Report of the Vermont State Auditor

May 16, 2008

LEGISLATIVE ADVISORY REVIEW OF CONTRACT AWARD PROCESS:

VERMONT "VOICE RADIO INTEROPERABILITY SOLUTION"

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Rep. Harry S. Monti
PO Box 1107
Barre, VT 05641

Re: VCOMM/DPS Vendor Selection Process

Dear Rep Monti:

Having read of your decision to retire from the Legislature this year, I would like to salute you on your many years of service to the citizens of Vermont. Good luck with your next new adventures and commitments.

During the past Session, you and others asked our Office to examine the fairness of the process by which a vendor was selected last year in response to the State of Vermont's RFP for a "Voice Radio Interoperability Solution." The RFP for this project was dated October 2006. Let me provide you with the results of a preliminary inquiry into this matter.

The State's RFP and selection process were jointly developed and conducted by staff at the Department of Public Safety and the Steering Committee of the Vermont Communications Board (VCOMM), chaired by J. Paul Duquette, Chief of the Newport City Police Department. VCOMM was established by executive order of the Governor and is comprised of representatives from a wide variety of first responder organizations, including fire departments, EMS agencies, law enforcement officials and others.

This was a highly complex RFP which generally asked for "solutions," rather than presenting specific requirements for equipment, installation, and implementation, and asking vendors to develop a price to implement the State's system design.

Preliminary Opinion

Based solely on a preliminary assessment of the process by my Office, in our opinion, DPS and VCOMM are in general compliance with contracting procedures established by the State of Vermont which seek to ensure a fair and open competitive bidding process that serves the best interests of the State and its citizens, with two important exceptions which I will explain below.

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Process Overview

Based on interviews with DPS staff, VCOMM members, the VCOMM consultant and a review of documentation, we note that the process included a number of steps to ensure open, informed, competitive bidding as required by State policy:

- a comprehensive and detailed RFP (156 pages with supplementary material) issued by the State which included particulars on how proposals would be evaluated;
- adequate opportunities for vendors to ask questions and clarify portions of the RFP, including a pre-proposal bidders conference;
- reasonably sufficient time to prepare proposals that were due March 23, 2007;
- opportunities for some site visits to be accompanied by State personnel;
- in-person presentations by bidders on June 19-20, 2007 in Waterbury;
- technical review of each proposal by a VCOMM-selected consultant to determine how well each one addressed the requirements outlined in the RFP;
- a decision by the VCOMM chair to set up a 7-person evaluation committee to reduce the risk that the consultant's previous employment relationship with Motorola might unfairly impact the decision;
- individual, separate proposal review and scoring by 7 individuals – the consultant and 6 members of the VCOMM Steering Committee;
- proposal evaluation criteria and a weighting framework suggested by the State in the contracting and purchasing manual developed by the Dept. of Buildings and General Services (BGS); and
- at least two meetings of the evaluation committee (one via conference call) before the VCOMM Chair informed bidders in a letter dated July 17, 2007 that "we feel that the proposals were all viable solutions" and "we have elected to enter into discussion and negotiations with Motorola." [1]

[1] Section 4.5.1 of the Request for Proposal states: "Evaluations of Proposals and recommendations by the Evaluation Team(s) are advisory only. Such evaluations and recommendations will be submitted to the Owner, which will make a final decision of award. The Owner may accept, reject or modify the Evaluation Team's recommendation of award ... Section 4.5.2 of the Request for Proposal states: "Owner will make the final decision regarding award of Contract. Owner is not obligated to award any Contract or respond to

Proposal Cost Totals

The DPS/ VCOMM group appears not to have conducted a public bid opening, which is required for contracts over $100,000. Thus, I believe I can share the bid cost totals with you. They were:

EF Johnson	$4,944,159
Rinkers Communications/WFI	$5,092,634
Motorola	$12,486,624

It is clear from the documentation and interviews that the evaluation committee agreed that Motorola's proposal best met the requirements outlined in the RFP and that Motorola was selected for further negotiation even though the price was highest.

Exception No. 1 – Documentation of Decision to Choose Highest Bidder

Under state contracting rules (Bulletin No. 3.5) for cost-based projects, when other than the lowest bid is accepted,

> **there must be documentation concerning the quality of services, products, or other relevant considerations offered by a higher priced vendor that justify the award of the contract to the higher priced vendor.**

We did not see documentation that, in our opinion, would be sufficient to support a decision to choose a bidder approximately $7 million above the low bid. We did see scoring sheets from the evaluators, which gave the selected vendor the highest combined score, and meeting notes of the evaluation committee which indicated a consensus agreement on a preferred vendor. However, we would normally expect to see some type of substantive documentation, such as a detailed memo to the Commissioner or to the contract file, justifying the decision to reject two proposals at approximately $5 million, and to select one at approximately $12 million, as required by State guidelines. Such documentation is important not only to collect and summarize relevant detail for the record and comply with policy, but it also serves to protect the integrity of the evaluation committee should a challenge or dispute arise concerning its decision.

Such documentation, in our opinion, should include a full list of the evaluation committee and their credentials, experiences and backgrounds which enable each member to sufficiently evaluate the proposals.

We did not see specific documentation from the Commissioner of the Dept. of Public Safety approving the vendor selection and authorized the VCOMM steering committee and DPS staff to begin negotiations. This should be included in the

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Proposals submitted, nor is it legally bound in any manner by the submission of a Proposal." We did not find documentation which indicated that the Owner (State of Vermont/Commissioner of DPS) approved the Evaluation Committee's decision or made any final decision regarding the award of Contract.

documentation to show that a review and acceptance of the evaluation committee's work took place.

Exception No. 2 – Evaluation Criteria

During the pre-submission period, a bidder asked the State and VCOMM about the specific evaluation criteria:

> **The general evaluation criteria, described in section 4.4.2 [of the RFP], does not have weighted scores. The criteria specified in [the] Bulletin 3.5 outline have specific weighting; will the general evaluation criteria also be weighted? If so, please provide the scores for these.**
>
> The vendor received this answer, dated January 8, 2007:
>
> ***The areas that will be evaluated have been identified. The actual scoring method including the potential for weighted scores has not been determined.***

The evaluation committee did, in the end, choose a scoring method to grade the proposals. However, the framework chosen was a generic suggestion for a generic personal services contract found in the Buyer's Resource Guide developed by the Purchasing and Contract Administration Division of BGS.

We found no documentation in the contract file as to why this scoring method was chosen. The grading scheme placed a 25% emphasis on "qualifications of staff to be assigned and supervision to be exercised over staff by firm's management." The RFP, on the other hand, did not appear to emphasize this selection criteria; the State's solicitation noted that "proposals will be evaluated in accordance with the following general criteria." (Sec. 4.4.2) There were 48 criteria noted. Thirty-three (68.7%) were technical in nature. Four (8.3%) were targeted to areas of qualifications and supervision of staff. We believe more consideration should have been given to a scoring method that better matched the submission requirements listed in the RFP.

Rinkers/WFI Proposal

You posed several questions regarding this vendor. The evaluation committee was clearly impressed with the effort made by Rinkers/WFI to visit proposed broadcasting sites throughout the state to enhance the quality of its proposal. However, a misconception by Mr. Karl A. Rinker, President of Rinkers Communications, that only $6.5 million was being budgeted by the State and VCOMM for the project, appears to have affected his bidding approach and ultimately weakened his firm's proposal. Mr. Rinker said he reviewed VCOMM general information flyers that included budget numbers and tried to stay within that budget. For example, a VCOMM flyer with the FY 06 budget showed a total of $7.5 million for its communication interoperability activities.

The RFP, however, did not mention a specific cost cap, and at the oral presentations and discussions on June 20, 2007, the VCOMM committee further

established with Mr. Rinker that the committee had not put in place any financial limitation on the cost of proposals.

By keeping the bid below a perceived cap, Rinkers/WFI was apparently unable to include additional equipment and installations that may have more completely addressed the RFP. Though the company expressed a willingness to revise its proposal in a short time frame, there was no decision by the VCOMM Steering Committee to pursue this option.

Project Status Today

I should point out that according to Chief Duquette's communication with Vermont's first responder community on Feb. 12, 2008:

> **"The 'Lifeline' Project is in a holding pattern. We have selected a vendor to negotiate with and approve of their project design."**

No contract has been signed with Motorola at this point. An independent review, required by statute and bid out by the State's Department of Information and Innovation (DII), has been put on hold while VCOMM and the State seek to get Industry Canada to approve the FCC (frequency) license applications. This aspect of the project was not discussed in the RFP. Chief Duquette wrote on Feb. 12, 2008,

> **"Because of these FCC issues we have decided to put the Independent Review on hold and not negotiate with the vendor for best & final price until we know where we stand with licensing. If we are not able to obtain licensing for certain sites it changes the make-up of the project."**

A contract cannot be executed until this review is done. When completed, it would evaluate the Motorola proposal as it relates to the RFP requirements, and the soundness of the Motorola concepts as compared to industry best practices, among other points.

In addition, the Vermont Electric Power Co., Inc., (VELCO), responsible for approximately 600 miles of electric transmission lines, is embarking on a communications upgrade which could be of assistance to VCOMM's Lifeline project; VCOMM and VELCO are having discussions on technical aspects of each other's proposals. Into this mix, we must add the Vermont Telecommunications Authority, created by the Legislature last year, which has broad authority on a number of communications issues. DPS staff indicated that VCOMM is now in the process of determining if potential partnerships with other entities could be beneficial and feasible.[2]

VCOMM leaders and DPS staff were aware of the possibility of having to work with other vendors, or to re-bid a changed project, in the event that negotiations with

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[2] "Inclusion of utilities as a shared system partner could derive significant economic benefit to Vermont's taxpayers," according to a report prepared by Macro Corporation, June 17, 2005, titled, *"State of Vermont – Communications Study Committee."*

Motorola were unsuccessful or if the project's scope of work changes to such a degree as to require a new RFP. At this time, it appears that the project leaders prefer to re-bid the RFP due to the amount of time that has passed since the original bid. Further, VCOMM recognizes that technology has changed within that time frame, and that VCOMM also now has a potential partner to share in the cost. Finally, VCOMM recognizes that more assessments must be completed for the National Emergency Channels. These factors may likely change the scope of the original RFP, and thus, a re-bid of this project would be prudent, officials indicate.

Conclusion

I hope this assessment answers the main questions you have posed. Please note that we have no opinion on the technical approach of the RFP or the technical responses made by bidders. We also did not review federal guidelines and requirements attached to the Homeland Security funding for this project[3]. We also did not review other VCOMM activities that are benefiting the State, such as its program to pay for reprogramming of local first responder radios to improve communications in a multi-agency response to an incident.

We do feel that, overall, the RFP process in question was carried out largely according to the State's procedures to ensure fair and open competitive bidding. It is clearly permissible under State guidelines to choose other than the lowest bidder. There is currently a serious gap in documenting the ultimate decision to go with Motorola which VCOMM is addressing.

We did not find any evidence that bidders were treated unfairly or that the decision makers were not acting in the best interests of the State.

Our recommendations to VCOMM and DPS at this point would be to review the contract file and to provide additional documentation that supports the Steering Committee's choice of vendors. The credentials of the evaluators should also be noted. Documentation should be located, if possible, explaining the decision to use the selected scoring method.

Further, I do not feel that a formal audit of this contracting process is required. I will provide this assessment, and backup documentation, to the Commissioner of DII for use in the independent review of the contract proposal should the State and VCOMM move ahead with the Motorola contract. DII's review is expected to be independent and comprehensive; I will suggest to the Commissioner of DII that the review re-examine all proposals to provide a technical opinion on the sufficiency of the evaluation committee's decision.

I should also inform you that during our preliminary review, we received excellent cooperation from VCOMM and the Dept. of Public Safety.

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[3] A range of federal procurement guidelines might impact this RFP, evaluation, and source selection. A formal audit would examine these requirements, if necessary.

Please feel free to contact me at anytime if you have further questions about this RFP and bidder selection process.

Sincerely,

Thomas M. Salmon CPA

Thomas M. Salmon, CPA
Vermont State Auditor

cc: Commissioner Thomas Tremblay, Dept. of Public Safety
Thomas Murray, Commissioner of the Dept. of Information and Innovation
Jim Reardon, Commissioner of the Dept. of Finance and Management