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Legal Opinion 2012-012

TO: Brent Ramharter; Judge Kathleen Jenks; Tina Schmaus

CC: John Engen, Mayor; City Council; Bruce Bender; Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE September 18, 2012

RE: Sole Source Provider Contract with Missoula Correctional Services - Missoula Municipal Court

FACTS:

A legal opinion concerning the necessity and legality of sole source provider contract for the City of Missoula Municipal Court obtaining services from Missoula Correctional Services was determined to be appropriate for auditors or citizens to review in the event they are interested in obtaining more information concerning the contract.

ISSUE(S):

For Fiscal Year 2013 (July 1, 2012 to June 30, 2013) is Missoula Correctional Services, Inc., herein (“MCS”), a sole source provider for services related to providing supervision to adult offenders under the jurisdiction of the Missoula Municipal Court?

CONCLUSION(S):

Yes, pursuant to information provided by Judge Kathleen Jenks and Tina Schmaus of the Municipal Court, pursuant to Section 18-4-306 MCA Missoula Corrections Services, Inc. is a sole service provider for the Municipal Court services being contracted for pertaining to supervision of criminal misdemeanor sentences of adult offenders.

LEGAL DISCUSSION:

The Municipal Court of the City of Missoula has created adult offender supervision programs including a misdemeanor supervision program and a sobriety and accountability program. The

programs will provide community supervision for adult offenders under the jurisdiction of the Court. The services to be contracted for include monitoring of compliance of offenders with Court ordered conditions including alcohol and drug testing, GPS satellite monitoring, house arrest, attendance at treatment, payment of fees and restitution and daily/weekly/monthly reporting to the supervising agency. When necessary for community safety, the programs require arrest and detention of offenders until such time as the offender can appear before the Court.

Section 18-4-306 M.C.A. allows for the award of a supplier service contract without public bidding when it is determined that:

- (a) There is only one source for the supply or service item;
- (b) Only one source is acceptable or suitable for the supply or service item; or
- (c) The supply or service item must be compatible with current supplies or services.

Subsection 18-4-306(1) MCA provides as follows:

A contract may be awarded for a supply or service item without competition when, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that:

- (a) there is only one source for the supply or service item;
- (b) only one source is acceptable or suitable for the supply or service item; or
- (c) the supply or service item must be compatible with current supplies or services.

(2) The department may require the submission of cost or pricing data in connection with an award under this section.

(3) The department shall maintain or shall require the head of a purchasing agency to maintain a record listing all contracts made under this section for a minimum of 4 years. The record must contain:

- (a) each contractor's name;
- (b) the amount and type of each contract; and
- (c) a listing of the supplies or services procured under each contract.

(4) The record must be available for public inspection. (emphasis added)

MCS qualifies as a sole source provider under both subsections 1(a) and (b) of Section 18-4-306 M.C.A. Subsection 1(a) applies to a situation where there is only one source for the service. A key element of the services to be provided for the Missoula Municipal Court programs is arrest power. Municipal Court Judge Kathleen Jenks has indicated that the aforementioned sole source provider provisions of subsections 18-4-306 MCA are applicable to the MCS contract.

Offenders under supervision may be involved in conduct that constitutes a community safety hazard such as driving under the influence of drugs or alcohol or domestic abuse. The ability of the entity contracted with to provide the services for the Municipal Court to immediately arrest offenders engaged in such conduct is crucial to community safety and the enforcement of the supervision program. Therefore the source that provides the services must have arrest power.

Section 46-23-1012 M.C.A. provides as follows:

At any time during probation, if a probation and parole officer reasonably believes that the probationer has violated a condition of probation, a court may issue a warrant for the arrest of the probationer or a county attorney may issue a notice to appear to answer to a charge of probation violation. The notice must be personally served upon the probationer. The warrant must authorize law enforcement officers to return the probationer to any suitable detention center.

(2) Any probation and parole officer may arrest the probationer without a warrant or may orally deputize any other officer with power of arrest to do so by giving the officer oral authorization and within 12 hours delivering to the detention center a written statement setting forth that the probationer has, in the judgment of the probation and parole officer, violated the conditions of probation. A written statement or oral authorization delivered with the probationer by the arresting officer to the official in charge of a detention center is sufficient warrant for the detention of the probationer if the probation and parole officer delivers the written statement within 12 hours of the probationer's arrest. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation.

(3) A probation and parole officer may authorize a detention center to hold a probationer arrested under this section without bail for 72 hours. Within 72 hours following the probationer's detention, the probation and parole officer shall:

- (a) authorize the detention center to release the probationer;
- (b) hold an intervention hearing pursuant to 46-23-1015; or

(c) arrange for the probationer to appear before a magistrate to set bail. In setting bail, the provisions of chapter 9 of this title regarding release on bail of persons charged with a crime apply.

(4) If the probationer is detained and bond is set, the probation and parole officer shall file a report of violation within 10 days of the arrest of the probationer.

(5) After the probation and parole officer files a report of violation, the court may proceed with revocation of probation in the manner provided in 46-18-203. (emphasis added)

Section 46-23-1012(2) M.C.A. provides authority for immediate arrest of offenders by probation and parole officers. Probation officers must meet the qualification of Section 46-23-1003 M.C.A. Those qualifications include a college degree, formal training in the behavioral sciences and training in accordance with the standards adopted by the Montana Public Safety Officers Standards and Training Counsel.

Section 46-23-1003 M.C.A. provides as follows:

(1) Probation and parole officers must have at least a college degree and some formal training in behavioral sciences. Exceptions to this rule must be approved by the department. Related work experience in the areas listed in 2-15-2302(2) may be substituted for educational requirements at the rate of 1 year of experience for 9 months formal education if approved by the department. All present employees are exempt from this requirement but are encouraged to further their education at the earliest opportunity.

(2) Each probation and parole officer shall, through a source approved by the officer's employer, obtain 16 hours a year of training in subjects relating to the powers and duties of probation

officers. In addition, each probation and parole officer must receive training in accordance with standards adopted by the Montana public safety officer standards and training council established in 2-15-2029. The training must be at the Montana law enforcement academy unless the council finds that training at some other place is more appropriate. (emphasis added)

MCS has properly credentialed and trained probation officers on its staff. The probation officers have arrest power under Section 46-23-1012 M.C.A. MCS is the only non-governmental entity in Missoula that employs such credentialed and trained probation officers that have arrest power. MCS provides the sole source of Municipal Court desired services for servicing Municipal Court's supervision and accountability programs.

MCS also qualifies as a sole source provider under Subsection 1(b) of Section 46-18-306 M.C.A. as the only source acceptable and suitable to supply the services. MCS has been providing the services required to administer the Missoula Municipal Court programs since 1994. While there are other entities that provide some of the components of the services in the Court programs, such as alcohol monitoring, there is no entity that provides the complete package of services required for the Missoula Municipal Court programs. There is no other entity that is acceptable or suitable to provide monitoring of offender attendance at treatment, payment of fees and restitution and daily/weekly/monthly reporting in addition to providing GPS satellite monitoring and drug and alcohol testing. That makes MCS the only source acceptable or suitable to supply the services required by the Missoula Municipal Court programs and therefore a sole source provider under Section 18-4-306 M.C.A.

CONCLUSION(S):

Yes, pursuant to information provided by Judge Kathleen Jenks and Tina Schmaus of the Municipal Court, pursuant to Section 18-4-306 MCA Missoula Corrections Services, Inc. is a sole service provider for the Municipal Court services being contracted for pertaining to supervision of criminal misdemeanor sentences of adult offenders.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney

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