



**Purchasing Contract
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

AGENDA ITEM NO.: 25
AGENDA DATE: Thu 06/17/2004
PAGE: 1 of 2

SUBJECT: Ratify legal services contract with CROWELL & MORING, L.L.P., Washington, DC, for legal services related to the filing of claims in the United States District Court for the District of Columbia, to recover an increase in the Medicare Cost Report reimbursement amounts for Brackenridge Hospital for Fiscal Years ended 1992, 1993, and 1994, in an amount equal to ten percent (10%) of the total reimbursement amount.

AMOUNT & SOURCE OF FUNDING: N/A

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING Purchasing	DIRECTOR'S
DEPARTMENT: for Financial and	AUTHORIZATION: <u>Vickie Schubert</u>
Administrative Services -	
Controller's Office;	

FOR MORE INFORMATION CONTACT: Diana L. Granger, Purchasing Officer/974-2050; Jeff Knodel, Controller/974-2589

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: N/A

PURCHASING: N/A

MBE / WBE: This contract was awarded in compliance with Chapter 2-9 of the City Code (Minority-Owned and Women-Owned Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore, no goals were established for this solicitation.

Ratification of a legal services contract with Crowell & Moring is requested for work related to claims filed on the City's behalf with the United States District Court for the District of Columbia for additional Medicare Cost Report reimbursements. Prior to October 1, 1995, the City operated Brackenridge Hospital (Brackenridge), which provided medical services to Medicare and Medicaid patients. Brackenridge received reimbursement for these services from the Centers for Medicare and Medicaid Services (CMS) formerly known as Health Care Financing Administration (HCFA), which is an agency of the Department of Health and Human Services. As a participant in the Medicare and Medicaid programs, Brackenridge was required to file a Medicare cost report at the end of each fiscal year to determine the final eligible costs as prescribed by prevailing Medicare regulations (at that time).

In mid-February, 2003, the City became aware of the implications of *Monmouth Medical Center vs. Thompson*, a lawsuit filed in the United States Court of Appeals. The lawsuit established guidance regarding the eligibility of certain costs related to the filing of Medicare cost reports. The lawsuit stipulated that certain previously ineligible costs were actually eligible for inclusion within the Medicare cost reports for certain time periods. As determined by the *Monmouth* decision, the statute of limitations for filing a claim under the *Monmouth* case was February 27, 2003. To be considered eligible for additional reimbursements, the City had to file a claim by the deadline in the United States District Court



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for the District of Columbia. This timeframe did not allow staff to obtain City Council approval before agreements were negotiated and executed with Crowell & Moring, the attorneys in Washington, D.C. who filed the claim (and with Landmark Reimbursement [see companion RCA # 5170]). The City required the assistance of Robert Roth with Crowell & Moring, L.L.P., as local counsel in Washington, D.C., in conjunction with Landmark Reimbursement's services, to pursue the claims in federal court.

On February 24, 2003, the Purchasing Office entered into two agreements to pursue additional reimbursements for the City. The legal services agreement is with Crowell & Moring, L.L.P., a Washington, D.C firm that handled similar cases for other hospitals. A second agreement is with Landmark Reimbursement for consulting services to determine and support the additional reimbursement amounts due the City based on the Brackenridge Hospital Medicare cost reports for fiscal year 1992, 1993, and 1994. (See companion RCA # 5170) Robert Roth was the lead plaintiff attorney in the *Monmouth* case. Both parties have worked on similar appeals and are working on this appeal as a joint effort for Brackenridge. They also represent other hospitals and health entities that have filed lawsuits pursuant to the *Monmouth* case.

The City will pay Crowell & Moring, L.L.P. ten percent (10%) of the gross additional reimbursements within thirty (30) days of the date the City receives such amount. Based on an initial estimate of \$3.5 to \$4 million attributable to recovery by Brackenridge, the City could pay Crowell & Moring between \$350,000 to \$400,000, with the remainder going to the City to be used for any lawful purpose. The City will not be liable to Crowell & Moring, L.L.P. if the City is not successful in the appeal.



TO: Mayor and Council Members

FROM: Jeff Knodel, Controller

DATE: June 9, 2004

SUBJECT: Ratification for Legal and Consulting Services for Brackenridge Medicare Cost Report

In mid-February 2003, the City became aware of certain legal facts related to prior year Medicare Cost Reports filed by Brackenridge Hospital for the period of time the City operated the Hospital. At issue is the City's ability to retroactively seek reimbursement concerning eligibility requirements in the disproportionate share adjustment within the Medicare cost report. The affected cost reports include FYE 1992, 1993, and 1994.

In order to proceed with the issue, the City was required to file suit in U.S. District Court in Washington DC by the filing deadline of February 27, 2003. The deadline did not allow staff sufficient time to bring the issue forward to Council. In order to meet the filing deadline, the City entered into a contract with Crowell & Moring for legal representation and Landmark Reimbursement to provide consulting services. The City filed suit in U.S. District Court on February 26, 2003.

The structure of the contracts specifies that, if the City is successful in recovering amounts through the filing, Landmark Reimbursement will be compensated 20% of the gross amount and Crowell & Moring will be compensated 10% of the gross amount paid. If the City is unsuccessful, the City will not be liable for any costs incurred by either firm.

The RCA for these items is scheduled for the June 17, 2004 Council meeting.

If you require additional information, please advise.