

SUSPENSION



To: Michelle Parker, First Assistant County Attorney

From: Laurence K. Rubin 

Re: Transfer of Funds prior to opening Responses to RFP # 1929VF June 19, 2019 Erie County Sheriff's Office ("RFP")

Date: July 11, 2019

We have reviewed the question as to whether the Erie County Sheriff's Office can open responses to its RFP for a body camera system and evaluate the responses and/or interview vendors prior to such time as the funds appropriated for the body camera system are transferred to the Sheriff's Office. It is our opinion that the responses may be opened and evaluated prior to the transfer of such funds.

By its very terms, the RFP is not a legally binding commitment by the Erie County Sheriff's Office.

"The ECSO reserves the right to reject any or all of the proposals, or any part thereof, submitted in response to this RFP, and reserves the right to waive formalities if such action is deemed to be in the best interest of the ECSO.... This RFP is not intended and shall not be construed as to commit the ECSO to pay any costs incurred in connection with any proposal or to procure or contract with any firm. "

The RFP further emphasizes the non-binding nature of the RFP in its outline of the steps that will be followed for the RFP review, and emphasizes that all County approvals must be obtained prior to the execution of a contract, but not before.

"II. PROPOSAL PROCEDURES A. ANTICIPATED SCHEDULE OF PROPOSAL The following schedule is for informational purpose only. The County reserves the right to amend this schedule at any time.

Issue RFP: June 19, 2019

Proposals Due: Noon, July 10, 2019 (or postmarked) In-person

Vendor Presentations: July 29 – August 2, 2019

Selection Made: August 30, 2019

Contract Signed: Following all necessary County approvals"

There is no requirement of State law or local law, including the Erie County Charter or Erie County Administrative Code that funds be available for an RFP to be issued or responses

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evaluated. Funds should be appropriated and available prior to a contract being awarded and this is made clear in the Erie County Charter for contracts awarded by the Purchasing Director or any other officer.

“... [the Purchasing Director] shall not contract for or furnish any services, equipment or other articles except upon receipt of authorized requisitions and certifications as to the availability of funds... “ Charter §306

This rule is equally applicable to the Erie County Sheriff.

“No County officer...shall....enter into any contract which, by its terms, involves the expenditure of money for any of the purposes for which provision is made in the budget in excess of the amounts appropriated for such fiscal year ...” Erie County Charter § 2507(a)

Thus, the responses to the RFP may be opened and evaluated regardless of whether or not funds have been appropriated or transferred for engaging the services that are the subject of the RFP.