

**WESTERN ORANGE COUNTY SELF-FUNDED
WORKERS' COMPENSATION AGENCY
(A Joint Powers Authority)**

REQUEST FOR PROPOSAL

**WORKERS' COMPENSATION
CLAIMS ADMINISTRATION AND MANAGED CARE SERVICES**

The Western Orange County Self-Funded Workers' Compensation Agency (WOCSFWCA), a California Joint Powers Authority (JPA) is requesting proposals from qualified professional for its self-insured workers' compensation administration. In conjunction with these services, the WOCSFWCA is seeking qualified firms to perform managed care services which include: Medical Case Management; Medical Provider Network (MPN); Utilization Review; Bill Review; Litigation Management; Investigations; and Loss Control. In addition, the JPA is in need of administrative services.

All proposals will be screened for thoroughness and responsiveness to the Request for Proposal (RFP). Following the screening process, the selected finalists will be invited to participate in an oral interview process. NOTE: Claims Administrators and/or Managed Care Providers will be interviewed independently.

Background

The JPA was formed and became operational on July 1, 1979 and its **current** members are Brea Olinda Unified School District, Laguna Beach Unified School District, Ocean View Elementary School District and Orange County Department of Education. Effective July 1, 2011, the Huntington Beach City School District withdrew from WOCSFWCA. We are interested in qualified third party administrators (TPA) significant experience working with JPA's, and who are committed to working with school entities.

Since inception of the self-insured program, WOCSFWCA has purchased excess insurance. Currently, the self-insured retention is **\$500,000** per occurrence.

Any questions pertaining to this RFP must be submitted in writing by **April 10, 2023** to:

Mr. Gabriel Hsu
Western Orange County Self-Funded Workers' Compensation Agency
c/o Orange County Department of Education
200 Kalmus Drive
Costa Mesa, California 92626

Estimated Time Table

- Issue RFP March 30, 2023
- Last Day to Submit Questions April 10, 2023
- Answers to RFP Posted April 17, 2023
- Deadline for Receipt of RFP Proposals **April 24, 2023**
- Interview Selected Proposers May 8-19, 2023
- Contract Negotiations May 22 – May 26, 2023
- Board Action and Selection June 7, 2023
- Effective Date of Contract Start July 1, 2023

Provide four (4) bound and SEALED copies of the proposal and any accompanying information along with one (1) electronic copy by **4:30 p.m. April 24, 2023** to Western Orange County Self-Funded Workers’ Compensation Agency, c/o Gabriel Hsu, Orange County Department of Education, 200 Kalmus Drive, Costa Mesa, CA 92626. The email address is GHSU@OCDE.US The proposal may be mailed or delivered in person during normal business hours, which are 7:30 a.m. to 4:30 p.m., Monday through Friday. Delivery of proposals is the sole responsibility of the Proposer. All proposals must be signed and become the property of the JPA. Any proposal received after this date and time will not be given consideration.

Acknowledgments

It is acknowledged that in the workers’ compensation industry many TPA’s provide bundled services which include the primary TPA services along with many, if not all, of the managed care services. Such vendors may offer bids for these bundled services. In addition, a proposer may submit proposals for managed care services only. In either circumstance, **pricing for claims administration and managed care services must be set forth separately in all proposals**. All TPA vendors responding to the RFP must have the ability to work cooperatively with non-affiliated service providers in the event managed care services are awarded to a non-affiliated managed care provider.

Currently WOCSEWCA has a total of 224 open claims. The breakdown of the claims are 148 indemnity claims, 50 future medical claims, and 26 medical only claims. The WOCSEWCA self-insured loss history is provided in the following table, valued as of March 24, 2023.

Claim Year	Number of Claims		Incurred Liability	Paid To Date
2020	Open	94	\$2,269,693	\$1,234,889
	Closed	105		
	Total	176		
2021	Open	158	\$2,444,942	\$1,417,963
	Closed	114		
	Total	229		
2022	Open	172	\$1,484,757	\$633,799
	Closed	191		
	Total	221		

REQUEST FOR PROPOSAL FOR WORKERS COMPENSATION SERVICES

WOCSFWCA is seeking proposals from qualified firms to provide third party administration claims and managed care services for our self-insured workers compensation program. We looking to establish a three (3) years contractual relationship with the successful TPA. It is the intent of WOCSFWCA is to enter an agreement for a period of three (3) years with an option to renew for two additional years for a maximum of five (5) years.

A. Information to include in Written Proposal

Please provide response to the following:

1. A brief description of the respondent including:
 - a. Contact information including e-mail address, telephone number and fax number;
 - b. The names and background of principal owners, partners, or officers including a resume detailing experience;
 - c. The length of time your firm has been in business of providing workers' compensation services;
 - d. The office and location that would administer WOCSFWCA claims; and
 - e. The office that would service WOCSFWCA for loss data, accounting, finance, or functions other than claims adjusting.
2. Advise whether there are any major changes (e.g., relocation, consolidation, mergers) planned for respondent during the next twelve (12) months. If so, please describe all changes occurring.
3. Describe in detail any litigation involving your firm in the past 10 years. Are there any pending lawsuits or legal actions against the company? If so, please describe.
4. Do you have a business continuity plan and disaster recovery plan? Please provide details of how you will protect documentation, document retrieval and back up plans, and where work will be performed in the event of damage to your facility.
5. Provide a list of both current and former clients (include contact information) for which similar types of claims-related services are currently provided. Please include the name, title, and phone number of three (3) people, in three (3) different companies, other than the WOCSFWCA, whom the WOCSFWCA can contact to discuss the respondent's performance.

6. Provide a list of clients (include liaison contact information) who have elected to leave and contract with other vendors during the past twenty-four (24) months, and describe reasons for change.
7. Describe in detail the computer operating system (claims management system and version) utilized to provide workers' compensation services. Please note that in the development of a "Best Practices" platform the claims management information system is considered to be critically important.
8. Advise if your computer system tracks lost time, temporary modified duty and temporary partial disability. Provide sample screen shots and describe them.
9. Samples of computer-generated reports must accompany the proposal.
10. WOCSFWCA requires at least **one** dedicated workers' compensation claims examiner who must have a minimum of five (5) plus years of claims adjusting experience. This examiner will personally adjust **all** of WOCSFWCA's open indemnity claims. In no event will this examiner be allowed to work on other accounts. A second adjuster will handle all future medical and medical only claims. The managing supervisor or team lead must have a minimum one (1) year of supervisory experience. All claims handling staff, including the claims supervisor, must reside and work in California. All claims personnel assigned to provide services to WOCSFWCA shall be subject to an interview and prior approval of WOCSFWCA.

Indicate the maximum number of claims that each adjuster will be capped at before another adjuster is assigned to assist in claims handling.

Include a proposed staffing model for the WOCSFWCA account. Indicate the fully dedicated staff member that will manage WOCSFWCA active indemnity claims. Indicate the maximum number of claims that each adjuster will be capped at before another adjuster is assigned to assist in claims handling.

1. Indemnity Adjuster
2. Medical Only and Future Medical claims adjuster

WOCSFWCA has the absolute right to approve or disapprove all of the TPA's staff performing work hereunder and any proposed changes in the TPA's staff, including, but not limited to, the TPA's management.

The TPA shall notify the WOCSFWCA within one business day when staff is terminated or removed from the WOCSFWCA account. The TPA will also provide a coverage plan to manage and administer WOCSFWCA claims within 2 business days of an examiner termination or removal. The TPA shall send a "Notice of Change in Adjuster" within 3 days the prior adjusters termination. There shall not be a temporary adjuster to cover a desk for more than 30 days in the event of an adjusters termination.

If TPA staffing levels do not meet the staffing requirements set in the contract. The TPA will issue a payment of \$8500 to WOCSFWCA every 30 days until the requirements are met.

11. Indicate whether the respondent can comply with the SCOPE OF SERVICES as outlined in this RFP. If the respondent is unable to comply with a specific performance objective, please indicate which objective cannot be complied with and the reason(s) the objective cannot be met.
12. Describe in detail the training that can be provided to the members of the WOCSFWCA regarding claims procedures and other pertinent areas of workers' compensation.
13. Describe in detail your process for issuing checks and benefit payments (including settlements), reporting processes, and proposed funding arrangements such as impress accounts, check writing vouchers, and wire transfer. Describe your security measures to prevent fraud or theft. Indicate the pros and cons of such arrangements. Indicate whether you can accept account-funding contributions by wire transfer. Indicate whether you require minimum funding or an initial funding deposit and if so, how much.
14. Describe in detail the formal claim review process between the client and the TPA. How frequently are these held and who participates. Describe your large loss reporting systems and provide sample reports.
15. Identify any company owned ancillary services and how services are integrated or utilized. Is this mandatory for all clients?
16. Managed care services, which include bill review, utilization review, lien services and nurse case management may be awarded to another vendor. Please describe in detail how you will be able to work with an outside provider to ensure effective service for the WOCSFWCA. Is your computer system adaptable with outside vendors? Are there any limitations? Do you have other clients with outside provider programs? Please provide a list of clients (include contact information) for which these services are provided by an outside provider and the name of that provider.)
17. Should an outside managed care provider be chosen, does your organization commit to developing an Electronic Data Interface (EDI), as well as claims access for nurses, at no additional cost to the WOCSFWCA.
18. Describe your process/procedures for accepting electronic/online claims reporting by WOCSFWCA members.
19. Describe any other services not previously covered which you believe may be of particular value to the WOCSFWCA. Do you offer loss control services? Do you have RMIS systems to track loss data to develop loss control plans? Do you offer Ergo Evaluations? What costs are associated with the services you offer?

20. Describe services that your company provides in completing state mandated Cal/OSHA reporting for COVID cases. Please provide examples of COVID reporting and general COVID trends.
 - a. What measures and strategies would the TPA provide to reduce WOCSFWCAs exposure to COVID related claims.
 - b. What is the typical exposure that your TPA has had with long haul COVID claims, what are your plans to mitigate the costs of long haul COVID claims.
21. If selected, please outline in detail your transition plan and timeline for the transfer of services.
22. Submit a cover letter that contains the name, title, address, and telephone number of the individual(s) with authority to bind the proposal during the period in which the WOCSFWCA is evaluating the proposal. The respondent shall also identify the legal form of the firm, i.e., sole proprietor, partnership, corporation, etc. If the firm is a corporation, the cover letter shall identify the state in which the firm was incorporated. A principal of the firm or other person fully authorized to act on behalf of the firm shall sign the cover letter.
23. The proposal must be valid until July 1, 2023.
24. The proposal must indicate that the vendor agrees to be bound by the proposal and shall enter into a contract to provide services in a form as approved by the WOCSFWCA, if selected.
25. The vendor(s) whose proposals are selected as finalists for consideration will be asked to appear, at their own expense, before an evaluation panel to discuss their proposal. You may be called back for subsequent meetings or presentations. Please indicate whether this is acceptable to your company.

B. Scope of Services – Claims Administration

The WOCSFWCA is interested in obtaining a TPA who will be able to favorably perform the following performance objectives and be contractually committed to comply with the following, but not limited to, performance standards:

1. Fees /Caseloads: Provide your proposed annual fee to accomplish the scope of work described in this Request for Proposal. Fees should reflect pricing for administration of the program from July 1, 2022 through June 30, 2023 and for fiscal years 2023/24 and 2024/25, each year's fees noted separately. Please include a detailed explanation of any one time costs at the beginning or at the end of any contract. If there are other fees charged by your firm or by a subsidiary separate from those described above for the

administration of the claims, please clearly and separately identify those services, the ownership of the provider and the associated rates or costs (i.e. bill review fees, UR fees, etc.).

2. Forms: The TPA shall provide all forms necessary for the processing of benefits or claims information including the Employer's Report of Injury, DWC Form 1, return to work slips, vouchers, checks, and other related forms. These forms shall be provided electronically if requested. The cost of providing these forms shall be included within the contract price.

3. Claims Handling – Administrative
 - a. Claim File Set Up and Diary Review: Upon receipt of the Employer's Report of Injury, the TPA will prepare an individual claim file within two (2) working days for each claim. Preparation of the claim file shall include entering each new claim into the computer system and establishing appropriate reserves. All claim files shall be reviewed at least every forty-five (45) calendar days for active claims and at least every (90) calendar days for claims that have settled but are open for future medical care. The examiner shall distinguish the regular diary review from routine file documentation in the computer notepad. A plan of action will be included and separately labeled in the file notes during a diary review. The supervisor shall monitor the diary reviews by printing a "No Activity" report each month to identify any files that have fallen off the diary system. The supervisors review shall critique the POA, reserves, investigation and medical, disability and legal management of the claim. The supervisor shall monitor activity on indemnity files at intervals not to exceed 90 calendar days. Future medical files shall be reviewed by the supervisor at intervals not to exceed 180 calendar days. The Supervisor should not handle a caseload, although they may handle specific issues.

 - b. Future Medical Claims: Future medical claims shall remain open for one (1) year from the last payment of any benefit. Reviews shall be documented in the claim notes to include settlement information, future medical care outline, last date and type of treatment, name of excess carrier, excess carrier reporting level, and excess carrier reporting history.

 - c. Employer Contact: The TPA shall contact the WOCSEWCA within one (1) working day of receipt of notice of a claim by any source. Such contact shall be documented in the computer notepad after the claim has been created in the system.

 - d. The TPA shall request the Employer's Report of Injury form when or if notification of an injury or incident by any source is received first (i.e., Application of Adjudication, notice of legal representation, Doctor's First Report of Injury, etc.).

 - e. The TPA will confirm with the WOCSEWCA the DWC Form 1 was given to the employee within one (1) working day of knowledge of the injury. If there is no evidence the

form was provided, the TPA will provide the form with the initial contact letter to the employee within one to three (1-3) business days of receiving the claim.

- f. When a claim reaches or exceeds one half of the member's SIR in total incurred value, the TPA shall report to the WOCSFWCA every ninety (90) days regarding the status of the claim. Such information shall be reported in an approved Status Report form and include the examiner's plan of action for the future handling of the claim. The TPA agrees to follow all reporting requirements of the Excess provider.

4. Communication

- a. Return calls or emails shall be made within 1 working day of the original telephone inquiry. All documentation shall reflect these efforts.
- b. All correspondence received shall be clearly stamped with the date of receipt. All correspondence requiring a written response shall have such response completed and transmitted within 5 working days of receipt.
- c. The TPA shall have coverage for take calls and administer claims during WOCSFWCA working hours.

5. Fiscal Handling

- a. Fiscal handling for indemnity benefits on active cases shall be balanced with appropriate file documentation on a semi-annual basis to verify that statutory benefits are paid appropriately. Balancing is defined as, "an accounting of the periods and amounts due in comparison with what was actually paid". Provide samples of any forms used.
- b. In cases of multiple losses with the same person, payments shall be made on the appropriate claim file, and calculations fully documented.

6. Medicare Reporting

Proper verification of a claimant's status as to Medicare eligibility shall be completed and documented in the claim file. In those cases where the claimant does meet the eligibility requirements, mandatory reporting to the Center for Medicaid Services (CMS) must be completed directly or through a reporting agent in compliance with Section 111 of the Medicare Medicaid and SCHIP Extension Act of 2007 ("MMSEA"). Describe how this reporting process is handled, and if outsourced to a vendor, is there an additional cost to the WOCSFWCA.

7. Claim Creation/Setup/Document Handling/Closure

- a. Three-point contacts shall be conducted by the examiner assigned to the claim with the injured worker, WOCSFWCA, and the treating physician within 3 working days of receipt of the claim. If a nurse case manager is assigned to the claim, initial physician contact may be conducted by either the claims examiner or the nurse case manager. In the event a party is non-responsive, there should be evidence of at least three documented attempts to reach the individual by phone, email or in writing. Medical-only claims shall have this three point contact requirement as well. Legal contact with opposing counsel shall be made with any application as a first notice.
- b. The initial compensability determination (accept claim, deny claim or delay acceptance pending the results of additional investigation) and the reasons for such a determination shall be made and documented in the file within 14 calendar days of the filing of the claim with the WOCSFWCA, in accordance with the labor code. In the event the claim is not received by the third party administrator within 14 calendar days of the filing of the claim with the employer, the third party administrator shall make the initial compensability determination within 7 calendar days of receipt of the claim, or as required by law.
- c. Delay of benefit letters shall be mailed in compliance with the Division of Workers' Compensation (DWC) guidelines. In the event the WOCSFWCA does not provide notice of lost time to the third party administrator timely to comply with DWC guidelines, the third party administrator shall mail the benefit letters within 7 calendar days of notification. The final compensability determination shall be made by the claims examiner or supervisor within 90 calendar days of employer receipt of the claim form.
- d. If a decision is made to delay benefits on a claim, an AOE/COE investigation shall be initiated within 3 working days of the decision to delay. This may include, but is not limited to, assigning out for witness/injured worker statements, initiating the QME/AME process, requesting medical records, etc.
- e. All documentation shall be reviewed and cataloged within 2 days of receipt.
 - a. All PR2/WS shall be updated in the notes within 2 days of receipt or knowledge
 - b. All MMI/P&S/PR4 reports should be addressed within 14 calendar days of receipt/knowledge.
 - c. The TPA is to follow up with the JPA within 1-day of receipt of any new Notice of Representation, Notice of Application, or Amended Application. The adjuster is to address any new claims of injury within 3 days of receipt of Notice of Application.
 - d. All mileage reimbursement requests forms shall be addressed within 14 calendar days of receipt.

- f. The TPA will make active attempts to maintain a closing ratio of 95% per fiscal year. If the TPA closing ratio drops below an 85% closing ratio for the fiscal year. The TPA will issue a penalty payment to the WOCSFWCA of \$5000

8. Reserves

Using the information available at claim file set up, an initial reserve shall be established for the most probable case value or per Self Insurance Plan Regulations. The initial reserve shall be electronically posted to the claim within 14 calendar days of receipt of the claim. Reserves shall be updated and reviewed during the 90-day action plan claim review.

9. Indexing

All claims shall be reported to the Index Bureau (ISO Index) at time of initial set up. All claims shall be re-indexed on an annual basis thereafter.

10. Claims Payments - Technical

a. Initial Temporary and Permanent Disability Indemnity Payment.

- i. The initial indemnity payment shall be issued to the injured worker within 14 calendar days of knowledge of the injury and disability. In the event the third party administrator or self-administered entity is not notified of the injury and disability within 14 calendar days of the employer's knowledge, the third party administrator shall make payment within 7 calendar days of notification. Initial permanent disability payments or delays shall be issued within 14 calendar days after the date of last payment of temporary disability. Outline your transaction process, vouchers or the methods used with regard to client provided salary continuation.
- ii. The properly completed DWC Benefit Notice shall be mailed to the employee within 14 calendar days of the first day of disability. In the event the third party administrator is not notified of the first day of disability until after 14 calendar days, the DWC Benefit Notice shall be mailed within 7 calendar days of notification.
- iii. Self-imposed penalties shall be paid on late payments in accordance with the CA labor code. Cost of all penalties shall be borne by the TPA unless the WOCSFWCA delayed reporting of the injury. Penalties shall be calculated and reimbursed no less frequently than quarterly to the WOCSFWCA.
- iv. Overpayments shall be identified and reimbursed timely where appropriate. The third party administrator shall request reimbursement of overpaid funds from the party that received the funds. If necessary, a credit shall be sought as part of any resolution of the claim.

b. Subsequent Temporary and Permanent Disability Payments

- i. Eligibility for indemnity payments subsequent to the first payment shall be verified, except for established long-term disability.
 - ii. Self-imposed penalty shall be paid on late payments in accordance with the labor code. Cost of all penalties shall be borne by the TPA unless the WOCSFWCA directly caused the delay.
- c. Final Temporary and Permanent Disability Payments
- i. All final indemnity payments shall be issued timely and the appropriate DWC benefit notices sent.
 - ii. Self-imposed penalty shall be paid on late payments in accordance with the labor code. Cost of all penalties shall be borne by the TPA unless the WOCSFWCA directly caused the delay.

d. Award Payments

Payments on undisputed Awards, Commutations, or Compromise and Releases shall be issued within 10 calendar days following receipt of the appropriate document.

e. Penalties

Penalties shall be coded so as to be identified as a penalty payment. The third party administrator shall advise the WOCSFWCA on a monthly basis of the assessment of any penalty for delayed payment and the reason thereof, and the administrator shall reimburse the WOCSFWCA monthly, concurrent with this report.

11. Medical Administration:

- a. The TPA will review and adopt the current provider listing provided by the WOCSFWCA. Absent a Medical Provider Network, the TPA shall assist in the selection of a panel of general practitioners, specialists, hospitals, and emergency treatment facilities to which injured employees should be referred, as approved by the WOCSFWCA, and the TPA shall regularly review and update the panel.
- b. The physician's office will be contacted within one to three (1-3) days of notice of all new claims. Such contact will continue as needed during the continuation of temporary disability or modified duty to assure that treatment is related to a compensable injury or illness. All contact shall be documented in the computer notepad.
- c. The TPA shall maintain contact with treating physicians to ensure employees receive proper medical treatment and are returned to full or modified employment at the earliest possible date.

- d. The TPA shall maintain direct contact with medical service providers to ensure their reports are received in a timely manner.
- e. The TPA shall arrange medical evaluations and consultations when needed, reasonable, and/or requested in compliance with the current Labor Code.
- f. The TPA will investigate the existence of apportionment in each case, relying on prior claims histories, index reporting, medical records and other evidence and shall document the file of all efforts to obtain apportionment.
- g. The TPA shall ensure that medical bills are reduced to the recommended rates established by the Administrative Director of Workers' Compensations. The use of a service contractor must be approved by the WOCSFWCA. The WOCSFWCA shall pay for the use and benefits of services provided.
- h. The TPA shall ensure that utilization review and/or professional managed care services will be provided upon authorization by the WOCSFWCA to injured employees by providers approved by the WOCSFWCA. The use of a service contractor must be approved by the WOCSFWCA. The WOCSFWCA shall pay for the use and benefits of services provided. Utilization Review will conform to statutory regulations.

12. Disability Management

- a. The third party administrator shall work proactively to obtain work restrictions and/or a release to full duty on all cases. The TPA shall notify the WOCSFWCA members upon receipt of temporary work restrictions or a release to full duty, and work closely with the WOCSFWCA member to establish a return to work as soon as possible.
- b. The third party administrator shall notify the WOCSFWCA member immediately upon receipt of an employee's permanent work restrictions so that the WOCSFWCA member can determine the availability of alternative, modified or regular work.
- c. If there is no response within three weeks (21 days), the third party administrator shall follow up with the WOCSFWCA member.
- d. The TPA shall work as a team with the WOCSFWCA in order to comply with laws preventing disability discrimination, including Government Code Section 12926.1 which requires an interactive process with the injured worker when addressing a return to work particularly with permanent work restrictions. The TPA shall cooperate with the WOCSFWCA to the fullest extent, in providing medical and other information the WOCSFWCA deems necessary for the WOCSFWCA to meet its obligations under federal and state disability laws. The TPA shall track modified duty and provide reporting as needed to the WOCSFWCA.

13. Resolution of Claim

- a. Within 14 calendar days of receiving medical information that adequately outlines all factors of injury, disability, ability to return to work, apportionment and future medical care, the claims examiner shall take appropriate action to resolve the claim and will contact the WOCSFWCA to discuss settlement recommendations.
- b. Settlement value and recommendation shall be documented appropriately utilizing all relevant information.

14. Settlement Authority

- a. No agreement shall be authorized involving liability, or potential liability, of the Excess Carrier without the advance written consent of that Carrier.
- b. The third party administrator shall obtain the WOCSFWCA's authorization on all settlements or stipulations.

15. Litigated Cases

- a. Defense of Litigated Claims
 - i. The third party administrator entity shall promptly initiate investigation of issues identified as material to potential litigation. The WOCSFWCA shall be alerted to the need for in-house investigation, or the need for a contract investigator who is acceptable to the WOCSFWCA. The WOCSFWCA shall be kept informed on the scope and results of investigations.
 - ii. The third party administrator shall, in consultation with the WOCSFWCA, assign defense counsel from a list approved by the WOCSFWCA.
 - iii. Settlement proposals directed to the WOCSFWCA shall be forwarded by the third party administrator or defense counsel in a concise and clear written form with a reasoned recommendation. Settlement proposals shall be presented to the WOCSFWCA as directed so as to insure receipt in sufficient time to process the proposal and obtain WOCSFWCA level Authority. The TPA shall utilize a format deemed acceptable to the WOCSFWCA.
 - iv. Knowledgeable WOCSFWCA personnel shall be involved in the preparation for depositions, medical examinations and trial, when appropriate or deemed necessary by the WOCSFWCA so that all material evidence and witnesses are utilized to obtain a favorable result for the defense. Certain designated WOCSFWCA personnel shall be expected to attend depositions.

16. Subrogation

- b. In all cases where a third party is responsible for the injury to the employee, attempts to obtain information regarding the identity of the responsible party shall be made

within 14 calendar days of recognition of subrogation potential. Once identified, the third party shall be contacted within 14 calendar days with notification of the WOCSFWCA's right to subrogation and the recovery of certain claim expenses. If the third party is a governmental entity, a claim shall be filed with the governing board within 6 months of the injury or notice of the injury.

- c. Claims Examiners will communicate with the claimant to explain Subrogation. The Examiner will attempt to recover directly from the carrier without legal intervention. Upon approval of the WOCSFWCA, referral to an outside attorney for collection, or a collection service provider will be authorized as needed.
- d. Periodic contact shall be made with the responsible party and/or insurer to provide notification of the amount of the estimated recovery to which the WOCSFWCA shall be entitled.
- e. The file shall be monitored to determine the need to file a complaint in civil court in order to preserve the statute of limitations. The WOCSFWCA shall be involved in any determination to waive or decline pursuit of any act of subrogation potential.
- f. If the injured worker brings a civil action against the party responsible for the injury, the claims administrator shall consult with the WOCSFWCA about the value of the subrogation claim and other considerations. Upon WOCSFWCA authorization, subrogation counsel shall be assigned to file a Lien or a Complaint in Intervention in the civil action.
- g. Whenever practical, the claims administrator shall aggressively pursue recovery in any subrogation claim. They should attempt to maximize the recovery for benefits paid, and assert a credit against the injured worker's net recovery for future benefit payments.

17. Excess Coverage

- a. Claims meeting the definition of reportable excess workers' compensation claims as defined by the Policy of Coverage or the CSAC Memorandum of Coverage Conditions Section shall be reported within 5 working days of the day on which it is known the criterion is met. The TPA shall utilize the Excess Workers' Compensation First Report Form recognized and provided by the Carrier or CSAC.
- b. Subsequent reports shall be transmitted on a quarterly basis on indemnity claims and on a semi-annual basis on future medical claims sooner if claim activity warrants, or at such other intervals as requested by the Carrier, in accordance with Underwriting and Claims Administration Standards.
- c. Reimbursement requests shall be submitted on a quarterly or semi-annual basis depending on claims payment activity. All reimbursements shall be provided to the WOCSFWCA within 1 week of receipt.

- d. A closing report with a copy of any settlement documents not previously sent shall be sent upon resolution of a claim involving excess coverage.

18. Computer Access

The TPA shall provide online access at no additional charge for the WOCSFWCA, for up to 10 users, as well as additional access for selected vendors providing services to the WOCSFWCA. The TPA shall provide training for use of the computer system at no additional charge. The WOCSFWCA shall be able to add claim notes as needed. WOCSFWCA shall have access to all claims documentation in the system.

V. MEDICAL BILL REVIEW SERVICES

The WOCSFWCA wishes to obtain competitive proposals relative to the provision of workers' compensation bill review, nurse case management and utilization review for its self-insured workers' compensation program. The RFP requests that specific information be provided. Proposers may expand on the information requested and/or provide other related information. However, it is important that bidders follow the directions, proposal format, and comply with all directions contained in the RFP to ensure that the proposal is considered.

A. Instructions for Preparing Written Quotes/Proposals

1. State the number of years your company has provided bill review services to self-insured organizations and/or insurance carriers, specifically note public entities.
2. Provide an overview of your bill review organization, its locations and the key staff that would be assigned to the WOCSFWCA account. Indicate number of years experience and qualifications for each of the key staff that would be assigned to the WOCSFWCA account.
3. Describe in detail the Account Manager's role and his/her experience and qualifications.
4. Provide the location of the office(s) that would service the WOCSFWCA.
5. Provide the average monthly bill volume processed by the office(s).
6. Provide a written statement of what distinguishes your company's approach from others.
7. List five (5) current California clients (including contact information), preferably public entities, whom the WOCSFWCA can contact.
8. Provide a list of TPA's you work with to provide bill review services.
9. Provide a list of TPA's you have electronic interface with to provide bill review services. Provide a list of the CMIS systems to which your system has interfaced.

B. Scope of Services – Bill Review

Provide responses in the order of the following items:

1. An estimate of the average gross percentage of savings that would occur on an annual basis. Provide a breakdown by bill review type including medical-legal, pharmacy, in-patient hospital, out-patient hospital, standard reviewable bills, and additional allowances.
2. Provide your price quotation for bill review services. Your proposal should include a quote for flat fee per bill, a per line quote (explain if you will accept a maximum and minimum line charge and if you will charge for headers on each review), and a quote for percentage of savings including but not limited to reviewable bills, in-patient hospital and outpatient facility bill reviews, negotiated bills, professional surgical fees, line audit bills, duplicate bills, in addition to re-evaluation/provider inquiries, expert testimony in defense reviews, EDI (Electronic Data Interface), and on-line access to the system.
3. Do you have a guaranteed turnaround time? What are the consequences if you fail to meet that guarantee?
4. What is your average turnaround time of your bills for the 1st, 2nd, 3rd and 4th quarters of 2020 for California based clients?
5. Provide your accuracy ratio or other basis that supports the accuracy of your bill review service.
6. Indicate if your company currently subcontracts or has subsidiaries for PPO networks. If so, please provide a list or description of the PPO networks. Additionally, please provide information on the types of PPO discounts and related charges or discounts that can be expected from such services.
7. Do you lease, own, or contract any of your bill review services or systems? If so, with whom?
8. How often is your bill review system updated with fee schedule changes?
9. If unbundled, how are bills sent? Do you plan to provide courier service for the pick-up and delivery of invoices or electronic interface? If so, how often?
10. Describe how disputes by providers are resolved and include what information is sent to providers to justify your bill reduction or rejections.
11. Is your system capable of printing a user-defined explanation on the Explanation of Review (EOR) form? Are the EORs printed with the checks?

12. What review procedures do you have in place for medical bills with missing or invalid International Classification of Diseases (ICD) 9 codes and missing or invalid procedure codes?
13. Describe the mechanism for identifying inappropriate billing patterns.
14. Describe your internal processes and interface capabilities with UR providers. What system is utilized to insure that payment is not made on bills for which UR has denied treatment? What is your error ratio? What are the consequences if you pay a bill in error? What process do you implement for recovery? Is there a fee?
15. Describe your capabilities for tracking the twenty four (24) visit capitation on physical therapy, chiropractic, and occupational therapy. Is it a manual or automated process? Does the claims examiner have the ability to override the process and, if so, how is this accomplished?
16. Describe in detail your scanning capabilities as well as Internet access of reviewed bills. Do you have the capacity to scan and store paper bills and reports for your clients? Please describe your document management approach, including the hosting of an on-line repository of documents related to medical bill processing. Do you have OCR capability or other approaches to create the electronic bill record? Is there a fee for this? Outline your fees.
17. Describe your implementation process of your services with the claims administrator(s).
18. Describe your ability to interface with an automated claims system. Do you have electronic interface or EDI with other UR service providers? Describe how this works. Provide a list of other claim systems with which you have interface capabilities and experience.
19. Does your system have the ability to monitor the following:
 - Unbundling
 - Upcoding
 - Assistant surgeon
 - Duplicate billing
20. Indicate the types of monthly, quarterly and annual reports that would be provided to the WOCSFWCA. Please provide a description and attach samples of your reports.
21. Does your software program provide the following? If so, please describe and provide samples:
 - Ad hoc report capability?
 - Reports on percentage of network "hits"?

- Comparison of billed costs, cost reduction, and net savings?
22. Should the WOCSEWCA implement a Medical Provider Network (MPN), please describe in detail what reports you can provide to document the MPN savings. Would there be an additional charge for this service? If so, how much? Do you have staff to develop this MPN or do you utilize a provider you work with to create the MPN? Please describe this process.
 23. Do you have a partnership with any pharmacy benefit management program? If so, please describe in detail your partnership with the pharmacy program including average percentage savings. Do they offer a mail order and card program? Can the formulary be customized? What vendors do you work with?
 24. Do you have a partnership with any diagnostic service program? If so, please describe in detail your diagnostic services partnership including average percentage savings below fee schedule.
 25. In general, please discuss the business rules functionality, including when and how bills will be routed to examiners for processing/approval? Outline all of your internal requirements, the people/positions involved in the process and deadlines and the consequences for delays.

VI. UTILIZATION REVIEW AND MEDICAL MANAGEMENT SERVICES

A. Instructions for Preparing Written Proposals

1. State the number of years your company has provided utilization review services and medical management services to self-insured organizations, TPAs, and/or insurance carriers; specifically note public entities.
2. Describe the services you will provide and the process you follow to develop the UR plan, the Level 1, 2 and 3 categories and how long it will take to implement on behalf of the WOCSEWCA.
3. Provide an overview of the key staff who would be assigned to the WOCSEWCA account. How many years of experience do the key staff people have in case management and utilization review?
4. Provide the qualifications of the proposed staff including license, certifications, number of years with the company, and experience in handling California workers' compensation injured workers.
5. Indicate the proposed physicians, nurse(s) and other staff assigned and years of experience.
6. Indicate the proposed Medical Director and his/her experience and background.

7. Indicate the proposed physician(s) for peer review.
8. Describe in detail the process to transmit UR decision to bill review. What flags and/or communications are utilized to prevent payment of bills for treatment that UR has denied?
9. Describe in detail the role of the proposed Account Manager and include his/her qualifications.
10. Indicate what educational programs you provide for your staff.
11. Include a written statement of what distinguishes your company's approach from all the others.
12. List contact information for three (3) to five (5) current California clients, preferably public entities whom WOCSFWCA can contact.

B. Scope of Services – Utilization Review

Provide answers in the order of the following:

1. How do you propose to charge for services? Provide flat fee and hourly rates including but not limited; to screening by nurse case manager, set up, utilization review, inpatient certification, outpatient certification, peer review, peer to peer review, prospective and retrospective review.
2. How will you assist the WOCSFWCA with developing the written policies and procedures of the utilization review plan for filing with the administrative director of the Division of Workers' Compensation? Provide a sample of a utilization review plan.
3. Describe your utilization review system including interaction with workers' compensation TPA's, bill review vendors, medical and service providers, employers, and patients. What type of training do you provide to the TPA?
4. Frequency of visits and training of the TPA?
5. Specify what type of personnel is assigned to conduct utilization reviews including nurses, physicians and Medical Director.
6. How many of your case managers have Certified Occupational Health Nurse (COHN) or Certified Case Manager (CCM) certifications? How many are bilingual in Spanish? Please provide resumes of designated case management staff.
7. Describe in detail your clerical staff function and how it relates to review of a case.
8. Describe your physician peer review programs and utilization protocols.

9. Describe your process to guarantee compliance with the Utilization Review timelines set forth in the Labor code.
10. Provide samples of your reports that are provided to employers and/or the TPA. Does this include hard and soft savings? Does it include turnaround time of reviews?
11. Describe your recommended protocol for TPA's to use to approve medical treatment requests. When should treatment requests be sent to your firm for review?
12. Describe how your system handles requests for reconsiderations. What is the timeline for completion of medical reviews?
13. What tracking mechanisms do you have in place for Peer Reviews, Referrals, and Appeals?
14. Describe the mechanism for identifying inappropriate utilization patterns.
15. Indicate what your average turnaround time is for utilization review. How do you ensure utilization reviews are completed in accordance with the California regulations regarding utilization review?
16. What review procedure is undertaken on requests for pharmacy services?
17. What method do you use to address long term medication requests to contain over use and costs?
18. Are you able to electronically invoice the claims administrator?
19. Do you lease, own or contract any of your UR services or systems?
20. How often is your system updated? What treatment standards do you utilize in the performance of Utilization Review?
21. Have you experienced a DWC audit? What were the results? What steps have you taken to remedy identified issues contained in the audit?
22. What percentage of utilization review determinations have been challenged at the WCAB? What were the results of these challenges? What percentage was upheld versus overturned?
23. Describe any additional savings available through your organization.

C. Scope of Services – Medical Management

Provide answers in the order of the listed questions in regards to telephonic and on-site case management.

1. How do you propose to charge for services? Provide flat fee and hourly rates including; but not limited to telephonic case management, field case management, and chiropractic case management.
2. Describe your medical case management services including interaction with workers' compensation TPA's, medical and service providers, employers, and patients.
3. What type of training do you provide to the TPA and how is it provided?
4. Specify what type of personnel is assigned to provide medical case management services including nurses and a Medical Director.
5. How many of your case managers have Certified Occupational Health Nurse (COHN) or Certified Case Manager (CCM) certifications? Are the nurses employees or contractors? How many are bilingual in Spanish? Please provide resumes of designated case management staff.
6. Describe in detail your clerical staff function and how it relates to the medical management process. Where are the telephonic nurses housed? Do these nurses have UR authority?
7. Provide samples of your reports that would be provided to employers and/or the TPA.
8. What are the specific red flags, triggers, or other criteria that you use to identify cases for telephonic and on-site case management?
9. Describe activities and time frames for telephonic case management and on-site case management.
10. Describe the case manager's role and interaction with the injured person, the providers of medical care, and the claims administrator.
11. Describe the provisions, mechanics, and qualification of the individuals responsible for medical care coordination, case management, and disability management.
12. What criteria is used to establish maximum medical improvement (MMI), and return to work time frames?
13. Describe the Disability Duration tools your firm utilizes.
14. Describe the capability of your computer system to incorporate practice parameters into its system to alert the case manager to excessive or inappropriate treatments.
15. What is the hardware, software and network architecture that you use to provide services and to interface with external sources such as the WOCSFWCA? Are there any charges for these services? If so, please include as a separate item in your pricing.

16. What is the timeframe for creating and interfacing with external sources with minimum customization?
17. Explain how nurse reviewers, physician reviewers, adjusters and other parties access input information.
18. Describe your company's standard and ad hoc reporting capabilities. Please provide samples.
19. Are you able to electronically invoice the claims administrator? Are you able to transmit decision letters electronically?
20. Please provide a list of other public agency clients who utilize your services. Have you lost any public agency clients, and if so, what were the reasons?

VII JPA ADMINISTRATION SERVICES

The WOCSFWCA JPA is in need of clerical and administrative services. Please quote a flat annual fee for each year of a three (3) year contract plus the additional (2) year extension option. The scope of this work includes:

1. Manage the day to day affairs of the JPA which includes the preparation of meeting agendas and agenda materials for all WOCSFWCA board meetings as determined by the Board.
2. Preparation of recommendations for each action appearing before the Board which pertains to Workers' Compensation Insurance, including the preparation of minutes.

VIII GENERAL

1. Administrator shall provide the WOCSFWCA, at no additional cost, within ten (10) business days of the date of termination of agreement, all claims, reports, files and a computer tape of the WOCSFWCA's self-insured Workers' Compensation program in a computer program compatible with the new Administrator's computer system and information on the tape lay-out/format.
2. All medical only claim files shall be retained for 7 years from the date of closure of the claim. All indemnity claim files which do not involve permanent disability payment and have no payment activity for 5 years shall be retained for 7 years from the date of closure of the claim. All indemnity claim files which involve payment activity within the last five years and cases with permanent disability payments or awards for lifetime medical treatment shall be retained indefinitely or until 2 years have lapsed from the date of death of the claimant. No claims shall be destroyed without the authority of the WOCSFWCA, and the Administrator shall be responsible for storage of all files within the above criteria during the term of this contract. Please outline your process for storing these files and retrieval of closed files. Will you house them offsite? Will the WOCSFWCA retain files? What if any costs will there be to the WOCSFWCA?

3. The TPA shall agree to allow a designated WOCSFWCA representative to participate in the selection process of any claims staff who will handle the account and the WOCSFWCA will give final approval on all position(s).
4. The TPA shall be responsible for all Statutory reporting obligations on behalf of the WOCSFWCA both State and Federal during the entire contract of administration, including any new regulatory processes and reporting which may become future requirements, at no additional cost to the WOCSFWCA.

Terms and Conditions

Confidentiality

- A. Contractor shall maintain the confidentiality of all records and information in accordance with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures relating to confidentiality, including, without limitation, the WOCSFWCA policies concerning information technology security and the protection of confidential records and information.
- B. Contractor shall indemnify, defend, and hold harmless WOCSFWCA, its members, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting, or professional fees, arising from, connected with, or related to any failure by Contractor, its members, its officers, employees, agents, or subcontractors, to comply with this paragraph, as determined by the WOCSFWCA in its sole judgment. Any legal defense pursuant to contractor's indemnification obligations under this paragraph shall be conducted by contractor and performed by counsel selected by Contractor and approved by WOCSFWCA. Notwithstanding the preceding sentence, WOCSFWCA shall have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide the WOCSFWCA with a full and adequate defense, as determined by WOCSFWCA in its sole judgment, WOCSFWCA shall be entitled to retain its own counsel, including, without limitation, reimbursement from Contractor for all such costs and expenses incurred by WOCSFWCA in doing so. Contractor shall not have the right to enter into any settlement, agree to any agreement for WCTPA Services injunction, or make any admission, in each case, on behalf of WOCSFWCA without WOCSFWCA's prior written approval.

- C. Contractor shall inform all of its members, officers, employees, agents and subcontractors providing services hereunder of the confidentiality provisions of this Contract.

Assignment and Delegation/Mergers or Acquisitions

- A. The contractor shall notify WOCSFWCA of any pending acquisitions/mergers of its company unless otherwise legally prohibited from doing so. If the contractor is restricted from legally notifying the WOCSFWCA of pending acquisitions/mergers, then it should notify WOCSFWCA of the actual acquisitions/mergers as soon as the law allows and provide to the JPA the legal framework that restricted it from notifying WOCSFWCA prior to the actual acquisitions/mergers.
- B. The contractor shall not assign its rights or delegate its duties under this Contract, or both, whether in whole or in part, without the prior written consent of the WOCSFWCA, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this paragraph, WOCSFWCA consent shall require a written Amendment to the Contract, which is formally approved and executed by the parties. Any payments by WOCSFWCA to any approved delegatee or assignee on any claim under this Contract shall be deductible, at the WOCSFWCA's sole discretion, against the claims, which the contractor may have against the County.
- C. Shareholders, partners, members, or other equity holders of contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Contract, such disposition is an assignment requiring the prior written consent of WOCSFWCA in accordance with applicable provisions of this Contract.
- D. Any assumption, assignment, delegation, or takeover of any agreement for services of the contractor's duties, responsibilities, obligations, or performance of same by any person or entity other than the contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without WOCSFWCA's express prior written approval, shall be a material breach of the Contract which may result in the termination of this Contract. In the event of such termination, WOCSFWCA shall be entitled to pursue the same remedies against contractor as it could pursue in the event of default by contractor.

Authorization Warranty

- A. The contractor represents and warrants that the person executing this Contract for the contractor is an authorized agent who has actual authority to bind the contractor to each and every term, condition, and obligation of this Contract and that all requirements of the contractor have been fulfilled to provide such actual authority.

Complaints

- A The contractor shall develop, maintain and operate procedures for receiving, investigating and responding to complaints.
- B Within thirty (30) business days after the Contract effective date, the contractor shall provide the WOCSFWCA with the contractor's policy for receiving, investigating and responding to user complaints.
- C WOCSFWCA will review the contractor's policy and provide the contractor with approval of said plan or with requested changes.
- D If the WOCSFWCA requests changes in the contractor's policy, the contractor shall make such changes and resubmit the plan within five (5) business days for WOCSFWCA approval.
- E If, at any time, the contractor wishes to change the contractor's policy, the contractor shall submit proposed changes to WOCSFWCA for approval before implementation.

Compliance with Applicable Law

- A. In the performance of this Contract, contractor shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures, and all provisions required thereby to be included in this Contract are hereby incorporated herein by reference.
- B. Contractor shall indemnify, defend, and hold harmless WOCSFWCA, its members, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs, and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by contractor, its officers, employees, agents, or subcontractors, to comply with any such laws, rules, regulations, ordinances, directives, guidelines, policies, or procedures, as determined by the WOCSFWCA in its sole judgment. Any legal defense pursuant to contractor's indemnification obligations shall be conducted by contractor and performed by counsel selected by contractor and approved by WOCSFWCA. Notwithstanding the preceding sentence, WOCSFWCA shall have the right to participate in any such defense at its sole cost and expense, except that in the event contractor fails to provide WOCSFWCA with a full and adequate defense, as determined by WOCSFWCA in its sole judgment, WOCSFWCA shall be entitled to retain its own counsel, and to reimbursement from contractor for all such costs and expenses incurred by WOCSFWCA in doing so. Contractor shall not have the right to enter into any settlement, agree to any injunction or other equitable relief, or make any admission, in each case, on behalf of WOCSFWCA without WOCSFWCA's prior written approval.

Compliance with Civil Rights Laws

- A. The contractor hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person shall, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract.

Conflict of Interest

- A. No WOCSFWCA employee whose position with the WOCSFWCA enables such employee to influence the award of this Contract or any competing Contract, and no spouse or economic dependent of such employee, shall be employed in any capacity by the contractor or have any other direct or indirect financial interest in this Contract. No officer or employee of the contractor who may financially benefit from the performance of work hereunder shall in any way participate in WOCSFWCA's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the WOCSFWCA's approval or ongoing evaluation of such work.
- B. The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Contract. The contractor warrants that it is not now aware of any facts that create a conflict of interest. If the contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the WOCSFWCA. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this paragraph shall be a material breach of this Contract.

Employment Eligibility Verification

- A. The contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the Agreement for Services employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended. The contractor shall retain all such documentation for all covered employees for the period prescribed by law.
- B. The contractor shall indemnify, defend, and hold harmless, the WOCSFWCA, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the contractor or the WOCSFWCA or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

Fair Labor Standards

- A. The contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless the WOCSFWCA and its members, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the contractor's employees for which the WOCSFWCA may be found jointly or solely liable.

Force Majeure

- A. Neither party shall be liable for such party's failure to perform its obligations under and in accordance with this Contract, if such failure arises out of fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by such party or any of such party's subcontractors), freight embargoes, or other similar events to those described above, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of such party (such events are referred to in this paragraph as "force majeure events").
- B. Notwithstanding the foregoing, a default by a subcontractor of contractor shall not constitute a force majeure event, unless such default arises out of causes beyond the control of both contractor and such subcontractor, and without any fault or negligence of either of them. In such case, contractor shall not be liable for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit contractor to meet the required performance schedule. As used in this subparagraph, the term "subcontractor" and "subcontractors" mean subcontractors at any tier.
- C. In the event contractor's failure to perform arises out of a force majeure event, contractor agrees to use commercially reasonable best efforts to obtain goods or services from other sources, if applicable, and to otherwise mitigate the damages and reduce the delay caused by such force majeure event.

Governing Law, Jurisdiction, and Venue

- A. This Contract shall be governed by, and construed in accordance with, the laws of the State of California. The contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Orange.

Independent Contractor Status

- A This Contract is by and between WOCSFWCA and the contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, joint venture, or association, as between WOCSFWCA and the contractor. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.
- B The contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Contract all compensation and benefits. The WOCSFWCA shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the contractor.
- C The contractor understands and agrees that all persons performing work pursuant to this Contract are, for purposes of Workers' Compensation liability, solely employees of the contractor and not employees of WOCSFWCA. The contractor shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the contractor pursuant to this Contract

Liquidated Damages

- A If, in the judgment of WOCSFWCA, the contractor is deemed to be non-compliant with the terms and obligations assumed hereby, the WOCSFWCA, may withhold the entire monthly payment or deduct pro rata from the contractor's invoice for work not performed. A description of the work not performed and the amount to be withheld or deducted from payments to the contractor from WOCSFWCA, will be forwarded to the contractor by the JPA, in a written notice describing the reasons for said action.
- B If WOCSFWCA, determines that there are deficiencies in the performance of this Contract that the JPA deems are correctable by the contractor over a certain time span, the JPA will provide a written notice to the contractor to correct the deficiency within specified time frames. Should the fail to correct deficiencies within said time frame, the JPA may: (a) Deduct from the contractor's payment, pro rata, those applicable portions of the Monthly Contract Sum; and/or (b) Deduct liquidated damages. The parties agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of the contractor to correct a deficiency within the specified time frame. The parties hereby agree that under the current circumstances a reasonable estimate of such damages is One Hundred Dollars (\$100 per day per infraction, and that the contractor shall be liable to WOCSFWCA for liquidated damages in said amount. Said amount shall be deducted from WOCSFWCA payment to the contractor; and/or (c) Upon giving five (5) days written notice to the contractor for failure to correct the deficiencies, WOCSFWCA may correct any and all deficiencies and the total costs incurred by WOCSFWCA for completion of the work by an alternate source, whether it be JPA or separate private contractor, will be deducted and forfeited from the payment to the contractor from the WOCSFWCA, as determined by the WOCSFWCA.
- C The action noted in "Liquidated Damages C" shall not be construed as a penalty, but as adjustment of payment to the contractor to recover the WOCSFWCA cost due to the failure of the contractor to complete or comply with the provisions of this Contract.
- D This Paragraph shall not, in any manner, restrict or limit the WOCSFWCA's right to damages for any breach of this Contract provided by law or as specified and shall not restrict or limit WOCSFWCA's right to terminate this Contract as agreed to herein.

Most Favored Public Entity

- A If the contractor's prices decline, or should the contractor at any time during the term of this Contract provide the same goods or services under similar quantity and delivery conditions to the State of California or any county, municipality, or district of the State at prices below those set forth in this Contract, then such lower prices shall be immediately extended to WOCSFWCA.

Non-Exclusivity

- A Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the contractor. This Contract shall not restrict WOCSFWCA from acquiring similar, equal or like goods and/or services from other entities or sources.

Notice of Delays

- A Except as otherwise provided under this Contract, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this

Contract, that party shall, within one (1) business day, give notice thereof, including all relevant information with respect thereto, to the other party.

Notices

- A All notices or demands required or permitted to be given or made under this Contract shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the concerned party. Addresses may be changed by either party giving ten (10) days prior written notice thereof to the other party. The WOCSEWCA shall have the authority to issue all notices or demands required or permitted under this Contract.

Public Records Act

- A Any documents submitted by the contractor; all information obtained in connection with the WOCSEWCA's right to audit and inspect the contractor's documents, books, and accounting records pursuant to this Contract; as well as those documents which were required to be submitted in response to the Request for Proposals (RFP) used in the solicitation process for this Contract, become the exclusive property of WOCSEWCA. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". The WOCSEWCA and its members shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.
- B In the event the WOCSEWCA is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", the contractor agrees to defend and indemnify the WOCSEWCA from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

Publicity

- A The contractor shall not disclose any details in connection with this Contract to any person or entity except as may be otherwise provided hereunder or required by law. However, in recognizing the contractor's need to identify its services and related clients to sustain itself, the JPA shall not inhibit the contractor from publishing its role under this Contract within the following conditions:
 - a. The contractor shall develop all publicity material in a professional manner; and
 - b. During the term of this Contract, the contractor shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of WOCSEWCA and its members without prior written consent
- B The contractor may, without the prior written consent of the WOCSEWCA, indicate in its proposals and sales materials that it has been awarded a contract with the WOCSEWCA.

Record Retention and inspection-Audit Settlement

- A The contractor shall maintain accurate and complete financial records of its activities and operations relating to this Contract in accordance with generally accepted accounting principles. The contractor shall also maintain accurate and complete employment and other records relating to its performance of this Contract. The contractor agrees that WOCSFWCA, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Contract. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the contractor and shall be made available to WOCSFWCA during the term of this Contract and for a period of five (5) years thereafter unless the WOCSFWCA's written permission is given to dispose of any such material prior to such time.
- B In the event that an audit of the contractor is conducted specifically regarding this Contract by any Federal or State auditor, or by any auditor or accountant employed by the contractor or otherwise, then the contractor shall file a copy of such audit report with WOCSFWCA within thirty (30) days of the contractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Contract. Subject to applicable law, the WOCSFWCA shall make a reasonable effort to maintain the confidentiality of such audit report(s)
- C Failure on the part of the contractor to comply with any of the provisions of this section shall constitute a material breach of this Contract upon which the WOCSFWCA may terminate or suspend this Contract.
- D If, at any time during the term of this Contract or within five (5) years after the expiration or termination of this Contract, representatives of WOCSFWCA conduct an audit of the contractor regarding the work performed under this Contract, and if such audit finds that the WOCSFWCA's dollar liability for any such work is less than payments made by WOCSFWCA to the contractor, then the difference shall be either: a) repaid by the contractor to WOCSFWCA by cash payment upon demand or b) at the sole option of WOCSFWCA, deducted from any amounts due to the contractor from the WOCSFWCA, whether under this Contract or otherwise.

Subcontracting

- A The requirements of this Contract may not be subcontracted by the contractor without the advance approval of the WOCSFWCA. Any attempt by the contractor to subcontract without the prior consent of WOCSFWCA may be deemed a material breach of this Contract.
- B If the contractor desires to subcontract, the contractor shall provide the following information promptly at the WOCSFWCA's request:
 - a. A description of the work to be performed by the subcontractor;
 - b. A draft copy of the proposed subcontract;
 - c. Other pertinent information and/or certifications requested by the WOCSFWCA.
 - d. The contractor shall indemnify, defend, and hold the WOCSFWCA harmless with respect to the activities of each and every subcontractor in the same manner and to the same degree as if such subcontractor(s) were the contractor employees.
 - e. The contractor shall remain fully responsible for all performances required of it under this Contract, including those that the contractor has determined to subcontract, notwithstanding the WOCSFWCA's approval of the contractor's proposed subcontract.

- f. The WOCSFWCA's consent to subcontract shall not waive the WOCSFWCA's right to prior and continuing approval of any and all personnel, including subcontractor employees, providing services under this Contract. The contractor is responsible to notify its subcontractors of the WOCSFWCA's right.
- g. The contractor shall be solely liable and responsible for all payments or other compensation to all subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the WOCSFWCA's consent to subcontract

Termination for Convenience

- A This Contract may be terminated, in whole or in part, from time to time, when such action is deemed by the WOCSFWCA, in its sole discretion, to be in its best interest. Termination of work hereunder shall be in effect by notice of termination to the contractor specifying the extent to which performance of work is terminated and the date upon which such termination becomes effective. The date upon which such termination becomes effective shall be no less than ten (10) days after the notice is sent.
- B After receipt of a notice of termination and except as otherwise directed by the WOCSFWCA, the contractor shall:
 - a. Stop work under this Contract on the date and to the extent specified in such notice, and
 - b. Complete performance of such part of the work as shall not have been terminated by such notice.
- C All material including books, records, documents, or other evidence bearing on the costs and expenses of the contractor under this Contract shall be maintained by the contractor.

Termination for Default

- A The WOCSFWCA may, by written notice to the contractor, terminate the whole or any part of this Contract, if, in the judgment of the WOCSFWCA
 - a. Contractor has materially breached this Contract; or
 - b. Contractor fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required either under this Contract; or
 - c. Contractor fails to demonstrate a high probability of timely fulfillment of performance requirements under this Contract, or of any obligations of this Contract and in either case, fails to demonstrate convincing progress toward a cure within five (5) working days (or such longer period as the WOCSFWCA may authorize in writing) after receipt of written notice from the WOCSFWCA specifying such failure.
- B In the event that the WOCSFWCA terminates this Contract in whole or in part as provided in Paragraph
- C the WOCSFWCA may procure, upon such terms and in such manner as the WOCSFWCA may deem appropriate, goods and services similar to those so terminated. The contractor shall be liable to the WOCSFWCA for any and all excess costs incurred by the WOCSFWCA, as determined by the WOCSFWCA, for such similar goods and services. The contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this paragraph.

- D Except with respect to defaults of any subcontractor, the contractor shall not be liable for any such excess costs if its failure to perform this Contract arises out of causes beyond the control and without the fault or negligence of the contractor. Such causes may include, but are not limited to: acts of God or of the public enemy, acts of the WOCSFWCA in either its sovereign or contractual capacity, acts of Federal or State governments in their sovereign capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises beyond the control of both the contractor and subcontractor, and without the fault or negligence of either of them, the contractor shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contractor to meet the required performance schedule. As used in this paragraph, the term "subcontractor(s)" means subcontractor(s) at any tier.
- E If, after the WOCSFWCA has given notice of termination, as outlined by the contract, it is determined by the WOCSFWCA that the contractor was not in default under the provisions of this contract or that the default was excusable under the conditions set in this section, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to "Termination for Convenience".
- F The rights and remedies of the WOCSFWCA provided in this section, Termination for Default, shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract

Termination for Improper Consideration

- A The WOCSFWCA may, by written notice to the contractor, immediately terminate the right of the contractor to proceed under this Contract if it is found that consideration, in any form, was offered or given by the contractor, either directly or through an intermediary, to any WOCSFWCA member, officer, employee, or agent with the intent of securing this Contract or securing favorable treatment with respect to the award, amendment, or extension of this Contract or the making of any determinations with respect to the contractor's performance pursuant to this Contract. In the event of such termination, the WOCSFWCA shall be entitled to pursue the same remedies against the contractor as it could pursue in the event of default by the contractor.

Termination for Insolvency

- A The WOCSFWCA may terminate this Contract forthwith in the event of the occurrence of any of the following:
 - a. Insolvency of the contractor. The contractor shall be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the contractor is insolvent within the meaning of the Federal Bankruptcy Code;
 - b. The filing of a voluntary or involuntary petition regarding the contractor under the Federal Bankruptcy Code;
 - c. The appointment of a Receiver or Trustee for the contractor; or

- d. The execution by the contractor of a general assignment for the benefit of creditors.
- e. The rights and remedies of the WOCSFWCA provided in this section, Termination for Insolvency, shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

Termination for Non-Appropriation of Funds

- A Notwithstanding any other provision of this Contract, the WOCSFWCA shall not be obligated for the contractor's performance hereunder or by any provision of this contract during any of the WOCSFWCA's future fiscal years unless and until the WOCSFWCA appropriates funds for this Contract in the WOCSFWCA's Budget for each such future fiscal year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The WOCSFWCA shall notify the contractor in writing of any such non-allocation of funds at the earliest possible date.

Validity

- A If any provision of this Contract or the application thereof to any person or circumstance is held invalid, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby.

Warranty Against Contingent Fees

- A The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any Contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.
- B For breach of this warranty, the WOCSFWCA shall have the right to terminate this Contract and, at its sole discretion, deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

Compliance with Fair Chance Employment Practices

- A Contractor shall comply with fair chance employment hiring practices set forth in California Government Code Section 12952, Employment Discrimination: Conviction History. Contractor's violation of this paragraph of the Contract may constitute a material breach of the Contract. In the event of such material breach, the WOCSFWCA may, in its sole discretion, terminate the Contract.

Health Insurance Portability and Accountability Act of 1996 (HIPAA)

- A The WOCSFWCA is subject to the Administrative Simplification requirements and prohibitions of the Health Insurance Portability and Services Accountability Act of 1996, Public Law 104-191 (HIPAA), and regulations promulgated thereunder, including the Privacy, Security, Breach Notification, and Enforcement Rules at 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164 (collectively, the "HIPAA Rules"). Under this Agreement, the Contractor provides services to the

WOCSFWCA and the Contractor creates, has access to, receives, maintains, or transmits Protected Health Information in order to provide those services. The WOCSFWCA and the Contractor therefore agree to the terms of Exhibit N, "Business Associate Under Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

Ownership of Materials, Software and Copyright

- A The WOCSFWCA shall be the sole owner of all right, title and interest, including copyright, in and to all software, plans, diagrams, facilities, and tools (hereafter "materials") which are originated or created through the Contractor's work pursuant to this Contract. The Contractor, for valuable consideration herein provided, shall execute all documents necessary to assign and transfer to, and vest in the WOCSFWCA all of the Contractor's right, title and interest in and to such original materials, including any copyright, patent and trade secret rights which arise pursuant to the Contractor's work under this Contract.
- B During the term of this Contract and for five (5) years thereafter, the Contractor shall maintain and provide security for all of the Contractor's working papers prepared under this Contract. The WOCSFWCA shall have the right to inspect, copy and use at any time during and subsequent to the term of this Contract, any and all such working papers and all information contained therein.
- C Any and all materials, software and tools which are developed or were originally acquired by the Contractor outside the scope of this Contract, which the Contractor desires to use hereunder, and which the Contractor considers to be proprietary or confidential, must be specifically identified by the Contractor to the WOCSFWCA as proprietary or confidential, and shall be plainly and prominently marked by the Contractor as "Proprietary" or "Confidential" on each appropriate page of any document containing such material.
- D The WOCSFWCA will use reasonable means to ensure that the Contractor's proprietary and/or confidential items are safeguarded and held in confidence. The WOCSFWCA agrees not to reproduce, distribute or disclose to non-JPA entities any such proprietary and/or confidential items without the prior written consent of the Contractor.
- E All the rights and obligations of this section, Ownership of Materials, Software, and Copyright, shall survive the expiration or termination of this Contract

Data Destruction

- A Contractor(s) and Vendor(s) that have maintained, processed, or stored the WOCSFWCA's data and/or information, implied or expressed, have the sole responsibility to certify that the data and information have been appropriately destroyed consistent with the National Institute of Standards and Technology (NIST) Special Publication SP 800-88 titled Guidelines for Media Sanitization. Available at:

<http://csrc.nist.gov/publications/PubsDrafts.html#SP-800-88 Rev.%201>

The data and/or information may be stored on purchased, leased, or rented electronic storage equipment (e.g., printers, hard drives) and electronic devices (e.g., servers, workstations) that are geographically located within the County of Orange, or external to the County of Orange's boundaries. The WOCSFWCA must receive within ten (10) business days, a signed document

from Contractor(s) and Vendor(s) that certifies and validates the data and information were placed in one or more of the following stored states: unusable, unreadable, and indecipherable.

Vendor shall certify that any WOCSFWCA data stored on purchased, leased, or rented electronic storage equipment and electronic devices, including, but not limited to printers, hard drives, servers, and/or workstations are destroyed consistent with the current National Institute of Standard and Technology (NIST) Special Publication SP-800-88, Guidelines for Media Sanitization. Vendor shall provide the WOCSFWCA with written certification, within ten (10) business days of removal of any electronic storage equipment and devices that validates that any and all WOCSFWCA data was destroyed and is unusable, unreadable, and/or undecipherable.