



Travis County Commissioners Court Agenda Request

Meeting Date: February 4, 2014

Prepared By/Phone Number: C.W. Bruner, 512-854-9763

Elected/Appointed Official/Dept. Head: Cyd Grimes

Commissioners Court Sponsor: Judge Biscoe

Agenda Language: Consider and take appropriate action regarding confidentiality and non-disclosure agreement with self-selected respondents to Request For Proposal (RFP) # 1311-003-CW for Third Party Administrator and Insurance Coverage for health related benefits.

- **Purchasing Recommendation and Comments:** Purchasing recommends approval of requested action. This procurement action meets the compliance requirements as outlined by the statutes.

The contract for Third Party Administration (TPA) of the Travis County Health Plans with United Healthcare (UHC) has been in force since October 1, 2001. This contract includes services for the payment of claims, provider network utilization and discounts, case and disease management, plan reporting, COBRA administration, retiree health plan billing, vision insurance and certain wellness programs. The contract also includes the Pharmacy Benefit Management services with Optum Rx.

HRMD and Purchasing felt the County would benefit from the competitive bid process for these services and prepared a Request for Proposal (RFP). The RFP includes a request for proposals for the following services:

- Health Plan Third Party Administration (includes case/disease management, claims payment, wellness programs, provider network and discounts, COBRA administration and retiree billing)
- Pharmacy Benefit Manager (PBM)
- Stop Loss Insurance
- Vision Insurance

RFP No. 1311-003-CW was issued November 21, 2013 and closed on January 7, 2014. A total of 18 proposals were received.

As part RFP specifications, one requirement is that each proposal responding to the TPA and/or PBM portion of the proposal must provide detailed claim level re-pricing

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to agenda@co.travis.tx.us by Tuesdays at 5:00 p.m. for the next week's meeting.

information (by aggregate and by individual claim) based on the health and pharmacy claim data included in the solicitation. Most vendors responded that they would provide this information upon the signing of a confidentiality and non-disclosure agreement (NDA) because they believe this data to be business sensitive or view the data as trade secret.

The County Attorney's Office provided a standardized confidentiality agreement for all respondents to utilize for any such request. The County Attorney's Office has reviewed each executed respondent confidentiality agreement for compliance with the County's legal obligations in particular to the requirements of the Public Information Act. HRMD and Purchasing recommend approval of these NDAs.

A supplemental list of vendors requesting the execution of a NDA will be added to the agenda backup on Friday, January 31, 2014.

➤ **Funding Information: N/A**

SAP Shopping Cart #:

Funding Account(s):

Comments:

CONFIDENTIALITY AGREEMENT

This agreement is entered into by the following parties:

Travis County, ("Travis County") and ____**(insert full legal corporate name of vendor)**____ ("Proposer").

Travis County desires to review certain information from Proposer in order to evaluate a proposal from the Proposer for an administrative services only agreement between Travis County and Proposer. Proposer considers some of the information requested to be confidential information.

As a condition to disclosing such Confidential Information, Proposer requires Travis County to treat all such Confidential Information in accordance with this Confidentiality Agreement and to take or refrain from taking the other actions described below.

1. Definitions

1.1. The term "Attorney General" means the Attorney General of Texas.

1.2. The term "Confidential Information" means the information listed below and any information that Recipient learns or becomes aware of, directly or indirectly, through the release of the Confidential Information.

- Line-by-Line Medical Repricing
- Rx MAC List (with pricing)

Confidential Information does not include any of Proposer's information that (a) is already known to Travis County at the time of its disclosure; (b) is or becomes publicly known through no wrongful act of Travis County; (c) is received from a third party free to disclose it to Travis County; or (d) is independently developed by Travis County without use of the Confidential Information.

1.3. The term "Person" means any natural person, corporation, association, partnership, joint venture, trust or any other artificial or legal entity.

1.4. The term "PIA" means the Texas Public Information Act in TEX. GOV'T CODE ANN. ch. 552, as amended.

1.5. The term "Representatives" means with respect to any Person, any of that Person's directors, officers, employees, agents, advisors, attorneys, solicitors, accountants, consultants, and other representatives.

2. Application of Texas Public Information Act

2.1. Proposer acknowledges that Travis County is subject to the Texas Public Information Act and agrees that this Confidentiality Agreement is subject to the Texas Public Information Act, Texas Government Code, chapter 552. To the extent that compliance with any provision of this agreement would result in Travis County's non-compliance with the PIA, that portion of this agreement has no force or effect. If Travis County is requested to disclose any item or data furnished to Travis County by Proposer under the provisions of the PIA, Travis County must notify Proposer in writing of that request within two (2) business days of receipt of that request by the County Attorney. It is expressly agreed that Travis County's officers and employees may request a decision from the Attorney General about the applicability of the PIA to any item or data furnished to Travis County and about whether that item is a public record of public information under the PIA. Proposer has ten (10) business days from the date Proposer receives notice that the County Attorney's office has requested a ruling from the Attorney General's office to provide any additional information to the Attorney General that should be considered for a decision from the Attorney General under the PIA. If the Attorney General provides a decision that the item or data must be disclosed, Travis County must notify Proposer of the decision within five (5) business days of notice of Travis County's receipt of the Attorney General's decision. Proposer must decide whether to ask Travis County to seek relief from compliance with the Attorney General's opinion and advise Travis County of that decision within one (1) business day of notice of Travis County's receipt of the Attorney General's decision. If Proposer requests that Travis County seek relief from compliance with the Attorney General's decision, Proposer must reimburse all reasonable costs incurred by Travis County in seeking relief from compliance with the Attorney General's decision on a timely basis. It is further acknowledged by Proposer that Travis County's officers and employees have the right to rely on the Attorney General's decision and that Travis County's officers and employees have no liability or obligation to Proposer for disclosure of any item or data furnished to County or to any person in reliance on the Attorney General's decision.

3. Treatment of Confidential Information

3.1. Confidential Information shall be used by Travis County solely for the purpose of evaluating the proposal by Proposer for an administrative services only agreement between Travis County and Proposer, and Travis County understands and agrees that, subject to the PIA, all Confidential Information shall be kept strictly confidential throughout the term of this Confidentiality Agreement and that, subject to the PIA, no Confidential Information shall be used directly or indirectly or in any other manner except for the purpose of evaluating the proposal by Proposer for an administrative services only agreement between Travis County and Proposer. Travis County understands and agrees that, subject to the PIA, the Confidential Information shall be disclosed only to its Representatives whose knowledge of the Confidential Information is required for the purpose of evaluating and analyzing the proposal by Proposer for an administrative services only agreement between Travis County and Proposer, in which case each such Representatives shall be informed of the confidential nature of the information and shall be directed and shall agree to keep such information confidential and to be bound by all other terms and conditions of this Confidentiality Agreement.

- 3.2. Subject to section 2 above, if Travis County receives a demand or request to disclose Confidential Information under the PIA, the terms of a valid and effective subpoena or an order issued by a court of competent jurisdiction or by a governmental body, then Travis County shall: (i) notify Proposer of the existence, terms and circumstances surrounding the demand or request, (ii) consult with Proposer concerning the advisability of taking legally available steps to resist or narrow the demand or request, and (iii) if disclosure of Confidential Information is required, cooperate with Proposer to attempt to obtain an order or other reliable assurance that the Confidential Information to be disclosed shall remain confidential. Nothing herein shall prevent Proposer from intervening on its own behalf and at its own expense to prevent or limit the disclosure of the Confidential Information.
- 3.3. Without Proposer's prior written consent, and except as may be required by applicable law including the PIA, Travis County will not disclose to any Person, other than its Representatives whose knowledge of the Confidential Information is required for the purpose of evaluating and analyzing the proposal submitted by Proposer for an administrative services only agreement between Travis County and Proposer, the fact that it is receiving the Confidential Information. Neither Party may include references to the other Party or their disclosures in advertisements, press releases, or other disclosures without express written consent of the other Party, unless required by applicable law.
- 3.4. Upon the conclusion of the period during which County is required to retain the Confidential Information based on Texas laws and regulations related to records retention, Travis County shall return all written (or other tangible expressions of) Confidential Information to Proposer and shall discontinue all use of the Confidential Information. In such event, all documents, memoranda, notes, summaries, copies, extracts or other reproductions of the Confidential Information and other writings (or tangible expressions thereof) prepared by Travis County or any Person on its behalf based upon or reflecting the Confidential Information shall be destroyed.

4. Legal Effect

- 4.1. Except as may be provided by other agreements, neither Party shall have any legal obligation of any kind whatsoever to the other by virtue of having executed this Confidentiality Agreement or having disclosed Confidential Information to the other party, except for those obligations specifically set forth herein.
- 4.2. The execution and delivery of this Confidentiality Agreement shall not create any partnership, agency or any other legal relationship or obligation among the Parties, their respective Affiliates, Representatives or between any of them, except as specifically set forth herein or in such other agreement(s) into which the parties may enter.

5. Equitable Relief

5.1. Travis County understands and agrees that money damages would not be a sufficient remedy for any breach of this Confidentiality Agreement, and therefore agrees that Proposer shall be entitled to seek appropriate equitable remedies, including without limitation injunctive relief and specific performance, as a remedy for any breach, direct or indirect, by Travis County of this Confidentiality Agreement. Equitable remedies shall not be exclusive, but shall be in addition to any other remedies or legal recourse that may be available.

6. No Waiver

6.1. Failure or delay by either Party in exercising any right or privilege under this Confidentiality Agreement shall not operate as a waiver, and any single or partial exercise thereof shall not preclude any other or further exercise thereof or the exercise of any other right or privilege.

7. Representatives' Compliance

7.1. Travis County shall procure compliance by its Representatives with the terms and conditions of this Confidentiality Agreement, and shall be liable for any breach by its respective Representatives of any provision of this Confidentiality Agreement.

8. Non-Assignability

8.1. This Confidentiality Agreement shall not be assignable by any Party, and any attempted assignment shall be null and void and without force or effect.

9. Governing Law; Resolution of Disputes

9.1. This Confidentiality Agreement shall be governed by and construed in accordance with the laws of Texas, without reference to its conflict of laws principles and rules.

10. Entire Agreement; Severability; Counterparts

10.1. This Confidentiality Agreement contains the complete agreement among the parties concerning the subject matter of it and supersedes all prior agreements.

10.2. If any one or more provisions of this Confidentiality Agreement should be determined by a tribunal of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected in any way.

11. Amendment, Effective Date and Termination of Agreement

11.1. This Confidentiality Agreement shall be effective as of the date on which it is fully executed for a one-year term, unless terminated sooner as provided in this Confidentiality Agreement.

11.2. This Confidentiality Agreement may not be amended, modified or extended except by a writing signed by each of the Parties.

11.3. Any Party may terminate this Confidentiality Agreement at any time and for any reason by written notice to the other Parties given in accordance with Section 12.

12. Notices

12.1. All notices hereunder shall be in writing, and given when mailed by certified or registered mail, postage paid, return receipt requested, delivered by hand, or sent by receipted courier service or facsimile with a confirmation copy by receipted courier service.

If to Proposer:

Proposer

Attn:

Address

Telephone:

If to Travis County:

Cyd V. Grimes, C.P.M., CPPO

Purchasing Agent

Travis County Purchasing Office

700 Lavaca Street, 8th Floor

Austin, TX 78701

12.2. A Party may change its designated address by written notice to the other Parties.

Proposer:

By: _____

Printed Name: _____

Title: _____

Date: _____

Travis County

By: _____
Samuel T. Biscoe, County Judge

Date: _____