

0001

1 CHICAGO TRANSIT AUTHORITY MEETING
2
3 MITIGATING POTENTIAL ORGANIZATIONAL
4 CONFLICTS OF INTEREST
5

6 April 12, 2018
7 3:30 p.m.
8
9

10 567 West Lake Street
11 Second Floor
12 Boardroom
13 Chicago, Illinois 60661
14
15
16
17
18
19
20
21
22
23
24

0002

1 MS. WATSON-WILSON: Good afternoon, as
2 Katrina said earlier, we had an action packed day in
3 store for you all, as we do, so we have delivered on
4 our promise.

5 My name is Shondra Watson-Wilson, and I'm one
6 of the managers of the Diversity Program and
7 responsible for outreach, so getting the word out to
8 particularly our diverse business firms and making
9 sure that you all have the information that you need
10 and the tools so that you can be successful when
11 being on CTA contract.

12 So today is a very important day for us, and I
13 encourage you guys to take lots of notes, pay
14 attention. This is good information to know, because
15 as I'm getting the word out about contracting
16 opportunities, I don't want you to get confused with
17 contracts that you potentially could be counted out
18 on, or if there's a conflict because you're working
19 on one thing, and so you may be conflicted with
20 working on the next. So it's very important that you
21 take the information, take lots of notes.

22 This information will also be posted on our
23 website, so if you miss something, you can actually
24 go back on to the website and receive it.

0003

1 So I'm going to share a secret with you all, so
2 this is going to be something that -- questions that
3 you're going to ask probably can't be directed to the

4 Diversity Department, so it's not that Shondra
5 doesn't want to answer the question, she just doesn't
6 know. So I'll admit that.

7 It's going to be something that's going to be
8 directed to our purchasing unit, and information is
9 going to be posted on the website so that you're not
10 conflicted.

11 It's my pleasure to bring Ellen McCormack, who
12 is our Vice President of our Purchasing Department,
13 and she is going to facilitate this workshop this
14 afternoon. Ellen.

15 MS. McCORMACK: Thank you, Shondra. Good
16 afternoon, my name is Ellen McCormack, and I am the
17 Vice President of Purchasing and Supply Chain for the
18 Chicago Transit Authority.

19 I am speaking to you this afternoon to discuss
20 the CTA RPM and our RLE project, which are the
21 largest capital projects in CTA history, and will
22 lead to incredible contracting opportunities for the
23 vendor communities.

24 The projects I'm referring to are of course the
0004

1 Red and Purple Modernization Program, otherwise known
2 as RPM, and the Red Line Extension Program, otherwise
3 known as RLE.

4 Because these two major construction projects
5 that each have several contracts associated with them
6 will be taking place in roughly the same time frame,
7 conflicts of interest are likely to arise. While I
8 cannot go through every possible scenario with you,
9 because many of these determinations will be fact
10 specific, I would like to provide you with things to
11 consider as you determine which of these contracts
12 you would like to pursue.

13 The three situations the CTA will examine to
14 determine if a conflict exists are these. First,
15 have you obtained or have you had access to
16 information that is not available to the general
17 public due to work you performed on behalf of the CTA
18 which would give you a competitive advantage or would
19 give you the appearance of a competitive advantage?

20 Second, would prior work done on behalf of the
21 CTA lead a vendor to have or potentially to have a
22 vested interest that is different than that of the
23 CTA? And the third, would the award of another
24 contract put the vendor in a position of supervising
0005

1 itself?

2 I would like to provide you with examples of
3 these three scenarios. I will use the term vendor to
4 apply to both the prime contractor and subcontractors
5 as applicable. The first example regarding a
6 competitive advantage would be a situation where a
7 vendor performed or is performing work on a contract

8 on behalf of the CTA where they were involved in the
9 development of or had access to the independent cost
10 estimate, ICE, scheduling, or any other nonpublic
11 information concerning work that is in the scope of
12 the second contract that would or could provide them
13 with an advantage while competing for that second
14 procurement.

15 If they were involved in creating or had access
16 to that information, then the vendor would be deemed
17 to have a competitive edge, and therefore would be
18 precluded from participating in the procurement.

19 Further, even when the vendor hadn't worked on
20 ICE or scheduling, for example, we would ask if they
21 have attended meetings where cost estimates were
22 discussed, or if they were able to access a shared
23 drive where that type of information was stored. If
24 the answer to either of those questions is yes, then

0006

1 the vendor would be precluded from participating in
2 the second procurement.

3 Even having access to sensitive information is
4 enough to provide the vendor with a competitive edge,
5 or at the very least, with the appearance of having a
6 competitive edge. However, and this is very
7 important, there may be ways to mitigate this type of
8 a conflict.

9 An example of this is when a vendor has
10 prepared design documents and then is in a position
11 to oversee the contractor executing the design. The
12 vendor would or could have a vested interest in
13 defending the adequacy of their design to avoid
14 liability for errors. Please note that there is no
15 way to mitigate this type of conflict.

16 However, in a case where the vendor only worked
17 on design documents up to 30 percent, the assumption
18 is that the vendor who raised the design up to 100
19 percent would now own the design. Therefore it is
20 possible that a vendor who only worked on the design
21 up to 30 percent would not have a vested interest in
22 defending the design document at 100 percent, and
23 therefore may not be conflicted out.

24 The third question that CTA will consider is if

0007

1 a vendor was awarded two contracts on the same
2 project, would this put the vendor in a position
3 where they would be monitoring themselves. An
4 example of this would be if a vendor were to be
5 awarded a contract as a program manager, and part of
6 the scope of the contract was to monitor the
7 construction manager, then the vendor could not be
8 awarded the contract for the CM.

9 Under these circumstances where the PM and the
10 CM are the same company, the vendor would have the
11 vested interest -- may have a vested interest in

12 ignoring any substandard work by the CM and may be
13 willing to sign off on invoices that it otherwise
14 wouldn't sign off on. Be advised that there is no
15 way to mitigate this type of conflict.

16 Please understand that the CTA is interested in
17 doing business with as many of you as possible, and
18 therefore will be looking at the answers to these
19 questions with the intention of excluding as few of
20 you as possible. However, the CTA must also protect
21 the integrity of the procurement process, which will
22 in turn protect the CTA.

23 With this in mind, I would like to provide you
24 some examples of possible ways which you can mitigate

0008

1 your conflict in a case where information was
2 acquired that could provide a competitive advantage.
3 For larger firms the employees that have obtained the
4 information which would provide the advantage could
5 be kept physically apart from the employees proposed
6 on the new procurement.

7 A training program informing the employees of
8 the importance of containing that information can be
9 implemented, and an affidavit that the employees have
10 not shared the information and will not share the
11 information can be signed by all employees that have
12 worked on the previous contract or are -- and are
13 proposed to work on the upcoming contract. This is
14 commonly known as a firewall.

15 Obviously the earlier that steps are taken the
17 better, they will be of no use if the information has
18 already been shared.

19 For smaller subcontracting firms that don't
20 have the manpower to offer different staffing, they
21 can help their cause by immediately requesting that
22 their prime contractor limit their access to only
23 that information that is necessary for them to
24 perform their work. This can be done by restricting

0009

1 their attendance at meetings and their access to a
2 shared drive, which could contain the information.
3 Ask the prime contractor to provide proof that you
4 have not had access to information that is
5 confidential.

6 One step that may be taken, for example, is as
7 simple as having sign-in sheets at meetings. A
8 sign-in sheet along with an affidavit signed by both
9 the prime and the subcontractor that these sheets are
10 accurate and true may be used as evidence that the
11 sub did not obtain confidential information through
12 their attendance at meetings.

13 Finally, I would like to walk you through the
14 use of the conflicts chart. So I would now ask you
15 to look at the chart in your handout. And for your
16 convenience a list of future procurements is included

17 in the handout as well.

18 For example, if you have already performed work
19 on the RPM PM contract, then you should look down the
20 left-hand side of the chart and look for the square
21 that says RPM PM. Then look across that row to see
22 what contracts you have an interest in proposing on,
23 and look to see if there's a C for conflict or an NC
24 for no conflict. If there's an NC, then you can

0010

1 presume that there is no conflict, and you can
2 proceed to propose on that contract.

3 There is, however, one caveat. If you are
4 aware of information that you believe will provide a
5 competitive edge, then you should assume that the CTA
6 will discover that as well, and you should send us a
7 letter providing the information and asking the CTA
8 to make a determination on whether a conflict exists.

9 If you see a C in the box, then you will know
10 that CTA sees a potential conflict. At this point
11 you should ask yourself if the conflict would be
12 because of a competitive advantage or because of a
13 potential conflict with a vested interest, or if it's
14 a situation where you would be supervising yourself.
15 If the reason for the conflict is one of the last two
16 I mentioned, then there is no cure for that and you
17 should look for other contracting opportunities.

18 However, if the conflict is due to a perceived
19 competitive advantage, then you should ask yourself
20 if you are able to mitigate that advantage by one of
21 the methods I previously mentioned or anything else
22 you think will help you with that.

23 If you believe you are able to mitigate your
24 competitive advantage, then you should send a letter to the

0011

1 Purchasing Department, which contains the following
2 information. The contract you previously worked on,
3 if you're a subcontractor, who you worked for, the
4 work that you performed, and proof that you had no
5 access to confidential information outside your scope
6 of work or that you have established a firewall, and
7 when that firewall was put in place.

8 Additionally, you should let us know what
9 contract or contracts you would like to pursue so
10 that we can perform an analysis to determine whether
11 or not a conflict exists pursuant to these contracts.

12 I hope that I was able to provide you with
13 pertinent information to assist you in your business
14 plan in deciding which CTA procurements you want to
15 pursue.

16 Due to the complicated nature of the subject, I
17 will not be taking questions at this time. However,
18 we will post the handout and a transcript of my
19 presentation on the CTA website for future reference.

20 I wish you all the best, and please note that

21 the CTA looks forward to doing business with each and
22 every one of you. Thank you.
23 * * * * *
24