

## **Opinion of the City of Rochester Board of Ethics—2014-2**

**Date: June 10, 2014**

Terry Taylor, a Firefighter employed by the Rochester Fire Department (RFD), asked the Board for an opinion regarding a proposed contract with the RFD. Prior to this request, RFD also made an inquiry to the City of Rochester Law Department regarding the same matter.

Firefighter Taylor has developed an online software application that assists agencies such as fire departments in tracking the certifications and training of employees for Emergency Medical Technician (EMT) certification. Taylor is the President and owner of EMS/Plumblin, LLC, a business he established to market this software application. This is a for-profit business.

In 2013, Taylor offered to allow RFD to use the software at no cost as a test to determine how well it worked. A City Law Department attorney was consulted regarding a Memorandum of Understanding (MOU) between RFD and Taylor for that purpose.

In 2014, RFD made an inquiry to the Law Department to determine whether it could do a three-month extension to keep the software operating within RFD, and then do a Request for Proposal (RFP) for purchase of a software system for this purpose. A City Law Department attorney advised RFD that it could do a short-term extension of the MOU, but also advised RFD that it must do an RFP process open to all qualified vendors for purchase of a system. The Attorney also advised RFD that there may be an Ethics Code issue, since Firefighter Taylor is a City employee. The Attorney suggested that Taylor seek an Advisory Opinion from the Ethics Board on this point.

RFD in fact conducted an RFP process for purchase of a software system, and plans to award a contract for purchase of such a system. EMS Plumblin, LLC is one of the vendors that submitted a proposal. Firefighter Taylor made a formal request for an Advisory Opinion from the Board of Ethics as to whether the City could award the contract to Taylor's company, given that Taylor is a City employee.

### **Opinion of the Board of Ethics**

The Code of Ethics ("Code") generally prohibits City employees from entering into any contract with the City, subject to some specifically enumerated exceptions. Code, § 2-18C(2). One of the enumerated exceptions is that "[t]he contract between the person and the City is awarded pursuant to the competitive bidding procedures of the General Municipal Law." Code, § 2-18 C (2)(a).

The RFP process utilized by RFD in this matter does not constitute a "competitive bidding procedure," nor does it comport with "competitive bidding procedures of the General Municipal Law." In fact, there are substantial differences between the two processes. For example, the RFP process does not require the City to award the contract to the lowest responsible bidder; cost is only one factor to be considered. Unlike the competitive bidding process, RFPs are flexible, and do not require the City to standardize

the terms of the contract. Under the competitive bid process, there must be standardized specifications and a sealed bid. However, the RFP process does not require this. Rather, the City need only set forth some general criteria, and may accept proposals with different terms, provided they fall within the general criteria.

Unlike the competitive bid process, the RFP process allows the City to exercise a considerable degree of discretion in awarding a contract. Thus, while the RFP process is a perfectly acceptable and legal process for certain types of municipal contracts, it does not meet the competitive bidding procedures specified in the General Municipal Law, which is the basis for the exception to the general rule prohibiting City employees from entering into a contract with the City.

Accordingly, it is the opinion of the Board of Ethics that Taylor and the City may not enter into this contract resulting from an RFP process rather than a competitive bidding procedure without violating the Code of Ethics.