



You began your City employment as a “[Junior tradesman ]”. In that position, you assisted the Bureau’s Deputy Commissioner with administrative management functions (e.g., helped prepare the Bureau’s budget, monitored and tracked the status of Bureau projects ) and worked, as assigned, on special Bureau projects (e.g., managed a bike lane construction project or a traffic signal modernization construction project). Effective [Date Y ], you were promoted to the position of [Assistant tradesman ]. In that position, you continued to provide administrative management support to the Bureau, but also were charged, among other responsibilities, with developing the Bureau’s [Program H (H ) ]. “[H programs ],” you explained, refers to the use of computers and communications technology for managing traffic signals, message signs and highway traffic radio systems.

In [Date X ], you were laid off by the City as part of a City-wide reduction in workforce. Since October 15, 2002, you have been employed as “[Chief Manager ]” with [Alpha Inc. ], an engineering firm based in [City A, State Z ]. [Alpha ] does transportation engineering, including transportation planning, software development and technology applications. You wish to know what restrictions, if any, the Governmental Ethics Ordinance imposes on your post-City employment with [Alpha Inc. ] with respect to 4 future City projects or contracts, and 2 ongoing City contracts, discussed in detail below.

**LAW:** The relevant provision of the Governmental Ethics Ordinance is subsection 2-156-100(b) of the section entitled “Post-Employment Restrictions.” It states:

**No former official or employee shall, for a period of one year after the termination of the official's or employee's term of office or employment, assist or represent any person in any business transaction involving the City or any of its agencies, if the official or employee participated personally and substantially in the subject matter of the transaction during his term of office or employment; provided, that if the official or employee exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract.**

Under this provision, then, a former employee is subject to two, distinct restrictions on employment after leaving City service. First, *for one year* after leaving City employment, a former employee is prohibited from assisting or representing any person other than the City in any business transaction involving the City or any of its agencies, if he or she participated personally and substantially in the subject matter of that transaction during City employment. Second, a former City employee is *permanently* prohibited from assisting or representing any person other the City on a contract if, as a City employee, he or she exercised “contract management authority” with respect to that contract.

Section 2-156-010(g) of the Ordinance defines the term “contract management authority:”

**"Contract management authority" means personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.**

**NOTE:** In its deliberations on your case, the Board considered your question of whether an employee who is laid off from City service—as opposed to one who resigns or retires—is subject to the post-employment provisions of the Ordinance. Although the Board recognizes that you did not initiate your separation, the Board finds that the Ordinance makes no distinction between employees who voluntarily separate, and those who are involuntarily separated, from City service. Therefore, the Board determines that, notwithstanding that you were laid off from City service as part of a City-wide reduction in workforce, you, as a former employee, are subject to the post-employment provisions of the Governmental Ethics Ordinance.

### **FUTURE PROJECTS/SPECIFIC FACTS AND ANALYSIS:**

Introduction. When you assumed the post of [Assistant tradesman ] in January 1998, two Bureau [H] initiatives were already underway: a strategic planning study for the City as a whole, and a preliminary traffic management engineering plan for the [Area A ] covering [Avenue A ] and parallel and cross routes around [Area A ]. Both studies were performed by a consultant to the Bureau, [Beta Inc. ] and were funded by [Delta ], through grant applications which you authored in your prior position as [Junior tradesman ]. In both instances, also, the Bureau's contract with the consultant contained a scope of engineering services that you authored. [Beta ] completed both studies in or around late 1999.<sup>2</sup>

---

<sup>2</sup>In the autumn of 1999, as part of the development of its [H ] Program, and in anticipation of the completion of the [Beta ] studies, the [Bureau 1 ] participated with the [Bureau 2 ] and the [Department 2 ], in an RFQ process through which consultants could seek to be “pre-certified” to provide certain specialized services to [Dpt. ]. The RFQ, entitled “[Title A ]” contained 8 categories. Five of the categories corresponded to [Bureau of 2 ] programs. The balance—Category 5, Traffic Signals; Category 6, Traffic Studies; and Category 7, Intelligent Transportation Systems—corresponded to [Bureau 1 ] programs.

You authored the scope of services for Category 7. You also sat on the committee that reviewed the responses to the RFQ. You and [Tom ], “Engineer of Traffic Planning,” represented the [Bureau 1 ] on the committee. The [Bureau 2 ] and the [Department 2 ] were also represented on the committee. The [Department 2 ] representative(s) did not participate in the vote on whether to certify the various respondents as “qualified.” You and [Tom ] voted only on responses in the three categories relating to the [Bureau 1 ], and [Bureau 2 ] personnel voted only on responses in the other five categories.

You explained the significance of an approval in a category as follows: it means that the Department has determined that the applicant has sufficient expertise and experience to provide the specialized service described, and is eligible to be considered as a consultant on assorted [Dpt. ] program projects. [Alpha ] responded in Categories 6 and 7 only. [Alpha ] was “approved ” in Category 7, and “approved, contingent upon having an Illinois Licensed Professional Engineer on staff” in Category 6.

A “second-round” RFQ issued in the spring of 2001, seeking new participants, as well as affording participants who had previously failed to qualify an opportunity to demonstrate that they had since acquired the necessary expertise and/or experience. To the best of your recollection, the scope of services of the 3 [Bureau 1 ] categories remained unchanged. You again participated in the review of responses and voted only on Traffic categories. [Alpha ] re-applied in category 6 only, with the same outcome as before: “approved, contingent upon having an Illinois Licensed

Between them, the two studies recommended various initiatives for final design and construction. You have asked the Board to specifically address whether you may assist or represent [Alpha ] on three of those initiatives, should [Alpha ] be awarded a contract or retained as a sub-consultant. You have stated that [Alpha ]'s role on these projects would most likely be that of a sub-consultant.<sup>3</sup> The three projects are:

1. [Dpt. ] [Project Q, (Q) ];
2. [Avenue Z ] [Project R ] and
3. [Avenue X ] [Project S ].

[Project Q ]. Among the initiatives recommended by [Beta ] in its strategic planning study, was the design and construction of a traffic management center. As envisioned, the center would integrate the operations of various City agencies currently involved in traffic control into a single function, and enhance the safety and efficiency of Chicago's surface transportation system through the deployment of [H] technology. In or around December 1999, in your position as [Assistant tradesman ] for the Bureau, you authored a 10-page, Phase 1 scope of services for this initiative.<sup>4</sup> At your direction, the Bureau then issued Requests for Proposals, based on the scope of services you authored, to all consultants—9 or 10 in all—who had been pre-certified in “[H program ]” services (under the system described above in Footnote 2).<sup>5</sup>

To your recollection, 5 firms responded to the RFP. You and [Tom ], the Bureau's [tradesman] of Traffic Planning, reviewed and scored the responses. Together you recommended to the [Dpt. ] Commissioner and the Chief Procurement Officer that the contract be awarded to [theta ], since renamed [zeta ]. You also participated on behalf of the Bureau in the negotiation of a proposed contract with [zeta ]. Following a customary audit of labor rates, overhead, minority contractor participation, etc., the contract, which had a value of approximately \$1.6 million, was awarded to [zeta ] in January 2001.<sup>6</sup>

You described your involvement in the [Project Q ], following the award of the contract to [zeta ], as follows: you served as project manager from February 2001 until April 2001, at which time [

---

Professional Engineer on staff.”

<sup>3</sup> [Alpha Inc. ], you explained, typically works as a Disadvantaged Business Enterprise (DBE) on federally funded transportation projects in accordance with Federal Highway Administration rules. As such, the firm is a small business which does not have the capacity to work as a prime consultant on large design projects or studies of the type conducted by the City or by IDOT.

<sup>4</sup>You explained that the project envisions 3 phases: Phase 1 is a 0-30% preliminary design study; Phase 2 is a 30-100% final design plan; and Phase 3 is actual construction of the traffic management center.

<sup>5</sup>You noted that the [Project Q ]/Phase 1 was the first [Bureau 1 ] project to utilize the pre-certification system described in footnote 2.

<sup>6</sup>You noted that the Bureau's Phase 1 contract with [zeta ] was for a “fixed scope of work, at a fixed price,” as opposed to a term agreement to which additional task orders, at an additional cost, might be added at a later date.

Tom [redacted] assumed the post. From April 2001 until you left City service in July 2002, you served as an advisor to [Tom [redacted]] on the project. You stated that during the initial months of the transition (from you to [Tom [redacted]]), you attended weekly project meetings, with your attendance decreasing over time to once per month, or less. You stated that as [zeta ]'s preliminary design study evolved, you were "copied" on their working drafts over the course of some fifteen months, and asked by [Tom [redacted]] to comment and make recommendations. You stated that, to the best of your recollection, you offered an average of 2 to 4 comments per working draft. In or around August 2002, [zeta ] issued a final summary report of their design study, approximately 100 pages in length, with several appendices. You identified Section 8 of the report, entitled "Final [Q ] Facility Requirements and Conceptual Design Plan," as the document which "gives the best idea of the scope of services for design Phase II work."

[Tom [redacted]], with whom Board staff also communicated regarding your involvement in the [Project Q ], stated that you attended weekly project meetings in the first month or two after he assumed the post of project manager, and that your attendance diminished over time to once per month, or less. He stated that, from time to time, he asked for your comments on [zeta ]'s draft reports, as related to technical specifications. [Tom [redacted]] stated that, to his recollection, you had "minimal involvement in the review and development of Section 8" of [zeta ]'s study. [Tom [redacted]] identified the authors of Section 8 as "[zeta [redacted]], with much input from participating agencies regarding their facility needs" and himself. [Tom [redacted]] also stated that Section 8 does not constitute a final design scope of services for Phase II. Instead, "Section 8 presents the results of the Phase 1 preliminary design effort, including size and layout of rooms in the [Q ]...and establishes design parameters that the Phase II consultant would be expected to meet or exceed." [Tom [redacted]] went on to say that he and [zeta ] are currently working to prepare a work plan for Phase II. He described the Phase II scope of services as "approximately 50 to 75% complete," adding that "...the ultimate scope for the [Q ] design consultant cannot be finalized until the scope of work for the [City's [Project T [redacted]]] has been developed, and until the division of responsibilities between the [T ] and [Q ] projects has been agreed to." [Tom [redacted]] also stated that he is uncertain when the [Q ] Phase II scope of services will be completed, given that "...the [Project T ] does not have a schedule yet."<sup>7</sup>

You have stated that Phase 1 of the [Project Q [redacted]] is approximately 98 % complete.<sup>8</sup> You wish to know if you may work on Phase II (Final Design) and Phase III (Construction) of the Project.

Section 2-156-100(b) of the Ethics Ordinance permanently prohibits you from assisting or representing any person other than the City on a contract if, as a City employee, you exercised contract management authority over that contract. Under the definition contained in Section 2-156-

---

<sup>7</sup>[Tom [redacted]] also stated that he recalled you attending a meeting with him and [zeta ], at which "alternative procurement methodologies" for Phase II were discussed. He stated that you concurred with his recommendation that a "system manager procurement" method be utilized.

<sup>8</sup>You also noted that [zeta ]'s Phase 1 design study does not include a final site selection, as originally envisioned, due to security considerations and other needs which arose following the events of September 11, 2001. Instead, the final site will be addressed in Phase II.

010(g), "contract management authority" means personal involvement in, or direct supervisory responsibility for, the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance. In addition, Section 2-156-100(b) of the Ordinance prohibits you for one year from the date you left City service, from assisting or representing any person other than the City on a business transaction involving the City, if you were personally and substantially involved in the subject matter of the transaction as a City employee.

The Board first will address the permanent prohibition. With respect to Phase 1 of the [Project Q], the Board finds that by authoring the scope of engineering services that was incorporated into the RFP to which [zeta ] and others responded; by reviewing and scoring the responses; by recommending to your Commissioner and the Chief Procurement Officer that the contract be awarded to [zeta ]; by participating on behalf of the Bureau in the negotiation of a proposed contract with [zeta ]; by serving for three months as project manager; and by serving subsequently as an advisor to [Tom ] on the project, you exercised "contract management authority," over [zeta ]'s Phase 1 contract. You are, therefore, permanently prohibited from assisting or representing [Alpha Inc. ], [zeta ], or any other person other than the City, on [zeta ]'s [Project Q ]/ Phase 1" City contract. With respect to Phases 2 and 3 of this project, the Board finds, based on the facts presented, that you did not have personal involvement in, or direct supervisory responsibility for, the formulation of Phase 2 or Phase 3 contracts that may eventuate under this initiative. Therefore, the permanent prohibition does not apply to those phases.

Focusing next on the one year prohibition, the Board finds that, during your City tenure, you were personally and substantially involved in the development of the City's intelligent transportation system, of which the [Project Q ] forms part. Therefore, you are prohibited for one year from the date you left City service, from assisting or representing [Alpha Inc.

], or any other person other than the City, on any business transaction involving the City relating to the development of the City's intelligent transportation system, including Phases II and III of the City's "[Project Q ]."

[Avenue Z ] [Project R ]. Another initiative, recommended by [Beta ] for design and construction (in its 1999 traffic management engineering plan), was the "[Avenue Z ] [Project R ]." As envisioned by [Beta ], this project would "expand real-time data flow to the traveling public...with the installation of Variable Message Signs." You stated that although you were charged, as [Assistant tradesman ], with "developing a scope of engineering services for this project and getting a contract awarded to a consultant," you were, due to other demands on your time, unable to develop a scope of services, or take any other action on this initiative, prior to your departure from City service. You stated that you do not know whether a scope of services has been developed for this project since you left.

The Board first will address the permanent prohibition. Because you did not take any action toward the formulation (e.g., developing a scope of engineering services, participating in the solicitation of proposals, evaluating responses, etc...) or the execution of a contract relating to this initiative, the

Board finds that you did not exercise contract management authority. Therefore, the permanent prohibition does not apply to contracts that may eventuate under this initiative.

Focusing next on the one year prohibition, the Board finds that, during your City tenure, you were personally and substantially involved in the development of the City's intelligent transportation system, of which this project forms part. Therefore, you are prohibited for one year from the date you left City service, from assisting or representing [Alpha Inc. ], or any other person other than the City, on any business transaction involving the City relating to the development of the City's intelligent transportation system, including the "[Avenue Z ] [Project R ]."

[Avenue X ] [Project S ]. In its 1999 plan, [Beta ] also recommended for final design and construction the "[Avenue X ] [Project S ]." In connection with that initiative, in or around May 2002, you authored a 10-page scope of engineering services for the design of an advanced traffic management system for a segment of [Avenue X ] between 63<sup>rd</sup> Street and Interstate 55. You then submitted a memo to the Contract Administrator of [Dpt. ]'s Bureau of Administration, asking that a Request for Proposals, based on the scope of services you authored, issue to 3 engineering firms, pre-certified in Category 5, Traffic Signals (under the system described above in footnote 2). As of July 2002, when you left City service, the RFPs had not issued and, to your knowledge, have not, to date. However, you have asked whether you may assist or represent [Alpha ] on the design of this advanced traffic management system, were it ultimately awarded a contract by the Bureau, or retained as a sub-consultant by the prime consultant, on this project.

As to this matter, the Board finds that by authoring the scope of engineering services for the design of this proposed advanced traffic management system, you exercised "contract management authority" within the meaning of the Ordinance. You are, therefore, permanently prohibited from assisting or representing [Alpha Inc. ], or any other person other than the City, on any contract that may ensue that is based on the engineering scope of services that you authored for this project. *See* Case 94044.A, wherein the Board found that a City employee's involvement in the preparation of contract specifications constituted contract management authority over the ensuing contract because his preparatory work significantly shaped the terms of the ultimate contract.

#### **FUTURE CONTRACTS/SPECIFIC FACTS AND ANALYSIS:**

In addition to the three projects discussed above (that grew out of a Bureau-commissioned study by [Beta ]), you have identified a specific contract with which you were involved during your City service, which you have asked the Board to address. You wish to know whether you may assist or represent your new employer on the contract, should it be awarded that contract or retained as a sub-consultant.

[Project U Contract ]. In or around 1997, [Delta Corp. ], a consultant retained by [Dpt. ]'s Planning Division, recommended that a [System 8 ] be implemented along the City's [Area D ]. That initiative was subsequently referred from [Dpt. ]'s Planning Division

to the [Bureau 1 ] where, with your assistance, the Bureau solicited and awarded a contract to a consultant to implement an [8] system for the [Area D ]. That system became operational in or around October 2001.

In March, 2002, in an effort to provide for maintenance services on the City's [8] system, you authored a 3-page scope of engineering services for the services of a multi-disciplined team of professionals to provide: 1) ongoing maintenance and repair services to the City's existing [8] stations; 2) enhancements to existing systems; and 3) design and installation of new [8] initiatives. (The scope of services contemplated two term agreement contracts: one City-funded for services in the first two categories; the other, federal and state-funded for services in the third category. ) You then submitted a memo to the Contract Administrator of [Dpt. ]'s Bureau of Administration, asking that an "open" Request for Qualifications, based on the scope of services you authored, issue. As of July 2002, when you left City service, the RFQ had not issued and, to your knowledge, has not, to date.

As to this matter, the Board finds that by authoring the scope of engineering services for this proposed maintenance and enhancement contract, you exercised "contract management authority" within the meaning of the Ordinance. You are, therefore, permanently prohibited from assisting or representing [Alpha Inc. ], or any other person other than the City, on any contract that may ensue that is based on the engineering scope of services that you authored for this proposed contract. *See* Case 94044.A.

### **ONGOING PROJECTS OR CONTRACTS/SPECIFIC FACTS AND ANALYSIS:**

Introduction. In addition to the four matters discussed above, on which you think you might be asked to assist [Alpha ] in the future, you have identified two other City contracts on which [Alpha ] currently serves as a sub-consultant to the [Beta Inc. ]. You have asked whether you may assist your new employer on these City contracts.

[Avenue Z ] [Project R1 ]. As part of a project entitled the "[Avenue Z ] [Project R1 ],"<sup>9</sup> [Alpha ] is currently assisting the project's prime consultant, [Beta Inc. ], by doing a design study "with a view toward final design documents for constructing an advanced traffic management system" for the segment of [Avenue Z ] near [Area A ]. The system involves interconnected traffic signals and a central control system within the [Area A ] Control Center. Between September 2001 and May 2002, as [Assistant tradesman ] for the Bureau, you did the following in connection with Parson's contract with the Bureau on this project: you wrote a scope of engineering services that was incorporated into the RFP to which [Beta ] responded, and into the contract which [Beta ] was awarded; you negotiated the final contract with [Beta ]; and you ultimately issued the "Notice to Proceed" to [Beta ].

---

<sup>9</sup>This project was among the initiatives recommended by [Beta ] in its 1999 traffic management engineering plan for the [Area A ] area, referred to above in the "Future Projects or Contracts" section of this opinion. It was the first of the recommended initiatives to be funded by IDOT.



As to this matter, the Board finds that by authoring the scope of engineering services that was incorporated into the RFP to which [Beta ] responded, and into the contract which [Beta ] was awarded, and by negotiating on behalf of the City the final contract with [Beta ], you exercised “contract management authority” within the meaning of the Ordinance. You are, therefore, permanently prohibited from assisting or representing [Alpha Inc. ], [Beta’s ] Transportation Group, or any other person other than the City, on Parson’s “[Avenue Z ] Smart Corridor Project 1A” City contract.

Enhancement to the Chicago Safety Information System” (CSIS) Project. The second project on which [Alpha ] currently serves as a sub-consultant to the [Beta Inc. ] is a traffic safety initiative called the “[Project V ]”. The project involves upgrading the crash data management system that the [Department 3 ] maintains for the City and that [Dpt. ] utilizes to extract accident and crash data. There are 2 phases to this project. [Alpha ] is currently assisting [Beta ] on phase 1 of the project by developing computer software procedures to extract data from the [Department 3’s ] crash data warehouse.

You stated that, while in City service, you prepared and submitted to IDOT the grant proposal which funds phase 1 of this project. The scope of engineering services described in the grant proposal you wrote later became the scope of engineering services described in the RFP that the Bureau issued for phase 1 of the project in September 2001 and, ultimately, in the contract awarded to [Beta ]. As to the second phase, there currently is no contract in place, to the best of your knowledge. You stated that the City could choose to amend its existing contract with [Beta ] to include the phase 2 scope of services, or the City could choose to issue a new RFP for the phase 2 work. In either case, while in City service, you, together with phase 1 consultant [Beta ], authored a scope of engineering services for the phase 2 work. The scope of engineering services was then incorporated into a second grant proposal which was submitted to IDOT in March 2002. IDOT has since committed \$120,000 for phase 2.

With respect to these matters, the Board finds that by authoring the Phase 1 scope of engineering services—that was contained in the grant proposal submitted to IDOT, in the RFP to which [Beta ] responded, and in the Phase 1 contract which [Beta ] was awarded—you exercised “contract management authority” within the meaning of the Ordinance. You are, therefore, permanently prohibited from assisting or representing [Alpha Inc. ], [Beta ], or any other person other than the City, on [Beta’s ] “[Project V ] /Phase 1” City contract.

The Board further finds that by co-authoring the engineering scope of services for Phase 2 of this project, you exercised “contract management authority” within the meaning of the Ordinance. You are, therefore, permanently prohibited from assisting or representing [Alpha Inc. ], [Beta Inc. ], or any other person other than the City, on any contract that may ensue that is based on the engineering scope of services that you and [Beta ] co-authored for Phase 2 of the [Project V ].

**CONFIDENTIAL INFORMATION:** We also bring to your attention Section 2-156-070 of the Governmental Ethics Ordinance, "Use or Disclosure of Confidential Information." This section prohibits you, as a former City employee, from using or revealing confidential information you acquired through your City employment. Confidential information, for purposes of this section, means any information that may not be obtained under the Illinois Freedom of Information Act, as amended.

**DETERMINATIONS:** After careful consideration of the facts presented and the relevant law, the Board has determined that:

1. notwithstanding that you were laid off from City service as part of a City-wide reduction in workforce, you, as a former employee, are subject to the post-employment provisions of the Governmental Ethics Ordinance.

Furthermore, the Board has determined that, under Section 2-156-100(b) of the Ordinance:

2. you are *permanently* prohibited from assisting or representing [Alpha Inc. ], [zeta ], or any other person other than the City, on [zeta ]' "[Project Q ]/ Phase 1" City contract;
3. you are prohibited for *one year* from the date you left City service from assisting or representing [Alpha Inc. ], or any other person other than the City, on any business transaction involving the City relating to the development of the City's intelligent transportation system, including Phases II and III of the City's "[Project Q ]," as well as the "[Avenue Z ] [Project R ]";
4. you are *permanently* prohibited from assisting or representing [Alpha Inc. ], or any other person other than the City, on any contract that may ensue that is based on the engineering scope of services that you authored for the "[Avenue X ] [Project S ]";
5. you are *permanently* prohibited from assisting or representing [Alpha Inc. ], or any other person other than the City, on any contract that may ensue that is based on the engineering scope of services that you authored for the "[Project U Contract ]";
6. you are *permanently* prohibited from assisting or representing [Alpha Inc. ], [Beta Inc. ], or any other person other than the City, on [Beta Inc. ]'s "[Avenue Z ] [Project R1 ] City contract;
7. you are *permanently* prohibited from assisting or representing [Alpha Inc. ], [Beta Inc. ], or any other person other than the City, on [Beta Inc. ]'s "[Project V ] /Phase 1" City contract; and

8. you are *permanently* prohibited from assisting or representing [Alpha Inc. ],  
[Beta Inc. ], or any other person other than the City, on any contract that  
may ensue that is based on the engineering scope of services that you and the [Beta Inc.  
] co-authored for Phase 2 of the “[Project V  
].”

Our determinations do not necessarily dispose of all the issues relevant to your situation, but are based solely on the application of the City Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incomplete or incorrect, please notify the Board immediately, as any change in the facts may alter our opinion. Other laws or rules may also apply to your situation. We note that any City department may adopt restrictions that are more stringent than those imposed by the Governmental Ethics Ordinance.

**RELIANCE:** This opinion may be relied upon by: 1) any person involved in the specific transaction or activity with respect to which this opinion is rendered; and 2) any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which this opinion is rendered.

[Signature ]

---

Darryl L. DePriest  
Chair