



CITY OF
PORTLAND, OREGON

OFFICE OF THE CITY AUDITOR
Gary Blackmer, City Auditor

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MEMORANDUM

Date: April 25, 2006

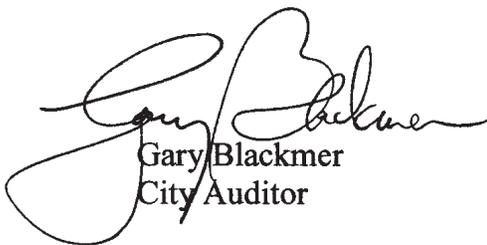
To: Mayor Tom Potter
Commissioner Sam Adams
Commissioner Randy Leonard
Commissioner Dan Saltzman
Commissioner Erik Sten

Ref: Final Investigation Case # 2005-J-0149 (Unwire Portland RFP Process)

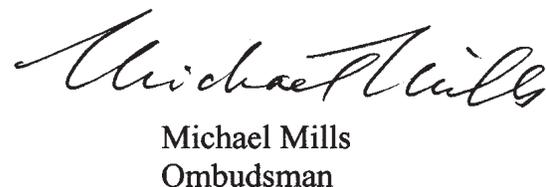
Please find attached the Ombudsman's Investigation Report, Case # 2005-J-0149.

The complaint is primarily about whether a private company with a possible interest in the outcome was involved in creating the RFP which posed the potential to favor one company's interests or a particular technological solution.

The Office of the Ombudsman did not find any evidence that any companies had any of the RFP information in advance or that the RFP limited the technological solutions. However, the Office of the Ombudsman did make a number of recommendations regarding disclosure and contracting. Both Bureaus were cooperative and provided information during the investigation and drafting of this report.



Gary Blackmer
City Auditor



Michael Mills
Ombudsman

cc: Jeff Baer, Director, Bureau of Purchases
Bruce Warner, Executive Director, Portland Development Commission

Ombudsman Investigation

Case Number: 2005-J-0149

Complaint:

The Ombudsman Office received a complaint regarding the Unwire Portland Request for Proposals (RFP) Process in December 2005. The complaint alleged that a private company with a potential interest in the outcome was involved in creating the RFP which posed the potential to favor one company's interests or a particular architectural solution; and, that disclosure of outside involvement was not adequate. The complainant also stated that the time to respond to the RFP, given the complexity of the subject matter, was too limited.

The deadline for proposals in this process was October 31, 2005. The Ombudsman Office generally declines to investigate complaints when there are other established rights of appeal. However, the Ombudsman Office proceeded with an investigation after learning that the complainant did not complete a bid and therefore would not have appeal rights to the Purchasing Board of Appeals.

Investigation:

Both Ombudsman Michael Mills and Deputy Ombudsman Kristen Erbes reviewed the issues involved, met with a Senior Deputy City Attorney, BOP staff, and Portland Development Commission (PDC) staff. In addition, the Ombudsman Office reviewed various documents including the RFP.

Background:

BOP worked closely with PDC to issue the RFP and monitor the proposal and selection process to ensure it complied with purchasing rules.

PDC hired Intel as a consultant to work on the RFP. Initially the contract was for \$100,000 and was executed in November 2004. It was extended and an additional \$58,870 was approved to continue Intel's involvement through completion of vendor selection. From reviewing the contract's Scope of Work, and from interviews with project staff, Intel staff contributed substantially to the project, including planning and designing a workshop with key stakeholders on the future development of wireless technologies, serving as the primary authors of the RFP and its Scope of Work, developing a score card matrix for vendor selection, and providing advisory services through the selection process. (It is important to note that Intel employees were not voting members of the Evaluation Committee, but advised committee members on technical questions. The Evaluation Committee list is confidential.)

The RFP was issued on September 16, 2005. A revised version was issued on September 30, 2005 and a final addendum was issued on October 10, 2005. Proposal bids were due on October 31, 2005.

Intel's Involvement & Disclosure

The project steering committee members were listed in the RFP¹. However, Intel's services were not disclosed in the RFP. BOP staff reported that Intel's involvement was mentioned verbally at the mandatory pre-proposal conference. Only those firms that attended the mandatory pre-proposal conference were allowed to submit a proposal. PDC staff discussed Intel's involvement with others, including responding to a question about Intel's involvement at a public meeting regarding the project. The Ombudsman Office could not find anything in writing disclosing Intel's involvement in the project's public documents.

Conclusion: Based on the information available, the Ombudsman Office concluded the disclosure of Intel's involvement was not formally made in writing. Because of the lack of this disclosure, and a belief that this relationship could favor some applicants, questions were raised in the vending community.

Intel's Involvement & Its Impact on the RFP Process

The complainant explained he was concerned about Intel's involvement because it gave an unfair advantage to companies Intel has partnered with or has financial investments in. PDC staff explained that they used a standard Intel "Contract for Services" form which included a "Non-Disclosure" agreement. PDC is confident that the "Non-Disclosure" agreement was sufficient to protect information from being passed from Intel to any companies bidding on the proposal.

The BOP and PDC staff interviewed believed strongly that the Unwire Portland project could not have moved forward as it did without contracting with a technical industry expert such as Intel. According to PDC staff, in addition to the technical expertise given by Intel's Management Consulting division, Intel provided marketing and project management expertise and subcontracted with Civitium and the Yankee Group to provide assistance with business model analysis and market research analysis, respectively.

Both BOP and PDC also believe that the RFP does not restrict proposals to a particular architectural solution. BOP staff felt that if the RFP did restrict proposals to a particular architectural solution, then the vending community would have protested. BOP did not receive protests of this nature.

There was one bid proposal that named a subcontractor who has a financial connection to Intel through an investment relationship with an Intel capital company. This relationship was disclosed by Intel to BOP. BOP reviewed this relationship and did not feel that it was reason to disqualify the proposal. BOP also felt that it was not significant to disclose.

Conclusion: The Ombudsman Office reviewed the contract between PDC and Intel. Based on our preliminary review and a brief overview with a Senior Deputy City Attorney, there is concern that the contract does not sufficiently comply with the Oregon

¹ Page 16 of Addendum_No_4_Revised_104112RFP.pdf

Public Records Act, ORS 192. The contract between Intel and PDC states that "contractual documentation between the parties" is confidential. That is contrary to the Oregon Public Records Act. There is also concern that it does not specifically address Intel's commitment to not share information gained in the preparation of the RFP, the RFP specifications, etc. with others, including those inside Intel and those Intel has business relationships with. The agreement identifies PDC as the "participant" and has space in paragraph 1 to allow the participant to identify confidential information, but PDC did not identify any particular information as confidential.

The Ombudsman Office recognizes that Intel's involvement was crucial to the success of the Unwire Portland project moving forward and the issuance of the RFP. There has been nothing found to suggest that any companies, Intel related or not, had any of the RFP information in advance. However, the contract that was in place may have not adequately protected the City's interests with regard to the non disclosure agreement and Oregon Public Records Act, ORS 192.

The RFP Process: Time

The complainant felt that the amount of time given to respond to the RFP was not sufficient given the complexity of the RFP. BOP staff felt that the amount of time given was sufficient. BOP staff added that the process allowed time for bidders to submit questions regarding the RFP and if bidders felt that the time allowed was too limited they could have raised that issue. BOP would have considered extending the time to respond to the RFP were the requests submitted earlier in the process and if the vending community concurred with the need for such an extension. PDC staff could see how vendors may have wanted additional time given the size and scope of the project.

The complainant also commented that it was not clear to him that potential bidders could have asked for more time.

Conclusion: The BOP believes that the amount of time given was sufficient. Further, the RFP makes it clear that it is the proposer's responsibility to, "ask questions, request changes or clarifications, or otherwise advise the City of Portland, Bureau of Purchases if any language, specifications or requirements of an RFP appear to be ambiguous, contradictory, or appear to inadvertently restrict or limit the requirements stated in the RFP to a single source."²

Because there is not evidence that more members of the vending community felt strongly that more time was needed, the Ombudsman Office finds this portion of the complaint not justified.

RFP Selection Process

In the course of investigating this complaint, the Ombudsman Office learned that the technical advisor (Intel employee) was present at finalist interviews. Although they were

² Page 5 of Addendum_No_4_Revised_104112RFP.pdf

present, they were not allowed to ask leading questions (they were allowed to ask follow up questions to clarify points made by the proposers during the interviews). BOP explained that having advisors present who are not part of the Evaluation Committee is not a common practice (most RFPs do not have technical advisors). However, the City has used technical advisors in this capacity in the past when the proposals relate to highly technical matters and the evaluation committee needs help to understand the technology. BOP and PDC staff felt that it was important to have technical advisers there because of the complexity of the proposals. A BOP Senior Procurement Specialist was there to assure fairness and to help protect the integrity of the selection process.

The Ombudsman Office also learned that Intel's involvement at the finalist interviews was not disclosed to the finalists prior to the interview. According to BOP staff, everyone in the room introduced themselves at the start of the interview meeting. (PDC Staff does not recall that everyone introduced themselves, that the evaluation committee remained anonymous.)

Conclusion: Although it is not a common practice, our office did not disagree with the staff's decision to have technical advisers present at the finalist interviews. However, their presence was not disclosed to finalists prior to arriving at the interview.

Recommendations:

1. When contractors are involved in assisting with project proposals, City bureaus must disclose the contractor involvement in written public documents, including the RFP.
2. Ensure all contracts used comply with laws, codes, and policies the City is subject to. Paragraph 1 of the contract between Intel and PDC states that "contractual documentation between the parties" is confidential. That is contrary to the Oregon Public Records Act. Additionally, the non disclosure agreement does not adequately address the City's duties under the Oregon Public Records Act. The non disclosure agreement also does not specify a process of what would happen if the City received a public records request that sought the materials that Intel was trying to keep confidential. That process is important.
3. When technical advisors will be present for evaluation committee interviews, proposers should be notified that they will be present prior to the interview. Both technical advisers and finalists should be asked to disclose any actual or potential conflicts of interest. (The Ombudsman Office recognizes it may not be appropriate to identify individual advisers by name, but at minimum the presence of outside technical advisers and their relationship to the process should be disclosed.) Informing proposers that technical committee members will sit in and to disclose who they are in advance may help prevent any later suggestion that there was a conflict of interest.

4. Evaluate the benefits of having the Bureau of Purchases administer PDC purchasing processes and contracts.

PDC contracted with Intel to develop this RFP, and PDC administered that contract. As stated above, it was in this contract where we found areas for improvement. Purchasing provides this type of service for other City agencies and could well provide such services to PDC to help protect the public's interests and provide better assurances of compliance with State statutes.

Commissioner Saltzman raised the idea of having Bureau Improvement Project (BIP) Team 13 look at this issue at the March 2006 BIP Implementation Team Meeting. The Ombudsman Office concurs with this recommendation to BIP #13 instead of creating a duplicative process. The Ombudsman Office raised this issue with PDC and acknowledges that PDC does not believe that this is within the original scope of the BIP Team's mandate and does not concur with our recommendation. BIP Team 13 does have one representative from PDC. If a subcommittee is created to look at this issue, more representatives from PDC should be included.

We believe these recommendations will help reduce perceptions of impropriety and foster greater trust between the public and government.

Agencies Responses:

The BOP and PDC Response to the April 14, 2006 draft report follow.

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CITY OF PORTLAND, OREGON

OFFICE OF MANAGEMENT & FINANCE

Tom Potter, Mayor

Timothy Grewe, Chief Administrative Officer

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Jeffrey B. Baer, Director
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MEMORANDUM

TO: Michael Mills, Ombudsman
FROM: Jeff Baer, Director Bureau of Purchases
SUBJECT: BUREAU RESPONSE TO CASE #2005-J-0149
DATE: April 18, 2006
CC: Kristen Erbes, Deputy Ombudsman

Thank you for the opportunity to review and respond to the investigative findings related to the complaint received on the Portland Unwire Request for Proposal (RFP) selection process. I want to clarify one point regarding the reference to the evaluation committee list being confidential. It is correct that the names of the evaluation committee are held in confidence and not disclosed during the evaluation and selection process, however once the Notice of Intent to Award has been publicly posted; the names of the committee are subject to disclosure under the Oregon Public Records Act. With that correction in mind and after reviewing the draft report with staff who worked on this project we find it to be factually correct.

The following is a response to each of the recommendations:

1. When contractors are involved in assisting with project proposals, City bureaus must disclose the contractor involvement in written public documents, including the RFP.

I agree. There is often a perception that the City has a hidden or elusive process or in some cases the City merely uses the selection process as a means to obtain a predetermined result.

In this particular project it appears there were a couple of instances where potential respondents were notified about Intel's involvement in the process. However, it could have been conveyed in a more formal written manner to alleviate the suspicion that the City had a predetermined outcome.

On future projects when the City hires a firm to provide oversight, give technical advice, help draft specifications or develop the scope of work, we intend to disclose and identify what level of involvement they played in the process. We will include this requirement in the City's PTE Manual to ensure compliance by each bureau. We will also include a provision that allows us to keep this information confidential during the selection process if it is found to be in the public or City's best interest to keep their identity confidential.

In addition to disclosing their level of involvement we will also have these firms sign a conflict of interest statement declaring that they have written an open competitive

specification, scope of work, etc. and affirming they do not have any financial interest in any resulting contract.

2. Ensure all contracts used comply with laws, codes, and policies the City is subject to.

The Bureau of Purchases is responsible for and does ensure City contracts are awarded in accordance with state law, codes and policies established by City Council. Additionally the City Attorney's Office reviews contracts for legal sufficiency prior to being executed by both parties.

This issue stems from a contract between Intel and PDC in which case the Bureau of Purchases did not review PDC's contract to ensure compliance with City Code or state law. It was assumed that since this was a PDC contract it had been reviewed by PDC staff for compliance with the appropriate requirements. This situation is somewhat unusual in the fact that two separate public agencies were involved in a technically complex project. Even though the City managed the solicitation process it would have been better to have both entities disclose all contracts associated with the project and give an opportunity to each agency to review to ensure compliance with both agencies rules and procedures.

3. When technical advisors will be present for evaluation committee interviews, proposers should be notified that they will be present prior to the interview.

I agree. Not only should the proposers be notified about a technical advisor's attendance at an interview, but it should be clearly explained to each proposer what the advisor's role will be during and after the interviews. We will also include this requirement in the City's PTE Manual to ensure compliance by each bureau.

4. Evaluate the benefits of having the Bureau of Purchases administer all PDC purchasing processes and contracts.

As permitted by state law both organizations have established their own Contract Review Boards. Each board has adopted similar procurement rules as allowed under Oregon law.

The Bureau of Purchases' administration of all PDC purchasing processes was brought up at the March Implementation Team Meeting at the request of Commissioner Saltzman. Since this was suggested by the Commissioner, and although not a part of the original scope of the Bureau Innovation Project 13 team, I am recommending this issue be folded under the purview of the BIP13 and convene a separate subcommittee to explore this specific issue with the intention of reporting back to Council with their findings. It is unknown at this point without further examining this issue if it would be legally permissible for the City to administer all PDC purchasing processes and contracts given the separate organizational and legal structures of both entities.

Eric E. Parsons
Commission Chair

April 21, 2006

Douglas C. Blomgren
Commissioner

Michael Mills
City of Portland Ombudsman
1221 SW 4th Avenue, Room 320
Portland, OR 97204

Bertha Ferrán
Commissioner

**RE: Unwire Portland RFP Protest: Recommendation on
Purchasing and Contracts**

Sal Kadri
Commissioner

Dear Michael:

Mark Rosenbaum
Commissioner

We have received and reviewed the investigative findings of the Unwire Portland RFP complaint, Case Number 2005-J-0149. There are two specific recommendations that directly affect the Portland Development Commission (PDC):

Tom Potter
Mayor

Recommendation #2: Ensure all contracts used comply with laws, codes, and policies the City is subject to.

Bruce A. Warner
Executive Director

We completely agree with this recommendation and will work harder to ensure all contracts are in compliance. We have reminded our purchasing and contracting personnel, as well as our legal staff, to be extremely vigilant when developing and/or authorizing contracts. This will be addressed as part of our efforts to centralize the purchasing function at PDC – refer to the City Auditor's recommendation #1 beginning on page two of this document.

Recommendations #4: Evaluate the benefits of having the Bureau of Purchases administer PDC purchasing processes and contracts.

We recognize it is possible this particular RFP may have experienced problems, however, the Ombudsman report cannot be considered as conclusive evidence this is true. Further, this single RFP instance does not rise to the level of examining whether the City of Portland should administer all PDC purchasing processes and contracts.

www.pdc.us

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We welcome any efforts to improve performance and accountability. We understand the team dealing with Bureau Improvement Project (BIP) #13 intends to evaluate this issue, and we continue to work with the BIP #13 team with their investigation of bureau improvements.

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¹ <http://www.portlandonline.com/shared/cfm/image.cfm?id=92322>

Michael Mills
City of Portland Ombudsman
April 21, 2006
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The following section is intended to add context to your considerations. The Portland Development Commission currently operates under the rules of section 15-104 of the City Charter; this charter section delegates certain powers to the Commission. Section 15-104 taken in total context clearly authorizes the Commission to perform purchasing and contracting functions.

The purchasing and contracting function at the Commission is staffed by highly qualified individuals, who are nationally certified as experts in their field. The Professional Services Manager is the lead of the section, and spent several years as the Purchasing Manager for the City of Portland. This information is provided to ensure the Ombudsman understands the Commission promotes and adheres to the highest levels of professional standards and practices within the purchasing and contracting functions.

The Commission has taken recent steps to assess the functions to ensure they are performed to the highest standards through two separate but related performance audits. The Ombudsman may not be aware of current performance audits of the purchasing and contracting functions performed by the City Auditor and our current outside auditor, TKW.

The City Auditor's effort¹ focused on internal controls. That report concluded *"that controls are largely in place and there is generally an appropriate level of oversight over the organization. However, we found that controls in some areas could be improved."* The audit produced two recommendations within the purchasing and contracting area.

- Provide training and strengthen supervision over P-card purchases
- Complete travel expense reconciliation forms and request for payment forms

We have responded to all of the audit recommendations, including the two listed by implementing the suggested changes.

The outside TKW audit focused specifically on contracting activities and produced three recommendations, one of which directly relates to the Ombudsman recommendation.

Recommendation #1: "We recommend the Portland Development Commission establish a centralized procurement function that has more formal authority and responsibility for coordinating/facilitating the contracting process."

¹ <http://www.portlandonline.com/shared/cfm/image.cfm?id=92322>

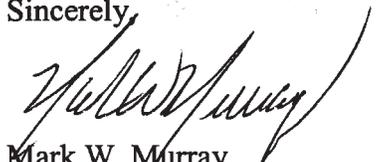
Michael Mills
City of Portland Ombudsman
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Currently some functions are centralized while others are decentralized with review by the centralized purchasing authority. We established a work group to analyze the recommendation to determine if centralized procurement would enhance the business functions of the Commission, or if another structure was more appropriate. The work group determined that a centralized approach would improve our functions and recommended this to upper management; (the concern noted in this investigation will be better and more consistently addressed under this improved structure). That recommendation was accepted and we are currently working through implementation; centralization will be completed July 1, 2006.

Therefore, given the inconclusive nature of the report, authorizing legislation, the degree of professionalism in our purchasing section, the impending centralization of the purchasing function within PDC, the focus PDC places on effectively managing the purchasing and contracting functions, the planned efforts of the BIP#13 team, and the reliance on a single RFP as the apparent basis for the recommendation, we believe it is unnecessary and unwise to include Recommendation #4 in the report.

Thank you for your consideration and cooperation. Please feel free to contact me at 823-3290 if you have any questions or would like further information.

Sincerely,



Mark W. Murray
Chief Administrative Officer

MWM:rad

