity to cure the Event of Default and mitigate its risk of damages under this clause, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for re-procurement of Services, including procurement and administrative costs; and,
- c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default.

The County may also bring any suit or proceeding for specific performance or for an injunction.

#### **ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION**

- a) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.
- b) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.
- c) In the event any Deliverable or anything provided to the County hereunder, or

- portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- d) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.
- e) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

#### **ARTICLE 28. CONFIDENTIALITY**

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the

Confidential Information.

- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

#### **ARTICLE 29. PROPRIETARY INFORMATION**

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledge that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the contractors will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

#### **ARTICLE 30. PROPRIETARY RIGHTS**

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the

Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.

- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.
- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

### **ARTICLE 31. BUSINESS APPLICATION AND FORMS**

**Business Application** The Contractor shall be a registered vendor with the County –

Department of Procurement Management, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

#### **ARTICLE 32. INSPECTOR GENERAL REVIEWS**

##### Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

##### **Miami-Dade County Inspector General Review**

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment

shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

### **ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS**

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

#### **ARTICLE 34. NONDISCRIMINATION**

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract with the County, the Contractor attests that it is not in

violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

#### **ARTICLE 35. CONFLICT OF INTEREST**

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
  - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
  - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set

forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

#### **ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION**

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

#### **ARTICLE 37. BANKRUPTCY**

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

#### **ARTICLE 38. GOVERNING LAW**

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida.

#### **ARTICLE 39. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION**

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "Individually Identifiable Health Information

(IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

#### **ARTICLE 40. SURVIVAL**

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

#### **ARTICLE 41. FUTURE CONSIDERATIONS**

The County at its sole discretion, at any time during the initial contract term and extensions thereof elect to add additional services through a supplemental agreement to this Contract. These services may include EMS Billing for Air Transports, Key Punch / Data Entry, Ambulance Subscription Program, electronic billing, or other projects as needed to continue optimal performance on this contract. The details of these additional services contracted under a supplement agreement will be negotiated and mutually agreed upon by both parties. The County reserves the right to compete these services under separate solicitations for full and open competition as required.

#### **HEALTHEMS Option**

ADPI can offer to the County an option during the first year of the contract to implement the HEALTHEMS system from ScanHealth, Inc. at a charge of \$1.50 per incident. Should the County exercise this option, ADPI will provide one scanner to the County at no charge. HealthEMS will provide sufficient supply of paper incident reports and will provide to the County, access to the HEALTHEMS system for scanning, data analysis, and State reporting. HEALTHEMS will export billing data to ADPI. The County will be responsible for analyzing the quality of the scanning prior to importing it into the HEALTHEMS database or, the County may engage ADPI to perform this service for an additional fee of \$1.00 per incident report.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Contractor

Miami-Dade County

Advanced Data Processing, Inc.

By: [Signature]

By: \_\_\_\_\_

Name: Doug Shamon

Name: \_\_\_\_\_

Title: President

Title: \_\_\_\_\_

Date: 11/13/2006

Date: \_\_\_\_\_

Attest: [Signature]  
Corporate Secretary

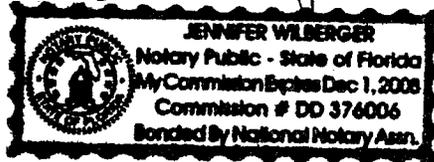
Attest: \_\_\_\_\_  
Clerk of the Board

Corporate Seal

Approved as to form  
and legal sufficiency

[Signature]  
Assistant County Attorney

Personally known



# **Appendix A**

## **Scope of Services**

## **BACKGROUND**

Miami-Dade Fire Rescue (MDFR) transports approximately 55,000 patients annually. EMS personnel arrive on the scene to provide emergency medical care, rescue services, and ambulance transportation to local hospitals. These incidents are documented by crews using paper based incident reports. The original incident report is sent to MDFR's Central Records Bureau where they will be separated, scanned and indexed for subsequent storage and retrieval. Report copies are picked up at Central Records by an authorized courier agreed to by the MDFR and Advanced Data Processing Inc. (ADPI). ADPI and MDFR will have a prearranged pick up schedule for dispersing patient care reports to ADPI's Miami headquarters. Report copies will also be sent to a data entry vendor who transcribes the data from the incident reports into a database for MDFR's use, reporting, and statistical analysis.

## **PROCESS**

ADPI billing and collection services will be segmented into distinct processes from Patient Care Report (PCR) creation to reporting and will be guided by compliant account management. Each step in the process has objectives that contribute to the maximization of revenue for each transport. ADPI's current Regional Manager, Patty Heuberger, will lead the processing team and manage all related patient accounts. The following four phases will be followed by ADPI to satisfy the requirement of the County for this Contract:

**Phase 1 The Front End Process** : Including PCR creation and PCR transformation.

### Objectives:

1. To capture all EMS transports and bill them within 24 hours of receipt.
2. To ensure the transport encounter has been properly coded and priced with medical necessity determination, thus, resulting in the maximum allowable reimbursement for all services provided by EMS staff.
3. To ensure absolute compliance with all federal, state and local regulations.
4. To create "clean claims," resulting in fee recovery in the fastest possible manner.
5. To place insurance carriers as the primary guarantor and patients as the secondary.

For the PCR creation and transformation process, a number of systems and tools will be utilized. Incident information will be provided to ADPI via paper PCRs received from MDFR. Paper batch reports will be picked up by an approved courier service at the scheduled weekly pick-up times. PCR information will be keyed manually into the ADPI system. All data will then be imported into QClaim, ADPI's proprietary software, where PCR transformation occurs.

## **Phase 2 The Billing Process**

### Objectives:

1. File a clean claim within 24 hours of completion.

2. Electronically file as many third party payees as possible.
3. Bill patients on a timely basis.

Once accounts are updated, invoices / statements are generated and mailed if the patient is deemed to be the guarantor. Invoices contain, in addition to accurate charges for services, a request for patient insurance information and instructions on how to provide such information. Insurance information can be provided by patients via mail (with enclosed courtesy return-payment envelope), through a dedicated phone line or on ADPI's secure patient website [www.ernsclaims.net](http://www.ernsclaims.net).

### **Phase 3 Payer Response**

#### *Objectives:*

1. Post payments and balance to bank lock box totals within 24 hours of receipt.
2. Provide appropriate account level payment detail within 48 hours of receipt.
3. Provide effective customer service to patients who contact ADPI office.
4. Provide timely and effective response to payer's denial or request for additional information.

ADPI will maintain all Miami-Dade County PCR and payment records for the duration of the Contract. ADPI will create scanned copies from all paper PCRs sent by the County and filed by cash receipt date and kept in chronological sequence along with deposit reconciliation. Copies of specific documents will be provided to the County upon request. All records are considered Miami-Dade County property and will be returned upon completion or termination of the contract.

### **Phase 4 Account Resolution**

#### *Objective:*

To achieve maximum compliant reimbursement for MDFR on every transport.

Account Resolution will consist of:

1. Insurance follow-up
2. Patient account resolution.

Insurance Follow-up: ADPI will apply its proprietary edit processes to all claims prior to submission. In the event a claim is denied, an accounts receivable analyst will/may take some of the following actions:

1. Obtain additional information and re-file the claim.
2. Contact payers via telephone to determine appropriate course of resolution.
3. Follow a formal appeals process with appropriate payer.
4. Request assistance from the Reimbursement Department.
5. Reclassify account as patient's responsibility and bill as a self-pay.

Each claim will be handled individually. If a claim has not been paid, denied, or rejected, ADPI accounts receivable group will review each account following the guidelines / deadlines listed below.

1. Medicare-30 days after filing.
2. Medicaid-30 days after filing.
3. Commercial Insurance-45 days after filing.

Patient Accounts Follow-up: Several billing cycles will be managed by ADPI system to produce maximum collections. Regular monthly cycle billing will be performed on self-pay accounts and accounts showing a patient pay balance. ADPI system will handle routine invoicing for payment arrangements as well as generation of messages for slow or, no pay accounts.

After initial billing, ADPI may attempt to contact the patient via phone if there has been no activity on the account. ADPI will follow a "soft" collection approach that focuses primarily on obtaining additional insurance information and providing a gentle reminder of the patient's obligation to pay the account.

Delinquent Account Collections: ADPI will send collection accounts to the Miami-Dade County, Finance Department for further processing. The County's internal collections department will process claims thereafter.

### **SCOPE OF SERVICES**

ADPI is a qualified, professional EMS billing vendor with expert knowledge, ample resources, and a track record of success to implement a best-practices solution for revenue cycle management and agrees to perform all requirements set forth in Miami-Dade's RFP No. 516, as well as those detailed in this Scope of Work document (Appendix- A). ADPI assures that it is the best-fit, risk-minimizing solution for Miami-Dade County.

#### **2.2 REQUIREMENTS / RESPONSIBILITIES OF CONTRACTOR**

- 2.2.1 Contractor shall invoice patient, or other third party, responsible at the current prevailing rate on the approved fee scheduled for payment of services rendered.
- 2.2.2 Contractor shall provide HIPAA privacy practices requirements to all patients transported.
- 2.2.3 Contractor shall participate in a yearly audit conducted by MDRF consistent with Generally Accepted Accounting Principles – GAAP. This audit will cover the common set of accounting principles, standards and procedures used to compile annual financial statements.
- 2.2.4 Contractor shall provide, on a monthly basis, a copy of all monthly financial activity, billing and receivable reports, consistent with GAAP on the MDRF account.

- 2.2.5 Contractor shall negotiate and arrange modified payment schedules for those individuals unable to pay the full amount at time of initial billing.
- 2.2.6 Contractor shall post all payments directly to a designated Lockbox. MDFR will provide the lockbox service.
- 2.2.7 Contractor shall provide Customer Service Representatives (CSR's), available during MDC normal business hours, which are able to read, write and speak fluently in English, Spanish and Creole. These CSR's shall be able to assist patients and/or other third party payees in all billing inquiries in a timely fashion. Customer calls will be facilitated as local within the County or through an "800" exchange, which will be published on all invoices.
- 2.2.8 Contractor shall conduct any follow-up required to obtain the necessary insurance information to process invoices for payment. Record of telephone calls and contact shall be maintained and any payment on an account shall be recorded per account.
- 2.2.9 Contractor shall accept the hard copy or electronic information pertaining to patients' pay or billing documentation from the County for all patients transported by Miami-Dade Fire Rescue Department.
- 2.2.10 Contractor shall be responsible for the invoicing, collection, and generation of any and all insurance forms and filings, record maintenance and preparation of standard and/or custom reports, as requested or required by MDFR Department.
- 2.2.11 Contractor shall provide all invoices and related insurance forms with remittance advice.
- 2.2.11.1 The invoices for services rendered shall contain the following information:
- Account number
  - Invoice number and date
  - Name of transported patient
  - Name of responsible party, if different from patient
  - Complete patient address
  - Date of Transport
  - Cost of transport including cost breakdown
  - Incident number ("Run" number provided by MDFR)
  - Transport from and to including (if applicable)
  - Insurance coverage and instructions (if applicable)
  - Billing inquiry telephone number
- 2.2.11.2 The invoice shall also contain a message stating:

- "...all checks must be made payable to the "Board of County Commissioners Miami-Dade Fire Rescue Department"
  - "...this is an invoice for services provided by Miami-Dade Fire Rescue". {Contractor shall provide sample}
- 2.2.11.3 All invoicing and reporting systems shall be automated.
- 2.2.11.4 Return envelopes shall be addressed as designated by the MDFR Department.
- 2.2.12 Contractor shall be responsible for the mailing of all invoices, forms and citizen surveys and be paid by the Contractor.
- 2.2.13 Contractor shall be responsible for sending a notice at thirty (30) days, a second notice at sixty (60) days and a third notice at ninety (90) days.
- 2.2.14 Contractor shall provide MDFR Department with a listing of accounts containing all pertinent facts related to the account in a written and electronic format with the latest version of Excel when an account falls 180 days or more past due.
- 2.2.15 Contractor shall mail proper insurance forms or electronic process to third party payers as required or requested by the patient. Either method shall include information on where to send payments to MDFR Department.
- 2.2.16 Contractor shall respond promptly to all patient requests and inquiries, either written or verbal. This communication needs to be in a format that can be tracked by both vendor and County upon request.
- 2.2.17 Contractor shall comply with all applicable Federal, State and local laws as they apply to the services being provided, such as, but not limited to, the Federal Debt Collection Practices Law. This further includes all requirements to maintain confidentiality for all medical and patient information as related to insurance and local laws or rules and regulations.
- 2.2.18 Contractor shall maintain any and all documentation, records and patient information in a safe and secure manner that will allow inspection and audit by the MDFR Department or its agents upon proper notification.
- 2.2.19 Contractor shall provide Electronic Claims Processing for Medicare and Medicaid.
- 2.2.20 Contractor shall provide and furnish all materials and personnel required for the performance of the contract.
- 2.2.21 Contractor shall make every effort to locate and correct any incorrect billing address for billable patients.
- 2.2.22 Contractor shall maintain a working arrangement with all of MDFR Department serviced hospitals and request that hospitals provide a copy of patient face

sheets or be provided with demographic and insurance information.

- 2.2.23 Contractor shall include in the invoice mailing a citizen satisfaction survey provided by MDFR and a return, self-addressed and postage paid envelope, which will be provided by Miami-Dade Fire Rescue Department. Said survey is expected to be no more than one page in length and of a size not to exceed 8 1/2 by 11 inches.
- 2.2.24 Contractor shall provide training to appropriate Miami-Dade Fire Rescue personnel regarding the gathering of necessary information and proper completion of Rescue Patient Records.
- 2.2.25 Contractor shall limit the use of confidential records of care or treatment of patients solely for the purpose of processing and collecting claims and shall not release any such information in any legal action, business dispute or competitive bidding process other than disputes with the County over billing services.
- 2.2.26 Contractor shall be prepared to assess service levels prior to billing and classify services into levels that meet Medicare and Medicaid transport criteria. These service levels may, in a limited number of cases, differ from what is indicated on internal documents based upon interpretation and must be brought to Miami-Dade Fire Rescue's attention to determine if changes may be necessary. The awarded vendor assumes all responsibility for Medicaid or Medicare audits.
- 2.2.27 Contractor shall designate a contract coordinator responsible for all matters related to the Contract.
- 2.2.28 Contractor shall provide all necessary developing, copying, faxing, mailings and all other such related services.
- 2.2.29 Contractor shall maintain records of current fees; industry approved billing codes, and description files. Maintain up to date knowledge of laws applicable to billing of patients for transports. Maintain knowledge of nationwide and local trends in transport fee schedule.
- 2.2.30 Contractor shall submit the following reports no later than the 30<sup>th</sup> day of the following month or more frequently as required:
- 2.2.30.1 Distribution of Charges and Collections - This report will track the charges, payments and financial class mix of all patients for a given month.
  - 2.2.30.2 Aged-Receiveable Report - This report will have outstanding invoices sorted by date with amounts for thirty days, sixty days, and ninety days. This report will provide totals for these categories.
  - 2.2.30.3 New Charges Alpha Listing - This report lists all invoices alphabetically by patient name or responsible payers.
  - 2.2.30.4 Payment Listing - This report lists payments, bad checks, charge

off, write off and refunds posted to each patient's account.

2.2.30.5 Check Edit Listing - This report lists all patients due refunds as a result of overpayment of accounts.

2.2.30.6 Class Listing - This report will report accounts as mail returns, deceased patients, accounts in bankruptcy cases, probate cases, insurance responsibility and self pay accounts.

2.2.31 Contractor shall select one of two ways to obtain report batches containing patient data and billing information:

2.2.31.1 Contractor shall pick-up the paper batch reports at scheduled mutually agreed times from the Miami-Dade Fire Rescue Central Records Bureau.

2.2.31.2 Contractor shall receive a daily electronic report batch containing patient data and billing information through a File Transfer Protocol (FTP) transmission from Miami-Dade Fire Rescue to a secure Vendor website. If the electronic Batch submission is selected, the vendor shall accept the electronic Reports in TIFF format. Field data provided by Miami-Dade Fire Rescue Department via electronic transfer shall have an agreed upon encryption scheme to protect that data from casual interception and inspection by unauthorized person(s).

### 2.3 REQUIREMENTS / RESPONSIBILITIES OF CONTRACTOR

2.3.1 Contractor shall provide a sample format, as referenced in Section 2.2.4.

2.3.2 Contractor shall provide a percentage scale, as referenced in Section 2.2.6. This will be negotiated at time of contract negotiations.

2.3.3 Contractor shall provide a description and history of the firm focusing on previous governmental experience. The firm should have at least five years of experience in Ambulance Transport Billing and Collections with at least two years in government accounts billing and collections and provide evidence of such experience.

2.3.4 Contractor shall provide documentation of average recovery rate for the past two (2) years.

2.3.5 Contractor shall provide the following sample documents:

2.3.5.1 Distribution of Charges and Collections reports. These reports will track the charges, payments and financial class mix of all patients for a given month.

2.3.5.2 Aged-Receiveable Report - This report will have outstanding invoices sorted by date with amounts for thirty days, sixty days, and ninety days. This report will provide totals for these

categories.

- 2.3.5.3 New Charges Alpha Listing - This report lists all invoices alphabetically by patient name or responsible payers.
  - 2.3.5.4 Monthly Payment Listing - This report lists payments, bad checks, charge off, write off and refunds posted to each patient's account.
  - 2.3.5.5 Check Edit Listing - This report lists all patients due refunds as a result of overpayment of accounts.
  - 2.3.5.6 Class Listing - This report will report accounts as mail returns, deceased patients, accounts in bankruptcy cases, probate cases, insurance responsibility and self pay accounts.
- 2.3.6 Contractor shall provide a brief description of the firm's approach to this overall project. Currently, the MDFR's Central Records Bureau collects, reviews, separates and batches Emergency Medical Services (EMS) reports completed by field personnel. The reports are then scanned and indexed into the department's Electronic Document Management System. The batch paper reports are picked-up by the present vendor on site.

## **2.4 RESPONSIBILITIES OF MIAMI-DADE FIRE RESCUE DEPARTMENT**

- 2.4.1 The MDFR Department will provide the necessary patient information for those patients that have been transported by Miami-Dade Fire Rescue Department to the ADPI on a weekly basis.
- 2.4.2 The MDFR Department will comply with all Federal, State and local laws, rules and regulations as applicable to the contracted services.
- 2.4.3 The MDFR Department will make every effort to obtain the proper billing address for all billable patients prior to forwarding said information to the successful Contractor.

## **2.5 TURN OVER OF OLD/AGING ACCOUNTS**

All old or aging accounts will be reviewed on a monthly basis by ADPI, those accounts deemed non-collectible, inactive, and self-paid will be turned over by ADPI to the County at twelve (12) months, if not before, for further collection efforts. Returned mail deemed non-collectible will be turned over immediately to the County for further action. Those accounts deemed active or self-paid will not be turned over at twelve months; ADPI will continue to collect on behalf of the County for these accounts.

### Definitions:

- Active accounts are defined as: prospects of payment, insurance claim patient, or other third party claim (i.e. Workers Compensation, Motor Vehicle, etc.)
- Inactive accounts are defined as: non-insured, self-pay patients not covered by insurance.

**2.6 ADPI ROLES/RESPONSIBILITIES - DURING CONTRACT TERM****Doug Shamon: Project Oversight**

Mr. Shamon will provide overall leadership, overseeing ADPI contract performance to ensure client satisfaction. Mr. Shamon will also work with Customer on implementation of revenue strategies and policies to achieve EMS revenue goals.

**Bill DeZonia: Project Oversight**

Mr. DeZonia, Chief Operating Officer, will oversee all billing operations and account management. He will ensure your revenue is optimized and devise compliant strategies to enhance collections.

**Joe McCloskey: Compliance and Quality**

Mr. McCloskey, Vice President – Compliance and Quality Assurance, will continually monitor all compliance efforts and ADPI's systems, procedures, and processes.

**Jack Donahue: Technology and Integration**

Mr. Donahue, Vice President-Information Technology, with the assistance of Joe Belfer, Senior Programmer / Analyst, and his IT team, will manage the implementation of any technology integrations. All County integration points are currently in place and operating within the ADPI system.

**David Poole: Reimbursement**

Mr. Poole, Vice President-Reimbursement and Process Improvement, and his team will ensure proper reimbursement, audit incoming payments, and maintain a dedication to maximizing reimbursement from self-pay accounts.

**Patty Heuberger: Accounting Management**

Mrs. Heuberger, Regional Director, will be the primary contact for Miami-Dade County, attending all meetings and overseeing all reporting.

**Misrak Tedla: Daily Operations**

Ms. Tedla, Account Manager, will manage the daily operations. Her regional department, with the support of ADPI's resources, will work with your EMS staff regarding daily activities.

# **Appendix B**

# **Price Schedule**

### **ADPI PERCENTAGE FEE AND MEDICAID PROCESSING FEES**

For all billing and collection services related to ambulance transport and emergency fees completed under contract RFP516, the fee paid to ADPI will not exceed the base charge of 5.5%. This calculation is based on the number of Modified Net Collections plus the Medicaid Processing Fee for each eligible account processed (including Medicaid secondary accounts) for the entire term of this Contract including any renewals or extensions. Modified Net Collections is defined as the total monthly EMS deposits minus refunds and deposits received from Florida Medicaid, calculated on a monthly basis.

The Processing Fee paid to ADPI shall be calculated based on the following criteria:

- For each Billing Month, ADPI shall report to MDFR the total 'Dollars Billed' in the previous Billing Month.
- For each Billing Month, ADPI shall report to MDFR, the total dollar value of the 'Modified Net Collections' pertaining to the previous Billing Month.
- MDFR shall calculate the Percentage Collection for the month using the formula:  

$$\text{Percentage Collection} = \frac{\text{'Modified Net Collection' for the Month}}{\text{'Dollars Billed' for the Month}}$$

#### **ADPI Fee Schedule:**

- ADPI Fee shall be 5.0% if the Percentage Collection is up to 63%
- ADPI Fee shall be 5.25% if the Percentage Collection is between 63% - 65%
- ADPI Fee shall be 5.5% if the Percentage Collection is over 65%

For the purposes of determining the ADPI Fee, the Percentage Collection shall be computed on a 12-month lag. For Example; The ADPI Fee for July 2006 will be paid by the County in July 2007 at the completion of the 12-month lag - based on the total Modified Net Collection for the Month of July 2006. ADPI will be entitled for the maximum Fee of 5.5% if, at anytime thereafter, ADPI exceeds the total Percentage Collection of 65% for that specific month.

#### **Medicaid Processing Fee Schedule:**

- \$7.50 per account during initial five (5) year term of the Contract for all eligible accounts,
- \$10.00 per account during first five year Option to Renew (OTR) of RFP516,
- \$12.50 per account during second five year Option to Renew (OTR) of RFP516.

*\* All Medicaid Processing Fees listed above are fixed rates that are not subject to increase over the term of this agreement.*

### **INCENTIVE COMPENSATION**

In addition to the base charge and the Medicaid Processing Fee, ADPI will be entitled to incentive compensation where the Modified Net Collections exceeds 65% on an incident month basis. ADPI will be entitled to keep the first \$10,000 collected over the 65%. After

achieving 65% collection; any collections made by ADPI over \$10,000 will defer back to the 5.5% collection rate for the County.

**EMERGENCY MEDICAL SERVICES RATE SCHEDULE**

Current County Fees:

Description	Amount
ALS1	\$380
ALS2	\$490
Specialty Care Transport	\$600
Basic Life Support	\$330
Oxygen	\$30
IV Solution	\$25
Back Board	\$25
Cardiac Monitoring	\$25
Mileage	\$7.50

**WEISS SEROTA HELFMAN  
PASTORIZA COLE & BONISKE, P.A.  
ATTORNEYS AT LAW**

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NINA L. BONISKE  
MITCHELL J. BURNSTEIN  
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DAVID M. WOLPIN

LYNN M. DANNHEISSER  
IGNACIO G. DEL VALLE  
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LILLIAN ARANGO DE LA HOZ<sup>o</sup>  
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JEFF P.H. CAZEAU  
RAQUEL ELEJABARRIETA  
CHAD FRIEDMAN

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\*OF COUNSEL

December 14, 2006

GREGORY A. HAILE  
JOHN J. KENDRICK III  
KAREN LIEBERMAN<sup>o</sup>  
JOHANNA M. LUNDGREN  
ANDREW W. MAJ  
MATTHEW H. MANDEL  
PAMI MAUGHAM  
ALEXANDER L. PALENZUELA-MAURI  
YUNIOR PIÑEIRO  
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SCOTT A. ROBIN  
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MICHAEL L. STINES  
JOSE S. TALAVERA  
STEVEN E. TAYLOR  
JAMES E. WHITE  
CLINTON A. WRIGHT III<sup>o</sup>

**VIA HAND DELIVERY**

Clerk of the Board  
Stephen P. Clark Center  
111 NW 1<sup>st</sup> Street, 17<sup>th</sup> Floor,  
Suite 202  
Miami Florida 33128

**RE: PER SE TECHNOLOGIES, INC. BID PROTEST OF AUGUST 17, 2006, RECOMMENDATION OF AWARD OF CONTRACT FOR RFP NO. 516 FOR EMERGENCY MEDICAL TRANSPORT BILLING AND COLLECTIONS SERVICES**

Dear Sir or Ma'am:

This firm represents Per Se Technologies, Inc. ("Per Se") in the above referenced matter.

Pursuant to Section 2-8.3 and 2.8.4 of the Code of Miami Dade County, Administrative Order 3-21 and the RFP, please find attached, Per Se's Formal Bid Protest of the above-referenced procurement, along with the required Bid Protest Bond. We have also attached a copy of the bid protest and exhibits for the Hearing Examiner.

Please note that while Per Se relies on all documents already on file to support this Bid Protest, to avoid unnecessary duplication of documents we have not attached the entire file. However, please consider all documents in the file, including all proposal's, scoring sheets, etc. incorporated to this Bid Protest by reference.

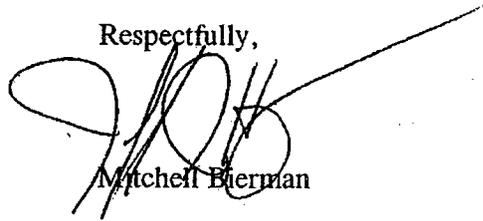
MEMBER OF THE BOARD  
2006 DEC 14 AM 11:27  
CLERK, CIRCUIT COURT  
DADE COUNTY, FLA.  
#1

96

Clerk of the Board  
December 14, 2006  
Page 2

Please do not hesitate to contact me should you have any questions.

Respectfully,

A handwritten signature in black ink, appearing to be "Mitchell Bierman", written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

Mitchell Bierman

MB/lq

47

WEISS SEROTA HELFMAN  
PASTORIZA COLE & BONISKE, P.A.

CLERK OF THE BOARD HARVEY RUVIN, CLERK OF THE BOARD

2006 DEC 14 PM 1:59

CLERK, CIRCUIT COUNTY COURTS  
DADE COUNTY, FLA.  
#1

IN RE: THE PROTEST OF  
AUGUST 17, 2006  
RECOMMENDATION OF  
AWARD OF CONTRACT FOR  
RFP NO. 516 FOR EMERGENCY  
MEDICAL TRANSPORT BILLING  
AND COLLECTION SERVICES

PER-SE TECHNOLOGIES, INC.,

Petitioner,

v.

MIAMI-DADE COUNTY,  
a political subdivision of  
The State of Florida,

Respondent.

**PETITIONER PER-SE TECHNOLOGIES, INC.'S  
FORMAL WRITTEN BID PROTEST AND  
INCORPORATED MEMORANDUM OF LAW**

Petitioner, PST Services, Inc d/b/a Per-Se Technologies, Inc. ("Per-Se"), by and through its undersigned counsel and pursuant to Sections 2-8.3 and 2-8.4 of the Code of Miami-Dade County (the "Code") and Administrative Order 3.2.1 hereby files the instant Formal Written Bid Protest to the Recommendation of Award of Contract to ADVANCED DATA PROCESSING, INC. ("ADP") in the above referenced matter and in support thereof states the following:

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## I. STANDING

Per-Se is a responsible, responsive proposer to RFP No. 516 (the "RFP"). See Report of Selection Committee attached as Exhibit "A". Per-Se was rated the second highest proposer. *Id.*

As a responsible and responsive participant in this RFP process, Per-Se has a "substantial interest" in the decision to award the contract. See *Silver Express Co. v. District Board of Lower Tribunal Trustees of Miami*, 691 So.2d 1099 (Fla. 3d DCA 1997) citing *Preston Carroll Co., Inc. v. Florida Keys Aqueduct*, 400 So.2d 524 (Fla. 3d DCA 1981).

## II. STATEMENT OF FACTS

1. In March 2006, Miami-Dade County (the "County") advertised the RFP seeking proposals from responsive and responsible firms to establish a contract for the purpose of billing and collecting funds from patients for emergency medical transportation rendered by the County. See RFP attached as Exhibit "B".

2. On or around August 17, 2006, a Selection Committee, chosen by the County, met to evaluate the proposal received in response to the RFP. Although dated August 17, 2006, the Selection Committee's report was not released until December 8, 2006.

3. In its report, the Selection Committee announced that the County had chosen ADP as the successful bidder on the RFP.

4. Per-Se has filed this bid protest because the Selection Committee acted unreasonably, arbitrarily and capriciously and conferred on ADP an unfair competitive advantage when it selected ADP as the successful bidder.

5. Specifically, the RFP provided directions on preparing a responsive proposal package and required all proposals to include a Technical Proposal and a Price Proposal. *See* RFP § 3.3.

6. Pursuant to the RFP, contract award would be based on two evaluation phases: Technical (Quality) and Price. *See* RFP § 4.1. Each proposal would be evaluated and ranked by Selection Committee Members based on six weighted criteria totaling one hundred points for each Committee Member.

7. Price was assigned a maximum of 35 points per each Selection Committee member. The responsive proposal with the lowest total price would be given the full weight of the points assigned to the price criteria. *See* RFP § 4.2. Every other proposal would be given points proportionately in relation to the lowest price. The point total would be calculated by dividing the lowest price by the total price of the proposal being evaluated with the result being multiplied by the maximum weight for price to arrive at a cost score of less than the full score for price. *Id.*

8. The RFP provided the following formula to calculate price:

$$\frac{\text{Lowest Price Proposed}}{\text{Proposer's Proposed Price}} \times \text{Total Points for Price} = \text{Price Score.}$$

9. The lowest price proposed would be determined from the figures provided by proposers on the Form B-1 Price Sheet. The County provided the following formula on Form B-1: REVENUE – CHARGE = NET.

10. If a proposer wished to submit an alternative pricing, the proposer was required to first submit pricing in accordance with Form B-1 and then include a separate alternative pricing labeled “ALTERNATE PRICING” on the first page of the alternative pricing. RFP § 3.2(8).

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11. Significantly, proposers who did not submit pricing in accordance with Form B-1 would not receive any evaluation points for the Price/Cost portion. *Id.* Additionally, the alternate pricing would not be scored. *Id.*

12. ADP, apparently concerned with the evaluation method for price proposals, submitted the following question which was published in Addendum # 3 to the RFP:

Finally, the formula entices Proposers to pick a high Revenue number. For example sake only, please assume a Proposer fills out B-1 with \$1 billion in Revenue and \$100 million in Charges. The resulting \$900 million in Net may yield the highest net proposed, but surely it only results in gaming the formula, not in providing the Most Advantageous Deal to the County. It was suggested during the pre-bid conference that some criteria be established to ensure the revenue estimate is "reasonable". But reasonable could vary by millions based on reasonable assumptions with no assurance that this level of performance will be achieved. Without specific assumptions objectively provide by the County, a Proposer could assume any kind of fee increase, any level of transport volumes, and payer mix, and could include projected helicopter transports while still being "Reasonable". Because any "projection" of revenue cannot be proved, nor can the ability of the Proposer to achieve it, this does not seem to lend itself to objective evaluation nor do we believe it is in the best interest of the County. How will the County ensure a fair and appropriate scoring of pricing points given these issues?

RFP Addenda 3, pg. 7.

13. In response to ADP's concern, the County answered that "[v]endors are to provide fair and reasonable figures based on proven transports and collections from their structured business practices and transport information received. Past history figures will help the Selection Committee obtain relevance in awarding points." *Id.* (emphasis added.)

14. That the Selection Committee and Staff would review proposers' past history was specifically discussed in the RFP which required proposers to "[p]rovide documentation of average recovery rate for the past two (2) years." RFP § 3.2(6)(c). The

RFP also provided that, in accordance with County Ordinance No. 98-42, "a Bidder's or Proposer's past performance on County Contracts be considered in the selection of Consultants and Contractors for future County Contracts." RFP § 3.2(6)(f).

15. Ironically, the scenario which ADP described in the Question reproduced above, is exactly what happened here. While 7 responsive proposers projected revenue between \$10 million dollars and approximately \$17 million dollars for the first year of the contract, ADP projected revenue of \$140 million dollars for 5 years, and included unsupported assumptions regarding increased fees and helicopter services which were not authorized by the RFP. *See* Price Proposals attached as Composite Exhibit "C".

16. Along with its Form B-1, ADP also attached a seven page explanation of its price proposal. *See* ADP Price Proposal Explanation attached as Exhibit "D". In the explanation, ADP identified some of the assumptions that it had relied on to reach its projected revenue figure. *Id.* These assumptions included projected annual future increases in Miami-Dade Fire Rescue Service Fees, Transport Volumes, Payer Mix and Medicare allowables. ADP also assumed future revenue from helicopter transports. The future increases projected by ADP were not authorized by the RFP and helicopter transports were not within the scope of service of the RFP. *See* RFP § 2.1.

17. Accordingly, because ADP did not submit pricing in accordance with Form B-1, the Selection Committee should not have assigned any evaluation points to ADP for the Price/Cost portion of its proposal. *See* RFP § 3.2(8). Additionally, because ADP's seven-page explanation of its price proposal was not in the proper alternate pricing format, it should not have been considered or scored by the Selection Committee.

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18. However, rather than follow the clear requirements of the RFP, the Selection Committee and Staff engaged in the questionable and unauthorized practice of trying to fix ADP's price proposal. In order to make ADP's numbers conform to the requirements of the RFP, the Selection Committee and/or Staff manipulated ADP's price proposal figures and made unwarranted assumptions to arrive at the 1 year net revenue figure of \$20,472,884 for ADP. It is unclear how the Selection Committee and/or Staff arrived at \$20,472,884, since ADP itself only projected net revenue of \$18,631,660 for fiscal year 2007 when not counting helicopter transports.<sup>1</sup> See ADP Price Proposal Explanation at pg. 2.

19. However, even if ADP's proposal had been evaluated based on its first year projected revenue of \$18.6 million (which was not on its Form B-1, but rather in its 7 page addendum) it would have been improper since the \$18.6 million figure was completely unsupported by anything in ADP's proposal or its past performance on the same county contract.

20. ADP is the incumbent vendor on this contract. ADP's total actual collections for the past fiscal year were only \$11,739,515. This figure is nearly \$7 million dollars less than ADP's projections for fiscal year 2007 and nearly \$9 million dollars less than the Selection Committee's projection for ADP. See RFP Addenda #1. The Selection Committee and County Staff simply had no rational basis for accepting ADP's

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<sup>1</sup> This figure still contained other assumptions including the 3% user fee increase. Apparently the County Staff or Selection Committee subtracted a portion of ADP's estimate to account for helicopter transports that were not part of this RFP.

outrageous and unsupported projection of \$18.6 million for the first year, much less, supplying the even more overly aggressive figure of \$20,472,884.<sup>2</sup>

21. Contrary to the RFP and Addenda # 3, the Selection Committee and Staff apparently accepted ADP's figures without ever reviewing ADP's past history to determine whether proposed figures were "fair and reasonable figures based on proven transports and collections". See RFP Addenda 3, pg. 7.

22. The Selection Committee and Staff acted unreasonably, arbitrarily and capriciously by manipulating ADP's pricing figures and by failing to abide by the process set forth in the RFP for evaluating proposals. Had the Selection Committee and Staff followed the RFP, Per-Se would have been the highest ranked proposer. These actions conferred an unfair competitive advantage to ADP.

#### **IV. ARGUMENTS AND INCORPORATED MEMORANDUM OF LAW**

Florida's competitive bid statutes were enacted for the benefit and protection of the public in that they are intended to ensure that the public receives the lowest and best price for goods and services. *Miami-Dade County School Board v. J. Ruiz School Bus Service, Inc.*, 874 So.2d 59 (Fla. 3d DCA 2004). While a public authority has wide discretion in award of contacts on competitive bids, such discretion must not be exercised arbitrarily or capriciously. See *City of Sweetwater v. Solo Construction Corp.*, 823 So.2d 798-802 (3d DCA 2002). The test for measuring whether a deviation in a bid is

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<sup>2</sup> Moreover, by failing to supply such a high projection for the other 7 proposers, particularly Per Se, which was ranked considerably higher on qualifications than ADP, the County conferred an unfair competitive advantage on ADP. It is particularly illogical and arbitrary for the County to presume a higher projected collection figure for ADP when its technical score was lower than Per Se's. Logically, a higher technical score would indicate a greater ability to collect fees.

sufficiently material to destroy its competitive character is whether the variation affects the amount of the bid by giving the bidder an advantage or benefit not enjoyed by the other bidders. *Harry Pepper & Associates, Inc. v. City of Cape Coral*, 352 So.2d 1190, 1193 (Fla. 2d DCA 1977).

Here, the County acted in an unreasonable, arbitrary and capricious manner and afforded ADP an unfair advantage by accepting ADP's non-conforming price proposal, by basing its evaluations on ADP's unverified revenue projections, by failing to consider ADP's past performance and by recalculating ADP's price proposal in an attempt to make it conform with the RFP requirements after proposals had been opened in contravention of the RFP and Florida law. Additionally, the County erred in considering ADP's price proposal which contained assumptions not authorized by the RFP and by not selecting the lowest priced proposal. The County's action in selecting ADP on unverified and unverifiable revenue projections of proposers is the very definition of an arbitrary decision.

Per-Se received the highest score on the Technical Proposal portion of the RFP. Had the Selection Committee properly evaluated the Price Proposal portion of the RFP, Per-Se would have been the successful proposer on the RFP.

The RFP specifically stated that proposers who did not submit pricing in accordance with Form B-1 of the RFP would not receive evaluation points for the Price/Cost portion. RFP § 3.2(8). Form B-1, as explained in Addendums 1 and 3, required each proposer to state the amount of revenue it reasonably expected to collect in a fiscal year based on past performance. Each proposer was to subtract the amount it

expected to charge the County from revenue to arrive at a net revenue amount. The County provided this formula as REVENUE – CHARGE = NET.

As ADP itself pointed out, a proposer could “game” the system by proposing an unrealistic revenue amount. Therefore the County assured all proposers that it would evaluate proposers’ past performance thereby forcing proposers to submit reasonable price proposals. The County backed up this assertion by requiring proposers to “[p]rovide documentation of average recovery rate for the past two (2) years.” RFP 3.2(6)(c).

Unfortunately, the Selection Committee failed to abide by the RFP and instead acted in an unreasonable, arbitrary and capricious manner by considering ADP’s unsupported price proposal despite obvious defects in the proposal and a record of past performance on a County contract that clearly demonstrated that ADP’s projections were overly aggressive.

**A. The Selection Committee Erred In Considering ADP’s Price Proposal Which Contained Assumptions Not Authorized By the RFP and Acted Unreasonably, Arbitrarily and Capriciously When It Recalculated ADP’s Price Proposal in Contravention of the RFP.**

By its own admission, ADP included significant assumptions in its price proposal. First, ADP projected revenue for five years instead of one year as was required by the RFP. Second, ADP assumed “a significant fee increase” of 3% that was not authorized by the RFP. ADP Price Proposal at Pg. 1. ADP assumed a higher number of transports than the RFP discussed. Finally, ADP included projected revenue from helicopter transports which, again, was not authorized by the RFP.

None of ADP’s assumptions were authorized by the RFP and they should not have been considered. If ADP wished to submit an alternate pricing, ADP was required to first submit pricing in accordance with Form B-1 and then include a separate alternative

pricing labeled "ALTERNATE PRICING" on the first page of the alternate pricing. Pursuant to the RFP, proposers' alternate pricing could not be the basis of their evaluation or ranking. RFP § 3.2(8). ADP failed to provide pricing in accordance with Form B-1 altogether and instead proposed alternative pricing as its primary price proposal.

Because none of the assumptions included by ADP were authorized by the RFP, the Selection Committee should not have given ADP any points for price. See RFP § 3.2(8). Instead of disregarding ADP's price proposal, as was required by the RFP, the Selection Committee changed ADP's figures in an attempt to conform them to the RFP format. The Selection Committee arrived at an annual projected revenue of \$20,472,884 for ADP. This figure appears nowhere in ADP's proposal. Accordingly, the Selection Committee manipulated ADP's figures in some manner not authorized by the RFP to arrive at the number.

The County's action was fundamental error because the County changed the format and amount of ADP's price proposal after it was submitted in order to help ADP win. "The entire scheme of bidding on public projects is to insure the sanctity of the competitive atmosphere prior to and after the actual letting of the contract. In order to insure this desired competitiveness, a bidder cannot be permitted to change his bid after the bids have been opened, except to cure minor irregularities." *Harry Pepper & Associates, Inc. v. City of Cape Coral*, 352 So.2d 1190 (Fla. 2d DCA 1977). Without question, if the bidder cannot change his bid after submittal, the County cannot do so on the bidder's behalf.

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Pursuant to the RFP, there was only one authorized procedure if a proposer failed to submit a proper price proposal on Form B-1: that proposer was not to receive any evaluation points for the Price/Cost portion. RFP § 3.2(8). By awarding ADP the maximum amount of points possible for its price proposal the County acted unreasonably, arbitrarily and capriciously and gave ADP an unfair advantage.

**B. The Selection Committee Acted Unreasonably, Arbitrarily And Capriciously and Contrary to Established County Law By Basing Its Evaluation On Unverified Price Proposals And By Failing To Consider Proposers' Past Performance.**

Even assuming *arguendo*, that the figure calculated by the Selection Committee for ADP's price proposal was correct, the Selection Committee acted unreasonably, arbitrarily and capriciously basing its evaluation of unverified price proposals.

The Selection Committee awarded ADP the maximum amounts of points for its price proposal based on a projected one year net revenue of over \$20 million dollars. That completely arbitrary figure bares no relation to ADP's past performance. Because ADP was the incumbent vendor, the County could easily have verified whether ADP's projected revenues were reasonable based on its demonstrated revenues over the term of the existing contract.

Indeed, in Addendum # 3 of the RFP the County provided ADP's actual collections in the past fiscal year. ADP's collections for that period totaled less than \$12 million. The record is completely devoid of any evidence to support the County's assumption that in the following year ADP's collections would somehow skyrocket by \$8 million.

The County was required to review ADP's contracts with the County in accordance with the RFP and County Ordinance No. 98-42 to determine ADP's past

performance and to determine whether ADP's projections of future performance were reasonable. Its failure to do so is a violation of clear County law and a fatal error requiring rejection of the award recommendation.

**C. The County Failed To Determine Which Proposal Represented The Lowest Total Price.**

As shown above, ADP's price proposal should have been rejected and the County should not have tried to correct ADP's errors. Alternatively, the County's evaluation of the price proposals failed to follow the RFP's requirement that "the responsive proposal with the lowest total price will be given the full weight of points assigned to the price criterion." RFP § 4.2. Unfortunately, the formula the used to calculate total price was flawed and subsequently, the County failed to award the full amount of points to the proposal with the lowest total price.

In order to arrive at the lowest price proposed, the County used the formula  $REVENUE - CHARGE = NET$ . That formula did not yield the lowest total price. Instead, the selection factor was decided based on ADP's unreasonable and unsupported projections. The only objective way to determine which firm offered the lowest price to the County would have been to compare the percentage rate that each company applied to total revenue as a service fee as this is the only fixed and verifiable number in the proposal.

If the County wanted an estimate of how much each company would collect, accepting ADP's "pie-in-the-sky" projections could hardly yield a reliable result. The evaluation of the technical abilities of the companies would provide a far more reliable indicator of their likely collection results than simply allowing the companies to pull a number out of the air as ADP did.

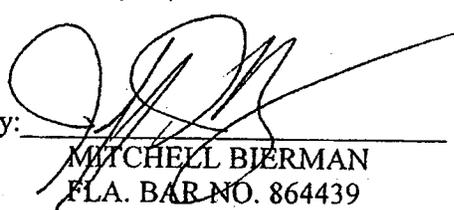
The County did not evaluate which company was offering the County the lowest price as required by the RFP, but rather it recommended the award to ADP because ADP provided the most aggressive unsupported revenue projections. Had the rejected ADP's non-responsive proposal, or at least sought to verify the numbers by reviewing them based on the verified past performance of each proposer, the result would have been different and Per Se would have been ranked first based on its superior qualifications ranking and reasonable price proposal.

#### V. CONCLUSION

For the forgoing reasons the special master should grant Per Se's requested relief.

WHEREFORE, Per-Se Technologies, Inc. respectfully requests that the Hearing Examiner direct the County to set aside the recommendation of award of contract to ADP and reevaluate the proposals received in response to RFP No. 516 in accordance with the directions set forth in the RFP.

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By: 

MITCHELL BIERMAN  
FLA. BAR NO. 864439  
JEFF P. H. CAZEAU  
FLA. BAR NO. 605905

**Date:** August 17, 2006

**To:** Miriam Singer  
Director  
Department of Procurement Management

**From:** Adil Khan *[Signature]*  
Chairperson  
Evaluation/Selection Committee *[Signature]*

**Subject:** Report of Evaluation/Selection Committee RFP No. 516: Medical Transport Billing and Collection Services

The Evaluation/Selection Committee has completed the task of evaluating proposals submitted in response to the above referenced Request for Proposals (RFP) following the guidelines published in the RFP solicitation as summarized below.

**Committee meeting dates:**

- May 12, 2006: Kick-off Meeting.
- May 25, 2006: Meeting to discuss the proposals and preliminary scores.
- June 13, 2006: Meeting to Evaluate Preliminary scores and short list vendors for Orals.
- June 28, 2006: Oral presentations.
- August 11, 2006: Meeting to review final scores and rank the vendors.

**Verification of compliance with contract measures:** The Review Committee meeting of 12/14/2005, recommended a Small Business Enterprise (SBE) Selection Factor for this solicitation. After the evaluation of proposals, it was determined that one of the proposing firms, Advanced Physician Billing, qualified for the selection factor measure but did not affect the final outcome.

**Verification of compliance with minimum qualification requirements:** The RFP had minimum qualification requirements which were reviewed by the Chairperson of this Committee and the County Attorney's Office. All of the proposers met the minimum requirements outlined in the RFP solicitation document.

**Summary of Committee scores:**

The Selection Committee evaluated and ranked responsive and responsible proposals on the criteria listed below. The criteria are itemized with their respective weights for a maximum total of one-hundred (100) points by each of the five Selection Committee members.

Criteria	Available Points
1. Expertise/Qualifications as described in Section 2.0 Scope of Services	10
2. Experience in Collection of Fees per Section 2.0 Scope of Services	20
3. Governmental Experience per Section 3.2.6	20
4. Technology and Equipment Availability (Section 2.2.31)	5
5. Collection Approach	10

6. Pricing/Percentage will be evaluated on the amount of revenue that is to be collected per year	35
<b>Total Points</b>	<b>100*</b>
* Additional points may be added to qualifying Proposers based on the Selection Factor applied by the County's SBE program. (See Section 1.7 for details)	

**Pre-Oral Presentation (Max. Value = 500 points):**

<u>Proposer</u>	<u>Preliminary Scores</u>		
	<u>Technical</u>	<u>Price</u>	<u>Total</u>
1. Southwest General Services	241	112	353
2. Intermedix	244	111	355
3. Per-Se Technologies	295	127	422
4. Ardem	73	127	200
5. TC Billing Associates	159	118.50	277.50
6. Diversified Ambulance Billing Inc.	262	129	391
7. Advanced Physician Billing	168	138.50	306.50
8. Advanced Data Processing	267	175	442

**Post Oral Presentation, Final scores (Max. Value = 500 points):**

<u>Proposer</u>	<u>Technical Score</u>	<u>Price Score</u>	<u>Final Score (Technical &amp; Price)</u>	<u>Projected / Year Revenue</u>
1. <b>Advanced Data Processing</b>	269	175	444	<b>\$20,472,884</b>
2. Per-Se Technologies	294	127	421	\$14,899,410
3. Diversified Ambulance Billing	262	129	391	\$15,116,065

**Local Preference:** Local Preference was considered in accordance with applicable ordinances, but did not affect the outcome.

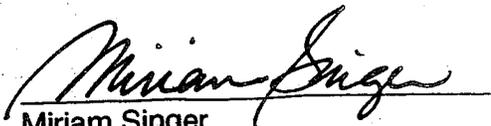
**Other information:** Due to an alleged violation of the Cone of Silence, the RFP was temporarily put on hold while the Miami-Dade County Ethics Commission investigated. Based on Ethics Commission's report, no additional action was deemed necessary. The hold was removed and the Selection Committee concluded the selection process.

**Negotiations:** The Committee recommends that the County enter into negotiations with the firm with the highest score, Advanced Data Processing, Inc. The following individuals will participate in the negotiations:

- Adil Khan, Procurement Contracting Officer, DPM
- Scott Mendelsberg, Chief Financial Officer, MDFR
- Vivian Elespe, Supervisor, MDFR

Copies of the score sheets are attached for each Evaluation/Selection Committee Member, as well as a composite score sheet for review.

Approved

  
\_\_\_\_\_  
Miriam Singer  
Director

8/17/06  
Date

# Memorandum



**Date:** April 4, 2006  
**To:** Those Listed Below  
**From:** George M. Burgess  
County Manager  
**Subject:** Request for Evaluation/Selection Committee for the Miami-Dade Fire Rescue Department for  
Emergency Medical Transport Billing and Collection Services - RFP No. 516

In accordance with Administrative Order 3-34, I am hereby appointing those listed below as the Selection Committee for the Miami-Dade Fire Rescue Department for Emergency Medical Transport Billing and Collection Services - RFP No. 516:

Selection Committee

Adil Khan, DPM, Non-Voting Chairperson  
Vivian Elespe, MDFR  
Scott Mendelsberg, MDFR  
Barbara Dunlop, GSA  
Lucien Hope, Finance  
Harold Goldson, DBD  
Oscar Aguirre, MDAD (Alternate)

Technical Advisor (Non-Voting)

Mirhmala Lucas, MDFR

The Selection Committee will meet to review written or printed material regarding the qualifications of each of the certified firms as it relates to the requirements defined in the advertised document. If required, the Selection Committee will select several candidate firms meeting the published criteria, to make oral presentations at a properly noticed public hearing to the full Selection Committee.

The Selection Committee shall be responsible for evaluating, rating and ranking the proposals by each Committee member, based on the criteria and procedure contained in the advertised document. The Evaluation/Selection Committee will first evaluate and rank responsive proposals on the Technical (Quality) criteria. If responsive proposers are invited to make oral presentations, the Committee may re-rate and re-rank the proposals based upon the written documents combined with the oral presentation. You may utilize staff of the issuing department and the using agency to conduct a preliminary review of the proposals for responsiveness to the technical requirements. All requests for specific determinations shall be made in writing to the County Attorney's Office.

You are directed to assist me in the selection process considering the factors delineated in the advertised document. These factors may include methodology and management approach, qualifications and experience of principals and staff, financial stability, proposer's past performance of similar scope and size, proposer's detailed plans to meet the objectives of each task, activity, etc., pursuant to any schedule, proposer's previous County experience, history and experience of the firm or individual(s), understanding of the project and the County's objectives, responsiveness to the established requirements, and Cost/Revenue (normally separate and sealed). When the document requires the proposer to provide cost/revenue in a separate sealed envelope, cost/revenue will be considered separately and after the other criteria have been evaluated.

If you are unable to participate in the Selection process, contact this office through the Department of Business Development (DBD) by memorandum documenting the reason why you cannot participate. Only in cases of dire urgency may you be excused from participation.

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