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Mr. Michael McCreery
United Counties Council of Illinois
217 East Monroe Street, Suite 101
Springfield, IL 62701

Re: Competitive Bidding Requirement for Healthcare Contracts

Dear Mike:

Issue:

Are healthcare contracts exempt from the competitive bidding requirements pursuant to Sec. 5-1022 of the Counties Code.¹

Analysis:

The provisions of Sec. 5-1022 of the Counties Code specifically states as follows:

(a) Any purchase by a county with fewer than 2,000,000 inhabitants of services, materials, equipment or supplies in excess of \$30,000, other than professional services, shall be contracted for in one of the following ways: (Emphasis added)

(1) by a contract let to the lowest responsible bidder after advertising for bids in a newspaper published within the county or, if no newspaper is published within the county, then a newspaper having general circulation within the county; or . . .

¹ 55 ILCS 5/5-1022.

The Counties Code does not define the phrase “professional services”, however, judicial decisions have addressed or otherwise interpreted the term “professional services” in conjunction with healthcare contracts.

The court in American Healthcare Providers, Inc. vs. County of Cook² held “healthcare contracts” were exempt from the competitive bidding requirements. The Court stated that since Cook County was a home rule unit, the provisions of the Counties Code did not govern the transaction; however, Cook County’s bidding ordinance prescribed competitive bidding including or comparable to Cook County’s professional service exemption provision. The Court summarized Cook County’s position as follows:

The County submits that the health care contracts at issue in this case are a textbook example of the type of contract for which the professional exemption provision is intended. It notes that there are ‘myriad insurance coverages and types of direct service provisions from which the County needed to choose a comprehensive health plan for numerous employees.’

The County insists it must be permitted to use the negotiated RFP method by which various companies can submit unique proposals through an ongoing negotiating process.

The Court in Compass Health Care Plans vs. Board of Educ. of City of Chicago³, interpreted a comparable professional service exception in the School Code. The School Code required competitive bidding with the following exception:

[E]xcept contracts which by their nature are not adapted to award by competitive bidding, such as contracts for the services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part.

The Court in holding that a competitive bid was required, stated:

[T]hat an HMO contract is not a contract for the direct furnishing of medical services, such as physical examinations of students, but is, instead, merely a contract for the administration of an employee health care program in which CPS employees select their own personal medical providers from a list of hospitals and doctors associated with the HMO.

² 265 Ill.App.3d 919, 638 N.E.2d 772, 202 Ill.Dec. 904 (1994).

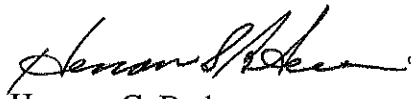
³ 246 Ill.App.3d 746, 617 N.E.2d 6, 186 Ill.Dec. 767 (1992).

Conclusion:

Based upon the analysis set forth by the Courts in American Healthcare Providers, Inc. vs. County of Cook, the burden will be on the county to support and justify reliance upon the “professional service” exemption in order to adopt a health plan without competitive bidding. The county if it elects to utilize a negotiating process in lieu of a bidding process to secure a health plan it must establish and find that such process is necessary to obtain the necessary health plans for county employees.

Sincerely,

GIFFIN, WINNING, COHEN & BODEWES, P.C.



Herman G. Bodewes

HGB:pa

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Disclaimer: This opinion was prepared by Giffin, Winning, Cohen & Bodewes, P.C. at the request of UCCI and is to be used solely by UCCI and its members. The State’s Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State’s Attorney.