



CONTRACT PURSUANT TO REQUEST FOR BIDS

Requisition #: 27685

Request for Bids Title: Medical Supplies for the County Sheriff, Health
Care Services

Department/Agency/Office/Court: Sheriff's Department

Bidder: McKesson Medical-Surgical, Inc.

Bidder's Principal Place of Business: 8741 Landmark Road
Richmond, VA 23228

This Contract is made by and between Bidder as its name and principal place of business appear above (hereinafter the "Contractor") and the County of Cuyahoga, Ohio, a body corporate and politic and a political subdivision of the State of Ohio organized and existing under the Charter of Cuyahoga County effective January 1, 2010, as same may have been amended, modified, and supplemented to the date hereof (hereinafter the "County") through and on behalf of the County Department, Agency, Office, or Court referenced and named above.

WITNESSETH:

WHEREAS, the County issued a Request for Bids with the Requisition Number and Title as specified on the front page of this Contract (hereinafter the "RFB");

WHEREAS, the Contractor submitted a Bid (hereinafter the "Bid") in response to RFB;
and

WHEREAS, the County has determined the Bid to be the lowest and best and to award this Contract to Contractor.

NOW THEREFORE, in consideration of the mutual promises and obligations herein to be observed and performed by the parties hereto, the County and the Contractor hereby agree as follows:

ARTICLE I
GENERAL TERMS

1.1 The Contract

The following documents shall constitute the entire contract, and shall govern in the following order:

- (a) This Contract;
- (b) The RFB; and
- (c) The Bid.

The terms and conditions in this Contract shall prevail over any inconsistent terms in either the RFB or the Bid. Should any conflict exist between the Bid and the RFB, the RFB shall govern.

1.2 Invoicing and Payment

Contractor shall submit invoice(s) to the County address specified in the RFB. Payment shall be made after verification that the goods, services, and other deliverables indicated on the invoice(s) have been satisfactorily provided in the manner specified in the RFB. A valid invoice will be processed and paid by the County within 45 calendar days of receipt.

1.3 Insurance Requirements (Types and Limits)

Contractor shall procure, maintain and pay premiums for the insurance coverage and limits of liability outlined below with respect to products, services, work and/or operations performed in connection with this Contract:

- (i) Worker's Compensation Insurance as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC).

For Contractors with employees working outside of Ohio, Worker's Compensation Insurance as required by the various state and Federal laws as applicable including Employers' Liability coverage with limits of liability not less than:

\$1,000,000 each accident for bodily injury by accident;
\$1,000,000 each employee for bodily injury by disease;
\$1,000,000 policy limit for bodily injury by disease.

Such insurance shall be written on the National Council on Compensation Insurance (NCCI) form or its equivalent.

- (ii) Commercial General Liability Insurance with limits of liability not less than:

\$1,000,000 each occurrence bodily injury & property damage;
\$1,000,000 personal & advertising injury;
\$2,000,000 general aggregate;
\$2,000,000 products/completed operations aggregate.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

- (iii) Business Automobile Liability Insurance covering all owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident;

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

1.4 Mandatory Requirements for All Insurance Coverage

- (a) The insurance policies of the Contractor required under Section 1.3 shall each name the "County of Cuyahoga, Ohio" as an Additional Insured and shall contain the following provisions:
 - (i) Thirty (30) days prior notice of cancellation or material change;
 - (ii) A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.
- (b) The insurance required in Section 1.3 shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A VII or above.
- (c) In the event Contractor represents to the County that the Contractor uses self-insurance or captive insurance for one or more of the types of coverage requested in Section 1.3, the County agrees to accept the Contractor's program of self-insurance provided that (1) Contractor provides financial proof to the County to support the representation of self-insurance for the amounts and types of coverage requested above; and

(2) if at any time the Contractor is no longer self-insured, then the Contractor shall acquire and maintain insurance as otherwise set forth herein with respect to the types of coverage for which the Contractor is no longer self-insured and provide the County a certificate of insurance evidencing its acquisition of such insurance coverage.

- (d) These insurance provisions shall not affect or limit the liability of the Contractor stated elsewhere in this Contract or as provided by law.
- (e) The Contractor shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Contract.
- (f) The Contractor shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by the County shall not constitute a waiver of any rights of the parties under this Contract.

1.5 Performance Bond

- (a) Contractor shall secure this Contract with a performance bond in the amount of \$25,000.00 to indemnify the County against damages as may be suffered by failure of Contractor to perform its duties and obligations under this Contract.
- (b) Performance bonds must be issued by a surety company, authorized to do business in the State of Ohio with an A.M. Best's rating of A or higher, in the exact legal business name of the Contractor. The County shall reject all bonds issued in any other business names under which the Contractor is doing business. The bond shall be accompanied by a certified power of attorney and a certificate of compliance from the bonding company for the State of Ohio signed by an authorized representative of the contractor.

1.6 Subcontracting

The Contractor shall provide to the County a Subcontractor Participation Schedule, including a listing of all subcontractors and the portion of the project such subcontractors will perform, and shall keep the Schedule up-to-date for the duration of the term of the Contract by sending written notice to the County. Submission of a Contractor Participation Schedule shall not relieve the Contractor from responsibility of full and complete satisfactory and acceptable performance under the Contract.

1.7 Indemnification

Contractor shall indemnify and hold the County harmless from and against any and all losses, costs, damages, claims, suits and/or liabilities ("Losses") incurred by the County as a result of a third-party claim of bodily injury to the extent such Losses are solely caused by Contractor's negligence or willful misconduct in the performance of McKesson's obligations under the Contract with the County. This indemnity does not extend to any Losses arising out of, resulting from or related to the County's negligence or willful misconduct.

County's right to indemnification is conditioned upon satisfying the following requirements: (a) County must promptly notify the Contractor of any claim for which indemnification will be sought; (b) County must give the Contractor control of the defense against the claim (including the right to select counsel and settle or compromise such claim, but the Contractor must not agree to a consent decree or similar order binding the County to any settlement that specifically apportions fault or liability to the County without the County's party's prior written consent); and (c) the County must reasonably cooperate with the Contractor's defense against the claim.

ARTICLE II

CONTRACT TERM AND TERMINATION

2.1 Term

The term of this Contract shall begin on September 1, 2013 and shall continue, unless cancelled or terminated under the provisions of this Contract, until August 31, 2016.

2.2 Termination

(a) *For Cause.* If either party breaches any term of this Contract, the non-breaching party reserves the right to immediately suspend performance and supply written notice of an intent to terminate to the breaching party. The breaching party shall have thirty (30) calendar days to cure the breach from the date of its receipt of the notice of breach. If the breaching party successfully cures the breach, the Contract shall not terminate and the non-breaching party must resume performance. If the breaching party fails to cure the breach within thirty calendar days the Contract shall immediately and automatically terminate for cause.

(b) *For Convenience.* The County shall have the right to terminate this Contract at any time during the base term or any extension with sixty (60) calendar days advance written notice to the Contractor.

ARTICLE III
STANDARD COUNTY REQUIREMENTS

3.1 Applicable County Ordinances

All contracts with the County, including this Contract, are subject to all applicable laws, ordinances, resolutions, regulations, rules and policies of the County, including but not limited to the Cuyahoga County Ethics Ordinance, the Cuyahoga County Inspector General Ordinance, the Cuyahoga County Contracting and Purchasing Procedures Ordinance, and the Cuyahoga County Debarment Law, Procedures and Review Board Ordinance. Copies of all County ordinances are available on the County Council website at <http://council.cuyahogacounty.us/>.

3.2 Ethics Requirements

The Contractor agrees to remain in compliance with all County Ethics requirements including, as applicable, Vendor Ethics Registration, Vendor Ethics Training, and Registration of all Lobbyists retained by the Contractor. The Contractor shall consult the Cuyahoga County Office of Inspector General to ensure it is in full compliance with all County Ethics requirements. The Inspector General's website may be found at: <http://inspectorgeneral.cuyahogacounty.us/>.

3.3 Debarment

Notwithstanding any provision herein to the contrary, in the performance of any of Contractor's obligations herein, Contractor shall not use or subcontract any individual or entity (including any entity that is owned or controlled by any individual) which is the subject of a debarment or suspension hearing or has otherwise been debarred or suspended by the County or any other governmental entity from performing work or services for the County. Contractor shall provide to the County, as specified in Section 1.6, a list of all proposed subcontractors, individuals and entities intended to perform any of the services prior to any engagement or entering into any contract or purchase order with respect to any services to be performed under this Contract.

3.4 Public Records Law

This Contract, including the RFB and Bid, shall be considered a public record under the Ohio Public Records Act ORC 149.43, and shall be available for inspection and copying by the public.

3.5 Findings for Recovery

The Contractor represents and warrants that it is not subject to an "unresolved" finding for recovery under Ohio Revised Code Section 9.24.

3.6 Annual Appropriations

All of the County's obligations under this Contract are contingent upon the County Council's appropriating the funds on an annual basis necessary for the continuation of this Contract in any contract year. In the event the funds necessary for the continuation of this Contract are not appropriated or approved, the County will notify the Contractor of such occurrence in writing. This Contract shall thereafter terminate and be rendered null and void on the last day of the last fiscal period for which appropriations were made. Such termination is made pursuant to and in accordance with the terms of this Contract and shall not be considered to be a breach or default on the part of the County, and shall not result in the County having liability to the Contractor or any third party for any penalty, liability or any other expense.

3.7 No Apparent Authority

The Contractor recognizes and agrees that no public official, officer, director, or employee of the County may be deemed to have apparent authority to bind the County to any contractual obligations not properly authorized pursuant to the County's Contracting and Purchasing Procedures Ordinance.

3.8 No Indemnification by County

The Contractor acknowledges that as an Ohio political subdivision, the County does not indemnify any person or entity. Contractor agrees that no provision of this Contract or any other contract or agreement between Contractor and the County may be interpreted to obligate the County to indemnify or defend Contractor or any other party.

3.9 County Tax Status

The County shall not assume responsibility for the payment of any personal property taxes for any materials not owned by the County, nor shall the County pay any insurance premiums for any coverage of any property not owned by the County. No conditions shall alter this statement. The County is a tax exempt No. 29 political subdivision of the State of Ohio (Federal I.D. No. 34-6000817). Necessary tax exemption blanks will be furnished to the Contractor when the contract becomes effective.

ARTICLE IV
CONTRACTOR'S WARRANTIES

4.1 CONTRACTOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCTS SOLD TO THE COUNTY BY CONTRACTOR, INCLUDING THE WARRANTY OF

MERCHANTABILITY OR THE FITNESS FOR ANY PARTICULAR USE OR PURPOSE. THE COUNTY SHALL LOOK TO THE MANUFACTURER OF PRODUCTS (IF OTHER THAN MCKESSON) FOR ANY WARRANTY THEREON. NO AGENT, EMPLOYEE, OR REPRESENTATIVE OF CONTRACTOR HAS ANY AUTHORITY TO MAKE ANY AFFIRMATION, REPRESENTATION, OR WARRANTY CONCERNING PRODUCTS OR SERVICES NOT SET FORTH IN THE COUNTY CONTRACT.

ARTICLE V **MISCELLANEOUS**

5.1 Governing Law/Jurisdiction

This Contract shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of Ohio. The parties agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this Contract, and each party consents to the exclusive jurisdiction of such courts. Contractor hereby agrees not to challenge this Governing Law and Jurisdiction provision, and further agrees not to attempt to remove any legal action outside of Cuyahoga County for any reason.

5.2 Entire Contract

This Contract, in addition to the incorporated documents specified in Section 1.1, constitute the entire Contract between the parties and supersede any and all inconsistent representations, written or oral, between the parties.

5.3 Authority

Each signatory hereto certifies that he or she is duly authorized and empowered to sign and deliver this Contract on behalf of all entities named below on whose behalf he or she has so acted.

5.4 Prohibition on Assignment

The Contractor may not assign, directly or indirectly, all or part of its rights or obligations under this Contract without prior written consent from the County.

5.5 Successors and Assigns

All terms, covenants, conditions and provisions of this Contract shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, devisees, executors, administrators, legal representatives, and permitted successors in interest and assigns.

5.6 Amendment

No alteration, amendment or modification hereof shall be valid unless executed by an instrument in writing by the parties hereto with the same formality as this Contract.

5.7 Counterparts

This Contract may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, and all of which shall together constitute one and that same document, and shall be binding on the signatories; and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

In the event that any signature is delivered by facsimile transmission, by email delivery of a ".pdf" format data file, or by uploading of a ".pdf" format data file on the County's website, such signatures shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

5.8 Severability

If any provision of this Contract is invalid or unenforceable for any reason, this Contract shall be divisible as to such provisions and the remainder of this Contract shall be and remain valid and binding as though such provision was not included.

5.9 Non-Exclusivity

Nothing herein is intended, nor shall be construed, as creating any exclusive arrangement with the Contractor. The County reserves the right to acquire similar, equal, or like goods, services, and/or other deliverables from other entities or sources.

5.10 Non-Waiver

The County's failure to require performance of any provision of this Contract, or if it requires performance and does not follow through, shall not affect the County's right to require performance at any time thereafter. Additionally, the County's waiver of any breach or default of this Contract shall not constitute a waiver of any subsequent

breach or default or a waiver of the provision itself or any other provision.

5.11 Performance

Acceptance of performance is a condition of this Contract. It shall be understood and agreed that an agent for the County shall determine finally the satisfactory quality of the services and/or materials furnished under the Contract. Failure to meet the performance requirements is a reason for termination of the Contract, and the Contractor shall be liable to the County for any excess cost and/or expenses incurred by the County thereunder.

5.12 Notice

Every notice, demand, consent, request, approval, report, offer, acceptance, certificate, or other communication which may be, or is required to be, given or delivered under or with respect to this Contract shall be in writing and sent postage prepaid by United States registered or certified mail, return receipt requested, and directed to the other party at its address set forth below, or at such other address within the continental United States as any party may hereafter designate by similar notice to the other.

To County:

(Enter Issuing Department/Agency/
Office/Court Address)

Cuyahoga County

Office of Procurement & Diversity

County Administration Building, Room 110

1219 Ontario Street

Cleveland, Ohio 44113

With respect to any legal claims or
disputes, and/or issues of liability, a
simultaneous copy must be sent to:

The County of Cuyahoga, Ohio
Attn: Cuyahoga County Director of Law
Cuyahoga County Department of Law
1219 Ontario Street, 4th Floor
Cleveland, Ohio 44113

To Contractor:

(Enter Contractor Address)

McKesson Medical-Surgical, Inc.

8741 Landmark Road

Richmond, VA 23228

5.13 Independent Contractor

The Contractor shall be and remain an independent contractor with respect to all

services performed herein and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any Local, State or Federal Law which are measured by the wages, salaries, or other remuneration paid to persons employed by the Contractor for work performed under the terms of this Contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by and duly authorized State or Federal officials; and said Contractor also agrees to indemnify and save harmless Cuyahoga County from such contributions, taxes or liability.

ARTICLE VI
ELECTRONIC SIGNATURE

6.1

THE CONTRACTOR AGREES ON BEHALF OF THE SUBMITTING BUSINESS ENTITY, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, SUBGRANTEES, AGENTS OR ASSIGNS, THAT ALL CONTRACT DOCUMENTS REQUIRING COUNTY SIGNATURES MAY BE EXECUTED BY ELECTRONIC MEANS, AND THAT THE ELECTRONIC SIGNATURES AFFIXED BY THE COUNTY TO SAID DOCUMENTS SHALL HAVE THE SAME LEGAL EFFECT AS IF THAT SIGNATURE WAS MANUALLY AFFIXED TO A PAPER VERSION OF THE DOCUMENT. THE CONTRACTOR ALSO AGREES ON BEHALF OF THE AFOREMENTIONED ENTITY AND PERSONS, TO BE BOUND BY THE PROVISIONS OF CHAPTERS 304 AND 1306 OF THE OHIO REVISED CODE AS THEY PERTAIN TO ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC SIGNATURE POLICY OF CUYAHOGA COUNTY.

IN WITNESS WHEREOF, the Parties have each caused their duly authorized representatives to execute this Contract, effective as of the Effective Date.

THE CONTRACTOR:

Signature: _____

Printed Name: _____

Contractor: _____

McKesson Medical Surgical Inc.
(OFFICIAL NAME AS IT APPEARS IN THE BID)

Title: Proposal Manager

Date: Oct. 8, 2013

COUNTY OF CUYAHOGA, OHIO

Signature: _____

Edward FitzGerald, County Executive

Edward FitzGerald, County Executive

Date: Edm FitzGerald/apc

2014-02-12 10:09:31

CERTIFIED COPY OF CERTAIN RESOLUTIONS
adopted by the
BOARD OF DIRECTORS
of
McKESSON MEDICAL-SURGICAL INC.

* * * *

RESOLVED, that each person named below, acting in accord with his or her job title and the requirements set forth in the McKesson Corporation Delegation of Authority policy, is hereby authorized to execute in the name and on behalf of the Corporation, any bid, proposal, contract, agreement and amendment, renewal or bond required in connection therewith for the sale or rental of products or the performance of services provided by the Corporation in the amount of \$150,000 or less, with any department of the United States government and any state, city, county, local government or subdivision thereof:

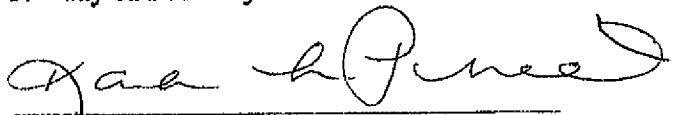
<u>Name</u>	<u>Job Title</u>
Michael Cantor	Director of EC Sales Administration
Cindy Ince	Contract Administration Manager

RESOLVED FURTHER, that Michael Cantor and Cindy Ince each be, and hereby is authorized and directed to execute and deliver such other documents and take such other actions in the name and on behalf of the Corporation as they deem are required or are necessary or appropriate to give effect to the intent of the foregoing resolution.

* * * *

I CERTIFY that the foregoing is a true and correct copy of certain resolutions duly adopted by the Board of Directors of McKesson Medical-Surgical Inc., acting by Unanimous Written Consent of Directors without a meeting on January 31, 2012, and that said resolutions have not been rescinded or amended and are now in full force and effect.

WITNESS my hand of said Corporation this 17th day of February 2012.



Karen M. Pineda
Assistant Secretary