City of Milwaukee

Office of the Comptroller

W. Martin Morics, C.P.A.
Comptroller

Michael J. Daun
Deputy Comptroller

John M. Egan, C.P.A.
Special Deputy Comptroller

Craig D. Kammholz
Special Deputy Comptroller

April 14, 2009

Mike Schumaker, Assistant Vice President
City Group Global Markets, Inc.
8500 Sears Tower
Chicago, IL 60606

Re: Request for Information Relating to Sell Side Services

Dear Mr. Schumaker:

This letter responds to your e-mail message dated April 13, 2009 in which you have asked for a list of the names of firms who have submitted a response to the City's RFP for Sell Side Services. Additionally, you have asked whether the City has scheduled dates for oral presentations. We will treat your request for the list of firms who have submitted proposals as a request for records pursuant to the provisions of the Wisconsin Public Records Law. Wis. Stat. §§ 19.31-39. We have not yet scheduled dates for oral presentations relating to the project.

The public policy in this state is to give the public the greatest amount of access to public records as possible. Wis. Stat. § 19.31. The general presumption is that public records are open to the public unless there is a clear statutory or common law exception. If there is no clear statutory or common law exception the custodian must "decide whether the strong presumption favoring access and disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure." *Hempel v. City of Baraboo*, 2005 WI 120, ¶ 28 (citations omitted). Notwithstanding the presumption of openness, the public's right to access a public record is not absolute. *Journal/Sentinel v. Aagerup*, 145 Wis. 2d 818, 822 (Ct. App. 1988).

The exceptions to the requirement of a government body to meet in open session under Wis. Stat. § 19.85 are indicative of public policy and may be used as grounds for denying a public records request if the custodian makes a specific demonstration that there is a need to restrict public access at the time of the request. Wis. Stat. § 19.35(1)(a). One applicable exception to the open meetings law is when competitive bargaining reasons or negotiating the purchase of public properties or the investing of public funds requires a closed session. Wis. Stat. § 19.85(1)(e). The record you have requested fits squarely within this exception to the open meetings law.

My office is just beginning to review and evaluate the proposals. Due to the nature of the RFP and the proposals we have received I have determined that, after conducting the required balancing test, the balance tips in favor of nondisclosure of the list of firms who have submitted proposals at this time. If the businesses with whom the City is currently engaged in negotiations, or with whom the City will be negotiating in the future, know in advance the City's negotiation strategy, the City will be unable to negotiate the best package possible. In its business dealings, the City desires the greatest competition and negotiation strength possible in order to ensure the best price and project package for the City and its taxpayers. In order to encourage competition and to allow the City to maintain the best negotiation strategy possible, the list of firms who submitted proposals is being withheld at this time. To make public

PACE Local 1-0316

the responsive record at this time will endanger the City's ability to successfully conclude crucial negotiations now and in the future. This would harm the public interest because of the potential decreased revenue or increased costs relating to various projects. The public interest in ensuring the best negotiation strategy possible would in my opinion, outweigh the public's right to inspect or to have access to the list you have requested at this time.

Pursuant to Wis. Stat. § 19.35(4), my determination denying portions of your request is subject to review by *mandamus* action under Wis. Stat. § 19.37(1) or upon application to the Wisconsin Attorney General or the Milwaukee County Corporation Counsel.

If you have any questions or concerns regarding my response, you may feel free to contact me.

Very truly yours,

W. Martin Morics
Comptroller

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