



Department of Public Works

Mariano A. Schifalacqua
Commissioner of Public Works

James P. Purko
Director of Operations

April 26, 2004

Honorable Michael J. Murphy
Alderman, 10th District
City Hall, Room 205

Dear Alderman Murphy:

Per your letter dated April 21, 2004 you asked the Department of Public Works to respond to a letter dated April 2 from Friebert, Finerty & St. John, S. C. The letter raised a number of issues regarding the Request for Proposal issued by the Department of Public Works to replace the parking access and revenue control system in the City-owned parking structures. The following is our response.

1. **Conclusion: Short RFP response time and questions the timing of the RFP.**

Response: The RFP was issued on March 12 and due on April 12 (not April 9 as the letter suggests) for a one-month response time. The due date was amended to April 12, 2004 as part of the first addendum issued on March 25, 2004. A one-month response time is typical for most RFPs. The RFP was issued on Friday, March 12, the day the Commissioner submitted his resignation. Staff was not aware of the Commissioner's intent to resign. Per the schedule included on page 1 of the RFP, a contract is not expected to be awarded until May or June, after the proposals are evaluated and a contract is negotiated. By this time there will be a new Mayor and Common Council and it is likely a new Commissioner of Public Works will be appointed as well. In addition, the time frame for the RFP (evaluation, selection, contract negotiation and equipment installation) is based on staff's desire to install new revenue control equipment in the City-owned parking structures by the end of summer 2004. Usage of the parking structures increases during the fall and winter months.

2. **Conclusion: Project could cost the City over \$3.2 million.**

Response: The 2003 Parking Fund capital budget authorizes \$969,000 to replace revenue control equipment in the City-owned parking structures. Until the responses to the RFP are reviewed, staff does not know to what extent the proposals will meet the City's operational and financial needs.

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It is staff's opinion that the \$3.2 million (referred to in the letter) reflects the experience of the City of Madison. The Madison Parking Utility was authorized to spend \$1.8 million to purchase revenue control equipment. The Parking Utility chose to purchase additional equipment totaling \$665,000 not originally specified in the RFP. After the equipment was installed, the Parking Utility apparently wanted to purchase more equipment (also not part of the original RFP) for another \$1.3 million. The Common Council denied this request. Consequently, the Madison experience was not based on cost overruns, but on the desire to expand their revenue control system.

It is completely inappropriate to suggest that the City's RFP will cost over \$3.2 million. The cost of the City of Madison's RFP is not comparable to the City of Milwaukee's RFP because the number of parking structures and the amount of equipment varies even though the desired technology and functionality is similar.

3. **Conclusion: The purchases envisioned by the RFP involves millions of dollars.**

Response: As stated earlier the 2003 Parking Fund capital budget authorizes \$969,000 to replace revenue control equipment in the City-owned parking structures. This estimate was developed in 2001 by the vendor of the City's current equipment. Over time if the City wishes to expand the number of pay-on-foot stations, for example, additional funding may be requested. However, it is staff's intent to install the new equipment and monitor its use over time.

4. **Conclusion: It is not clear whether an assessment concerning the renovation of existing equipment and any computer upgrade options were explored by DPW.**

Response: In preparation for the 2003 budget, staff analyzed the current equipment and determined that it should be replaced for the following reasons: 1) age of the equipment (12+ years old); 2) difficult to find replacement parts (have cannibalized equipment or taken equipment out of service); 3) excessive repairs costs; 4) increasing number of claims relating to the gates falling on vehicles; 5) provides minimal management and financial reports; and 6) provides no capability to process credit, debit or stored-value cards.

5. **Conclusion: Copying of Madison's RFP which resulted in substantial cost overruns.**

Response: The City's consultant and City staff reviewed and utilized significant portions of Madison's RFP as well as other RFPs, which were recently issued. In

addition, staff conducted several site visits, discussed revenue control equipment with other entities and vendors at parking conferences, etc. to refine the City's proposal.

The statement that Madison's equipment and services have failed to meet expectations and has created significant cost overruns is **simply not true**. City staff has been in contact with the City of Madison and they have indicated to us that while there have been some minor operational problems, their system is functioning well. **There have been no cost overruns**. According to City of Madison staff, \$1.8 million was appropriated to replace their revenue control equipment and an additional \$665,000 was provided to purchase additional pay-on-foot machines not envisioned in the RFP. The additional equipment was requested due to customer usage.

6. **Conclusion: The RFP was prepared with the assistance of a traffic consultant from Cleveland, Ohio.**

Response: After receiving recommendations on three consultants, the City sent letters soliciting the consultants' interest in preparing an RFP for the City of Milwaukee. Two consultants indicated their interest and were interviewed by City staff. A service contract was entered into with James LaRocco, a consultant for Integrity Parking from Cleveland, Ohio. It is important to note that the City specified that the consultant should not be aligned with any particular vendor. The Parking Commissioner of the City of Madison was never consulted for this purpose. Copies of the solicitation letter and consultant service agreement have been provided to Friebert, Finerty & St. John as part of an open record request.

7. **Conclusion: Local traffic consultants such as HNTB Corporation and Graef Anhalt and Schloemer were not considered.**

Response: Although we are aware of these local consultants, DPW envisioned that one or both would be asked to participate in the evaluation process so it would not be appropriate to use them as consultants on this project.

8. **Conclusion: There were no interviews or needs assessment by DPW or its consultant with the existing parking management contractors.**

Response: DPW staff is in contact with Central Parking Systems, the City's parking management contractor, on a daily basis regarding management, financial and maintenance issues relating to the City's parking structures. City staff is extremely knowledgeable of the problems and shortcomings of the current revenue control system. In addition, the City's consultant did interview management personnel at

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Central Parking Systems during the preparation of the RFP. His notes have been provided to Friebert, Finerty & St. John as part of an open record request.

9. **Conclusion: There was never a Notice of Intent to Issue an RFP/RFQ published.**

Response: City staff determined that because of the unique nature of this project, it would mail the RFP to all known vendors of parking revenue and control equipment. In total, the RFP was mailed to 11 vendors.

10. **Conclusion: No pre-RFP meeting was ever called.**

Response: Staff determined that a pre-RFP meeting might preclude interested parties from participating in the process. All but two of the potential vendors would have to travel from out-of-state for a pre-RFP meeting. Staff determined that it would mail the RFP to all known vendors, and upon review of the RFP, if any of the vendors were still interested in responding, the City would provide a tour of its structures and answer questions at that time. In fact, four vendors participated in this process.

11. **Conclusion: There was no compliance with section 7-15, Milwaukee Charter Ordinance.**

Response: The City Attorney's Office reviewed the RFP process and determined that the City was in compliance with section 7-15, Milwaukee Charter Ordinance. See attached letter from the City Attorney's Office dated April 19, 2004.

12. **Conclusion: No effort was made to attempt to conduct this procurement by competitive bid.**

Response: The Commissioner of Public Works along with City staff determined that an RFP process would be appropriate given the nature of the project and would be the most beneficial to the City. The City Attorney has indicated that the process was legal and defensible.

13. **Conclusion: The RFP does not contain a DPW proposal number, which has been assigned in every bid package.**

Response: According to DPW's Contract Compliance Officer, it is DPW's policy that if an RFP is mailed to all known vendors, assigning a contract number to the RFP is unnecessary.

14. Conclusion: The RFP is not posted or displayed on the City's web sites where all DPW bids and RFPs are traditionally published.

Response: According to DPW's Contract Compliance Officer, the RFP does not need to be posted on the City's web sites if the RFP is mailed to all known vendors. City staff determined that to ensure maximum participation, the RFP would be mailed to known vendors. As stated earlier, the RFP was mailed to 11 vendors. In short, staff was concerned not to preclude any vendor from participating in the process because they did not see the RFP posted on the web site.

15. Conclusion: No cost benefit analysis or fiscal impact analysis was performed in connection with the proposed system called for in the RFP.

Response: The RFP specifies functionality as desired by the City. During the RFP evaluation process, functionality and cost as well as other factors will determine the proposed system.

16. Conclusion: DPW, even though specifically requested to do so, flatly refused to conduct a so-called pre-bid conference.

Response: Only one distributor and its manufacturer asked whether DPW was planning to conduct a pre-RFP conference. This vendor currently has its equipment installed in the City-owned parking structures and understands the City's parking operation better than any other vendor who received the RFP. No other vendors requested a pre-bid conference. See responses to questions 10 and 14.

17. Conclusion: This transition period is not a time to risk the money involved.

Response: This question seems to imply that because a new Mayor was elected on April 6 and the Commissioner of Public Works retired, DPW should not issue this RFP. The Commissioner not only reviewed the RFP he was also involved in the process. The RFP schedule was developed based on staff's desire to install the new revenue control equipment in the City-owned parking structures by the end of summer 2004. See response to question 1.

18. Conclusion: Lack of public and industry input.

Response: As stated earlier, this project was discussed as part of the 2003 Parking Fund capital budget. The project was requested (a copy of the BMD-2 and BMD-100 has been provided to Friebert, Finerty & St. John as requested in the open record request) by DPW and reviewed by both the City Budget Office and the Legislative

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Reference Bureau and discussed during the Common Council's Finance and Personnel Committee review of the 2003 budget. It was eventually approved by the full Common Council as part of the 2003 Adopted Budget.

19. Conclusion: Past practices encouraged vendor and industry comment.

Response: Once the RFP was issued, vendors were asked to submit any questions in writing to the Parking Financial Manager. The City would respond to all questions in writing within five business days. In addition, all vendors were allowed to tour the City-owned parking structures on their own and with City staff and ask questions. See responses to questions 10 and 14 regarding the City's statement on a pre-RFP meeting.

20. Conclusion: Need for Common Council Intervention.

Response: It is DPW's position and confirmed by the City Attorney's Office that all City policies and procedures have been followed in the issuance of this RFP. The Common Council has already approved of this project as part of the 2003 budget process. In addition, the RFP was due 30 days after it was issued. No vendor saw the RFP before it was issued, therefore, no vendor had an advantage.

I hope you find this information helpful. If you have any questions or concerns, please contact me at extension 5582.

Sincerely,



Dorinda R. Floyd
Administrative Services Director

Attachment

Cc: Cindy Angelos



Department of Public Works

Mariano A. Schifalacqua
Commissioner of Public Works

James P. Purko
Director of Operations

April 16, 2004

Mr. Grant F. Langley
City Attorney
City Hall, Room 800

Attention: Ms. Linda Burke

Dear Mr. Langley:

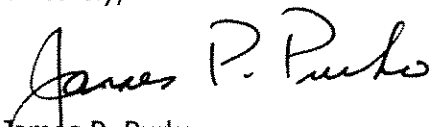
On March 12, 2004, the Department of Public Works issued a Request for Proposal to replace the parking access and revenue control system in the City-owned parking structures. Since that time, we have received two open record requests from Friebert, Finerty & St. John, S.C. questioning the RFP process as well as numerous other issues. We have responded to the requests with assistance from Linda Burke and Melanie Swank of your office.

A letter from Friebert, Finerty & St. John, S.C. dated April 2, 2004, which was sent to Alderman Fred Gordon and which you were copied, asks that the RFP be suspended. After meeting with Linda Burke, it was her opinion that there was no violation to Milwaukee Charter Ordinance Chapter 7 provisions and that all legal requirements regarding the issuance of the RFP were sufficiently satisfied. Five responses to the RFP were received on April 12th. They have since been opened and are in the process of being reviewed by an evaluation team.

Alderman Murphy, who was also copied on the letter, requested a meeting to discuss this issue. He requested that DPW seek a written opinion from the City Attorney regarding the legal findings pertaining to the issuance of this RFP.

We would appreciate your response as soon as possible. If you have any questions, please contact Dorinda Floyd, Administrative Services Director, at extension 5582.

Sincerely,


James P. Purko
Director of Operations

JPP:DRF:mra
c: Alderman Michael J. Murphy
Dorinda Floyd
Cindy Angelos

CITY OF MILWAUKEE

Form CA-43

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Assistant City Attorneys

April 19, 2004

James P. Purko
DPW-Director of Opeearitions
Municipal Bujilding, Room 516

Re: RFP for equipment at City-owned parking structures

Dear Mr. Purko:

By letter dated April 16, 2004, you asked whether the issuance of the Request for Proposals for the above procurement satisfied applicable legal requirements. You have received correspondence questioning the process from an attorney for a potential proposer. We already met with you to inform you orally that it appears, from a legal perspective, that the process you used is legal and defensible. We informed you that we obviously could not advise you as to policy issues surrounding this procurement.

One of the major "objections" to the RFP concerned the use of the proposal process instead of a strict "low bid" process. Chapter 7 of the Milwaukee City Charter, as well as the common law of this state, permit dispensing with competitive bidding if it is impossible or impracticable to draft specifications. Based on representations of your staff, the existence of different technologies and systems, at varying costs, justified receiving proposals, so that the systems could be evaluated based on feasibility and actual experience, as well as cost.

This is a standard, and legal, justification for dispensing with competitive bidding, if the contracting agency so wishes. It also appears, contrary to suggestions contained in the attorney's correspondence, that the Commissioner of Public Works himself made the policy determinations as to the need for the procurement, the use of the proposal method, and the length of time to submit proposals, in consultation with a retained consultant.

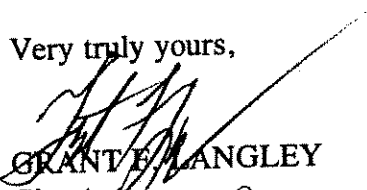
Another "objection" revolved around the alleged inability of many companies to meet the requirements of the RFP. According to the consultant, 14 companies could provide the type of equipment referred to in the RFP. In addition, the RFP permits companies to propose

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alternatives. Also, we have been informed that the company raising these objections has in fact submitted a proposal.

Finally, because the funding for this specific procurement was placed in DPW's budget and under the authority of the Commissioner, it does not appear legally necessary for the Common Council to approve the award.

Very truly yours,



GRANT E. LANGLEY
City Attorney



LINDA ULISS BURKE
Deputy City Attorney

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