

**SERVICE AGREEMENT FOR Auto Liability, General Liability and Workers
Compensation CLAIMS HANDLING FOR LEXINGTON FAYETTE URBAN COUNTY
GOVERNMENT**

THIS SERVICE AGREEMENT (this "Agreement") shall be effective as of July 1, 2013 until June 30, 2016, by and between Assured NL Insurance Services Inc., [Risk Management Services Company] a Delaware company ("Service Provider"), and Lexington Fayette Urban County Government (LFUCG) ("Client"), collectively (the "Parties")

PRELIMINARY STATEMENTS

WHEREAS, Client desires for Service Provider to provide various services for and on the behalf of Client and its affiliates (all of which shall be deemed to be included in any reference to Client herein); and

WHEREAS, Service Provider agrees to perform such services on the terms and conditions set forth herein and in the attached RFP 14-2013. NOW, THEREFORE, in consideration of the foregoing and of the mutual promises and covenants hereinafter contained, the Parties agree as follows:

ARTICLE 1 - SERVICES PROVIDED

Subject to all other terms and conditions of this Agreement, Service Provider shall provide the services (the "Services") described in the proposal RFP ¹⁴⁻²⁰¹³~~37-2012~~ of the Lexington Fayette Urban County Government, that is attached hereto as Exhibit A (the "Proposal") and this attachment will become a part of the complete Contract between the Parties. A list of the claims handling duties are listed as follows:

- Risk Management Services Corporation will comply with the claims handling standards listed in the RFP 14-2013, concerning its ability to provide investigations that meet or exceed the Claims handling Best Practices. All claims will be handled out to the LFUCG Riskmaster software system.
- Risk Management Services Corporation will at all times assign adjusters who have at least 8 years of experience in AL, GL and Workers Compensation claims adjusting. All adjusters assigned to LFUCG claims will be properly licensed as adjusters by the Commonwealth of Kentucky.
- Risk Management Services Corporation will at all times during this contract, use the Insurance Industry Best Practices in claims handling, as covered by LFUCG Division of Claims Administration Quality Control forms and the LFUCG Division of Claims Administration Claims AL, GL, and Workers Compensation audit forms, which have previously been provided to your company. All claimants will be contacted to determine Coverage, liability and subrogation possibilities.
- Risk Management Services Co will use the services of PDA appraisers or Craig Adjustment Co, if the Auto damage is over \$3500 or the Property

Damage is over \$5000. The cost of PDA and Craig Adjustment Co. services will be paid by LFUCG.

- Risk Management Services Corporation will assure through proper claims supervision that their adjusters are handling the LFUCG claims per LFUCG Division of Claims Administration required standards, and in full compliance with the Commonwealth of Kentucky's Unfair Claims Settlement Practices Act.

ARTICLE 2 - PROPRIETARY RIGHTS

The Parties shall each retain all title, copyright, and other proprietary rights in and to all materials and systems, all works of authorship and all intellectual property created, utilized or developed by each of them or their representatives in the performance of the Services hereunder or otherwise in connection with this Agreement, including, without limitation, computer programs, computer equipment, products, software, designs, plans, specifications, computer output, valuations, estimates, reports, modules, formats, risk data record formats, procedures, documentation and every innovation, conception, improvement, discovery or invention and any and all intellectual property rights associated therewith. Any materials delivered by Client to Service Provider in connection with this Agreement shall be used by Service Provider only in connection with performance of the Services and shall not otherwise be disclosed to third parties. Upon demand by Client, Service Provider shall immediately return to Client all materials provided by Client to Service Provider, any compilations or analyses of Client data such as loss runs or claims histories, and any other intellectual property described above.

ARTICLE 3 - RELATIONSHIP OF PARTIES AND THIRD PARTIES

3.1. Service Provider, at all times, shall be an independent contractor, and employees of Service Provider shall in no event be considered employees of Client.

3.2. The Parties do not anticipate that Client or its representatives will provide Service Provider with any protected health information ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1995 ("HIPAA") and the Standards for Privacy of Individually Identifiable Health Information and Security Standards for the Protection of Electronic Protected Health Information, 45 C.F.R. Part 150 and Part 154 ("Rules") in connection with the performance of the Services called for under the Agreement. In the event that it is deemed necessary for Client or its representatives to provide PHI to Service Provider in

connection with the performance of the Services, the parties agree to take reasonable steps necessary to protect the security and confidentiality of such PHI in accordance with HIPAA, the Rules, and other laws relating to the privacy and security of PHI, which are now in force or which may hereafter be in force.

ARTICLE 4 - COMPENSATION

4.1. Service Provider shall be compensated by Client for the Services rendered hereunder in accordance with the Proposal, as follows:

➤ This agreement is subject to the final approval of the Mayor and the Council of the LFUCG. The fee schedule is based on LFUCG RFP 14-2013 proposal of Risk Management Services Corporation. Commencing on 12:01 AM, July 1, 2013 and ending at 12PM on June 30, 2016. The fee schedule is as follows:

- A. Risk Management Services Corporation fee schedule for FY 14 for all AL, GL, and Work Comp claims handling is a flat rate of \$214,700. This cost includes all claim handling services until final closure of all losses.
- B. Risk Management Services Corporation fee schedule for FY 15 is ~~APD \$ 60 per claim to closure and PRP is \$50 per claim to closure.~~ Subrogation fee is 20% of collected funds.
- C. Risk Management Services Corporation fee schedule for FY 16 is ~~APD \$ 62 per claim to closure and PRP is \$52 per claim to closure.~~ Subrogation fee is 20% of collected funds.

4.2. Service Provider may seek to adjust or amend its fees for the reasons set forth above. Upon notice from Service Provider regarding a proposed adjustment or amendment, Client agrees to review such proposal promptly and discuss the proposal with Service Provider in good faith. In no event will an adjustment or amendment be retroactive.

a) the historical data upon which Service Provider's fees and service charges were developed were based upon erroneous, obsolete or insufficient information, or a change in Client's business will materially change the nature and/or volume of its business or needs as contemplated at the inception of the Agreement;

b) legislative and/or regulatory requirements materially impact or change the scope of Service Provider's services or responsibilities; or

c) Service Provider must, under any applicable law, utilize another service company as a provider of services hereunder.

4.3. Upon prior notice, Client shall be responsible for any sales, use, value added, , or similar taxes customarily attributable to a user of services, and Client shall pay such taxes to Service Provider in accordance with invoices submitted by Service Provider.

ARTICLE 5 - TERMINATION

5.1. This Agreement may be terminated by either party at any time upon ninety (90) days prior written notice to the other party.

5.2. In addition to all other rights and remedies available to Service Provider under this Agreement and applicable law, Service Provider may cancel this Agreement and discontinue its services hereunder immediately upon notice to Client if Client: (a) is acquired by or merges with any other entity, unless this Agreement is assumed in writing by the new entity and such assumption is agreed to by Service Provider; (b) dissolves, liquidates a substantial part or all of its business or has a bankruptcy proceeding filed by or against it; or (c) threatens insolvency or has a receiver or trustee appointed on its behalf.

5.3. In the event of termination by either party, the Parties agree to cooperate with each other for any balance of the term of the Agreement and for a reasonable amount of time thereafter. Such cooperation will include, without limitation, return of each party's respective property, transfer by Service Provider of Client's information, including electronic records, and communicating with each other regarding all matters pertaining to the Agreement and its cessation.

ARTICLE 6 - CONDITIONS AND LIMITATIONS

6.1. Service Provider does not act as an insurer for Client, and this Agreement shall not be construed as an insurance policy or a contract or agreement of indemnity; it being understood that Service Provider is in no event financially responsible for the payment or satisfaction of claims, lawsuits, or any cause of action of any form, kind or nature against Client.

6.2. Service Provider's responsibility for the performance of Services as specified in this Agreement is conditioned upon Client fully cooperating with, and providing all reasonable assistance requested by, Service Provider; and the performance by Client of all other obligations under this Agreement. Service Provider likewise agrees to cooperate with Client fully in connection with this Agreement, including without limitation providing all reasonable assistance requested by Client relative to the Services under this Agreement.

6.3. The Services to be provided by Service Provider hereunder are not of a legal nature, and Service Provider shall in no event give, or be required to give, any legal opinions or provide any legal representation to Client.

6.4. Service Provider shall indemnify, defend and hold harmless Client, its direct and indirect parents, subsidiaries and affiliates, and each of their respective officers, directors, agents, employees, shareholders, managers, members, successors, and assigns from and against any and all claims, suits, demands, losses, costs, judgments, fines, liabilities, and damages, including reasonable attorneys' fees and court costs (hereinafter individually and collectively referred to as "Liabilities") incurred by or asserted against Client as a result of or arising from Service Provider's negligence, acts, omissions or misconduct. This indemnity shall not apply to any acts or omissions by Service Provider as a result of any directives or instructions issued by Client or its employees, attorneys or agents..

6.5. SERVICE PROVIDER WARRANTS THAT IT WILL PERFORM THE SERVICES HEREUNDER IN ACCORDANCE WITH INDUSTRY STANDARDS AND IN A GOOD AND WORKMANLIKE MANNER. SERVICE PROVIDER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO SUCH SERVICES AND ITS PERFORMANCE HEREUNDER.

IN NO EVENT SHALL EITHER PARTY TO THIS AGREEMENT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER.

6.5. Neither party shall be in breach of this Agreement if there is a total or partial failure by it in its duties and obligations occasioned by any act of God, fire, act of foreign, federal, state or local government, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies, labor disputes or whatever nature, or any other reason beyond its reasonable control. In the event of delay in performance due to any such cause, the date of the delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.

6.6. Any recommendations by Service Provider hereunder are advisory only for the sole purpose of assisting Client. All surveys and reports shall be based upon the conditions observed and the information supplied by Client during any Service Provider visit of Client's location(s) or otherwise and Service Provider shall be under no obligation to verify or investigate the accuracy or completeness of the data and information provided by Client. Any survey performed by Service Provider pursuant hereto is not a comprehensive safety inspection. Client acknowledges that Service Provider does not guarantee, assure or warrant: (1) the safety of any of Client's locations, properties or operations; (2) that Client or its locations, properties or operations are in compliance with federal, state and local laws, statutes, ordinances, recommendations, regulations, consensus codes or other standards; or (3) that compliance with, or implementation of, Service Provider's recommendations will eliminate or reduce any or all hazards, accidents or other losses. Service Provider assumes no responsibility for management or operation of loss control and safety procedures and Client acknowledges that Service Provider

shall not be deemed to be acting for or on behalf of Client's safety, risk management or other similar department.

6.8. Neither party may assign this Agreement, or its rights hereunder, without the prior written consent of the other party hereto.

6.9. All notices to be given pursuant to this Agreement shall be in writing, and shall be deemed to have been duly given when personally delivered or when mailed by United States first class mail, postage prepaid, to the following addresses:

If to Client:

If to Service Provider:

Risk Management Services Co.
2211 River Road
Louisville, KY 40205
Attention: Jeff Rausch

6.10. The terms of this Agreement shall be governed by the laws of the Commonwealth of Kentucky, except for its conflict of law rules.

6.11. The Parties mutually agree that this Agreement is intended by them to be solely for the benefit of the parties hereto and that no third parties may rely on any reports, analyses or other material provided by Service Provider or shall obtain any direct or indirect benefits from this Agreement, have any claim or be entitled to any remedy under this Agreement or otherwise in any way be regarded as third party beneficiaries of this Agreement.

6.12. This Agreement and the attached RFP 14-2013 constitute the entire understanding and agreement between the Parties, and supersede all prior or contemporaneous agreements or understandings, written or oral, of the Parties. This Agreement may be amended or modified only in a writing executed by both parties. No waiver of one or more provisions of this Agreement shall constitute a waiver of any other provision.

Article 7: INSURANCE

Risk Management Services Corporation shall maintain for the duration of this Agreement Commercial General Liability Insurance and Errors and Omissions Coverage against claims which may arise from or in connection with the work performed under this agreement in the principal amount of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars

(\$2,000,000) aggregate, per policy year, for any act or omission in the furnishing of Liability claims handling services. Said policy shall name "The Lexington Fayette Urban County Government, its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers, and successors in interest" as "additional insured" and be placed with an insurer with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined in the most current Best Key rating guide. The policy shall provide that such insurance shall not be cancelled, modified or permitted to lapse without (30) days prior written notice to LFUCG. When requested by LFUCG from time to time, Risk Management Services Corporation shall promptly provide evidence of such insurance acceptable to LFUCG.

IN WITNESS WHEREOF, the parties have executed this Service Agreement as of the day and year first above written.

Assured NL Insurance Services, Inc.

BY: Charles J. Runk
TITLE: Senior Vice President

BY: [Signature]
TITLE: Mayor

EXHIBIT 'A'

Urban County Government

Request For Proposal

The Lexington-Fayette Urban County Government hereby requests proposals for **RFP #14-2013 Third Party Administrator for Claims Management, Adjustment Services for Workers Compensation, Auto Liability and General Liability Claims** to be provided in accordance with terms, conditions and specifications established herein.

Sealed proposals will be received in the Division of Central Purchasing, Room 338, Government Center, 200 East Main Street, Lexington, KY, 40507, until **2:00 PM**, prevailing local time, on **April 30, 2013**

Proposals received after the date and time set for opening proposals will not be considered for award of a contract and will be returned unopened to the Proposer. It is the sole responsibility of the Proposer to assure that his/her proposal is received by the Division of Central Purchasing before the date and time set for opening proposals.

Proposals must be sealed in an envelope and the envelope prominently marked:

RFP #14-2013 Third Party Administrator for Claims Management, Adjustment Services for Workers Compensation, Auto Liability and General Liability Claims

If mailed, the envelope must be addressed to:

Purchasing Director

Lexington-Fayette Urban County Government

Room 338, Government Center

200 East Main Street

Lexington, KY 40507

Pre-Proposal Meeting to be held on **Tuesday, April 23rd 2013** at **2:00PM** in the Purchasing Conference room on the 3rd floor of the Government Center Building at 200 East Main Street, Lexington, KY 40507

Additional copies of this Request For Proposals are available from the Division of Central Purchasing, Room 338 Government Center, 200 East Main Street, Lexington, KY 40507, (859)-258-3320, at no charge.

Proposals, once submitted, may not be withdrawn for a period of sixty (60) calendar days.

The Proposer must submit one (1) master (hardcopy), (1) electronic version in PDF format on a flashdrive or CD and five (5) duplicates (hardcopies) of their proposal for evaluation purposes.

The Lexington-Fayette Urban County Government reserves the right to reject any or all proposals, and to waive technicalities and informalities when such waiver is determined by the Lexington-Fayette Urban County Government to be in its best interest.

Signature of this proposal by the Proposer constitutes acceptance by the Proposer of terms, conditions and requirements set forth herein.

Minor exceptions may not eliminate the proposal. Any exceptions to the specifications established herein shall be listed in detail on a separate sheet and attached hereto. The Lexington-Fayette Urban County Government shall determine whether any exception is minor.

The Lexington-Fayette Urban County Government encourages the participation of minority- and women-owned businesses in Lexington-Fayette Urban County Government contracts. This proposal is subject to Affirmative Action requirements attached hereto.

Please do not contact any City staff member or any other person involved in the selection process other than the designated contact person(s) regarding the project contemplated under this RFP while this RFP is open and a selection has not been finalized. Any attempt to do so may result in disqualification of the firm's submittal for consideration.

Laws and Regulations

All applicable state laws, municipal ordinances and regulations of all authorities having jurisdiction over the project shall apply to the contract, and shall be deemed to be incorporated herein by reference.

Equal Employment Opportunity

The Entity (regardless of whether construction contractor, non-construction contractor or supplier) agrees to provide equal opportunity in employment for all qualified persons, to prohibit discrimination in employment because of race, color, creed, national origin, sex or age, and to promote equal employment through a positive, continuing program from itself and each of its subcontracting agents. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices.

Kentucky Equal Employment Opportunity Act

The Kentucky Equal Employment Opportunity Act of 1978 (KRS 45.560-45.640) requires that any "county, city, town, school district, water district, hospital district, or other political subdivision of the state shall include in directly or indirectly publicly funded contracts for supplies, materials, services, or equipment hereinafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin;
- (2) The contractor will state in all solicitations or advertisements for employees placed by or on behalf of the contractors that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin;
- (3) The contractor will post notices in conspicuous places, available to employees and applicants for employment, setting forth the provision of the nondiscrimination clauses required by this section; and
- (4) The contractor will send a notice to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding advising the labor union or workers' representative of the contractor's commitments under the nondiscrimination clauses."

The Act further provides:

"KRS 45.610. Hiring minorities -- Information required

(1) For the length of the contract, each contractor shall hire minorities from other sources within the drawing area, should the union with which he has collective bargaining agreements be unwilling to supply sufficient minorities to satisfy the agreed upon goals and timetables.

(2) Each contractor shall, for the length of the contract, furnish such information as required by KRS 45.560 to KRS 45.640 and by such rules, regulations and orders issued pursuant thereto and will permit access to all books and records pertaining to his employment practices and work sites by the contracting agency and the department for purposes of investigation to ascertain compliance with KRS 45.560 to 45.640 and such rules, regulations and orders issued pursuant thereto.

KRS 45.620. Action against contractor -- Hiring of minority contractor or subcontractor

(1) If any contractor is found by the department to have engaged in an unlawful practice under this chapter during the course of performing under a contract or subcontract covered under KRS 45.560 to 45.640, the department shall so certify to the contracting agency and such certification shall be binding upon the contracting agency unless it is reversed in the course of judicial review.

(2) If the contractor is found to have committed an unlawful practice under KRS 45.560 to 45.640, the contracting agency may cancel or terminate the contract, conditioned upon a program for future compliance approved by the contracting agency and the department. The contracting agency may declare such a contractor ineligible to bid on further contracts with that agency until such time as the contractor complies in full with the requirements of KRS 45.560 to 45.640.

(3) The equal employment provisions of KRS 45.560 to 45.640 may be met in part by a contractor by subcontracting to a minority contractor or subcontractor. For the provisions of KRS 45.560 to 45.640, a minority contractor or subcontractor shall mean a business that is owned and controlled by one or more persons disadvantaged by racial or ethnic circumstances.

KRS 45.630 Termination of existing employee not required, when

Any provision of KRS 45.560 to 45.640 notwithstanding, no contractor shall be required to terminate an existing employee upon proof that employee was employed prior to the date of the contract.

KRS 45.640 Minimum skills

Nothing in KRS 45.560 to 45.640 shall require a contractor to hire anyone who fails to demonstrate the minimum skills required to perform a particular job."

It is recommended that all of the provisions above quoted be included as special conditions in each contract. In the case of a contract exceeding \$250,000, the contractor is required to furnish evidence that his workforce in Kentucky is representative of the available work-force in the area from which he draws employees, or to supply an

Affirmative Action plan which will achieve such representation during the life of the contract.

Contention Process

Vendors who respond to this invitation have the right to file a notice of contention associated with the RFP process or to file a notice of appeal of the recommendation made by the Director of Central Purchasing resulting from this invitation.

Notice of contention with the RFP process must be filed within 3 business days of the bid/proposal opening by (1) sending a written notice, including sufficient documentation to support contention, to the Director of the Division of Central Purchasing or (2) submitting a written request for a meeting with the Director of Central Purchasing to explain his/her contention with the RFP process. After consulting with the Commissioner of Finance the Chief Administrative Officer and reviewing the documentation and/or hearing the vendor, the Director of Central Purchasing shall promptly respond in writing findings as to the compliance with RFP processes. If, based on this review, a RFP process irregularity is deemed to have occurred the Director of Central Purchasing will consult with the Commissioner of Finance, the Chief Administrative Officer and the Department of Law as to the appropriate remedy.

Notice of appeal of a RFP recommendation must be filed within 3 business days of the RFP recommendation by (1) sending a written notice, including sufficient documentation to support appeal, to the Director, Division of Central Purchasing or (2) submitting a written request for a meeting with the Director of Central Purchasing to explain his appeal. After reviewing the documentation and/or hearing the vendor and consulting with the Commissioner of Finance and the Chief Administrative Officer, the Director of Central Purchasing shall in writing, affirm or withdraw the recommendation.

SELECTION CRITERIA:

1. Specialized experienced and technical competence of the person or firm (including a joint venture or association) with the type of service required. (i.e. Claims expertise, public entity experience, stewardship reports, claimant surveys, etc.)
2. Capacity of the person or firm to perform the work, including any specialized services, within the time limitations. (i.e. experience in using RiskMaster Information Systems, document imaging, fair adjuster workloads, etc.)

3. Character, integrity, reputation, judgment, experience and efficiency of the person or firm. (i.e. written references; adjusters with minimum eight years experience in handling AL/GL/WC claims, SAS 70 reports, etc.)
4. Past record and performance on contracts with the LFUCG or other governmental agencies and private industry with respect to such factors as control of cost, quality of work and ability to meet scheduling.
5. Familiarity with the details of the project. (i.e. benchmark studies with like entities)
6. Degree of local employment to be provided by the person or firm and ability to meet the on scene accident requirements.
7. Estimated Cost of Services (see Section V)

Proposals shall contain the appropriate information necessary to evaluate based on these criteria. A committee composed of government employees as well as representatives of relevant user groups will evaluate the proposals.

Questions shall be addressed to:

 Todd Slatin
 Director
 Division of Central Purchasing

 tslatin@lexingtonky.gov

Affirmative Action Plan

All vendors must submit as a part of the proposal package the following items to the Urban County Government:

1. Affirmative Action Plan for his/her firm;
2. Current Work Force Analysis Form;

Failure to submit these items as required may result in disqualification of the submitter from award of the contract. All submissions should be directed to:

 Director, Division of Central Purchasing
 Lexington-Fayette Urban County Government

 200 East Main Street, 3rd Floor

 Lexington, Kentucky 40507

All questions regarding this proposal must be directed to the Division of Central Purchasing, (859)-258-3320.

AFFIDAVIT

Comes the Affiant, _____, and after being first duly sworn,
states under penalty of perjury as follows:

1. His/her name is _____ and he/she is the individual submitting the
proposal _____ or _____ is _____ the _____ authorized _____ representative
of _____, the entity submitting the
proposal (hereinafter referred to as "Proposer").

2. Proposer will pay all taxes and fees, which are owed to the Lexington-Fayette Urban County Government
at the time the proposal is submitted, prior to award of the contract and will maintain a "current" status in
regard to those taxes and fees during the life of the contract.

3. Proposer will obtain a Lexington-Fayette Urban County Government business license, if applicable, prior to award of the contract.

4. Proposer has authorized the Division of Central Purchasing to verify the above-mentioned information with the Division of Revenue and to disclose to the Urban County Council that taxes and/or fees are delinquent or that a business license has not been obtained.

5. Proposer has not knowingly violated any provision of the campaign finance laws of the Commonwealth of Kentucky within the past five (5) years and the award of a contract to the Proposer will not violate any provision of the campaign finance laws of the Commonwealth.

6. Proposer has not knowingly violated any provision of Chapter 25 of the Lexington-Fayette Urban County Government Code of Ordinances, known as "Ethics Act."

Continued on next page

7. Proposer acknowledges that "knowingly" for purposes of this Affidavit means, with respect to conduct or to circumstances described by a statute or ordinance defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists.

Further, Affiant sayeth naught.

STATE OF _____

COUNTY OF _____

The foregoing instrument was subscribed, sworn to and acknowledged before me by _____ on this the _____ day of _____, 2012.

My Commission expires: _____

NOTARY PUBLIC, STATE AT LARGE

EQUAL OPPORTUNITY AGREEMENT

The Law

- Title VII of the Civil Rights Act of 1964 (amended 1972) states that it is unlawful for an employer to discriminate in employment because of race, color, religion, sex, age (40-70 years) or national origin.
- Executive Order No. 11246 on Nondiscrimination under Federal contract prohibits employment discrimination by contractor and sub-contractor doing business with the Federal Government or recipients of Federal funds. This order was later amended by Executive Order No. 11375 to prohibit discrimination on the basis of sex.
- Section 503 of the Rehabilitation Act of 1973 states:

The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap.

- Section 2012 of the Vietnam Era Veterans Readjustment Act of 1973 requires Affirmative Action on behalf of disabled veterans and veterans of the Vietnam Era by contractors having Federal contracts.
- Section 206(A) of Executive Order 12086, Consolidation of Contract Compliance Functions for Equal Employment Opportunity, states:

The Secretary of Labor may investigate the employment practices of any Government contractor or sub-contractor to determine whether or not the contractual provisions specified in Section 202 of this order have been violated.

The Lexington-Fayette Urban County Government practices Equal Opportunity in recruiting, hiring and promoting. It is the Government's intent to affirmatively provide employment opportunities for those

individuals who have previously not been allowed to enter into the mainstream of society. Because of its importance to the local Government, this policy carries the full endorsement of the Mayor, Commissioners, Directors and all supervisory personnel. In following this commitment to Equal Employment Opportunity and because the Government is the benefactor of the Federal funds, it is both against the Urban County Government policy and illegal for the Government to let contracts to companies which knowingly or unknowingly practice discrimination in their employment practices. Violation of the above mentioned ordinances may cause a contract to be canceled and the contractors may be declared ineligible for future consideration.

Please sign this statement in the appropriate space acknowledging that you have read and understand the provisions contained herein. Return this document as part of your application packet.

Bidders

We agree to comply with the Civil Rights Laws listed above that govern employment rights of minorities, women, Vietnam veterans, handicapped and aged persons.

Signature _____

Name of Business _____

WORKFORCE ANALYSIS FORM

Name of Organization: _____

Date: / /

<u>Categories</u>	<u>Total</u>	<u>White</u>		<u>Latino</u>		<u>Black</u>		<u>Other</u>		<u>Total</u>	
		<u>M</u>	<u>F</u>	<u>M</u>	<u>F</u>	<u>M</u>	<u>F</u>	<u>M</u>	<u>F</u>	<u>M</u>	<u>F</u>
<u>Administrators</u>											
<u>Professionals</u>											
<u>Superintendents</u>											
<u>Supervisors</u>											
<u>Foremen</u>											
<u>Technicians</u>											
<u>Protective Service</u>											
<u>Para-Professionals</u>											
<u>Office/Clerical</u>											
<u>Skilled Craft</u>											

<u>Service/Maintenance</u>													
<u>Total:</u>													

Prepared by: _____ Name & Title _____

DIRECTOR, DIVISION OF CENTRAL PURCHASING
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
200 EAST MAIN STREET
LEXINGTON, KENTUCKY 40507

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE
EQUAL EMPLOYMENT OPPORTUNITIES AND DBE CONTRACT PARTICIPATION

The Lexington-Fayette Urban County Government has set a goal that not less than ten percent (10%) of the total value of this contract be subcontracted to MBE/WBE's. The goal for the utilization of certified MBE/WBE's as subcontractors are recommended goals. Contractors who fail to meet such goals will be expected to provide written explanations to the Director of the Division of Central Purchasing of efforts they have made to accomplish the recommended goals and the extent to which they are successful in accomplishing the recommended goals will be a consideration in the procurement process.

For assistance in locating MBE/WBE Subcontractors contact Marilyn Clark at 859/258-3320 or by writing the address listed below:

Marilyn Clark, Division of Central Purchasing
Lexington-Fayette Urban County Government

200 East Main Street – Room 338

Lexington, Kentucky 40507

Lexington-Fayette Urban County Government
MBE/WBE Participation Goals

PART 1 - GENERAL

- 1.1 The LFUCG request all potential contractors to make a concerted effort to include Minority-Owned (MBE) and Woman-Owned (WBE) Business Enterprises as subcontractors or suppliers in their proposals.
- 1.2 Toward that end, the LFUCG has established 10% of total procurement costs as a Goal for participation of Minority-Owned and Woman-Owned Businesses on this contract.
- 1.3 It is therefore a request of each Submitter to include in its proposal, the same goal (10%) or for MBE/WBE participation and other requirements as outlined in this section.

PART 2 - PROCEDURES

- 2.1 The successful proposer will be required to report to the LFUCG, the dollar amounts of all purchase orders submitted to Minority-Owned or Woman-Owned subcontractors and suppliers for work done or materials purchased for this contract. (See Subcontractor Monthly Payment Report)
- 2.2 Replacement of a Minority-Owned or Woman-Owned subcontractor or supplier listed in the original submittal must be requested in writing and must be accompanied by documentation of Good Faith Efforts to replace the subcontractor / supplier with another MBE/WBE Firm; this is subject to approval by the LFUCG. (See LFUCG MBE/WBE Substitution Form)
- 2.3 For assistance in identifying qualified, certified businesses to solicit for potential contracting opportunities, submitters may contact:
 - A. The Lexington-Fayette Urban County Government, Division of Central Purchasing (859-258-3320)
- 2.4 The LFUCG will make every effort to notify interested MBE/WBE subcontractors and suppliers of each RFP, including information on the scope of work, the pre-proposal meeting time and location, the proposal date, and all other pertinent information regarding the project.

PART 3 - DEFINITIONS

- 3.1 A Minority-Owned Business Enterprise (MBE) is defined as a business which is certified as being at least 51% owned and operated by persons of African American, Hispanic, Asian, Pacific Islander, American Indian or Alaskan Native Heritage.
- 3.2 A Woman-Owned Business Enterprise (WBE) is defined as a business which is certified as being at least 51% owned and operated by one or more Non-Minority Females.

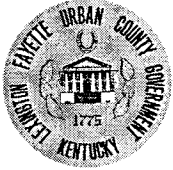
PART 4 - OBLIGATION OF PROPOSER

- 4.1 The bidder shall make a Good Faith Effort to achieve the Participation Goal for MBE/WBE subcontractors/suppliers. The failure to meet the goal shall not necessarily be cause for disqualification of the bidder; however, bidders not meeting the goal are required to furnish with their bids written documentation of their Good Faith Efforts to do so.
- 4.2 Award of Contract shall be conditioned upon satisfaction of the requirements set forth herein.
- 4.3 The Form of Proposal includes a section entitled "MBE/WBE Participation Form". The applicable information must be completed and submitted as outlined below.
- 4.4 Failure to submit this information as requested may be cause for rejection of the proposal.

PART 5 - DOCUMENTATION REQUIRED

- 5.1 Proposers reaching the Goal are required to submit only the "MBE/WBE Participation Form." The form must be fully completed including names and telephone number of participating MBE/WBE firm(s); type of work to be performed; estimated value of the contract and value expressed as a percentage of the total Lump Sum Proposal Price. The form must be signed and dated, and is to be submitted with the proposal.
- 5.2 Proposers not reaching the Goal must submit the "MBE/WBE Participation Form", the "MBE Quote Summary Form" and a written statement documenting their Good Faith Effort to do so (If proposal includes no MBE/WBE participation, proposer shall enter "None" on the subcontractor / supplier form). In addition, the proposer may submit the following as proof of Good Faith Efforts to meet the Participation Goal:
- A. Advertisement by the proposer of MBE/WBE Contracting opportunities associated with this proposal in at least two (2) of the following:
1. A periodical in general circulation throughout the region
 2. A Minority-Focused periodical in general circulation throughout the region
 3. A Trade periodical aimed at the MBE/WBE community in general circulation throughout the region
 4. Proposer shall include copies of dated advertisement with his submittal

- B. Evidence of written notice of contracting opportunities to at least five (5) MBE/WBE firms serving the construction industry at least seven (7) days prior to the proposal opening date.
- C. Copies of quotations submitted by MBE/WBE firms which were not used due to uncompetitive pricing or other factors and/or copies of responses from firms that were contacted indicating that they would not be submitting a proposal.
- D. Documentation of Proposer's utilization of the agencies identified to help locate potential MBE/WBE firms for inclusion on the contract including responses from agencies.
- E. Failure to submit any of the documentation requested in this section may be cause for rejection of the proposal. Proposers may include any other documentation deemed relevant to this requirement. "Record of MBE/WBE Solicitation" and other required documentation of Good Faith Efforts are to be submitted with the proposal, if participation Goal is not met.



MINORITY BUSINESS ENTERPRISE PROGRAM

Marilyn Clark
Minority Business Enterprise Liaison
Division of Central Purchasing
Lexington-Fayette Urban County Government
200 East Main Street
Lexington, KY 40507
mclark@lexingtonky.gov
859-258-3323

OUR MISSION: The mission of the Minority Business Enterprise Program is to facilitate the full participation of minority and women owned businesses in the procurement process and to promote economic inclusion as a business imperative essential to the long term economic viability of Lexington-Fayette Urban County Government.

To that end the city council adopted and implemented resolution 167-91-Disadvantaged Business Enterprise (DBE) 10% Goal Plan in July of 1991. The resolution states in part (a full copy is available in Central Purchasing):

"A Resolution supporting adoption of the administrative plan for a ten percent (10%)

Minimum goal for disadvantaged business enterprise participation in Lexington-Fayette Urban County Government construction and professional services contracts;

Providing that as part of their bids on LFUCG construction contracts, general Contractors shall make a good faith effort to award at least ten percent (10%) of

All subcontracts to disadvantaged business enterprises; providing that divisions of

LFUCG shall make a good faith effort to award at least ten percent of their Professional services and other contracts to disadvantaged business enterprises..."

A Disadvantaged Business Enterprise is defined as a business at least 51% owned, operated and managed by a U.S. Citizen of the following groups:

- African-American
- Hispanic-American
- Asian/Pacific Islander
- Native American/Native Alaskan
- Non-Minority Female

We are very happy that you have decided to bid for a contract, request for proposal, submitted a quote or are interested in learning more about how to do business with Lexington-Fayette Urban County Government. We have compiled the list below to help you locate certified minority vendors.

LFUCG-Economic Engine Listings

Marilyn Clark
mclark@lexingtonky.gov
859-258-3323

Commerce Lexington-

Tyrone Tyra, Minority Business Development
ttyra@commercelexington.com
859-226-1625

Tri-State Minority Supplier Diversity Council

Sonya Brown
sbrown@tsmsdc.com
502-625-0137

Small Business Development Council

Dee Dee Harbut /UK SBDC
dharbut@uky.edu

Shawn Rogers, UK SBDC
Shawn.rogers@uky.edu

Shiree Mack
smack@uky.edu

Community Ventures Corporation

James Coles
jcoles@cvcky.org
859-231-0054

Kentucky Department of Transportation

Shella Jarvis
Shella.Jarvis@ky.gov
502-564-3601

KPAP

Debbie McKnight
Debbie.McKnight@ky.gov
800-838-3266 or 502-564-4252

Bobbie Carlton
Bobbie.Carlton@ky.gov

Ohio River Valley Women's Business Council

Rea Waldon
rwaldon@gcul.org
513-487-6534

Kentucky Small Business Connect

Tom Back
800-626-2250 or 502-564-2064
https://secure.kentucky.gov//sbc

National Minority Supplier Development Council, Inc.

(NMSDC)

www.nmsdc.org

LFUCG MBE/WBE PARTICIPATION FORM

Bid/RFP/Quote Reference # _____

The MBE/WBE subcontractors listed have agreed to participate on this Bid/RFP/Quote. If any substitution is made or the total value of the work is changed prior to or after the job is in progress, it is understood that those substitutions must be submitted to Central Purchasing for approval immediately.

<u>MBE/WBE Company, Name, Address, Phone, Email</u>	<u>Work to be Performed</u>	<u>Total Dollar Value of the Work</u>	<u>% Value of Total Contract</u>
<u>1.</u>			
<u>2.</u>			
<u>3.</u>			
<u>4.</u>			

The undersigned company representative submits the above list of MBE/WBE firms to be used in accomplishing the work contained in this Bid/RFP/Quote. Any misrepresentation may result in the termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and false claims.

Company

By

Date

Title

LFUCG MBE/WBE SUBSTITUTION FORM

Bid/RFP/Quote Reference # _____

The substituted MBE/WBE subcontractors listed below have agreed to participate on this Bid/RFP/Quote. These substitutions were made prior to or after the job was in progress. These substitutions were made for reasons stated below and are now being submitted to Central Purchasing for approval. By the authorized signature of a representative of our company, we understand that this information will be entered into our file for this project.

SUBSTITUTED MBE/WBE Company Name, Address, Phone, Email	MBE/WBE Formally Contracted/ Name, Address, Phone, Email	Work to Be Performed	Reason for the Substitution	Total Dollar Value of the Work	% Value of Total Contract
1.					
2.					
3.					
4.					

The undersigned acknowledges that any misrepresentation may result in termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and false claims.

Company Date

Company Representative Title



MBE QUOTE SUMMARY FORM
Bid/RFP/Quote Reference # _____

The undersigned acknowledges that the minority subcontractors listed on this form did submit a quote to participate on this project.

<u>Company Name</u>	<u>Contact Person</u>
<u>Address/Phone/Email</u>	<u>RFP Package / RFP Date</u>

<u>MBE/WBE Company Address</u>	<u>Contact Person</u>	<u>Contact Information (work phone, Email, cel)</u>	<u>Date Contacted</u>	<u>Services to be performed</u>	<u>Method of Communication (email, phone, meeting, ad, event etc)</u>	<u>Total dollars Do Not Leave Blank (Attach Documentation)</u>	<u>MBE *</u> AA HA AS NA Female

(MBE designation / AA=African American / HA= Hispanic American/AS = Asian American/Pacific Islander/NA= Native American)

The undersigned acknowledges that all information is accurate. Any misrepresentation may result in termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and claims.

Company Company Representative

Date Title



LFUCG SUBCONTRACTOR MONTHLY PAYMENT REPORT

The LFUCG has a 10% goal plan adopted by city council to increase the participation of minority and women owned businesses in the procurement process. In order to measure that goal LFUCG will track spending with MBE/WBE vendors on a monthly basis. By the signature below of an authorized company representative, you certify that the information is correct, and that each of the representations set forth below is true. Any misrepresentation may result in termination of the contract and/or prosecution under applicable Federal and State laws concerning false statements

and false claims. Please submit this form monthly to the Division of Central Purchasing/ 200 East Main Street / Room 338 / Lexington, KY 40507.

Bid/RFP/Quote #
Total Contract Amount Awarded to Prime Contractor for this Project

<u>Project Name/ Contract #</u>	<u>Work Period/ From:</u> <u>To:</u>
<u>Company Name:</u>	<u>Address:</u>
<u>Federal Tax ID:</u>	<u>Contact Person:</u>

<u>Subcontractor Vendor ID (name, address, phone, email)</u>	<u>Description of Work</u>	<u>Total Subcontract Amount</u>	<u>% of Total Contract Awarded to Prime for this Project</u>	<u>Total Amount Paid for this Period</u>	<u>Purchase Order number for subcontractor work (please attach PO)</u>	<u>Scheduled Project Start Date</u>	<u>Scheduled Project End Date</u>

By the signature below of an authorized company representative, you certify that the information is correct, and that each of the representations set forth below is true. Any misrepresentations may result in the termination of the contract and/or prosecution under applicable Federal and State laws concerning false statements and false claims.

<u>Company</u>	<u>Company Representative</u>
<u>Date</u>	<u>Title</u>

LFUCG STATEMENT OF GOOD FAITH EFFORTS

Bid/RFP/Quote #

By the signature below of an authorized company representative, we certify that we have utilized the following methods to obtain the maximum practicable participation by minority and women owned business enterprises on the project. Please indicate which methods you used by placing an X in the appropriate place.

Attended LFUCG Central Purchasing Economic Inclusion Outreach Event

Sponsored Economic Inclusion event to provide networking opportunities

Requested a list of MBE/WBE subcontractors or suppliers from LFUCG Economic Engine

Advertised for MBE/WBE subcontractors or suppliers in local or regional newspapers

Showed evidence of written notice of contracting and/or supplier opportunities to MBE/WBE firms at least seven days prior to the proposal opening date

Provided copies of quotations submitted by MBE/WBE firms which were not used and/or responses from firms indicating they would not be submitting a quote

Provided plans, specifications, and requirements to interested MBE/WBE subcontractors

Other
Please list any other methods utilized that aren't covered above.

The undersigned acknowledges that all information is accurate. Any misrepresentations may result termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and claims.

Company _____ Company Representative _____

Date _____ Title _____

Firm Submitting Proposal: _____

Complete Address: _____
_____ Street _____ City _____ Zip _____

Contact Name: _____ Title: _____

Telephone Number: _____ Fax Number: _____

Email address: _____

GENERAL PROVISIONS

1. Each Respondent shall comply with all Federal, State & Local regulations concerning this type of service or good.

The Respondent agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, 29 U.S.C. 650 et. seq., as amended, and KRS Chapter 338. The Respondent also agrees to notify the LFUCG in writing immediately upon detection of any unsafe and/or unhealthful working conditions at the job site. The Respondent agrees to indemnify, defend and hold the

LFUCG harmless from all penalties, fines or other expenses arising out of the alleged violation of said laws.

2. Failure to submit ALL forms and information required in this RFP may be grounds for disqualification.
3. Addenda: All addenda, if any, shall be considered in making the proposal, and such addenda shall be made a part of this RFP. Before submitting a proposal, it is incumbent upon each proposer to be informed as to whether any addenda have been issued, and the failure to cover in the bid any such addenda may result in disqualification of that proposal.
4. Proposal Reservations: LFUCG reserves the right to reject any or all proposals, to award in whole or part, and to waive minor immaterial defects in proposals. LFUCG may consider any alternative proposal that meets its basic needs.
5. Liability: LFUCG is not responsible for any cost incurred by a Respondent in the preparation of proposals.
6. Changes/Alterations: Respondent may change or withdraw a proposal at any time prior to the opening; however, no oral modifications will be allowed. Only letters, or other formal written requests for modifications or corrections of a previously submitted proposal which is addressed in the same manner as the proposal, and received by LFUCG prior to the scheduled closing time for receipt of proposals, will be accepted. The proposal, when opened, will then be corrected in accordance with such written request(s), provided that the written request is contained in a sealed envelope which is plainly marked "modifications of proposal".
7. Clarification of Submittal: LFUCG reserves the right to obtain clarification of any point in a bid or to obtain additional information from a Respondent.
8. Bribery Clause: By his/her signature on the bid, Respondent certifies that no employee of his/hers, any affiliate or Subcontractor, has bribed or attempted to bribe an officer or employee of the LFUCG.
9. Additional Information: While not necessary, the Respondent may include any product brochures, software documentation, sample reports, or other documentation that may assist LFUCG in better understanding and evaluating the Respondent's response. Additional documentation shall not serve as a substitute for other documentation which is required by this RFP to be submitted with the proposal,
10. Ambiguity, Conflict or other Errors in RFP: If a Respondent discovers any ambiguity, conflict, discrepancy, omission or other error in the RFP, it shall immediately notify LFUCG of such error in writing and request modification or

clarification of the document if allowable by the LFUCG.

11. Agreement to Bid Terms: In submitting this proposal, the Respondent agrees that it has carefully examined the specifications and all provisions relating to the work to be done attached hereto and made part of this proposal. By acceptance of a Contract under this RFP, proposer states that it understands the meaning, intent and requirements of the RFP and agrees to the same. The successful Respondent shall warrant that it is familiar with and understands all provisions herein and shall warrant that it can comply with them. No additional compensation to Respondent shall be authorized for services or expenses reasonably covered under these provisions that the proposer omits from its Proposal.
12. Cancellation: If the services to be performed hereunder by the Respondent are not performed in an acceptable manner to the LFUCG, the LFUCG may cancel this contract for cause by providing written notice to the proposer, giving at least thirty (30) days notice of the proposed cancellation and the reasons for same. During that time period, the proposer may seek to bring the performance of services hereunder to a level that is acceptable to the LFUCG, and the LFUCG may rescind the cancellation if such action is in its best interest.

A. Termination for Cause

- (1) LFUCG may terminate a contract because of the contractor's failure to perform its contractual duties
- (2) If a contractor is determined to be in default, LFUCG shall notify the contractor of the determination in writing, and may include a specified date by which the contractor shall cure the identified deficiencies. LFUCG may proceed with termination if the contractor fails to cure the deficiencies within the specified time.
- (3) A default in performance by a contractor for which a contract may be terminated shall include, but shall not necessarily be limited to:
- (a) Failure to perform the contract according to its terms, conditions and specifications;
- (b) Failure to make delivery within the time specified or according to a delivery schedule fixed by the contract;
- (c) Late payment or nonpayment of bills for labor, materials, supplies, or equipment furnished in connection with a contract for construction services as evidenced by mechanics' liens filed pursuant to the provisions of KRS Chapter 376, or letters of indebtedness received from creditors by the purchasing agency;
- (d) Failure to diligently advance the work under a contract for construction services;

- (e) The filing of a bankruptcy petition by or against the contractor;
- or
- (f) Actions that endanger the health, safety or welfare of the LFUCG or its citizens.

B. At Will Termination

Notwithstanding the above provisions, the LFUCG may terminate this contract at will in accordance with the law upon providing thirty (30) days written notice of that intent, Payment for services or goods received prior to termination shall be made by the LFUCG provided these goods or services were provided in a manner acceptable to the LFUCG. Payment for those goods and services shall not be unreasonably withheld.

13. Assignment of Contract: The contractor shall not assign or subcontract any portion of the Contract without the express written consent of LFUCG. Any purported assignment or subcontract in violation hereof shall be void. It is expressly acknowledged that LFUCG shall never be required or obligated to consent to any request for assignment or subcontract; and further that such refusal to consent can be for any or no reason, fully within the sole discretion of LFUCG.
14. No Waiver: No failure or delay by LFUCG in exercising any right, remedy, power or privilege hereunder, nor any single or partial exercise thereof, nor the exercise of any other right, remedy, power or privilege shall operate as a waiver hereof or thereof. No failure or delay by LFUCG in exercising any right, remedy, power or privilege under or in respect of this Contract shall affect the rights, remedies, powers or privileges of LFUCG hereunder or shall operate as a waiver thereof.
15. Authority to do Business: The Respondent must be a duly organized and authorized to do business under the laws of Kentucky. Respondent must be in good standing and have full legal capacity to provide the services specified under this Contract. The Respondent must have all necessary right and lawful authority to enter into this Contract for the full term hereof and that proper corporate or other action has been duly taken authorizing the Respondent to enter into this Contract. The Respondent will provide LFUCG with a copy of a corporate resolution authorizing this action and a letter from an attorney confirming that the proposer is authorized to do business in the State of Kentucky if requested. All proposals must be signed by a duly authorized officer, agent or employee of the Respondent.
16. Governing Law: This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. In the event of any proceedings regarding this Contract, the Parties agree that the venue shall be the Fayette County Circuit Court or the U.S. District Court for the Eastern District of Kentucky, Lexington Division. All parties expressly consent to personal

jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Contract or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

17. Ability to Meet Obligations: Respondent affirmatively states that there are no actions, suits or proceedings of any kind pending against Respondent or, to the knowledge of the Respondent, threatened against the Respondent before or by any court, governmental body or agency or other tribunal or authority which would, if adversely determined, have a materially adverse effect on the authority or ability of Respondent to perform its obligations under this Contract, or which question the legality, validity or enforceability hereof or thereof.
18. Contractor understands and agrees that its employees, agents, or subcontractors are not employees of LFUCG for any purpose whatsoever. Contractor is an independent contractor at all times during the performance of the services specified.
19. If any term or provision of this Contract shall be found to be illegal or unenforceable, the remainder of the contract shall remain in full force and such term or provision shall be deemed stricken.

Signature _____

Date _____

Request for Proposal

The Lexington Fayette Urban County Government (hereinafter LFUCG) will receive sealed qualifications for the following project:

<u>Project:</u>	<u>Third Party Administrator for Claims Management / Adjustment Services for Workers Compensation, Auto Liability and General Liability Claims, and all reporting requirements to our Excess Insurers.</u>
<u>Proposal Due Date and Time:</u>	<u>April 30, 2013 by 2:00PM</u>
<u>Pre-Proposal Date and Time:</u>	<u>The Informational Meeting will be held on April 23, 2013 at 2:00 PM.</u>
<u>Pre-Proposal Location:</u>	<u>Lexington Fayette Urban Co. Government Department of Purchasing 200 E. Main Street, 3rd Floor, Lexington, Kentucky 40507 1-859-258-3320</u>

Type of work:

Third Party Administration (TPA) of claims processing for Workers Compensation, Auto Liability and General Liability claims and all reporting requirements to our Excess Insurers.

SCOPE

The following information will provide prospective proposers with the scope of Workers Compensation, Auto Liability and General Liability claims processed by the LFUCG Department of Law Claims Section. The average number of claims was obtained using a report of new losses from July 1, 2010 to July 1, 2012.

Workers Compensation, Auto Liability and General Liability loss incidents will be reported to the TPA electronically by LFUCG Divisional Insurance Coordinators. The TPA will set up the new losses in the LFUCG Riskmaster software system; review and investigate coverage of each claim, determine nature and extent of all bodily injuries, obtain all estimates of damage and approve same, or obtain an appraisal of damage by PDA (Property Damage Appraisers), provide input of payment data into Riskmaster and close all completed claims in Riskmaster. All file notes, reserve changes, appraisals and approval of best damage estimate, and coding will be processed by the TPA in LFUCG's Riskmaster database. An electronic claim file will be maintained by the TPA scanning documents and attaching to claim files within LFUCG's Riskmaster database, also setting up events only will be done by the TPA into the LFUCG Riskmaster system. **The TPA will have to be able to go to the scene of any accident that would require the TPA to report the loss to our Excess insurer.** The TPA would be required to meet the reporting requirements of all reportable losses and Litigated losses to our Excess insurer.

The following is the LFUCG's prior claims history for Workers Compensation, Auto Liability and General Liability claims for FY 10, FY 11 and FY 12: **Average number of new losses for three fiscal years is Auto Liability 175, General Liability 228 and Workers Compensation 496. This is a per year average using the last three fiscal years data. Total Annual claims is 899 average. The pothole and sewer backup claims are included in the GL average of 228 and would total about 45 claims per year on average.**

SECTION I

INSTRUCTIONS TO PROPOSERS

1.00 **INTRODUCTION.** The LFUCG has reviewed its need for Claims Management/Adjustment for Workers Compensation, Auto Liability and General Liability claims. Attention must be paid to all requested items contained in this Request for Proposal (RFP). The interested parties are invited to submit proposals in accordance with the requirements of this RFP. Please read the entire package before proposing. The Third Party Administrator (TPA) shall make the necessary entry in all blanks provided for the response. The fee structure proposed for all lines of coverage by the TPA shall be firm for acceptance for a period of ninety (90) days from the date of proposal opening. If no award is made within ninety (90) days of the proposal opening, this solicitation is automatically cancelled unless LFUCG's Purchasing Director requests an extension.

This entire set of documents including attachments constitutes the RFP. This RFP will be considered part of the contract with the successful bidder. The TPA must return this document with all information requested to properly analyze the TPA's proposed fee structure. The TPA's notes, exceptions, and comments may be rendered on an attachment, provided the same format of this RFP text is followed. All proposals shall be returned in a sealed envelope with proposal number and opening date clearly stated on the outside of the envelope.

1.01 **PROPOSAL OPENING.** Sealed proposals will be accepted in accordance with the instructions detailed in the cover letter. Upon acceptance, the proposals will be considered closed. The TPA shall file all documents necessary to support its proposal and include them with its proposal. The TPA shall be responsible for the actual delivery of proposals during business hours to the address indicated in the cover letter. It shall not be sufficient to show the proposal was mailed in time to be received before scheduled closing time for receipt of proposals.

1.02 **PROPOSAL RESERVATIONS.** The LFUCG reserves the right to reject any or all proposals, to award in whole or in part and to waive minor immaterial defect in proposals. Negotiations may be necessary in order to complete the contract. The LFUCG may consider any alternative proposal that meets its basic needs.

1.03 **LIABILITY.** THE LFUCG is not responsible for any costs or expenses incurred by a TPA in the preparation of proposals.

1.04 **CHANGES/ALTERATIONS.** The TPA may change or withdraw its proposal at any time prior to proposal opening; however, no oral modifications will be allowed. Only telegrams, letters, or other formal written request for modification or corrections of a previously submitted proposal which is addressed in the same manner as the proposal, and received by the LFUCG prior to the scheduled closing time for receipt of proposals will be accepted. The proposal, when opened, will then be corrected in accordance with such written request, provided that the written request is contained in a sealed envelope, which is plainly marked "Modification of Proposal".

1.05 **PRE-PROPOSAL CONFERENCE.** A pre-proposal conference will be held on the date and at the place specified above. The purpose of the conference will be to provide interested TPA's with an oral presentation of the "Claims Management/Adjustment Services" requirements, and to allow the presentation of questions. **These questions must be submitted in writing or via e-mail as directed in 1.09, by 4 P.M. Friday, April 19, 2013.** PLEASE NOTE THE FOLLOWING ON THE OUTSIDE OF THE ENVELOPE: **RFP QUESTIONS FOR CLAIMS MANAGEMENT.** Any information provided is not official unless reduced to writing by the Purchasing Department. Copies of the official information will be provided to all TPA's who received an RFP.

1.06 **FINANCIAL HISTORY.** Each TPA must supply the following financial information to establish its financial position.

1.06.1 Last three (3) years Annual Reports.

1.06.2 The LFUCG requires TPA's to submit all of the following:

- A certified financial statement
- A resume of your staff experience
- A certified statement disclosing all ownership interests whether direct, indirect or beneficial and including intermediate and ultimate ownership interest where several levels of ownership exist, disclosing any single source in excess of 30% of outstanding debt.

Such disclosures shall contain any information of or relating to any and all common ownership, control, management or common pecuniary benefit said proposing entity, its owners, management or representatives' possess or retain in any other entity now participating in claims or adjusting services contracts.

1.06.3 The LFUCG may require further financial information at a later date.

1.07 **CHANGES IN CONTROL.** In the event of a change in "control" of the TPA (as defined below), the LFUCG shall have the option of terminating this Agreement by written notice to the TPA. The TPA shall notify the LFUCG within ten days of the occurrence of a change in control. As used in this Agreement, the term "control" shall mean the possession, direct or indirect of either (i) the ownership of or ability to direct the voting of as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the TPA or (ii) the power to direct or cause the direction of the management and policies of the TPA whether through the ownership of voting securities, by contract or otherwise.

1.08 **CLARIFICATION OF SUBMITTALS.** The LFUCG reserves the right to obtain clarification of any point in a respondent's submittal or to obtain additional information.

1.09 **PROPOSER QUESTIONS AND INQUIRIES.** TPA's with technical questions and inquiries prior to the pre-proposal conference must direct them to:

Qualification Questions

Email to: tlatin@lexingtonky.gov

Or mail to:

Todd Slatin
Director of Purchasing
200 East Main Street
3rd Floor
Lexington, KY 40507
Phone: (859) 258-3320

1.09.1 **CONTACT WITH LFUCG.** Contact with any member of the LFUCG Council, LFUCG staff, Department of Law staff or any member of the evaluation team by a firm submitting a proposal and in regard to the RFP other than the contact specified in Section 1.09 of this RFP, may be grounds for disqualification of the proposal.

1.10 **INDEMNIFICATION AND HOLD HARMLESS.**

See attachment III.

1.12 **USE OF NAME.** The LFUCG Department of Law and the Lexington/ Fayette Urban County Government are not engaged in research for advertising, sales promotion, or other publication purposes. No advertising, sales promotion or other publication materials containing information obtained from this proposal are to be mentioned, or, imply the name of the above, without prior express written permission.

1.13 **FINAL CONTRACT WITH SUCCESSFUL TPA.** Any or all statements contained in the proposal or made during negotiation (if applicable) by the TPA shall become part of the final contract.

1.14 **DISPUTES.** In the event that a dispute arises between the LFUCG and the TPA that cannot be settled by negotiation between the two parties, both parties will agree to mediation in Fayette County, Kentucky.

1.15 **AWARD OF CONTRACT.** Required proposal attachments, contents and evaluation factors are outlined in Sections II, III, IV and V.

Representatives from selected firms may be interviewed by a selection committee and given an opportunity to present their proposal and answer questions. The selection committee will recommend one TPA's proposal for contract approval by the LFUCG Council.

The award of contract, if made, shall be made to the TPA whose proposal furthers the best interest of the LFUCG. No award will be made until all necessary investigations have been made to determine the eligibility and responsibility of the Proposer under consideration.

In the event, the LFUCG Council approval is not received within ninety (90) calendar days after opening of the proposals, the Proposer may request that it be released from the contract obligation. The foregoing action by the LFUCG or the Proposer shall in no way provide any cause whatsoever for a claim against the LFUCG by the Proposer.

1.16 **TERM OF CONTRACT.** The initial term of this contract is for three (3) years, beginning July 1, 2013 and ending June 30, 2016. Any changes in the contract terms shall be

agreed to and accepted in writing, by the LFUCG and the TPA. The LFUCG reserves the right to cancel this contract with a thirty (30) day written notice.

1.17 **SCHEDULE.** The schedule and description of events for this procurement are listed on page one (1):

The listed dates are subject to change at the sole discretion of the LFUCG.

1.18 **POST AWARD CONFERENCE (SUCCESSFUL TPA ONLY).** A post-award conference will be scheduled as soon as practical after the award of the contract. The TPA shall attend the conference along with the prospective Service Manager. A proposed implementation schedule shall be submitted to the LFUCG Department of Law Claims Section, or its designee, in a form satisfactory to the Claims Manager, or designee. Upon receipt of the required documentation, a Notice to Proceed will be issued by the LFUCG.

1.19 **TERMINATION CLAUSES:**

1.19.1 LFUCG may terminate this contract for any reason by providing thirty (30) days advanced written notice.

1.19.2 **TERMINATION FOR CAUSE:**

1) LFUCG may terminate this contract immediately upon written notice to the TPA if:

a) The TPA violates or fails to perform any covenant, provision, obligation, term or condition contained in this Agreement, provided that, unless otherwise stated in this Agreement, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the TPA cures such default within (20) days of receipt of written notice of default from the non-defaulting party. The parties stipulate and agree that a failure to deliver any services within seven (7) days after the time required for delivery in the delivery schedule agreed upon by the parties shall not be deemed a failure "reasonably susceptible to cure," and that such failure shall constitute an Event or Default which entitles LFUCG to immediately terminate this Agreement by written notice to the TPA Company.

b) The TPA ceases to do business as a going concern, makes assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such appointed for it or any substantial part of the TPA's assets or properties).

c) The TPA fails to provide and maintain the fidelity bond as required by this contract; fails to obtain or maintain the insurance policies and endorsements as required by this contract; or fails to provide the proof of insurance as required by this contract.

1.19.3 **FAILURE TO PERFORM OBLIGATIONS.** If the TPA fails to provide the services as described in this contract on any day (or days) for which this Contract calls for such

services to be provided, the TPA will be in default and LFUCG may take any of the following actions:

- a) Employ such means as it may deem advisable and appropriate to continue work until the matter is resolved and the TPA is again able to carry out operations under this contract.
- b) Deduct any and all operating expenses incurred by the LFUCG from any money then due or to become due the TPA and, should the LFUCG's cost of continuing the operation exceed the amount due the TPA, collect the amount due either from the TPA or surety bond or both and also assert a lien on all real and personal properties of the TPA.
- c) The TPA agrees that monetary damages are not an adequate remedy for the TPA's failure to provide the services as required by this contract, nor could monetary damages be the equivalent of the performance of such obligation and, accordingly, the TPA hereby consents to legal proceedings seeking specific performance of such obligation of the TPA in a court of competent jurisdiction within the Commonwealth of Kentucky, and LFUCG venue.

1.19.4 CANCELLATION OF ORDERS AND SUBCONTRACTS. In the event this agreement is terminated by LFUCG for any reason prior to the end of the term, the TPA shall, upon the effective date of termination (unless the LFUCG's notice of termination directs otherwise), immediately discontinue all service in connection with this agreement and promptly cancel all existing orders and any subcontracts which are chargeable to this Agreement. As soon as practicable after receipt of notice of termination, the TPA shall submit a statement to LFUCG, showing in detail all products delivered and all services performed under this agreement to the date of termination. In the event of termination by LFUCG without cause prior to the end of the term, the TPA shall be entitled to receive all outstanding charges and fees for products actually delivered and services actually rendered under this agreement as of the effective date of termination (provided the TPA complies with provisions of this agreement relating to incurred and invoiced expenses).

1.20 TPA RESPONSIBILITIES. The TPA agrees to comply with all applicable, local, state and federal ordinances, statutes, laws, rules, regulations and good business practices governing Claims Management/Adjustment Services.

The TPA will be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but not be limited to, Workers' Compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the work.

If the Proposer or TPA discovers any provisions in the specifications or contract documents, which are contrary to or inconsistent with any law, ordinance or regulation, they shall immediately report it in writing to the LFUCG Department of Law, Manager of Claims.

1.21 TAXES. The TPA shall pay all applicable federal, state and local taxes, which may be chargeable against the performance of the work.

1.22 HUMAN RESOURCES PROVISIONS

1.22.1 PERSONNEL ADMINISTRATION

1) Character and Conduct of Employees

- a) The TPA shall assure that its employees serve the public in a courteous, helpful and impartial manner. All employees of the TPA in both field and office shall refrain from belligerent behavior and/or profanity. Correction of any such behavior and language shall be the responsibility of the TPA.
- b) In the event a report is received alleging any employee of the TPA was discourteous, belligerent, and profane or in any way intimidating, either physically or verbally, the TPA shall be responsible for appropriate discipline.

2) Nondiscrimination

- a) The TPA agrees that it has adopted and will maintain and enforce a policy of nondiscrimination on the basis of race, color, religion, sex, age, national origin, or disability.
- b) The TPA agrees that, upon written request, it will permit the LFUCG access during normal business hours to its records of employment, employment advertisements, application forms, and other pertinent data and records, for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of this contract.
- c) The TPA agrees that it will inform the LFUCG of any alleged violation(s) of employment practices which its employees file with the Equal Employment Opportunity Commission, Labor Department or any other federal or state compliance agency; also the TPA will inform LFUCG of the final disposition of such cases.

1.23 TPA'S INDEPENDENT TPA STATUS. The TPA and the LFUCG agree that the TPA is an independent TPA and not an employee nor agent of the LFUCG. The TPA shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder and all persons performing the same and nothing herein shall be construed as creating a partnership, agency, joint venture or other similar relationship between LFUCG and the TPA.

The TPA agrees that it will not represent to anyone that its relationship with LFUCG is other than that of an independent TPA, and LFUCG and the TPA may so inform any parties with whom they deal and may take any other responsible steps to carry out the intent of this section. The TPA shall be fully and solely responsible for its own acts and omissions and those of its employees, officers, and agents.

1.24 FORCE MAJEURE. It is mutually understood and agreed that the TPA shall be relieved of its obligations under this contract during any period or periods of time when acts of God, war or public enemy or any other act beyond the control of the TPA render impossible its performance under this contract. The TPA must make a reasonable effort to resume service in the event of an act of God or if other catastrophe terminates or reduces service.

1.25 LFUCG NOT LIABLE FOR DELAYS. It is further expressly agreed that in no event shall LFUCG be liable for, or responsible to the TPA, any sub-TPA or to any other person for or

on account of any stoppages or delay in the work herein provided for by injunction or other legal or equitable proceedings or on account of any delay for any cause over which LFUCG has no control.

1.26 **AMENDMENTS TO THE CONTRACT.** Any changes in this contract must be mutually agreed upon by the parties involved and must be incorporated by written amendments to this contract. To the extent provided by LFUCG policy, the LFUCG Mayor, with Council approval, shall have the authority to amend the contract on behalf of LFUCG.

1.27 **WAIVER.** A waiver of any breach of any provision of this contract shall not constitute or operate as a waiver of any other provision, nor shall any failure to enforce any provision hereof operate as a waiver of the enforcement of such provision or any other provision.

1.28 **LAW TO GOVERN.** This contract is entered into and is to be performed in the Commonwealth of Kentucky. LFUCG and the TPA agree that the law of the Commonwealth of Kentucky shall govern the rights, obligations, duties and liabilities of the parties to this contract and shall govern the interpretation of this contract. All litigation arising out of this contract shall be brought in courts sitting in Kentucky with venue in Fayette County.

1.29 **ENTIRETY OF CONTRACT: TITLES OF SECTIONS.** This RFP and subsequent contract embodies the entire agreement between LFUCG and the TPA. The section headings inserted herein are for convenience only, and are not intended to be used as aids to interpretation and are not binding on the parties.

1.30 **SEVERABILITY.** The invalidity of one or more of the phrases, sentences, clauses or sections contained in this contract shall not affect the validity of the remaining portion of the contract so long as the material purposes of the contract can be determined and effectuated.

1.31 **APPROVALS.** Notwithstanding anything herein which may be to the contrary, all approvals or consents required or permitted pursuant to this contract shall be in writing in order to be considered valid and effective.

1.32 **HOLIDAYS.** Following are LFUCG-observed holidays:

<u>New Year's Day</u>	<u>Dr. Martin Luther King, Jr. Day</u>
<u>President's Day</u>	<u>Memorial Day</u>
<u>Independence Day</u>	<u>Labor Day</u>
<u>Thanksgiving Day</u>	<u>Christmas Day</u>
<u>(2 days)</u>	<u>(2 days)</u>

And such other holidays designated by resolution of LFUCG. Actual dates for the above-mentioned holidays will be provided to the TPA during the month of December proceeding the new calendar year.

1.33 **COST INCREASE.** Except as described in the successful proposal, no payment increase will be considered automatic

1.34 **DRUG-FREE WORKPLACE.** LFUCG is a drug-free workplace employer. The LFUCG Council has also adopted a policy requiring LFUCG construction and service TPA's to provide a drug-free workplace in the performance of any LFUCG contract.

In order to be eligible to submit a bid or proposal for a LFUCG construction or service contract, a prospective TPA must certify that it has a drug-free policy in its employee manual.

1.35 **EMPLOYEE QUALIFICATIONS, SCREENING AND RETENTION.** The TPA shall employ personnel who are qualified for their positions of responsibility, including state licensed adjusters.

1.36 **EMPLOYEE TRAINING.** The TPA shall provide training for all personnel working on this contract. It is the sole responsibility of the TPA to ensure that each individual is fully knowledgeable of those duties and responsibilities. Adjusters must meet and maintain state licensing requirements including continuing education credits.

1.37 **PERFORMANCE/PENALTIES.** LFUCG is particularly interested in the TPA's performance in the areas of operation, on-time performance, and timely submission of required reports. The LFUCG Department of Law, Claims Section will administer this.

The following penalties will apply throughout this agreement:

- (a) Failure to testify at legal proceedings/administrative hearings as deemed necessary by the Department of Law, Claims Section, shall result in a deduction from the monthly payments to the TPA in the amount of the cost of obtaining other expert testimony and/or any sanctions or costs imposed by the court/commission.
- (b) Repeated violations of subsection (a) (two or more times) by the TPA shall constitute default and subject the contract to termination.

SECTION II

GENERAL SPECIFICATIONS

2.00 **INTRODUCTION.** These specifications cover the general requirements of the TPA for Claims Management/Adjustment Services for LFUCG. The services shall be performed in a professional manner and conform to all acceptable claims practices required by the laws of the Commonwealth of Kentucky and current Best Practices.

It is expected that the TPA would evaluate claims in a manner that would protect each entity against any incident of loss.

2.01 LFUCG DEPARTMENT OF LAW WILL:

2.01.1 Provide appropriate assistance to the TPA to obtain information relative to claims in order to conduct the claims adjustment. This information will be limited by current restrictions regarding privacy or personnel records or other such matters.

2.01.2 Pay the TPA for services rendered according to the established fee schedule. Fees shall be billed and paid monthly.

2.01.3 Provide a primary designated liaison, the Claims Manager for coordinating and handling claims submitted for adjustment.

2.02 THE TPA SHALL:

2.02.1 Make telephone or e-mail contact with insured Division within 1 Work day of reception of the new loss by the adjuster. TPA adjuster shall determine the liability of the loss and set up subrogation, when appropriate. Coordinate all work with the Department of Law, Claims Section designated liaison. TPA will have \$10,000 per claim authority and any claim exceeding this amount, the TPA will report to the Claims Manager and request settlement authority.

2.02.2 Process all claims in a timely and efficient manner per claims procedure manual of LFUCG, and the Kentucky statutes and regulations and by use of Industry Best Practices.

2.02.3 Provide reports as required on a weekly, monthly and quarterly basis as requested by the Claims Manager.

2.02.3.1 Set up losses in the LFUCG Riskmaster database per LFUCG claims procedures. All file notes, reserve changes, coding, payments and documents will be stored electronically in the LFUCG Riskmaster database. TPA must be able to link to LFUCG Riskmaster system.

2.02.4 Not assign or delegate any portion of the loss adjustment services to be provided without written consent of LFUCG Department of Law.

2.02.5 Have the capability to provide these services on a 24 hour, seven day a week basis. After hours emergency call out capabilities to the scene of the accident are required in the emergency call out procedure attached.

- 2.02.6** Provide a detailed statement of the company's history.
- 2.02.7** Provide five letters of reference (one being a public entity) with contact names and phone numbers.
- 2.02.8** Provide services, which shall be performed by competent, trained and licensed personnel. We require a minimum of three years of claims handling experience in Workers Compensation and Property claims. All work shall be done in accordance with accepted industry Best Practices standards.
- 2.02.9** Continue to provide services at the agreed upon or submitted rates throughout the term of the contract.

SECTION III

REQUIRED ORGANIZATION AND CONTENTS OF PROPOSAL

- 3.00** PROPOSAL CONTENTS. Each TPA must submit in its proposal response the following information:
- 3.01.1** Cover Letter
- 3.01.2** Addendum Acknowledgment (if any)
- 3.01.3** A Corporate Vision and Mission Statement
- 3.01.4** Estimated Cost of Services (see Section V)
- 3.01.5** A minimum of five (5) letters of reference complete with names, addresses, telephone numbers of clients utilizing the TPA's services (at least one [1] from a public entity).
- 3.01.6** Any exceptions to this RFP
- 3.01.7** Responses to Questions (3.02)
- 3.02** QUESTIONS: PROPOSALS WILL BE CONSIDERED NON-RESPONSIVE AND WILL BE REJECTED WITHOUT ANSWERS TO 3.02.1 THROUGH 3.04. An alternative proposal will not be considered unless it conforms to the provisions of this RFP.
- 3.02.1** State the number of years the Proposer has provided or managed Claims Administration Services. Identify and provide a telephone number for the responsible individual who can verify service. If there is any recent, current or pending litigation involving the Proposer's operation of Claims Administrator Services, describe in detail. Attach additional descriptive material, if necessary.
- 3.02.2** Describe how you are going to provide this service to comply with the specifications set forth in this document. Identify and describe the experience and qualifications of key personnel to be providing the requested service (senior management, claims manager, claims adjusters and claims assistants, operations management, etc.).
- 3.02.3** Attach your firm's most recent audited financial statements, including income statements, balance sheets and an independent auditor's opinion. All information will be held strictly confidential.
- 3.02.4** Discuss your firm's capabilities in providing the required Claims Administrator Services. Attach a copy of a resume of each adjuster to be assigned to the LFUCG claims account.
- 3.02.5** Indicate briefly, why you consider your firm to be the best to perform this contract. Please indicate any new or creative ideas that would provide the LFUCG with high-quality, safe, efficient and responsive services in the provision of Claims Administrator Services.

3.02.6 Provide a brief summary of the legal status of your company (i.e. Corporation, Proprietorship, and Partnership). List the key stockholders and officers.

3.03 PROOF OF INSURABILITY (see Attachment III)

3.04 FINANCIAL RESPONSIBILITY

SECTION IV

PROPOSAL EVALUATION FACTORS

- 4.0** Proposals will be evaluated using the following
Criteria
- 4.00.1** Specialized experience and technical competence of the person(s) or firm with the type of service required. (i.e. Claims expertise, public entity experience, stewardship reports, claimant surveys, etc.)
- 4.00.2** Capacity of the person(s), firm or organization to perform the work, including any specialized services, within the time limit. (i.e. experience in using RiskMaster Information Systems, document imaging, fair adjuster workloads, etc.)
- 4.00.3** Character, integrity, reputation, judgment, experience and efficiency of the person(s) or firm. (i.e. written references; adjusters with minimum eight years experience in handling AL/GL/WC claims, SAS 70 reports, etc.)
- 4.00.4** Past record and performance on contracts with the LFUCG or other governmental agencies and private industry with respect to such factors as control of cost, quality of work and ability to meet scheduling.
- 4.00.5** Familiarity with the details of the project. (i.e. benchmark studies with like entities)
- 4.00.6** Degree of local employment to be provided by the person or firm and ability to meet the on scene accident requirements.
- 4.00.7** Estimated cost of services (see Section V)

SECTION V

ESTIMATED COST OF SERVICES

5.00 Since the number of claimants varies from year to year, the cost of providing claims services will be priced on an average of previous volume. The TPA may quote based on a cost per claim type. All bids are based on the handling of these claims to final closure.

5.01 As an alternative pricing format, the TPA may quote a price based on an annual flat fee to be paid in monthly increments. Please give LFUCG a percentage of subrogation collection to be charged by TPA for each year of the RFP. All bids are based on the handling of these claims to final closure.

5.01A The numbers given are projected numbers based on the number of claimants that were recorded for FY 11 and FY 12, the actual number of claimants under the RFP may total more or total less than the prior average. We do not promise nor guarantee any number of claimants under this RFP.

5.02A **COST PER CLAIM PRICING FORMAT**

Year One:

<u>CLAIM TYPE</u>	<u>PRICE PER CLAIM TO CLOSURE</u>
Workers Compensation	\$ _____
Auto Liability	\$ _____
General Liability	\$ _____

Year Two:

<u>CLAIM TYPE</u>	<u>PRICE PER CLAIM TO CLOSURE</u>
Workers Compensation	\$ _____
Auto Liability	\$ _____
General Liability	\$ _____

Year Three

<u>CLAIM TYPE</u>	<u>PRICE PER CLAIM TO CLOSURE</u>
Workers Compensation	\$ _____
Auto Liability	\$ _____
General Liability	\$ _____

Subtotal for Years 1-3 \$ _____ Price per claim **to closure**

Please also give a per year flat cost per claim to Pothole claims and Sewer backup claim that are generally denied due to Sovereign Immunity. \$ _____

5.02B ANNUAL FLAT FEE PRICING FORMAT

Year One:

<u>CLAIM TYPE</u>	<u>ANNUAL FEE To Closure</u>
Workers Compensation	\$ _____
Auto Liability	\$ _____
General Liability	\$ _____

Year Two:

<u>CLAIM TYPE</u>	<u>ANNUAL FEE To Closure</u>
Workers Compensation	\$ _____
Auto Liability	\$ _____
General Liability	\$ _____

Year Three:

<u>CLAIM TYPE</u>	<u>ANNUAL FEE To Closure</u>
Workers Compensation	\$ _____
Auto Liability	\$ _____
General Liability	\$ _____

NOTE: The number of claims per year is an estimate **ONLY**, and is **NOT** guaranteed.

5.03 CONFIRM RECEIPT OF ANY ADDENDUMS ISSUED FOR THIS BID:

DATE _____ ADDENDUM # _____

I certify this proposal complies with the General and Specific Specifications and conditions issued by LFUCG except as clearly marked in the attached copy.

Please print name _____ Date _____

Authorized Signature

5.04 Submitted By:

Service Provider

Printed Name

Authorized Signature

Street Address/City/State/Zip

Telephone: _____ Facsimile: _____

(Area code) _____ (Area code)

It is understood by the Service Provider that the LFUCG reserves the right to reject any and all proposals, to make awards on all items or on any items according to the best interest of the LFUCG, to waive formalities, technicalities and inequalities, to recover and rebid this RFP.

Date _____ **Printed Signature**

Authorized Signature

5.05 Proposer and insurance agent statement:

We understand the insurance requirements of these specifications and the evidence of insurability shall be provided prior to contract execution. If our client is awarded this contract, we agree to provide the LFUCG with a thirty (30) day written notice of any intent to amend, terminate, or non-renew coverage by the insuring company.

Service Provider /Insurance Agency:

Date

Authorized Signature

Location of Agency

(Area Code) Telephone Number

ATTACHMENT I

CLAIMS PROCEDURES FOR SUBROGATION AND EXCESS RECOVERY

The procedures outlined are meant to be a general outline of services provided by the TPA and not a complete list of specified activities. It may be necessary to do several of these procedures on one incident and/or additional activities to comply with the complete performance of claims service required by this RFP.

SUBROGATION PROCEDURES:

- Determine liability and damages on both parties involved in the accident
- Send a subrogation initial notice to the wrongdoer or insurer within 10 days of determination of liability.
- Send final subrogation notice to wrongdoer or insurer with full documentation of damages and payment within 10 days of settlement of the loss.
- Follow up each 30 days until subrogation funds are collected
- Send the collections directly to James Hoskins in Accounting within 24 hours of reception of the money and CC Tom Sweeney, Claims Manager, Department of Law.
- Provide Quarterly report on pending subrogation, amount of collections, expected amount of collections pending, and total number of pending subrogation claims.

ATTACHMENT II

WORKERS COMPENSATION AND PROPERTY CLAIMS PROCEDURES

- These procedures will be provided to you as part of the successful bidders training package.

Attachment III

**RISK MANAGEMENT PROVISIONS
INSURANCE AND INDEMNIFICATION**

INDEMNIFICATION AND HOLD HARMLESS PROVISION

- (1) It is understood and agreed by the parties that Consultant hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Consultant or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier (hereinafter "Consultant") under or in connection with this agreement and/or the provision of goods or services and the performance or failure to perform any work required thereby.

- (2) Consultant shall indemnify, save, hold harmless and defend the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, volunteers, and successors in interest (hereinafter "LFUCG") from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by Consultant's performance or breach of the agreement and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the Consultant; and (b) not caused solely by the active negligence or willful misconduct of LFUCG.

- (3) Notwithstanding, the foregoing, with respect to any professional services performed by Consultant hereunder (and to the fullest extent permitted by law), Consultant shall indemnify, save, hold harmless and defend LFUCG from and against any and all liability, damages and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees, for any damage due to death or injury to any person or injury to any property (including the loss of use resulting therefrom) to the extent arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of Consultant in the performance of this agreement.

- (4) In the event LFUCG is alleged to be liable based upon the above, Consultant shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all reasonable attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by LFUCG, which approval shall not be unreasonably withheld.

- (5) These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this agreement.

FINANCIAL RESPONSIBILITY

Consultant understands and agrees that it shall, prior to final acceptance of its proposal and the commencement of any work or services, demonstrate the ability to assure compliance with the above Indemnity provisions and these other risk management provisions.

INSURANCE REQUIREMENTS

YOUR ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW, AND YOU MAY NEED TO CONFER WITH YOUR INSURANCE AGENTS, BROKERS, OR CARRIERS TO DETERMINE IN ADVANCE OF SUBMISSION OF A RESPONSE THE AVAILABILITY OF THE INSURANCE COVERAGES AND ENDORSEMENTS REQUIRED HEREIN. IF YOU FAIL TO COMPLY WITH THE INSURANCE REQUIREMENTS BELOW, YOU MAY BE DISQUALIFIED FROM AWARD OF THE CONTRACT.

Required Insurance Coverage

Consultant shall procure and maintain for the duration of this contract the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to LFUCG in order to protect LFUCG against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder by Consultant. The cost of such insurance shall be included in any bid:

<u>Coverage</u>	<u>Limits</u>
<u>General Liability (Insurance Services Office Form CG 00 01)</u>	<u>\$1 million per occurrence, \$2 million aggregate or \$2 million combined single limit</u>
<u>Commercial Automobile Liability (Insurance Services Office Form CA 0001)</u>	<u>combined single, \$1 million per occurrence</u>
<u>Professional Liability</u>	<u>\$1 million per occurrence, \$2 million aggregate</u>
<u>Worker's Compensation</u>	<u>Statutory</u>
<u>Employer's Liability</u>	<u>\$500,000.00</u>

The policies above shall contain the following conditions:

- a. All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky. LFUCG shall be named as an additional insured in the General Liability

Policy and Commercial Automobile Liability Policy using the Kentucky DOI approved forms.

- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by LFUCG.
- c. The General Liability Policy shall have a Professional Liability endorsement (including Errors and Omissions) for any services performed pursuant to the contract, and/or a separate Professional Liability Policy shall be obtained unless it is deemed not to apply by LFUCG.
- d. The Professional Liability policy shall be maintained for a minimum of three years beyond the completion date of the project, to the extent commercially available. If not commercially available, Consultant shall notify LFUCG and obtain similar insurance that is commercially available and acceptable to LFUCG.
- e. LFUCG shall be provided at least 30 days advance written notice via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed.
- f. Said coverage shall be written by insurers acceptable to LFUCG and shall be in a form acceptable to LFUCG. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.

Renewals

After insurance has been approved by LFUCG, evidence of renewal of an expiring policy must be submitted to LFUCG, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

Deductibles and Self-Insured Programs

IF YOU INTEND TO SUBMIT A SELF-INSURANCE PLAN IT MUST BE FORWARDED TO LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, DIVISION OF RISK MANAGEMENT, 200 EAST MAIN STREET, LEXINGTON, KENTUCKY 40507 NO LATER THAN A MINIMUM OF FIVE (5) WORKING DAYS PRIOR TO THE RESPONSE DATE. Self-insurance programs, deductibles, and self-insured retentions in insurance policies are subject to separate approval by Lexington-Fayette Urban County Government's Division of Risk Management, upon review of evidence of Consultant's financial capacity to respond to claims. Any such programs or retentions must provide LFUCG with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance coverage. If Consultant satisfies any portion of the insurance requirements through deductibles, self-insurance programs, or self-insured retentions, Consultant agrees to provide Lexington-Fayette Urban County Government, Division of Risk Management, the following data prior to the final acceptance of bid and the commencement of any work:

- a. Latest audited financial statement, including auditor's notes.
- b. Any records of any self-insured trust fund plan or policy and related accounting statements.
- c. Actuarial funding reports or retained losses.
- d. Risk Management Manual or a description of the self-insurance and risk management program.
- e. A claim loss run summary for the previous five (5) years.
- f. Self-Insured Associations will be considered.

Verification of Coverage

Consultant agrees to furnish LFUCG with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf prior to final award, and if requested, shall provide LFUCG copies of all insurance policies, including all endorsements.

Right to Review, Audit and Inspect

Consultant understands and agrees that LFUCG may review, audit and inspect any and all of its records and operations to insure compliance with these Insurance Requirements.

DEFAULT

Consultant understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default and that LFUCG may elect at its option any single remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging Consultant for any such insurance premiums purchased, or suspending or terminating the work.

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RMSC

Risk Management Services Company

*P.O. Box 22989
Louisville, KY 40252
p 502-326-5900 / 502-326-5909
800-372-5402 www.rmssc.com*

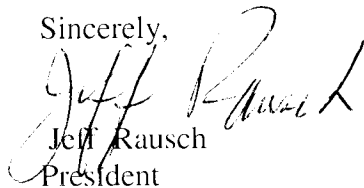
July 12, 2013

Mr. Tom Sweeney
Lexington Fayette Urban County Government
Department of Law, Claims Manager
200 East Main Street
Lexington, Kentucky 40507

Dear Tom,

Attached is the signed contract. Let me know if you need anything else from me.

Sincerely,


Jeff Rausch
President

attachment