

ADVISORY OPINION
Case No. 99028.A, Post-Employment

To: [John]

Date: August 19, 1999

On June 2, 1999, you asked the Board of Ethics for advice on how the City's post-employment restrictions apply to you. You said that you are [] a computer programmer for the Alpha Department []. You have held this position for approximately eight years. You have been a City employee for more than 29 years. You are considering leaving City service and interviewing for a position with [Beta [] a company which recently entered into a [n outsourcing [] contract with [Alpha] to manage [a computer system []. After reviewing the facts presented by you and [Mary, your supervisor [], it is the Board's opinion that the Ethics Ordinance does not prohibit you from interviewing with [Beta] or any other person. However, the Ethics Ordinance does permanently prohibit you from assisting or representing [Beta], or any other person, in connection with the [outsourcing] contract. A statement of the facts, the relevant provisions of the Ethics Ordinance and the Board's analysis follow.

FACTS: [Mary] explained to staff that early retirement incentive programs have greatly reduced the number of qualified computer professionals working for [Alpha]. To address this concern, the City has contracted with private vendors to provide a number of computer-related support services. In 1998, [Alpha and other City departments [] issued a joint Request for Proposals ("RFP") seeking bids from private contractors interested in [the outsourcing contract []. This RFP was written by a City employee in conjunction with a consulting firm. You were not involved in writing this RFP.

Two vendors responded to the RFP: [Gamma and Beta []. An evaluation committee comprising representatives from [Alpha and other City departments [] was formed to review and evaluate bids and recommend a vendor. You served on this evaluation committee. You said that as a member of this committee, you were asked to evaluate how each company responded to seven of sixteen computer-related,

technical requirements stated in the RFP.¹ The areas you evaluated included: time sharing environment; disk space management; general software support; Year 2000 plan; data security; back up and recovery systems and new technology capacity. You said that you were not asked to provide your opinion as to which of the contractors could best meet the City's needs, but simply whether, from the materials provided by the contractor, you believed that the contractor could meet the City's needs. After reviewing the bids provided by both [Gamma and Beta], you opined that both vendors appeared capable of meeting the seven computer-related technical requirements which you reviewed.

[Mary] told staff that as a member of the evaluation committee, you were also asked to speak with a few of the references listed by each bidder. At a later date, after the City decided to enter into parallel negotiations with both [Gamma and Beta], [Mary] said that you were asked to review each bidder's "statement of work" which focused more closely on nine of the sixteen technical requirements outlined in the original RFP.

Each bid was also reviewed to determine whether the vendor could provide the necessary services for the lowest cost and timely support the users from a locally-sited center. Additionally, because this contract would result in the elimination of a number of City positions, each bid was reviewed to determine the extent to which the vendor would interview City personnel losing their positions. You were not asked to review the bids using these criteria.

After reviewing the two bids, references and statements of work, the evaluation committee voted to recommend that [Alpha] enter into the [outsourcing] contract with [Beta]. According to documents provide by [Mary], you were not a voting member of this committee and, therefore, you did not vote on the recommendation. You explained to staff that [Jane, Alpha's department head], was not bound by the evaluation committee's recommendation. However, [Jane] did accept the committee's recommendation. Contract negotiations between [Alpha]and [Beta] began in January 1999.

On June 1, 1999, the City entered into a written agreement with [Beta]for five years of support services, with the option of two one-year extensions to the contract. The contract is worth approximately \$40 million over 6.5 years. According to [Mary], [Beta] was selected, in part, because its bid was substantially lower than [Gamma's] bid and [Beta] planned to provide local support headquartered in a Chicago suburb, while [Gamma] proposed supporting the City's computer services from a St. Louis location. You were not involved in negotiating the terms of this contract. Your supervisors and attorneys from the Law Department negotiated the terms of this contract.

¹Other employees of [Alpha]were asked to review the two responses to determine whether the vendors could meet the other technical requirements in the RFP.

You are considering leaving City service. You would like to interview and, if offered, accept a position with [Beta] working on [Beta's outsourcing] contract with [Alpha]. Although your City position will not be outsourced under the terms of the contract with [Beta], you told staff that all of your current duties will be taken over by [Beta]. Therefore, your duties and position will change as a result of the City's contract with [Beta].

As [a programer with Alpha] you said that you are part technician, part supervisor. You install and support operating systems and software [], you write code for the system and you supervise approximately four other City employees who perform similar functions.

LAW AND ANALYSIS:

Post-Employment Restrictions: Former City employees are not prohibited by the City's Governmental Ethics Ordinance from interviewing with or working for any particular new employer. Case No. 99012.A, p. 2. Therefore, you are not prohibited from interviewing with or working for May or any other person.

However, the Ethics Ordinance does restrict the activities which former City employees may perform for their new employers. Section 2-156-100(b) of the Ordinance reads:

No former official or employee shall, for a period of one year after the termination of the official's or employee's term of office or employment, assist or represent any person in any business transaction involving the City or any of its agencies, if the official or employee participated personally and substantially in the subject matter of the transaction during his term of office or employment; provided, that if the official or employee exercised contract management authority with the respect to a contract this prohibition shall be permanent as to that contract.

Under this provision, former City employees are subject to both a one-year prohibition and a permanent prohibition after leaving City service. First, for one year after leaving City employment, former employees are prohibited from assisting or representing any person in a business transaction involving the City or any of its agencies if they participated personally and substantially in the subject matter of that transaction during their City employment. "Assisting" or "representing" a person in a business transaction involving the City includes helping a vendor perform a City contract. See Case No. 92035.A.

Second, former City employees are permanently prohibited from assisting or representing any person in a contract if, as a City employee, they exercised "contract management authority" over that contract. The Ordinance defines contract management authority as:

personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance. § 2-156-010(g).

Therefore, if a City employee evaluated bids or proposals for a contract, he would have exercised contract management authority over that contract. If that same City employee subsequently left City service, he would be permanently prohibited from assisting or representing any person on that contract.

Permanent Prohibition: The definition of contract management authority includes the “evaluation of bids or proposals.” § 2-156-010(g). Although the Ordinance does not define “evaluation” or “evaluate,” Merriam-Webster’s Dictionary defines evaluate “to determine or fix the value of; to determine the significance, worth, or condition of usually by careful appraisal and study.”

Staff gathered information from both you and [Mary] about your involvement with the City’s [outsourcing] contract with [Beta]. You said that you were not involved in the formulation of the RFP for this contract: another [Alpha] employee and a consulting company developed the RFP for this contract. According to [Mary] you did not vote on the question of which vendor should be recommended. And, you said that you were not involved in negotiating the terms of this contract. Your supervisors and attorneys from the Law Department negotiated the terms of this contract.

However, you were a member of the evaluation committee charged with evaluating the two responses to the RFP. As a member of the evaluation committee you were asked to review each bid focusing on seven of sixteen technical requirements listed in the RFP. You were asked to opine on whether the two vendors appeared capable of meeting the seven technical requirements you were asked to review. [Mary] told staff that you were also asked to check a few of each bidder’s references and to review each bidder’s statement of work.

It is the Board’s opinion that you evaluated both bids. You read the entire bids submitted by both [Gamma and Beta]. Based on your experience and your knowledge of the needs of the City, you studied each vendor’s response to seven specific categories to determine whether the vendors were capable of meeting the City’s needs. You interviewed some of each vendor’s references. You reviewed each vendor’s statement of work. Based on this review and study, you provided the evaluation committee with your opinion that both vendors appeared capable of meeting the City’s needs. Therefore, the Board determines that you evaluated these bids and exercised contract management authority over the City’s [outsourcing] contract with [Beta]. As a result, the Governmental Ethics Ordinance permanently prohibits you from assisting or representing any person, including [Beta], in connection with this [outsourcing] contract with [Beta].

This determination is consistent with the Board's decision in Case No. 94011.A. In that case the Board found that a former City employee exercised contract management authority over a City contract when the former City employee supervised the process by which a vendor's contract performance was reviewed and, as part of a team, recommended that the contract be renewed. Case No. 94011.A, p. 8.

Because you are permanently barred from assisting any person in a business transaction involving this [outsourcing] contract, the Board need not analyze the one-year prohibition regarding this same contract.

DETERMINATIONS:

1. The Board determines that the Governmental Ethics Ordinance does not prohibit you from interviewing with or working for any particular employer. Therefore, you are not prohibited from interviewing with or working for [Beta] or any other person.
2. The Board determines that the Governmental Ethics Ordinance permanently prohibits you from representing any person, including [Beta], in connection with this [outsourcing] contract.

We also advise you that Section 2-156-070 of the Ordinance, "Use or Disclosure of Confidential Information," prohibits all current and former employees from using or disclosing any confidential information gained in the course of their City employment. "Confidential information" is defined as any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

Our determination is not necessarily dispositive of all issues relevant to this situation, but is based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts stated are incorrect or incomplete, please notify the Board immediately, as any change may alter our determination. Other laws or rules also may apply to this situation. Be advised that City departments have the authority to adopt and enforce rules of conduct that may be more restrictive than the limitations imposed by the Ethics Ordinance.

RELIANCE: This opinion may be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered and any person involved in any specific transaction or activity indistinguishable in all its material aspects from the transaction or activity with respect to which this opinion is rendered.

Darryl L. DePriest
Chair