

met



October 24, 1990

City of Chicago
Richard M. Daley, Mayor

C O N F I D E N T I A L

[REDACTED]

Board of Ethics
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Executive Director
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Re: Sales and Marketing / Lobbying
Case No. 90058.A
ADVISORY OPINION

Dear [REDACTED]

Suite 530
205 West Randolph Street
Chicago, Illinois 60606
(312) 744-9660

The Board of Ethics has reviewed your request for an advisory opinion on whether Co's sales and marketing of its products and services for use by the City of Chicago constitute lobbying. In conversations with our staff, you stated that in addition to the efforts of Co's employees to obtain business with the City, Co hire consultants who assist Co in responding to Requests for Proposals ("RFPs") issued by the City. These consultants receive a fee if Co's bid is accepted by the City.

Issue: Whether Co's employees or consultants hired by Co to market and sell products and services to the City are acting as lobbyists under the Governmental Ethics Ordinance.

Ethics Ordinance: Section 2-156-210 (formerly 26.2-21) of the Ethics Ordinance requires all lobbyists whose lobbying-related compensation or expenditures total \$5,000 or more in the preceding or current calendar year to register annually and file disclosure reports semi-annually with the Board of Ethics. As defined in Section 2-156-010(p) (formerly 26.2-1(p)) of the Ordinance, a "lobbyist" is any person:

- (i) who for compensation or on behalf of any person other than himself undertakes to influence any legislative or administrative action; or
- (ii) any part of whose duties as an employee of another includes undertaking to influence any legislative or administrative action.



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"Legislative action" and "administrative action" are defined in Sections 2-156-010(o) and 2-156-010(a) (formerly 26.2-1(o) and 26.2-1(a)), respectively:

"Legislative action" means the introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, veto or other official action or non-action on any ordinance, resolution, motion, order, appointment, application or other matter pending or proposed in the City Council or any committee or subcommittee thereof.

"Administrative action" means a decision on, or any proposal, consideration, enactment or making of any rule, regulation, or other official non-ministerial action or non-action by any executive department, or by any official or employee of an executive department, or any matter which is within the official jurisdiction of the executive branch.

Analysis: Persuasive efforts in connection with the award of government contracts have generally not been considered lobbying. Lobbyist registration and reporting requirements have been directed towards efforts by individuals to influence government actions which have a broad impact (such as the formulation of laws, rules, regulations and rate-making), not towards attempts to influence government actions whose application is limited to specific individuals (such as contracts or administrative adjudications). The latter are regulated not by public disclosure, but by specific rules of conduct. In the case of persuasive efforts in connection with the award of contracts, regulation is through laws which specifically address problem areas in procurement via restrictions on the giving and acceptance of gifts and prohibitions on improper influence and bribery.

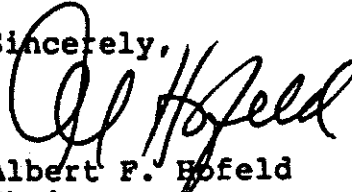
Therefore, we have determined that sales and marketing efforts in connection with the award of a City contract do not in themselves constitute lobbying. Accordingly, persons engaged in such activities are not required to register as lobbyists with the Board of Ethics.

However, there are other provisions of the Ordinance which do apply to persons responding to RFPs and presenting bids on

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contracts to the City, most notably 2-156-030 (Improper Influence, formerly 26.2-3), 2-156-040 (Gifts, formerly 26.2-4), 2-156-080 (Conflicts of Interest, formerly 26.2-8) and 2-156-090 (Representation, formerly 26.2-9) (See attached copy of the Ethics Ordinance).

Sincerely,



Albert F. Hofeld
Chairman

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cc: Kelly Welsh, Corporation Counsel
Department of Law