

MEMORANDUM

To: Land Conservation Committee/County Board Chair Sharon Corrigan

From: Corporation Counsel Marcia MacKenzie

Re: RFP Authority

Date: August 22, 2017

---

I am in receipt of the minutes of the Land Conservation Committee (“LCC”) from July 18, 2017 (“minutes”) and the agenda for the LCC meeting scheduled for Thursday, August 24, 2017 (“agenda”). I note that in the minutes there are three questions for the Corporation Counsel.

Although no one from the Committee has requested an opinion from the Corporation Counsel’s office, the agenda for this week contains the item with questions included. Therefore, I will respond to the questions, which have to do with the statutory roles of the LCC in the Request for Proposal (“RFP”) process. Following are the answers to the questions and an explanation.

1. Can the LCC be part of the proposal scoring group? Answer: No. The executive branch , here, DOA, manages scoring.
2. Can the LCC review proposal scores prior to final ranking? Answer: No. DOA manages scoring.
3. Can the LCC modify the number of proposals offered funding after a resolution is presented to the County Board? Answer: Assuming the resolution (s) The County Board may vote the contract up or down only.

*Summary:*

The law set forth below describes the required protocols governing county contracting as set forth in the Wisconsin Statutes. The statutes prescribe a system in

which 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*. In the interests of fairness to all citizens, and pursuant to law, the Department of Administration (DOA) has well established written policies and procedures for RFP creation and contracting. Again, we are required to have a process that is fair to all citizens. Thus, DOA practices have been used consistently for many years.

After it legislates, the Board has no authority over the administrative aspects of the RFP process. The following tasks are included in the process and are exclusively performed by 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 a contract with the chosen vendor

You can see from this list that the LCC may have no statutory role in proposal scoring, including acting as scorers or reviewing scores prior to the final ranking.

There are also exceptions from open records requests that protect the contracting process. Under these exceptions, the RFP remains a confidential document until the selection process is complete and a contract is finalized. Therefore, the RFP in question 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 state 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.”

It appears that the LCC has performed its duties under the statutes and the budget language authorizing the study. Therefore, it can have no further role in the RFP process.

The applicable 2017 budget language states:

Neither expenditures nor borrowing proceeds be changed and a provision be added to the capital budget resolution as follows, "Land Conservation Committee shall review the feasibility study and approve the program parameters for implementation of the Community Manure Storage program, as well as approve the cost sharing assistance provided to individual small and medium scale producers to develop and implement alternative manure management strategies *The provision specifies that the Land Conservation Committee review the feasibility study and program parameters of the community manure storage initiative and approve the applications for cost-sharing assistance to individual producers.*

**The LCC has reviewed the feasibility study.** Criteria associated with the obtaining a feasibility study have been provided to LCC at three separate LCC meetings and one LWC meeting. Thus, the LCC has “reviewed” the criteria.

**LCC has approved the program parameters for implementation of the Community Manure Storage program.**

The LCC approved the program parameters for the Community Manure Storage program at their March 2017 meeting.

**LCC has approved cost sharing assistance provided to individual small and medium scale producers.**

No small or medium scale producers have sought cost share funds through the Community Manure Storage program. However, should projects arise, LCD staff will follow standard procedures for obtaining approval of cost share agreements with LCC.

In summary, at this point, the LCC has fulfilled the role spelled out for it in the budget language. Under the law, DOA should take over the process. Appropriate staff should proceed with the County's RFP process, seek proposals and contract with the applicant. I hope this provides the needed clarification. Anyone who has questions, feel free to contact me.