

CONFIDENTIAL

August 29, 2006

Mr. [John Smith]
[123 Main Street]
[Apt 1]
Chicago, Illinois 606[]

RE: Case No. 06050.Q

Dear Mr. [Smith],

On [], 2006, you contacted this office, requesting Board staff's opinion as to whether the Governmental Ethics Ordinance prohibits you from accepting a position as the Chief Administrative Officer for [XYZ] Engineering Corporation ["XYZ"], a City vendor. After reviewing the facts that you have presented, staff concludes that, although the Ordinance does not prohibit you from accepting this position with [XYZ], it does prohibit you, for one year after you leave City service, from assisting or representing [the XYZ] Engineering Corp., or any other person other than the City, on any business transaction involving: 1) the management, operation, maintenance, design or construction of any City facility; 2) acquiring or maintaining City M/WBE status; or 3) leasing or licensing agreements at [City Facility 1] or [City Facility 2].

CITY EMPLOYMENT

Department of [Q]. You are an attorney licensed to practice in Illinois, and have been employed by the City of Chicago (the "City") since July 20[]. From July 20[] through December 20[], you were the Deputy Commissioner of the Real Estate Division for the Department of [Q] ("Q"). In that position, you were responsible for all leasing, licensing and property management at both [City Facility 1] and [City Facility 2]. Your primary duties were to negotiate: 1) lease agreements with the [parties] for the use of gates, ramp space, passenger holding area and cargo facilities; 2) license agreements with the [parties], which allowed them to arrive at and depart from the [City facilities]; and 3) lease agreements with retail tenants, rental car companies and fixed base operators for use of [City Facility 1 and 2] space and land. As you explained, your property management duties did not include managing or handling needed maintenance and repairs - each tenant was responsible for its own maintenance and repairs.

Department of [R]. From December 20[] through April 20[], you held the position of Managing Deputy for the Department of [R]. In that role, you served as R's liaison to

the minority and woman-owned business (“M/WBE”) communities. As part of your duties, you led the restructuring of the City’s Minority and Woman Business Enterprise Construction Program and worked closely with City consultants in meeting with the Mayor’s Task Force, which was charged with making recommendations on revising the M/WBE program. Your responsibilities also included managing the approximately 15 to 20 employees of [R]’s M/WBE certification unit. At no time during your tenure in [R] were you involved in the Request for Proposal (“RFP”) or Request for Qualification (RFQ) process.

[XYZ], your prospective future employer, holds two City contracts: Contract [A], under which [XYZ] provides engineering services to the Department of [S] and Contract [B], under which [XYZ] provides property management and real estate consulting services to [T] and/or [Q].¹ During your employment in [R], one of [XYZ]’s two contracts with the City, Contract [B], was modified.² You stated that you were not involved in the process by which the substantive terms of that modification were worked out; however, you said that you were involved with [XYZ]’s re-certification as a MBE.³ Included in the contract modification documents is a copy of a letter bearing your signature, informing [XYZ] of its continued MBE certification eligibility and informing [XYZ] of the actions it was required to perform to continue its certification. You explained that MBE certification is a process that is distinct from contract modification.⁴ You further explained that periodically each M/WBE is required to submit financial documentation and other records attesting to the fact that it is minority/woman owned. The documents are then reviewed by [R] staff. If the information is sufficient to warrant (re)certification, the Deputies of Certification and Re-Certification are authorized to sign on behalf of the Managing Deputy. In this instance, the deputies would have been authorized to sign [XYZ]’s re-certification letter on your behalf.

Department of [T]. From April 20[] to the present, you have served as the Managing Deputy of the Department of [T] (“T”). [T] is responsible for ensuring that all City facilities are clean, safe and accessible through the initiative of seven different bureaus: 1) Architecture, Engineering and Construction Management, which provide capital planning for City facilities, design, engineering, and construction management services; 2) Energy, which procures reliable sources of energy at the least cost; 3) Facilities Management, which provides building and property management services consisting of custodial and maintenance services for all City-owned buildings; 4) Finance and Administration; 5) Green Initiative, which manages all of the Green construction projects and policies; 6)

¹ Under Contract [B], [XYZ] was retained to 1) provide various real estate consulting services to supplement the City’s internal resources and to assist the City in making optimal real estate decisions based on market conditions; and 2) manage newly acquired properties on behalf of the City.

² The modification occurred in February 20[].

³ City M/WBE status is not tied to a particular contract; therefore, the certification is applicable as to all of [XYZ]’ contracts.

⁴ Though certification is distinct from contract modification, a company’s work cannot be counted towards the M/WBE totals required by City ordinance without the certification status.

Support Services, which manages all permanently held City properties and facilities; and 7) Trades and Engineers, which provides maintenance and repair to all City facilities.

As Managing Deputy, the seven deputies who manage [T's] daily activities through the seven bureaus report directly to you. In addition, you stated that you deal with all of the policy issues which arise as a result of managing all of the City's facilities, and serve as the [T] liaison to the Departments of [Mem], [R], the Mayor's Office and the Office of [G]. Your duties include, but are not limited to, acting as [T's] designated contact person for the performance matrix; and addressing any interdepartmental projects, purchases or concerns.⁵

PROPOSED EMPLOYMENT

[XYZ] Engineering Corporation.

Your proposed employment with [XYZ] is as its Chief Administrative Officer. Founded in 19[], [XYZ] Engineering Corporation (also known as [XYZ] International, Inc.) provides its clients with architectural, engineering, information technology, and facility management services. Its clientele includes private sector enterprises as well as federal, state, and local governments. [XYZ], as mentioned previously, has two current City contracts. Contract No. [B] between [XYZ] and the City was entered into in February of 20[], and has been modified 4 times, with the most recent modification occurring February [], 20[], retroactive to December 20[]. The contract is currently scheduled to expire in December 2006. All of the modifications appear to be one year extensions. The scope of services for Contract [B] is very broad, authorizing [XYZ] to perform real estate consulting services and property management services for the City in general;⁶ however, the contract's most recent extension was specifically requested by the Department of [Q]. In addition, you stated that you were aware that [XYZ] was performing "some [] work." However, you stated that that you did not have any interaction with [XYZ] during your City service, you did not supervise [XYZ]'s performance, you did not consult with other City personnel regarding [XYZ]'s performance under this or any other contract, and you were not involved in the negotiation of this contract or any of its subsequent modifications.

As [XYZ]'s Chief Administrative Officer, you would be responsible for oversight of all of [XYZ]'s day-to-day activities, similar to the duties held by a chief operations officer. You would also be responsible for developing business strategies, reviewing RFPs and RFQs issued by the City and/or any other governmental entity, and assembling bid packages should [XYZ] decide to respond to those RFPs and RFQs.

⁵ For example, if [R] has a question or concern about a particular good or service requested for purchase by [T], you would be the person to address any issues related to that purchase.

⁶ [XYZ] duties under Contract [B] may include real estate portfolio management, site review, marketing, auditing, administrative services, property operations, information systems, community outreach, safety and loss control, and claims.

You stated that, to the best of your belief and understanding, it is possible that you may be asked to assist [XYZ] on various City projects, but you have been informed that this would occur only if you have not had prior involvement with that particular project or contract. You also stated that, to the best of your knowledge and belief, you would have contact with your former City departments or City personnel only if [XYZ] were to be awarded a new City contract or if you were called upon in your capacity as an attorney to review a contract between [XYZ] and the City.

APPLICABLE LAW, ANALYSIS AND CONCLUSIONS

Section 2-156-100. The provision of the Ordinance that is relevant to your request is Section 2-156-100, entitled “Post-Employment Restrictions,” which provides in pertinent part that:

(b) 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 respect to a contract this prohibition shall be permanent as to that contract. [emphasis added]

This section of the Ordinance has two relevant prohibitions. First, for a period of one year after leaving City service, it prohibits you, as a former City employee, from assisting or representing any person in any business transaction involving the City if you participated “personally and substantially” in the subject matter of that transaction during your City employment. Second, it permanently prohibits you from assisting or representing any person on a specific contract if, during your City employment, you exercised “contract management authority” over that contract.

Permanent Prohibition. Based on Board staff’s review of your City career, it appears that you have exercised contract management authority with respect to numerous contracts; however, none of those contracts is at issue in your proposed employment with [XYZ]. Staff specifically notes that you had no involvement with the letting, award, performance, supervision, extension or modification of either Contract [B] or Contract [A]. As such, you could not have exercised contract management authority and, therefore, an analysis under the permanent prohibition is unnecessary. Should your proposed employment change to include any contracts that you were involved in as a part of your City duties, we strongly urge you to contact us for further guidance, as this may change the application of this provision.

One-Year Prohibition. The main issue is whether the one-year prohibition in §100(b) limits your ability to assist [XYZ] on any of its ongoing or potential City contracts or projects. The answer turns on whether you participated “personally and substantially” in the subject matter of any of those projects or contracts during your City service

You have not identified any specific project or transaction on which you anticipate being asked to work by [XYZ]. However, to the best of your belief and understanding, the position of Chief Administrative Officer will likely require you to oversee of all of [XYZ]’s day-to-day activities including, but not limited to, developing business strategies, reviewing RFPs and RFQs issued by the City and/or any other governmental entities, and assembling bid packages should [XYZ] decide to respond to those RFPs and RFQs. You may also be asked to assist [XYZ] on various City projects or contracts on which you have not had prior involvement and, possibly, to have contact with your former City departments or City personnel if [XYZ] were to be awarded a new City contract or if you were called upon in your capacity as an attorney to review a contract between [XYZ] and the City.

Based on a review of your City responsibilities, as described by you, **Board staff concludes that** although the Ordinance does not prohibit you from accepting the Chief Administrative Officer position with [XYZ], **the Ordinance does prohibit you, for one year after you leave City service, from assisting or representing [XYZ] Engineering Corp., or any other person other than the City, on any business transaction involving:**

- 1) **the management, operation, maintenance, design or construction of any City facility;**
- 2) **acquiring or maintaining City M/WBE status; or**
- 3) **leasing or licensing agreements at [City Facility 1] or [City Facility 2].**⁷

In accordance with this guidance, Board staff strongly advises you, should you accept employment with [XYZ], to create an ethical wall between yourself and the City so that you are not involved with these three subject matters for a period of one year from your date of separation from City service. In addition, be aware that should the terms of your employment change in any way, there may be both one-year and/or permanent prohibitions

⁷ Due to the range of services supplied by [XYZ] - architectural, engineering, information technology, and facility management services - its contracts and projects with the City are apt to encompass a broad array of subject matters. Inherent in such multi-faceted contracts are various functional areas, which may include, but are not limited to, management of ongoing relationships with the City and its various departments; the preparation of bids and responses to RFPs and RFQs; acquiring or maintaining City M/WBE certification; and managing City facilities. Consistent with Board precedent as it relates to multi-faceted contracts and projects, staff concludes that this prohibition does not run to the multi-faceted contract(s) or project(s) as a whole, but rather, to those particular aspects of the contract(s) or project(s) that relate to these three subject matters. See Case nos. 04034.Q, 04006.A; 94011.A; 94014.A.

on the work you can perform *vis a vis* the City. If such changes should occur, please contact the Board for further guidance. Please note also that this one-year prohibition runs not only to [XYZ] but to its sub-contractor(s) as well as any other entity.

Staff also reminds you that Section 2-156-070, "Use or Disclosure of Confidential Information," prohibits current and former City employees from using or revealing confidential information acquired through his or her City employment. Confidential information, for purposes of this section, means any information that may not be obtained pursuant to a Freedom of Information Act request.

Staff's conclusions are based solely upon the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. Other rules or policies, such as the Rules of Professional Conduct, may also apply. If there are additional material facts and circumstances that were not available to staff when it considered this matter, you may request reconsideration in the form of a Board advisory opinion. *A request for reconsideration must: 1) be in writing; 2) explain the material facts and circumstances that are the basis for the request; and 3) be received by staff within fifteen days of the date of this letter.*

Thank you for your willingness to abide by the rules of the Governmental Ethics Ordinance. Should you have any additional questions, please do not hesitate to contact us at (312) 744-9660.

Very truly yours,

Briana N. Billingslea
Attorney/Investigator

Approved by:

Dorothy J. Eng
Executive Director