

**Vestavia Hills
City Council Agenda
Special Meeting
February 21, 2013
4:30 PM**

1. Call to Order
2. Roll Call
3. Invocation – George Pierce
4. Pledge of Allegiance

New Business (Requesting Unanimous Consent)

5. Unanimous Consent For The Immediate Consideration And Action On Resolution Number 4409
6. Resolution Number 4409 – A Resolution Authorizing The City Manager To Purchase Parts For The City’s Telephone System Pursuant To Title 41-16-53, *Code Of Alabama, 1975 (Public Hearing)*

First Reading (No Action Taken At This Meeting)

7. Citizens Comments
8. Motion For Adjournment

RESOLUTION NUMBER 4409

A RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE PARTS FOR THE CITY'S TELEPHONE SYSTEM PURSUANT TO TITLE 41-16-53, *CODE OF ALABAMA, 1975*

WHEREAS, on October 18, 2004, the City Council of the City of Vestavia Hills, Alabama approved and adopted Resolution Number 3464, accepting a bid from BellSouth for a new telecommunications system for the City of Vestavia Hills pursuant to a Lease/Purchase Agreement; and

WHEREAS, over the years, the City's telecommunications system has become antiquated. The manufacturer of the equipment no longer produces that equipment or parts: therefore, maintenance and repair the telephone system is virtually impossible; and

WHEREAS, a diligent nationwide search was made for a company that might have similar equipment and part(s) in its inventory for the system which resulted in success through Steve Webb in Atlanta, Georgia for an amount not to exceed \$16,750 and an estimated \$3,200 in labor to install said part(s); and

WHEREAS, the telecommunications system of the City, if disabled for any reason, could result in an emergency affecting the health, safety or convenience of the general public, so, the Mayor and Council have determined this purchase to constitute an emergency purchase pursuant to Title 41-16-53, *Code of Alabama, 1975*.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The City Manager is hereby authorized to purchase the above described part(s) and make said repairs to the City's telecommunications system in an amount not to exceed \$20,000 (parts and labor); and
2. This Resolution Number 4409 shall become effective immediately upon adoption and approval.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720
TELEPHONE (205) 324-2010
FACSIMILE (205) 324-2295

February 13, 2013

By Hand Delivery

City Manager Randy Robertson
Vestavia Hills Municipal Center
P. O. Box 660854
Vestavia Hills, Alabama 35266-0854

In Re: Purchase of Parts and Labor for City Telephone System

Dear Mr. Robertson:

On February 12, 2013, you requested that I provide you with my written legal opinion as to whether or not the City of Vestavia Hills may legally purchase parts and labor for the existing City telephone system at an estimated cost of approximately \$20,000.00 under contractual agreement without inviting free and open competitive bidding. The purpose of this letter is to comply with your request.

I. FACTS

On October 18, 2004, the City Council of the City of Vestavia Hills, Alabama approved and adopted Resolution Number 3464 accepting the bid of BellSouth for a new telecommunications system for the City of Vestavia Hills pursuant to a Lease/Purchase Agreement in the aggregate amount of \$199,854.00, plus \$1.00 at the end of the lease term.

The transaction was concluded pursuant to the following legal documents:

1. BellSouth Business Master Agreement for Purchase of Equipment and/or Services No. 2K3C 015602 by and between BellSouth Communications Systems, LLC and the City of Vestavia Hills, Alabama; and
2. Lease Between BSFS Equipment Leasing, as Lessor, and the City of Vestavia Hills, as Lessee, for the equipment set forth in Schedule No. 7341525-001.

The City telecommunications system is now antiquated. The manufacturer of the equipment no longer produces that equipment or any parts therefor. For that reason, maintenance and repair of the telephone system is almost impossible.

Terry Ray has made a diligent search throughout the United States for a company that might have similar equipment and parts in its inventory. He has located that equipment and parts through Steve Webb in Atlanta, Georgia. The parts will cost \$16,750.00. It is estimated that it will cost approximately \$3,200.00 for labor to install the equipment and parts.

II. LEGAL ISSUE

Is the contemplated purchase of telecommunication equipment and parts at a cost estimated to be approximately \$19,950.00 subject to the Alabama Competitive Bid Law?

III. LEGAL OPINION

It is my legal opinion that the answer to the legal question is in the negative.

IV. BASIS FOR LEGAL OPINION

The Alabama Competitive Bid Law applicable to municipalities set forth at Title 41-16-50 (a), *Code of Alabama, 1975*, provides in pertinent parts as follows:

“(a) With the exception of contracts for public works whose competitive bidding requirements are governed exclusively by Title 39, all expenditure of funds of whatever nature for labor, services, work, or for the purchase of materials, equipment, supplies, or other personal property involving fifteen thousand dollars (\$15,000) or more, and the lease of materials, equipment, supplies, or other personal property where the lessee is, or becomes legally and contractually, bound under the terms of the lease, to pay a total amount of fifteen thousand dollars (\$15,000) or more, by or on behalf of any... governing bodies of the municipalities of the state... shall be made under contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible bidder.”

I base my legal opinion upon other parts of the Alabama Competitive Bid Law, which are set forth below:

A. EMERGENCY: Title 41-16-53, *Code of Alabama, 1975*, provides as follows:

“§41-16-53. **Emergency exemptions.** In case of emergency affecting public health, safety or convenience, so declared in writing by the awarding authority, setting forth the nature of the danger to public health, safety or convenience involved in delay, contracts may be let to the extent necessary to meet the emergency without public advertisement. Such action and the reasons therefor shall immediately be made public by the awarding authority.”

Generally, the term "emergency" signifies a situation which has suddenly and unexpectedly arisen which requires speedy action. The Attorney General, in an opinion dated February 14, 1974, said that a municipality need not submit bids on a garbage truck if an emergency situation is declared and the provisions of Section 41-16-53 of the *Code* are complied with.

The City cannot be without a telecommunications system for even a split second. The primary duty of the Police and Fire Departments is to protect the public health, safety and general welfare. In my judgment, these facts present an emergency situation.

B. EXEMPTIONS: Title 41-16-51 *Code of Alabama, 1975*, provides as follows:

"§41-16-51. Exemptions—Void contracts—Criminal penalties.

(a) Competitive bids shall not be required for utility services, the rates for which are fixed by law, regulations, or ordinance, and the competitive bidding requirements of this article shall not apply to:

(11) Purchases of computer and word processing hardware when the hardware is the only type that is compatible with hardware already owned by the entity taking bids and custom software.

(13) Contractual services and purchases of commodities for which there is only one vendor or supplier and contractual services and purchases of personal property which by their very nature are impossible to award by competitive bidding."

C. SOLE SOURCE: Title 41-16-75, *Code of Alabama, 1975*, provides as follows:

"§41-16-75. Sole source contracts. State entities seeking to purchase goods or services from a sole source vendor may do so only upon the approval of the Department of Finance, through the Division of Purchasing, unless the purchasing state entity is authorized by law to conduct its own purchasing activities. Approval for sole source purchases shall be given only if the purchasing state entity establishes that no other goods or service can meet its needs and that no other vendor offers substantially equivalent goods or service that can accomplish the purpose for which the goods or service is required. The Director of Finance may require information from either the purchasing entity or the vendor seeking to be declared a sole source that is deemed necessary to meet the requirements of this provision."

V. CONCLUSION

It is my legal opinion that the City may purchase the parts and labor for the telecommunications system for an amount exceeding \$15,000.00 because this is an emergency situation and that the compatible equipment and parts for the telecommunication system are so rare that it would be impossible to award the contract and make the purchase by competitive bidding.

VI. MY RECOMMENDATIONS

If the City Council decides to spend the approximate sum of \$19,950.00 for the purchase of the parts and labor, then in such event I recommend that it adopt a simple resolution finding and determining that this is an emergency situation under Title 41-16-53, *Code of Alabama, 1975*, and, therefore, not subject to the Alabama Competitive Bid Law.

Please call me if you have any questions regarding this matter.

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

cc: City Clerk Rebecca Leavings (by hand)
Finance Director Melvin Turner (by hand)

Rita Hosmer

From: Terry Ray
Sent: Tuesday, February 12, 2013 4:54 PM
To: Rita Hosmer
Subject: FW: BCM 400 project How is this revision?

How does this look?

Terry Ray
Battalion Chief
EMS Officer
City of Vestavia Hills
(205) 978-0212
(205) 789-7366 Cell
(205) 978-0205 Fax

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From: Stephen [mailto:webb32@comcast.net]
Sent: Tuesday, February 12, 2013 4:44 PM
To: Terry Ray
Subject: BCM 400 project How is this revision?

My name is Stephen Webb and I have been working in the Telecommunications field for the last 19 years. I have been working on Nortel Business Communications Manager Systems since their first release of 1.0 back in 1998. During the buy out of Nortel by Avaya a few years ago the announcement was made that Avaya would no longer be manufacturing and in time supporting the Business Communications Manager Phone system. This was an abrupt decision that not only hurt existing customers but also customers who just bought into the reliable Nortel Business Communications Manager. The Business Communications Manager was End of Sale announced back on March 1st of 2010 and even the very latest release of the larger BCM 450 R6 is now at it's end. With the announcement of this liquidation being known companies started scooping up the parts that they could get their hands on and in turn have sold as many of those parts to customers as possible leaving the inventory that is out there very slim.

Taking into consideration the high needs of the system at City of Vestavia there were only 2 routes to take that we could look into for a crash kit that would make the downtime minimal. We could either get a basic shell system and modules and if the main went down we could order a regeneration of the codes that exist on it which would cause anywhere from a 1-4 days of downtime to do so or we could find a system out there that was an exact like for like system with a restored database loaded ready to swap in its place and be back in service within an hour or two versus days.

The system in the City of Vestavia is very robust and it is necessary for all the key codes that are present to be in it to work. I have been on the search for the last 2 weeks attempting to find either of the 2 above listed solutions that would best fit the needs of this area. What I have found in that time is that the parts for this are harder to find than I could have imagined. With all the searching I could not find anyone out there that would guarantee a fast enough turn around to regenerate the codes on an emergency basis leaving us in the 1-4 days of being down. On the second solution I started by trying to find the parts to build a base system and add all the codes needed which brought the pricing for the system and codes alone to over 26,000.00 without labor or the additional module parts in it, not to mention I can't find all the parts to build it that way. The best case scenario was me searching the web and tele-connect sights for a system that was already coded or at least close to what we needed and then adding what we needed to that. I found only 1 system that came even close and it was in need of 2 licenses to make it complete. It needed 1-4 seat Unified Messaging license and also 1-32 port Voice Media Gateway license. I found the 4 port license within a week but only found a total of 2 of the Voice Media Gateway license codes and one of those companies was selling it for almost double the price of the first one.

The only company I could find that had the availability of the BCM system with codes, the additional ability to add the remaining codes out of inventory and all of the modules needed were Atlantel in Atlanta Georgia. They are able to supply all that we need and a 1 year warranty on all those parts as well. No other companies out there can supply this need. I strongly believe that Atlantel is our only source to accommodate the robust need for City of Vestavia's crash kit system.

One of the largest challenges in doing this search is supply and demand. Because the Business Communications Manager System is end of life and no longer produced the companies out there are not looking to hold onto anything. They will take the first buyer they get until their Business Communications Manager inventory is gone. The current access I have to this solution I have quoted for could be gone tomorrow which is why I was stressing the importance of moving on this fast to make sure we can get it. I to this very day still search out there to see if I can find another one just in case this one is not available and I am still having no luck. I am confident that this system will fulfill the needs of Vestavia Hills and the survivability of the telephone networking until it is no longer needed.

If you have any questions please feel free to give me a call.

Thank you,

Stephen
(678) 361-6767