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DANVILLE, ILLINOIS 61832
217-554-6000**

December 10, 2013

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

Dear John:

Enclosed is the letter you requested. It is addressed to me. I regarded it as a letter concerning competitive bidding, not a discussion of our GIS system. In the future, it would help if you would be more descriptive of what you want. If we are unclear, we will ask for clarification. I am also enclosing our response to that letter.

I might also add that negotiations and discussions about services which are complex or critical, involving certain skill levels, face to face meetings are held rather than letters exchanged. It can be important to take the measure of the person you are going to be dealing with as well as be sure they are truly committed by taking to time to meet in person.

Sincerely,



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

Enclosure



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17 November 2013

The Board of Vermilion County, Illinois
Bill Donahue, *Esq.*, Asst. State's Attorney of Vermilion County
Court House Annex Building
6 North Vermilion Street
Danville, Illinois

To Mr. Donahue and the County Board:

While carrying out our duties for the Illinois Professional Land Surveyors Association (IPLSA), my fellow professional surveyors and I often have the opportunity to discuss issues and applications of law that have statewide consequences regarding the practice of our profession. One recent issue regarding the procurement of professional services by Vermilion County has been deliberated among us that, if I understand correctly, has been the subject of extensive discussion between Mr. Donahue and Ted Hartke. I intend to explain why I believe a contract for GIS services provided to an Illinois county government should be competitively bid (per Section 5-1022 of the Counties Code) rather than given to a firm with which the County has a satisfactory relationship (which would apply if the GIS mapping company were a state-licensed professional service business)

As you are aware, the *Local Government Professional Services Selection Act* (50 ILCS 510) provides a mechanism by which local governments in Illinois do not have to give work performed within narrowly defined professional categories to the lowest bidder. This is because the General Assembly has determined that the people are not well-served by having architectural, engineering, and surveying services contracted with cheapness as the sole criterion.

In our careful reading of the law, there are some requirements that must



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be met before the provisions of 50 ILCS 510 take effect:

1. The contract must be for architectural services, engineering services, or land surveying services. These services are defined within the acts that define these professions in Illinois¹, and relevant selections are attached to this letter as Exhibit A.

2. The firm must be licensed by the Illinois Department of Financial and Professional Regulation to provide architectural, engineering, or land surveying services within the state of Illinois.

The issue is that Vermilion County is providing contracts to Bruce Harris & Associates of Batavia as if their GIS mapping work falls under the auspices of the *Local Government Professional Services Selection Act* when, in fact, it does not. The GIS contract is not considered a land surveying service, and Bruce Harris & Associates is not a licensed design firm. Since their services fall clearly outside of the definitions provided by the *Act*, the *Act* does not apply. Since the *Act* does not apply to any contract between an Illinois local government and Bruce Harris & Associates, its contents should be disregarded, and the usual practices for procurement of contracts should be followed instead.

The usual practice is found in the Illinois Counties Code (55 ILCS 5). Section 5-1022 clearly states that all counties (apart from Cook County) must handle all contracts exceeding \$30,000 by either:

1. A bid process whereby the contract is given to the "lowest responsible bidder" after advertising for bids in a newspaper of general circulation, or
2. by giving out the contract in an emergency situation.

¹ The Illinois Architecture Practice Act of 1989 (225 ILCS 305), the Professional Engineering Practice Act of 1989 (225 ILCS 325), the Structural Engineering Practice Act of 1989 (225 ILCS 340) or the Illinois Professional Land Surveyor Act of 1989 (225 ILCS 330).



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Clearly, the second option does not apply, so a contract for GIS mapping services, which does not fall under the requirements for architecture, engineering, or surveying, must be competitively bid and contracted to the lowest responsible bidder. For your convenience, I will attach the relevant selection from the Counties Code as Exhibit B.

I write this letter because I believe the County Board has made an oversight which can be easily corrected. As a business owner and a contractor for many local government bodies, I recognize the incomparable value of rules and procedures that are consistently applied to all governments and contractors. Such consistency promotes openness of government, financial efficiency, and constituent satisfaction. It also ensures that the bidding process is fair for all contractors. Thank you for taking the time to address my concerns, and I hope you follow up on them for the benefit of the people of Vermilion County and the State of Illinois. If you have any questions, please contact me at mgarrett@ss-ci.com, or call my office at 1 (618) 658-6058 and I will answer your questions.

Sincerely,

Mitchell R. Garrett, PLS

President

MRG:zg



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EXHIBIT A

Selection from the Illinois Professional Land Surveyor Act of 1989

(225 ILCS 330/5) (from Ch. 111, par. 3255)

Sec. 5. Practice of land surveying defined. Any person who practices in Illinois as a professional land surveyor who renders, offers to render, or holds himself or herself out as able to render, or perform any service, the adequate performance of which involves the special knowledge of the art and application of the principles of the accurate and precise measurement of length, angle, elevation or volume, mathematics, the related physical and applied sciences, and the relevant requirements of law, all of which are acquired by education, training, experience, and examination. Any one or combination of the following practices constitutes the practice of land surveying:

(a) Establishing or reestablishing, locating, defining, and making or monumenting land boundaries or title or real property lines and the platting of lands and subdivisions;

(b) Establishing the area or volume of any portion of the earth's surface, subsurface, or airspace with respect to boundary lines, determining the configuration or contours of any portion of the earth's surface, subsurface, or airspace or the location of fixed objects thereon, except as performed by photogrammetric methods or except when the level of accuracy required is less than the level of accuracy required by the National Society of Professional Surveyors Model Standards and Practice;

(c) Preparing descriptions for the

determination of title or real property rights to any portion or volume of the earth's surface, subsurface, or airspace involving the lengths and direction of boundary lines, areas, parts of platted parcels or the contours of the earth's surface, subsurface, or airspace;

(d) Labeling, designating, naming, or otherwise identifying legal lines or land title lines of the United States Rectangular System or any subdivision thereof on any plat, map, exhibit, photograph, photographic composite, or mosaic or photogrammetric map of any portion of the earth's surface for the purpose of recording the same in the Office of Recorder in any county;

(e) Any act or combination of acts that would be viewed as offering professional land surveying services including:

(1) setting monuments which have the appearance of or for the express purpose of marking land boundaries, either directly or as an accessory;

(2) providing any sketch, map, plat, report, monument record, or other document which indicates land boundaries and monuments, or accessory monuments thereto, except that if the sketch, map, plat, report, monument record, or other document is a copy of an original prepared by a Professional Land Surveyor, and if proper reference to that fact be made on that document;

(3) performing topographic



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surveys, with the exception of a licensed professional engineer knowledgeable in topographical surveys that performs a topographical survey specific to his or her design project. A licensed professional engineer may not, however, offer topographic surveying services that are independent of his or her specific design project; or

(4) locating, relocating, establishing, re-establishing, retracing, laying out, or staking of the location, alignment, or elevation of any proposed improvements whose location is dependent upon property lines;

(f) Determining the horizontal or vertical position or state plane coordinates for any monument or reference point that marks a title or real property line, boundary, or corner, or to set, reset, or replace any monument or reference point on any title or real property;

(g) Creating, preparing, or modifying electronic or computerized data or maps, including land information systems and geographic information systems, relative to the performance of activities in items (a), (b), (d), (e), (f), and (h) of this Section, except where electronic means or computerized data is otherwise utilized to integrate, display, represent, or assess the created, prepared, or modified data;

(h) Establishing or adjusting any control network or any geodetic control network or cadastral data as it pertains to items (a) through

(g) of this Section together with the assignment of measured values to any United States Rectangular System corners, title or real property corner monuments or geodetic monuments;

(i) Preparing and attesting to the accuracy of a map or plat showing the land boundaries or lines and marks and monuments of the boundaries or of a map or plat showing the boundaries of surface, subsurface, or air rights;

(j) Executing and issuing certificates, endorsements, reports, or plats that portray the horizontal or vertical relationship between existing physical objects or structures and one or more corners, datums, or boundaries of any portion of the earth's surface, subsurface, or airspace;

(k) Acting in direct supervision and control of land surveying activities or acting as a manager in any place of business that solicits, performs, or practices land surveying;

(l) Offering or soliciting to perform any of the services set forth in this Section.

In the performance of any of the foregoing functions, a licensee shall adhere to the standards of professional conduct enumerated in 68 Ill. Adm. Code 1270.57. Nothing contained in this Section imposes upon a person licensed under this Act the responsibility for the performance of any of the foregoing functions unless such person specifically contracts to perform such functions.



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EXHIBIT B

Section 5-1022 of the Illinois Counties Code

Sec. 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 inter-connect 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 regardless of whether the person or affiliate is a "retailer maintaining a place of business within this State" as defined in Section 2 of the Use Tax Act. 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.