

CITY OF MILWAUKEE

Form CA-43

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February 19, 2003

Alderman Thomas G. Nardelli
15th Aldermanic District
Room 205, City Hall
Milwaukee, WI 53202

Re: RFP for police data system

Dear Mr. Nardelli:

By letter dated February 11, 2003, you posed legal questions concerning a Request for Proposals for a data system for the Milwaukee Police Department.

You related your understanding of certain facts leading up to the RFP. You stated that you have been told that the RFP was written in a way that precludes all but one vendor from submitting a proposal, and that a proprietary product available from only one vendor (an "Open Sky" platform) is being sought. You state that the RFP was written by an MPD employee who will also be on the proposal evaluation committee.

Obviously, this office does not have the technical expertise to comment on whether the drafter of the RFP was qualified to author a technical RFP, whether the people with whom he consulted were proficient in these systems, or whether the RFP is appropriate to the needs of the department. We have been advised by the City Purchasing Director that the RFP calls for vendors to propose a system to meet certain functional requirements; that it need not be an "Open Sky" platform (this platform was mentioned in an early grant application but, we have been told, is not required in the RFP); and that no comments or questions in this regard were submitted at or following the pre-proposal meeting attended by prospective vendors.

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Therefore, without commenting on the technical or policy issues you raise, we will address your specific questions:

1. Given that the communications/data systems are commodities, is it appropriate for the Purchasing Department to issue an RFP rather than a competitive bid?

Yes. When competitive bidding is used, specifications are written and all bidders must agree to meet those specifications, without material deviation. The contract is awarded to the bidder who offers to meet those specifications for the lowest price. There can be no negotiations.

Certain types of procurements are exempt from competitive bids. These include, as examples, work for which it is impossible or impracticable to draw specifications; work involving creative or artistic talents; or work that requires scientific knowledge, or special skills or training. *See sec. 16-05-3, Milwaukee Charter; Aqua Tech, Inc. v. Como Lake Protection & Rehabilitation District, 71 Wis. 2d 541 (1976).* RFPs are frequently used to solicit proposals for differing systems in order to encourage innovation and allow proposers design flexibility, *Waste Management, Inc. v. Wisconsin Solid Waste Recycling Authority, 84 Wis. 2d 462 (1978)*, and to be able to evaluate the proposals on the system proposed, experience, and other factors.

We have been told that the RFP calls for the proposers to design a high-tech, wireless system. In fact, we have learned that the City's Central Board of Purchases in November of 2002 approved dispensing with competitive bids and approved the RFP mechanism for this very project.

2. Is it proper for the author of the RFP to sit on the panel making the final determination?

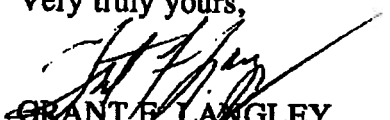
There is no legal prohibition against a department member writing specifications or RFPs, or against the author serving on a proposal - evaluation committee. It would be an impermissible conflict of interest if a City employee who participated in the making and award of a contract had a pecuniary interest in the contract. It also could, in some circumstances, be ill-advised to allow a private individual or company who might bid or propose to write the specifications. We have no information, however, that this is the case at hand.

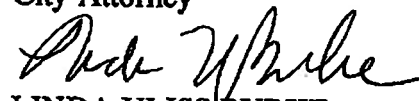
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3. Could the City be found in violation of existing ordinances on this matter?

As stated above, at his time we are unaware of any legal improprieties.

Very truly yours,


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