

MEMORANDUM

To: Chair Sharon Corrigan/County Board Committee and Commission Chairs

From: Corporation Counsel Marcia MacKenzie

Re: RFP Authority

Date: June 26, 2017

This is to provide clarification regarding the (legal) roles of the County Board and County Executive in the Request for Proposal (“RFP”) process. As you know, we have dealt with this in the past. I believe it would be helpful if committee chairs were provided with some guidelines.

Discussion:

The law set forth below describes the relative roles of elected officials. In short, however, the Board legislates, then the county departments, which are supervised by the County Executive, implement the policies described in the legislation. This includes all aspects of the drafting and issuing of RFPs. Consequently, the Department of Administration (DOA) has well established written policies and procedures for RFP creation and contracting, which have been used consistently for many years. The Board has not ever been involved in the administrative aspects of the RFP process. The following tasks are included in the process and are exclusive to the DOA:

- Drafting the RFP
- Issuing the RFP (timing)
- Determining the scoring criteria
- Choosing the scoring panel
- Scoring
- Ranking
- Choosing the vendor (lowest responsible bidder)
- Negotiating contract with the chosen vendor

During the above process, pursuant to open records law aimed at protecting the contracting process, as well as long standing County policy, the RFP is a confidential document. For that reason, and because the County Board may not interfere in the process, an RFP is not subject to committee review until the process is complete and a resolution seeking approval of the contract goes to the Board. The County Board, per statute, then accepts or rejects the resulting contract as a whole. The County Board may not amend the contract. If a contract is rejected, it becomes the responsibility of the DOA to renegotiate the terms.

Law:

The general rule is set forth in Chapter 59 of the Wisconsin Statutes, which governs the division of authority in counties where there is a county executive. Wis. Stats. §§ 59.02(1) and (2) provide that a county board has authority to enact ordinances and resolutions, and Wis. Stat. § 59.17(2) delegates all administrative authority to county executives, unless there is a statute specifically providing otherwise:

59.17 (2) DUTIES AND POWERS . . .

The duties and powers of the county executive shall be, without limitation because of enumeration, to:

- (a) Coordinate and direct all administrative and management functions of the county government not otherwise vested by law in other elected officers.

In addition, the court of appeals has held that “the county executive functions as an administrator and manager.” *See, Schuette v. Van De Hey*, 205 Wis. 2d 475, 480 (Ct. App. 1996). The Attorney General has written that under the statutory division of powers, “[t]he role of the county board is primarily policy making and legislative and the county executive exercises substantial direct and indirect control over personnel

performing administrative functions for the various county departments and offices.”
See, 68 OAG 92, 95 (1979), *citing*, 63 OAG 220, 227-28 (1974). Consequently,
legislative (policy) decisions are for the board and the day to day authority to administer
and direct the functions of county departments rests with the county executive. *See*, 68
OAG 92 (1979); 77 OAG 113, 118 (1988).

The County Executive exclusively supervises the Department of Administration
regarding tasks associated with the RFP process. Wis. Stats. § 59.17(2)(br) provides that:
“[n]otwithstanding any statutory provision that a board or commission supervise the
administration of a department, the department head [under the direction of the County
Executive] shall supervise the administration of the department and the board or
commission shall perform any advisory or policy-making function authorized by statute.”

I hope this provides the needed clarification. Anyone who has questions, feel free
to contact me.