

[CITY ATTORNEY LETTERHEAD]

_____, 2003

TO:

**Re: Request for Proposals to Locate Insurance Coverage
and to Pursue Insurance Claims on Behalf of the
City of Milwaukee and its Affiliated Agencies Pertaining to
Recovery of Costs Incurred In Environmental Testing,
Investigation and Remediation Activities**

Dear :

The Milwaukee Common Council has passed a resolution authorizing and directing the City Attorney to report his findings and recommendations concerning selection of a law firm or firms on a contingency basis to act on behalf of the City and its affiliated agencies (collectively, the "City") against the insurance industry to investigate available insurance coverage and to recover monies expended by the City in performing environmental testing, investigation, and remediation activities and, if appropriate, to represent the City in any resulting litigation.

This resolution has been adopted in response to the decision of the Wisconsin Supreme Court in *Johnson Controls, Inc. v. Employers Insurance of Wausau*, 2003 WI 108, 264 Wis.2d 60, 665 N.W.2d 257, holding that such costs may be recoverable under pre-1986 comprehensive general liability ("CGL") policies. The resolution further provides that the law firm or firms shall be selected based on the following criteria:

1. The firm's experience in environmental matters.
2. The firm's experience in insurance law and litigation.
3. The firm's experience in, and capacity to: (a) investigate and locate sources of insurance coverage; and (b) initiate, pursue, and litigate insurance claims.
4. The firm's capacity to handle time-consuming, complex, and innovative litigation.
5. The firm's offer of a contingency-agreement proposal favorable to the City.
6. The extent and adequacy of the firm's malpractice insurance.
7. The absence of any conflicts of interest that may preclude or limit the firm's ability to represent the City with respect to the matters within the scope of the resolution.
8. Such other criteria as the City Attorney finds prudent and appropriate.

The resolution further provides that any agreement entered into by the City Attorney to retain a law firm or firms to represent the City in this matter shall be subject to Common Council approval. A copy of the resolution is enclosed.

All investigatory and litigation activities during the course of this representation will proceed on a contingency-fee basis. It is, of course, premature at this stage to determine the exact terms of the contingency-fee contract, but it is anticipated that the contract would provide for various contingency-fee recoveries based upon the amount of the total recovery from insurance companies in each claim or case. We acknowledge that a law firm cannot make a final commitment to either proceed with litigation or to the terms and conditions of representation until it has completed its investigation and evaluation of the case.

If your firm is interested in undertaking the tasks outlined in the resolution on a contingency basis, we ask that you respond, in writing, to the City Attorney and describe to him your firm's ability to proceed with this work in the context of the seven criteria stated in the resolution. To further assist the City Attorney in evaluating the law firm or firms interested, we have attached a list of 12 questions and ask that you provide answers to those questions. Your answers will be used for evaluation purposes only and will not constitute a commitment by you concerning the terms and conditions of representation. The terms and conditions of representation will be addressed after a preliminary selection has been made. Your answers, however, will provide us guidance in the selection and decision making process.

We ask that you respond by _____(date)_____, so that we can meet the deadline outlined in the resolution. If for some reason any respondent requires additional time, we ask that you contact us before _____ (date)_____, so that we can extend the same additional time to the other respondents. Any firm or firms chosen will be expected to comply with the provisions of sec. 304-23 of the Milwaukee Code of Ordinances (copy attached).

Very truly yours,

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
Deputy City Attorney

SSM:lmb
enclosure
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