



ATTORNEY-CLIENT PRIVILEGED AND CONFIDENTIAL
FOR DALLAS COUNTY INTERNAL USE ONLY

January 16, 2002

John Clark Long, IV
Assistant District Attorney
Chief-Civil Section
County of Dallas, Texas
411 Elm Street, Ste. 505
Dallas, Texas 75202

Re: RFP 2002-001-1007 Legal Opinion re Vendor Contact
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We have been asked to render a legal opinion whether the County Judge or a Commissioner may meet individually with any of Vendors that have bid in the above-referenced high technology out-sourcing contract.

OPINION

It is our opinion that a discussion between the County Judge or a Commissioner may take place outside the confines of a regularly scheduled Commissioners Court ("Court") meeting so long as certain requirements are met.

DISCUSSION

Discussions with Vendors

Texas Local Government Code Section 262.030 sets forth the statutory requirements for procurement of high technology services by a county. As set forth in section 262.030(e), discussions between vendors and the County may take place prior to the actual awarding of the contract.¹ However, all Vendors submitting bids must be accorded *fair and equal treatment* with respect to any opportunity for discussion.² Hence, if a Commissioner has a discussion with one Vendor, he must accord the other Vendors the same opportunity.

It is our understanding that a Vendor would like to meet with a Commissioner to discuss the Vendor's bid outside of a noticed public meeting of the Court. Such a meeting may

¹ Tex. Loc. Gov't Code § 262.030(e).

² *Id.*

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**GOVERNMENT
EXHIBIT NO.
105
3:14-CR-293-M**



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take place so long as each Vendor is accorded the same opportunity. We suggest that all of the remaining Vendors be contacted and accorded the same opportunity to meet with that Commissioner.³ Specifically, the other Vendors should be notified in writing that a particular Commissioner is available to meet with them to have a discussion about their bid. All of the discussions must be approximately the same length in duration and take place under substantially similar conditions. The requirements of 262.030(e) have been fulfilled even if a Vendor declines because the Commissioner accorded the Vendor a fair and equal opportunity.

Attendance at Discussions with Vendors

The requirement to afford Vendors fair and equal treatment with regard to discussions applies to both the Commissioners Court and the Evaluation Committee.⁴ Thus, if a member of the Evaluation Committee has a discussion with one Vendor, then, as outlined above, he must accord the other Vendors the same opportunity.

It has been related to us that the attendance at the proposed discussion would be as follows: (a) representatives of the Vendor; (b) a Commissioner; and (c) the Dallas County MIS Director. Because the MIS director is a member of the Evaluation Committee, he, like the Commissioner, must accord the other Vendors the same opportunity to meet with him.

A Purchasing Department representative, who is not on the Evaluation Committee, should be in attendance at all discussions with Vendors. We tender this recommendation not only because Purchasing Department presence is regularly referenced in the Request for Proposal, but, also, because it provides an additional witness who may attest as to the sum and substance of the meeting.

Second, most of the strictures of the Texas Open Meetings Act are not implicated so long as only one Commissioner attends the discussion.⁵ However, if two or more members of the Court conduct a discussion, the Texas Open Meetings Act would be implicated.⁶ It is clear that a quorum of the Commissioners (3 or more) may not informally meet to discuss

³ Please note that nothing contained in the County's Request for Proposal alludes to private discussions between Commissioners and Vendors. Although notice regarding these contacts is not required, we nonetheless believe an overabundance of caution regarding these communications is prudent.

⁴ Tex. Loc. Gov't Code § 262.030(e).

⁵ Tex. Loc. Gov't Code § 551.001(4)(B).

⁶ It is also important to note that any transaction entered into in violation of the Texas Open Meetings Act is void. Tex. Loc. Gov't Code § 551.141.



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county business.⁷ Thus, any meeting between 3 or more members of the Court and a Vendor would have to comply with the notice provisions under the Texas Open Meetings Act. In addition, Commissioners may not meet in numbers less than a quorum to circumvent the Texas Open Meetings Act.⁸ Due to this statutory prohibition, and the criminal implications thereof, we recommend that no more than one Commissioner meet with a Vendor at any given time. This does not prohibit each Commissioner from meeting individually with each Vendor.

If you have any questions, please contact us at your convenience. We intend to provide by separate correspondence an analysis of the rules regarding gifts.

Paul W. Fairbright
STRASBURGER & PRICE, L.L.P.

Steven T. Ramos
STRASBURGER & PRICE, L.L.P.

⁷ TEX. LOC. GOV'T CODE § 551.001(4)(B); see also Op. Tex. Att'y Gen. No. MW-390 (1981).

⁸ TEX. LOC. GOV'T CODE § 551.143.

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*** ERROR TX REPORT ***
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TX FUNCTION WAS NOT COMPLETED

TX/RX NO          3153
CONNECTION TEL.   59*0104#2148537957PP
SUBADDRESS
CONNECTION ID
ST. TIME          01/16 18:35
USAGE T          00'00
PGS. SENT        0
RESULT           NC          NO18  STBY/NO SIGNAL

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Fax

Date: 1/16/02 Pages (including cover sheet): 4

To

| Name | Company/Firm | Phone number | Fax Number |
|----------------|----------------------|--------------|--------------|
| John Hennessey | County of Dallas, TX | 214-653-7339 | 214-653-7057 |

From

| Name | Phone number | Email |
|-------------------|--------------|--------------------------------|
| Paul W. Fulbright | 214-651-2342 | paul.fulbright@strasburger.com |

Client/telex number: 27559 0104 Client/telex name: Dallas County IT Services Agreement

Message

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Attached please see an opinion letter prepared in response to the Commissioner's Court Administrator's request for legal advice. As indicated, the opinion letter relates to the subject of contact with the Vendors in the Information Technology RFP.

Please do not hesitate to call if you should have any questions.

CC: J. Long, J. Ferguson, A. Clemens, P. Vasquez (Dallas County)
Scott Trimble (Clearview Management Consultants, L.L.C.)

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***  ERROR TX REPORT  ***
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TX FUNCTION WAS NOT COMPLETED

TX/RX NO          3143
CONNECTION TEL    59*0104#2148537057PP
SUBADDRESS
CONNECTION ID
ST. TIME         01/16 18:35
USAGE T         00'00
PGS. SENT       0
RESULT          NG          #018  RTTY/NO SIGNAL

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Fax

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| | Date | Pages (including cover sheet) |
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| To | | |
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| | | 214-653-7057 |
| From | | |
| Name | Phone number | Email |
| Paul W. Fulbright | 214-651-2342 | paul.fulbright@strasburger.com |
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CC: J. Long, J. Ferguson, A. Clamson, P. Vaequez (Dallas County)
Scott Trimble (Clearview Management Consultants, L.L.C.)



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- CC: J. Long, J. Ferguson, A. Clemson, P. Vazquez (Dallas County)
- Scott Trimble (Clearview Management Consultants, L.L.C.)

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