



Request for City Council Committee Action From the City Attorney's Office

Date: December 14, 2005
To: Ways & Means/Budget Committee
Referral to:

Subject: Authorized legal action against primary vendor of case management system.

Recommendation: Receive & File

Previous Directives:

Prepared by: Burt Osborne, Assistant City Attorney Phone: 673-2473

Approved by: _____
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain):
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact:

City Goals:

Background/Supporting Information

In September of 2004, the City Council authorized BIS to enter into a contract with LegalEdge for the development and implementation of the City Attorney's Case Management System ("CMS"). The contract included all of the technical requirements for the development of the CMS and provided, among other things, criteria for the rejection of non-functioning deliverables. From the outset, the City implementation team began experiencing problems with LegalEdge deliverables.

The delivery of the initial product for prosecution missed many scheduled dates. Expectations were late fall 2004 for a completed standard product that would support the City's requirements. The City staffed its technical project team based upon that time frame. The date gradually started slipping with the new date

always within the next month. In January of 2005 the City requested a new schedule which was provided. The new schedule projected the date for a completed version 1.0 to the City on February 18th 2005. By the end of March, nothing had arrived.

The quality of the deliveries was always at issue as well. The products delivered were missing important functionality, were difficult to use and fraught with bugs and unexpected error messages. The various problems included the failure to deliver any working integration component and the failure to deliver any programmer toolkit, as agreed. Although BIS has excellent documentation regarding all of those issues, in some instances, the technical rejection criteria for rejecting non-functioning deliverables was not followed exactly by the BIS project team.

The cons of a lawsuit against LegalEdge include the expense of pursuing a court case and the possibility that a Judge or a jury may conclude that the City, by not following the proper rejection criteria in the contract, accepted all of the deliverables from LegalEdge. Additionally, LegalEdge would likely counterclaim against the City in the event we sued LegalEdge, and LegalEdge could obtain a money judgment against the City if the Court concluded that we owe LegalEdge for the deliverables that we "accepted." LegalEdge is also likely to bring a business defamation counterclaim against BIS staff and consultants if the City files suit.

Additionally, the cost of software litigation in this instance could easily surpass \$100,000, not including attorney time and resources. The City would need to hire at least one expert and would have to reimburse the BIS consultants for their time spent in preparation, depositions and at trial. If the City were to achieve only partial victory in Court, the case could likely cost as much to pursue as the City would recover.

At this time, we recommend that no legal action be taken against LegalEdge. We have evaluated the costs of pursuing litigation and the relative chances of success and have concluded that the costs of litigation would likely outweigh any benefit.