

**RANDALL J. BRINEGAR  
VERMILION COUNTY STATE'S ATTORNEY  
WILLIAM T. DONAHUE  
ASSISTANT STATE'S ATTORNEY/CIVIL  
DIVISION  
6 N VERMILION STREET  
DANVILLE, ILLINOIS 61832  
217-554-6000**

October 11, 2013

Mr. John Kraft  
7060 Illinois Highway 1  
Paris, IL 61944

Dear John,

Attached are the documents requested in your FOIA of Wednesday, October 9, 2013.

Thank you,



William T. Donahue  
Assistant State's Attorney/Civil Division  
Vermilion County Board

Enclosure



**Vermilion County Board**  
**Vermilion County, IL**  
**6 N. Vermilion Danville, Illinois 61832**  
**217-554-6000**

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Memo from the County Board Office:

As some of you may know, we are now recording our board and committee meetings. Vermilion County has always had a tradition of openness. On our web page anyone can find complete copies of our budgets, audits, both old and new, and other financial information, our meeting agendas, minutes, labor contracts, and a host of other information. We moved our meeting from the day time to evening hours specifically to allow public attendance as most people tended to work during the day (except farmers who work whenever they can). Some time back the Board office explored the idea of live broadcasting of Board meetings, but the cost was prohibitive. We now are going to record the various meetings and post them on our website afterwards for everyone to see. Aside from being a continuation of our policy of openness, we have recently encountered a change in atmosphere in our meetings. Public comments over the wind farms have turned from harsh to attempts at intimidation and bullying. Individual board members have been physically accosted by certain individuals who have joined forces to oppose the wind farms. Comments have been made which depart from a tone of honest debate to personal attacks and attempts at disruption. Board members have been physically blocked in their movement here and in public in an attempt at intimidation. All of this over one issue. It is now degenerating further into baseless allegations, hoping to confuse or mislead others.

Principally we are recording our meetings so that the public can not only read the minutes and press reports of meetings, but see public meetings for themselves and what is actually going on, without editing. However we are also concerned over the increasingly violent and disruptive tone of some of the comments and view this as a safety measure as well.

In a larger sense, this change in tone is regrettable because it is contrary to the very theme of democratic government. As board members we have always been able to accept that from time to time we or our fellow residents may differ on a policy or action. Debates have been strenuous, but never angry and never with a view to intimidation or personal attack. That line has been crossed in the tone of some public comment. It is easy to lose sight of the importance of process when receiving a constant barrage of invective. Reviewing the history of the issue might be useful.

By choice, the county has not adopted a comprehensive land use plan, preferring to allow individuals to use their land as they see fit within very broad limits. Even after the concern over a mega hog farm in the late 90's, the county board deliberated over the need for greater controls over land use and rejected it, favoring personal independence over government control. We have allowed landowners to settle their own land disputes without becoming directly involved. There are remedies for such disputes in the courthouse next door. In past meetings over land use controls, the view has been that the board did not wish to be deciding who could do what with their land. Aside from the cost to design and implement such an administrative undertaking, it was recognized that whatever decision you made on controlling the use of land meant that one person 'won' so to speak, but another person was disappointed or lost an opportunity to develop their land. If we ignored advice from various legal opinions and simply did what the opponents of wind farms suggest and design setbacks that would drive out wind farms, what would we say to the landowners who now have lost the economic opportunity of development? The open country of Vermilion County is not a state park or giant subdivision; it is agricultural, which is a business. A great number of landowners want

this opportunity as do the various business and smaller units of governments. What do we say to them? They also have rights and a need to make a living in uncertain economic times. How do we balance their rights? How do we ignore such a large group because three or four families in one section of the project area have become aggressive and demanding? The only fair and legal way to decide such issues would be zoning. Unless we adopt it, we are simply arbitrarily favoring the loudest voice, not the best, most reasoned choice. Even with zoning, the decision does come down to a question of do you favor development or the status quo. There are no easy decisions and that is why the law has a process to handle this called zoning. Wind turbines are legal to operate and the State and Federal governments have actually encouraged their development. Opponents who complained to us about noise have refused to allow access to their land to test the noise levels despite the use of an expert they requested. It is difficult to make such a far reaching decision with great economic impact on a whole community, even with the legal cloak of zoning, without measuring the degree of alleged harm and possible alternatives.

The current level of hostility is unfortunate, but it would be inadvisable to act under duress or threats. The majority of people have chosen to allow wind turbine activity. The majority have rejected zoning. Ironically, nothing we can do would in any way solve the concerns of the protesting group we have with us at each meeting even if we prohibited, illegally, further wind turbine development. There is a remedy in the law for them, but they will need to prove their case to elsewhere, not here.



**RANDALL J. BRINEGAR**  
**VERMILION COUNTY STATE'S ATTORNEY**

**William T. Donahue**

**Vermilion County Assistant States Attorney**  
**Civil Division, Vermilion County Board Office**

Courthouse Annex  
Phone: (217) 554-6000

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Fax: (217) 554-6010 email: bdonahue@vercounty.org

October 8, 2013

Memorandum

RE: Professional Services and Bidding

The requirements for a county to comply with competitive bidding is set at 55 ILCS 5/5-1022. That statute is attached. An issue has come up recently concerning whether bidding is required for professional services. To answer this we need to determine what is a 'professional' service such that bidding is not required?

Any purchase of materials, services, equipment or supplies in excess of \$30,000.00, except for professional services, must be let through either competitive bidding or without advertising for bids in the case of an emergency declared by the County Board. The term professional service is not defined by statute. Both case law and some attorney general opinions however illustrate and help define that term however.

In the case of Court Street Steak House, Inc., v. County of Tazewell, 163 Ill.2d 159 (1994) the Illinois Supreme Court held that the proper statute for county government is 55 ILCS 5/5-1022 when discussing competitive bidding. In that case, the Supreme Court upheld the award of a contract to a bidder who was not the lowest bidder. The contract was let to a nonprofit corporation that employed mentally handicapped persons. That social goal was found to be a sound reason for awarding the bid to other than the low bidder. The point is that the County has discretion even when determining who the lowest responsible bidder is and the statute to look at is 55 ILCS 5/5-1022.

Having identified the appropriate statute, the question is when does the professional services exemption apply? The professional services exemption from bidding is present in virtually every competitive bidding statute. One Attorney General Opinion discussing the township competitive bidding statute discussed the definition of professional services:

*"The term "professional services" does not have a definite and fixed meaning. The term is not necessarily limited to services provided by members of one of the recognized professions, such as lawyers or engineers, however. Rather, an essential element in defining professional services is the need for confidence, trust and belief in not only the ability but the talent of the person performing the services. Furthermore, it is well recognized that professional services are not primarily work or labor oriented, but instead involve essentially a mental product."* (2000 Ill. Atty. Gen. Op. 014.October 24, 2000)

The court cases discussing that term are similar. In American Health Care Providers, Inc., v. County of Cook, 265 Ill.App.3d 919 (1st Dist. 1994), the appellate court held that health care contracts and their selection was not susceptible to competitive bidding because the selection process involved judgment on a number of plans and details that involved discretion and choice. Therefore, it was exempt under the professional service exception. (The court also separately ruled that as a home rule unit, Cook County was exempt from bidding for that reason as well.) Similarly in Shively v. Belleville Township High School District No. 21 et. al., 329 Ill.App.3d 1156, the court in interpreting the township statute concluded that professional services exemption

applies where it involves services of individuals possessing a “high degree of professional skill” where the “ability or fitness of the individual plays an important part.” In reviewing municipal and county statutes, the Shively court concluded that where the service requires the exercise of professional and significant business judgment, then the professional services exception applied. In Shively, the court found that the job of a construction manager was a professional service.

Looking at a practical application, an individual has raised questions about professional services and its definition as applied to our GIS contract. The key to this analysis is the nature of services provided not the title or certificate of any one individual. An attempt has been made to ignore the County Code and look instead at the Professional Services Act at 50 ILCS 510/0.01 et. seq. That statute is also attached and by its own terms applies to architectural, engineering or land surveying services. That statute has nothing to do with competitive bidding. In point of fact, it discourages bidding, pushing selection based upon “skill” rather than cost. It is limited to those specific fields. The court cases cited never referred to that statute as a limitation on, or in any way related to, the various competitive bidding statutes. Reading the two together is a layman’s mistake. It does not apply in this case.

The GIS contract requires significant profession and judgment and decision making. In this case, we are relying upon the personal skill and judgment of multiple people. A GIS person must work to resolve conflicting data sources while mapping parcels, provide specialized computer programming knowledge to build GIS websites that include integration with the County’s tax system database, consult the County on best-practices on the most effective use of GIS technologies available as well as provide training to County staff. It is not mere picture taking or drawing of lines, but GIS is a judgment-based, highly skilled profession. We have had the example of having a PhD perform our GIS service in-house and it did not go well. The process of building and maintaining of GIS required more than a degree; it required experience, interpretation, knowledge and judgment. Lacking that, much of the data became unusable and unorganized. As a result we had to contract with Bruce Harris to fix and re-organize the data in usable form.

In sum, determining what is a professional service is a case by case, fact based determination. Titles or certificates do not determine the issue.

Sincerely,

A handwritten signature in black ink, appearing to read "William T. Donahue". The signature is fluid and cursive, with a large initial "W" and a long, sweeping underline.

William T. Donahue  
Assistant State’s Attorney

Westlaw

55 ILCS 5/5-1022

Page 1

Formerly cited as IL ST CH 34 ¶ 5-1022

C

Effective: January 1, 2010

West's Smith-Hurd Illinois Compiled Statutes Annotated Currentness

Chapter 55. Counties

Act 5. Counties Code (Refs &amp; Annos)

▣ Article 5. Powers and Duties of County Boards

▣ Division 5-1. In General

→→ 5/5-1022. Competitive bids

## § 5-1022. Competitive bids.

(a) Any purchase by a county with fewer than 2,000,000 inhabitants of services, materials, equipment or supplies in excess of \$30,000, other than professional services, shall be contracted for in one of the following ways:

(1) by a contract let to the lowest responsible bidder after advertising for bids in a newspaper published within the county or, if no newspaper is published within the county, then a newspaper having general circulation within the county; or

(2) by a contract let without advertising for bids in the case of an emergency if authorized by the county board.

(b) In determining the lowest responsible bidder, the county board shall take into consideration the qualities of the articles supplied; their conformity with the specifications; their suitability to the requirements of the county, availability of support services; uniqueness of the service, materials, equipment, or supplies as it applies to networked, integrated computer systems; compatibility to existing equipment; and the delivery terms. The county board also may take into consideration whether a bidder is a private enterprise or a State-controlled enterprise and, notwithstanding any other provision of this Section or a lower bid by a State-controlled enterprise, may let a contract to the lowest responsible bidder that is a private enterprise.

(c) This Section does not apply to contracts by a county with the federal government or to purchases of used equipment, purchases at auction or similar transactions which by their very nature are not suitable to competitive bids, pursuant to an ordinance adopted by the county board.

(d) Notwithstanding the provisions of this Section, a county may let without advertising for bids in the case of purchases and contracts, when individual orders do not exceed \$35,000, for the use, purchase, delivery, movement, or installation of data processing equipment, software, or services and telecommunications and interconnect equipment, software, and services.

(e) A county may require, as a condition of any contract for goods and services, that persons awarded a contract with the county and all affiliates of the person collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with the provisions of the Illinois Use Tax Act [FN1] regardless of whether the person or affiliate is a "retailer maintaining a place of business within this State" as defined in

55 ILCS 5/5-1022

Page 2

Formerly cited as IL ST CH 34 ¶ 5-1022

Section 2 of the Use Tax Act. [FN2] For purposes of this subsection (e), the term "affiliate" means any entity that (1) directly, indirectly, or constructively controls another entity, (2) is directly, indirectly, or constructively controlled by another entity, or (3) is subject to the control of a common entity. For purposes of this subsection (e), an entity controls another entity if it owns, directly or individually, more than 10% of the voting securities of that entity. As used in this subsection (e), the term "voting security" means a security that (1) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (2) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. A general partnership interest is a voting security.

(f) Bids submitted to, and contracts executed by, the county may require a certification by the bidder or contractor that the bidder or contractor is not barred from bidding for or entering into a contract under this Section and that the bidder or contractor acknowledges that the county may declare the contract void if the certification completed pursuant to this subsection (f) is false.

## CREDIT(S)

P.A. 86-962, Art. 5, § 5-1022, eff. Jan. 1, 1990. Amended by P.A. 87-1208, § 3, eff. Jan. 1, 1993; P.A. 88-150, § 5, eff. Jan. 1, 1994; P.A. 90-517, § 5, eff. Aug. 22, 1997; P.A. 93-25, Art. 30, § 30-20, eff. June 20, 2003; P.A. 93-157, § 5, eff. Jan. 1, 2004; P.A. 95-331, § 465, eff. Aug. 21, 2007; P.A. 96-170, § 5, eff. Jan. 1, 2010.

Formerly Ill.Rev.Stat.1991, ch. 34, ¶ 5-1022.

[FNI] 35 ILCS 105/1 et seq.

[FN2] 35 ILCS 105/2.

Current through P.A. 98-194 of the 2013 Reg. Sess.

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from the expiration of the 15-day period until fully paid. This Section shall also apply to any payments made by subcontractors and material suppliers to their subcontractors and material suppliers and to all payments made to lower tier subcontractors and material suppliers throughout the contracting chain.

P.A. 84-731, § 9, added by P.A. 87-773, § 2, eff. Jan. 1, 1992. Amended by P.A. 94-972, § 10, eff. July 1, 2007.

Formerly Ill.Rev.Stat.1991, ch. 85, ¶ 5609.

## ACT 510. LOCAL GOVERNMENT PROFESSIONAL SERVICES SELECTION ACT

Section	
510/0.01.	Short title.
510/1.	Policy.
510/2.	Federal Requirements.
510/3.	Definitions.
510/4.	Public notice.
510/5.	Evaluation Procedure.
510/6.	Selection procedure.
510/7.	Contract negotiation.
510/8.	Waiver of competition.

### 510/0.01. Short title

§ 0.01. Short title. This Act may be cited as the Local Government Professional Services Selection Act.

P.A. 85-854, Art. I, § 0.01, added by P.A. 86-1324, § 614, eff. Sept. 6, 1990.

Formerly Ill.Rev.Stat.1991, ch. 85, ¶ 6400.

### Title of Act:

An Act concerning municipalities, counties and other political subdivisions. P.A. 85-854, approved and eff. Sept. 24, 1987.

### 510/1. Policy

§ 1. Policy. It shall be the policy of the political subdivisions of the State of Illinois to negotiate and enter into contracts for architectural, engineering and land surveying services on the basis of demonstrated competence and qualifications for the type of services required and at fair and reasonable compensation.

P.A. 85-854, Art. I, § 1, eff. Sept. 24, 1987.

Formerly Ill.Rev.Stat.1991, ch. 85, ¶ 6401.

### 510/2. Federal Requirements

§ 2. Federal Requirements. In the procurement of architectural, engineering and land surveying services and in the awarding of contracts, a political subdivision of the State of Illinois may comply with federal law and regulations and take all necessary steps to adapt its rules, specifications, policies and procedures accordingly to remain eligible for federal aid.

P.A. 85-854, Art. I, § 2, eff. Sept. 24, 1987.

Formerly Ill.Rev.Stat.1991, ch. 85, ¶ 6402.

### 510/3. Definitions

§ 3. Definitions. As used in this Act unless the context specifically requires otherwise:

(1) "Firm" means any individual, firm, partnership, corporation, association or other legal entity permitted by law to practice the profession of architecture, engineering or land surveying and provide architectural, engineering or land surveying services.

(2) "Architectural services" means any professional service as defined in Section 5 of the Illinois Architecture Practice Act of 1989.<sup>1</sup>

(3) "Engineering services" means any professional service as defined in Section 4 of the Professional Engineering Practice Act of 1989<sup>2</sup> or Section 5 of the Structural Engineering Practice Act of 1989.<sup>3</sup>

(4) "Land surveying services" means any professional service as defined in Section 5 of the Illinois Professional Land Surveyor Act of 1989.<sup>4</sup>

(5) "Political subdivision" means any school district and any unit of local government of fewer than 3,000,000 inhabitants, except home rule units.

(6) "Project" means any capital improvement project or any study, plan, survey or new or existing program activity of a political subdivision, including development of new or existing programs which require architectural, engineering or land surveying services.

P.A. 85-854, Art. I, § 3, eff. Sept. 24, 1987. Amended by P.A. 86-711, § 40, eff. Jan. 1, 1990; P.A. 86-987, § 52, eff. Jan. 1, 1990; P.A. 86-1028, Art. II, § 2-42, eff. Feb. 5, 1990; P.A. 86-1475, Art. 3, § 3-41, eff. Jan. 10, 1991; P.A. 91-91, § 15, eff. Jan. 1, 2000.

Formerly Ill.Rev.Stat.1991, ch. 85, ¶ 6403.

<sup>1</sup> 225 ILCS 305/5.

<sup>2</sup> 225 ILCS 325/4.

<sup>3</sup> 225 ILCS 340/5.

<sup>4</sup> 225 ILCS 330/5.

### 510/4. Public notice

§ 4. Public notice. Present provisions of law notwithstanding, in the procurement of architectural, engineering or land surveying services, each political subdivision which utilizes architectural, engineering or land surveying services shall permit firms engaged in the lawful practice of their professions to annually file a statement of qualifications and performance data with the political subdivision. Whenever a project requiring architectural, engineering or land surveying services is proposed for a political subdivision, the political subdivision shall, unless it has a satisfactory relationship for services with one or more firms:

(1) Mail a notice requesting a statement of interest in the specific project to all firms who have a current statement of qualifications and performance data on file with the political subdivision; or

(2) Place an advertisement in a secular English language daily newspaper of general circulation throughout such political subdivision, requesting a statement of interest in the specific project and further requesting statements of qualifications and performance data from those firms which do not have such a statement on file with the political subdivision. Such advertisement shall state the day, hour and place the statement of interest and the statements of qualifications and performance data shall be due.

P.A. 85-854, Art. I, § 4, eff. Sept. 24, 1987.

Formerly Ill.Rev.Stat.1991, ch. 85, ¶ 6404.

### 510/5. Evaluation Procedure

§ 5. Evaluation Procedure. A political subdivision shall, unless it has a satisfactory relationship for services with one or more firms, evaluate the firms submitting letters of interest, taking into account qualifications, ability of professional personnel, past record and experience, performance data on file, willingness to meet time requirements, location, workload of the firm, and such other qualifications-based factors



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P.A. 86-987, § 52, eff.  
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as the political subdivision may determine in writing are applicable. The political subdivision may conduct discussions with and require public presentations by firms deemed to be the most qualified regarding their qualifications, approach to the project, and ability to furnish the required services. In no case shall a political subdivision, prior to selecting a firm for negotiation under Section 7, seek formal or informal submission of verbal or written estimates of costs or proposals in terms of dollars, hours required, percentage of construction cost, or any other measure of compensation.

P.A. 85-854, Art. I, § 5, eff. Sept. 24, 1987. Amended by P.A. 94-1097, § 5, eff. Feb. 2, 2007.

Formerly Ill.Rev.Stat.1991, ch. 85, ¶ 6405.

#### 510/6. Selection procedure

§ 6. Selection procedure. On the basis of evaluations, discussions and presentations, the political subdivision shall, unless it has a satisfactory relationship for services with one or more firms, select no less than 3 firms which it determines to be the most qualified to provide services for the project and rank them in order of qualifications to provide services regarding the specific project. The political subdivision shall then contact the firm ranked most preferred and attempt to negotiate a contract at a fair and reasonable compensation, taking into account the estimated value, scope, complexity, and professional nature of the services to be rendered. If fewer than 3 firms submit letters of interest and the political subdivision determines that one or both of those firms are so qualified, the political subdivision may proceed to negotiate a contract pursuant to this Section and Section 7.

P.A. 85-854, Art. I, § 6, eff. Sept. 24, 1987.

Formerly Ill.Rev.Stat.1991, ch. 85, ¶ 6406.

#### 510/7. Contract negotiation

§ 7. Contract negotiation. (1) The political subdivision shall prepare a written description of the scope of the proposed services to be used as a basis for negotiations and shall negotiate a contract with the highest qualified firm at compensation that the political subdivision determines in writing to be fair and reasonable. In making this decision the political subdivision shall take into account the estimated value, scope, complexity and professional nature of the services to be rendered.

(2) If the political subdivision is unable to negotiate a satisfactory contract with the firm which is most preferred, negotiations with that firm shall be terminated. The political subdivision shall then begin negotiations with the firm which is next preferred. If the political subdivision is unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be terminated. The political subdivision shall then begin negotiations with the firm which is next preferred.

(3) If the political subdivision is unable to negotiate a satisfactory contract with any of the selected firms, the political subdivision shall re-evaluate the architectural, engineering or land surveying services requested, including the estimated value, scope, complexity and fee requirements. The political subdivision shall then compile a second list of not less than three qualified firms and proceed in accordance with the provisions of this Act.

P.A. 85-854, Art. I, § 7, eff. Sept. 24, 1987.

Formerly Ill.Rev.Stat.1991, ch. 85, ¶ 6407.

#### 510/8. Waiver of competition

§ 8. Waiver of competition. A political subdivision may waive the requirements of Sections 4, 5, and 6 if it determines, by resolution, that an emergency situation exists and a firm must be selected in an expeditious manner, or the cost of architectural, engineering, and land surveying services for the project is expected to be less than \$25,000.

P.A. 85-854, Art. I, § 8, added by P.A. 87-1034, § 1, eff. Jan. 1, 1993.

Formerly Ill.Rev.Stat., ch. 85, ¶ 6408.

### ACT 515. LOCAL GOVERNMENT ENERGY CONSERVATION ACT

#### Section

- 515/1. Short title.
- 515/3. Applicable laws.
- 515/4. Applicability.
- 515/5. Definitions.
- 515/10. Evaluation of proposal.
- 515/15. Award of guaranteed energy savings contract.
- 515/20. Guarantee.
- 515/25. Installment payment contract; lease purchase agreement.
- 515/30. Term; budget and appropriations.
- 515/35. Operational and energy cost savings.
- 515/40. Available funds.
- 515/45. Funding.
- 515/99. Effective date.

#### 515/1. Short title

§ 1. Short title. This Act may be cited as the Local Government Energy Conservation Act.

P.A. 88-173, § 1, eff. July 28, 1993.

#### Title of Act:

An Act relating to energy conservation. P.A. 88-173, approved and eff. July 28, 1993.

#### 515/3. Applicable laws

§ 3. Applicable laws. Other State laws and related administrative requirements apply to this Act, including, but not limited to, the following laws and related administrative requirements: the Illinois Human Rights Act, the Prevailing Wage Act, the Public Construction Bond Act, the Public Works Preference Act, the Employment of Illinois Workers on Public Works Act, the Freedom of Information Act, the Open Meetings Act, the Illinois Architecture Practice Act of 1989, the Professional Engineering Practice Act of 1989, the Structural Engineering Practice Act of 1989, the Local Government Professional Services Selection Act, and the Contractor Unified License and Permit Bond Act.

P.A. 88-173, § 3, added by P.A. 94-1062, § 5, eff. July 31, 2006.

#### 515/4. Applicability

§ 4. Applicability. In order to protect the integrity of historic buildings, no provision of this Act shall be interpreted to require the implementation of energy conservation measures that conflict with respect to any property eligible for, nominated to, or entered on the National Register of Historic Places, pursuant to the National Historic Preserva-