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Illinois Department of Natural Resources
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February 27, 2005

Attention: David Bononi, IDNR Solicitation Contact

Subject: Misuse of Public Funds - Responsible Parties Avoid Financial Accountability
Misrepresentations and Conflict of Interest in Requested Services
Illinois Beach Asbestos Investigation Bid Solicitation # 22007625

Dear Mr. Bononi,

I request a written response that clarifies the scope of work defined in the Project Description for the asbestos-containing material (ACM) investigation and removal bid request for Illinois Beach State Park. Typically this work is awarded as two independent and separate contracts: 1) Qualified and properly insured consultant who identifies asbestos-containing materials and design/oversee the removal of the materials, and 2) Qualified and properly insured abatement contractor who removes and disposes of the asbestos-containing material. Your request combines these two activities under one contract in an unclear and confusing manner. The request for services listed the work under an "asbestos abatement" classification. However, upon examination of the request I found the scope of work in the project description quite different. The term or requirements for "abatement" is not found in the project description. It is unclear who would be qualified to bid on these services. It is also unclear how the work is to be performed. There is no accountability or control over the quality and completeness of the work product because the consultant is also the removal contractor. The wolf is overseeing the hen house. Finally, the project description identifies two sources of the asbestos contamination. Taxpayers should not foot the bill for pollution cleanup when responsible parties (sources) have been identified. The cost of cleanup should be bore by those who pollute!

In addition to a written response to my questions, I also request a project re-bid based on a more exact definition of the scope of work and related project qualifications. This request is made on behalf of Illinois taxpayers so that we can fully assess what services we are paying for. The State of Illinois typically uses competitive bids for asbestos removal services based on price. I am concerned that this contract will not be awarded based on costs when the project description and consultant/contractor qualifications and insurance requirements are so vague and confusing. I believe a more defined project description is required for this project in order to obtain more qualified bidders and provide more competitive pricing to protect against excessive budgets and cost over-runs to the taxpayers of our state. It will also reduce costly "change orders" due to clarifications or interpretations made after a contract is awarded. I assisted the Illinois Dunesland Preservation Society in the preparation of a similar critique of last years contract (post award) with Carnow, Connibar, and Associates, where these same mischaracterizations and conflicts of interest were identified.

I write this request as an Illinois licensed asbestos professional, a Certified Safety Professional, and concerned resident of Lake County, Illinois. I authored the June 2003 Illinois Dunesland

Preservation Society report on asbestos contamination at Illinois Beach State Park and have first hand knowledge of the issues relating to the continued asbestos recontamination to the “Crown Jewel” of Illinois.

My questions that I request a written response to are as follows:

1. Does the scope of work include removing ALL suspected asbestos containing materials (pieces) identified during the survey from the beach? If so, then:
 - a. The request states “ACM pieces have typically been small (a few inches in diameter) pieces of floor tile and transite siding.” The request further states the quantity to be removed to be “estimated at be about 20-30 small pieces per week.” How small of a piece of suspected asbestos containing debris is required to be identified and removed in the scope of work?
 - b. Microscopic asbestos is harmful to human health. Previous testing has identified the presence of microscopic asbestos on the Park shoreline. Microscopic asbestos contamination is not addressed in the “removal and disposal” requirements. Is the consultant/contractor required to identify and/or remove and dispose of microscopic asbestos fibers found on the Park beaches?
 - c. The request requires the consultant’s state licensed inspector to remove and dispose of all suspected asbestos-containing debris found during weekly beach sweeps. I am not aware of any asbestos consultant who carries a state license or credentials for asbestos abatement activities or asbestos abatement pollution liability insurance including the previous IDNR contract holder from last year Carnow, Connibar, and Associates (CCA). Typically asbestos inspections and consulting is separated from asbestos removal and disposal activities due to insurance, licensing, and credential issues and a perceived conflict of interest. Is the consultant required to be licensed as an asbestos abatement contractor and also required to carry a certain level of asbestos abatement pollution liability insurance for performing the removal and disposal activities?
 - d. The Occupational Safety and Health Administration (OSHA) regulates the disturbance of asbestos-containing materials. OSHA requires employers to establish regulated areas where asbestos is disturbed and notify those next to the regulated area of the activities taking place. The project description states, “Surveys shall be performed weekly during the primary bathing season, covering an estimated 7.0 miles of shoreline.” Will the beach be closed to the public during the asbestos removal and disposal activities or is the consultant required to notify individuals on the beach that a regulated asbestos area has been established?
 - e. Two known sources of the asbestos containing debris were identified in the project description. The Illinois EPA Air Section has stated that asbestos regulations regarding the presence of “regulated asbestos-containing materials” on the beaches could not be enforced because there was previously no known source identified. Damaged and weathered non-friable manufactured asbestos cement debris has been classified by the Illinois EPA and USEPA as a friable and regulated asbestos-containing material (RACM) when a source is identified. Is the damaged and weathered non-friable asbestos-containing debris along with the

friable asbestos-containing debris found on the beach required to be handled, transported, and disposed of as a “regulated asbestos-containing waste” now that sources of the asbestos pollution have been identified?

- f. In 1999, the Illinois EPA Director’s office ruled that dredged sand which was dumped on the beach that contained asbestos debris was an industrial process waste or a pollution control waste. The dredged sand found on the Park beach is currently classified by the IEPA as a regulated special waste. The project description states “A second potential source of park beach ACM is the transportation and deposition by Illinois DNR of dredged sand off shore from the Midwest Generation (formerly Commonwealth Edison) power plant. Illinois DNR used to replenish its beach sand at the Midwest Generating station’s intake. A stockpile of the intake sand was observed to contain transite pipe, gasket sheets, and other ACM materials.” Is the consultant you are seeking required to obtain IEPA permits to treat (by removing ACM pieces), transfer, and/or dispose of the special waste (dredged sand) found on Illinois Beach State Park?
2. What are the requirements for providing “management advice and counsel regarding ACM contamination at the Park?”
 - a. The project description discusses supervising inspectors licensed by the IDPH to investigate, locate, characterize as necessary and sample suspected ACM materials. I have taught the USEPA asbestos building inspector classes since the late 1980’s and know first hand that a licensed asbestos building inspector has limited knowledge on asbestos contamination issues. Licensed inspectors (asbestos building inspectors) are only trained to identify and sample asbestos-containing building materials found inside of buildings. What are the qualifications and experience required for those who will provide management advice and counsel regarding ACM “contamination” at the Park?
 - b. The USEPA states that there are over 3000 different commercial products that contain asbestos. Your project description mentioned a few of these materials previously found on the Park beaches. These were stated as floor tile, cement siding, cement piping, gasket sheets, and “other ACM”. I have personally found some of these “other ACM” materials at the Park beaches including pipe insulation, roofing materials, vehicle brake pads, and cement acoustical panels. What is a description of all of the suspected ACM materials the consultant is required to identify?
 - c. Much of the ACM debris found on the Park beaches is worn and weathered. Many of the pieces of ACM debris have become smooth and rounded (similar to how broken glass becomes smooth and rounded after tumbling in the abrasive surf zone) and have the appearance of typical rocks found on the shoreline. This makes the debris very difficult to identify without careful examination of all rocks with a trained eye. Last years contract holder Carnow, Connibar and Associates (CCA) had a two man team cover the 7 miles of beach in one eight hour shift. This allowed one member to drive an all terrain vehicle while one member “looked” for suspected asbestos debris. This method of inspection allows for about 1 mile of beach covered per hour. The 7 mile beach area is quite large and the debris is often camouflaged as a rock on the beach. I have personally walked the 7 miles of beach searching for suspected ACM. It is my opinion that an

effective ACM removal process would be a slow, careful, and tedious daily survey. **This contract would require the consultant to cover several hundred square feet of beach area per minute while examining each individual rock in order to cover the entire beach in an eight hour day.** Is the survey process identified in the project description an effective way of identifying and removing the majority (if not all) of the asbestos debris currently found on publicly accessible Park beaches?

- d. Much of the suspected ACM debris can be found in the water right along the shoreline. The beach areas are either dry, wet from wave action, or under water continuously. How far towards the lake is the consultant required to survey?
- e. Other materials are partially covered or fully covered by wind blowing sand across the surface of the beach. Disturbing the surface of the beach with a rake can uncover hidden debris. Is the consultant required to disturb or rake the beach surface to identify suspected ACM on the water/shoreline and expose partially or fully covered asbestos debris or is this asbestos debris to be ignored?
- f. ACM inspections usually require an inspector to identify the location of suspected asbestos containing materials. Once located, the materials are either assumed to contain asbestos or are sampled by taking a small representative piece for laboratory analysis. The project description states, "The consultant shall prepare monthly reports that include a log of all suspected ACM pieces collected..." The project description identifies ALL debris (pieces) as a sample whether it is actually sampled for lab analysis or not. It appears that an asbestos inspection will be combined with asbestos abatement (removal) as part of the contract. This is a problem for taxpayers for two reasons. If the contract is for a flat fee the consultant is only responsible for removing what they find. There is an incentive for the consultant to find less debris to reduce their costs and make more profit. If the contract is based on time and materials it is in the consultant's interest to assume all rocks on the beach are asbestos so more of their services are required increasing the contract amount. **Combining the asbestos inspection/consulting with asbestos removal services under one contract is a conflict of interest and not in the best interest of taxpayers or those frequenting the Park beaches.** All debris "pieces" on the beach should not be considered a sample. The project description states, "All such samples must be removed from the site and disposed of in accordance with all applicable state and federal laws for asbestos disposal." Does the project contract require the consultant to remove ALL asbestos "pieces" identified on the Park beach (thereby performing asbestos abatement) even if no true laboratory "sample" is obtained for inspection purposes?
- g. The project description states, "On July 16 and July 30, 2004, friable asbestos was discovered as part of the routine beach sweeps conducted by the Illinois DNR's consultant". The consultant CCA stated that they used the definition of friable provided by the Illinois Department of Public Health. The IDPH denied providing a definition of friable for outdoor beaches. The USEPA defined damaged and weathered asbestos cement debris found outdoors on the south end of the Park (in the Johns-Manville Superfund site) as "friable". Friable asbestos is much more regulated and much more hazardous than non-friable asbestos found in good condition. It is my professional opinion that the broken, weathered, and

abraded manufactured asbestos-containing cement debris on the Park beaches is in fact friable and a regulated asbestos containing material. Can you provide a written definition of the term “friable” the consultant will use to define the scope of services required for broken, weathered, and abraded manufactured cement debris that is traditionally defined as non-friable by IDPH inside a building but currently defined as friable and regulated by USEPA when outside?

- h. There are multiple analytical methods that can be used to determine the presence of asbestos in a sample. There are also multiple and controversial methods for identifying asbestos contamination. The project description does not identify the preferred methods of analysis. Cost for analysis is dependent upon the analytical method selected and the turn-around time specified for reporting results. These issues were not defined in the project description. What analytical methods are required and what turn-around time is necessary for the consultant to determine costs for compliance with the contract?
3. Why are taxpayers footing the bill for clean beach replenishment sand and for a cleanup of a regulated asbestos contaminated “special waste” that was polluted by and/or dumped on the public Park beaches by other responsible parties?
 - a. One source of asbestos debris on Park beaches includes the previous dumping of dredged sand taken off shore from the power plant and Johns-Manville Superfund site at the south end of the Park. The originating source of asbestos debris appears to have come from waste piles at the Johns-Manville manufacturing site where several million cubic yards of asbestos debris currently resides (now a superfund site). These Johns-Manville asbestos debris materials have been identified outside of their property in the Park nature preserve and fishing area beach. Cost of identification and cleanup of these areas outside of the original Superfund site and have been included as a responsibility of Johns-Manville as part of the overall Superfund clean-up. The cost for cleanup and disposal of asbestos in the Park Nature Preserve is bore by the polluter Johns-Manville. However, the additional asbestos debris that continues to appear on accessible public Park beaches is currently being identified and removed at taxpayer expense. Is the identification and removal of asbestos debris found on the Park beaches being considered a cost that should be bore by Johns-Manville, Midwest Generation, the U.S. Army Corps of Engineers, the dredging contractor and/or other responsible parties who dumped the regulated “special waste” on the public beaches (instead of being bore by Illinois taxpayers)?
 - b. The asbestos contaminated sand off-shore in Waukegan Harbor and near the Johns-Manville Superfund site was dredged and placed on our public Park beach to reduce costs associated with paying for “clean” sand from other locations. This resulted in significant cost savings to Illinois taxpayers. The off-shore pollution of the lake bottom sediments with asbestos has resulted in the IEPA classifying these dredged materials as a regulated “special waste” that can not be used for beach nourishment purposes. Taxpayers are now forced to pay for the inspection and clean-up of our public Park beaches that are polluted with this regulated “special waste” and pay for clean sources of beach nourishment sand. Is the State of Illinois seeking reimbursement for taxpayer costs for purchasing clean

replenishment sand from those parties that contributed to polluting the offshore sources of “free” beach nourishment sand with asbestos debris?

I authored a report on asbestos contamination found at the public Park beaches in June 2003 for the Illinois Dunesland Preservation Society. In that report I stated that the public Park beaches should be restricted from public use since no true scientifically based human health risk assessment was conducted. Your project description discusses the formation of an asbestos task force by the Illinois Attorney General in July 2003. Since that time this task force has not addressed in writing whether the beaches are safe to remain open to the public. I still believe the Park beaches should be closed to the public until more is known about past and current health risks. The beach should certainly be closed during the clean-up activities outlined in this contract.

As a professional in the asbestos field I am concerned that taxpayers of Illinois are paying unnecessary fees for clean-up of asbestos debris on our public Park beaches when other responsible parties have been identified. I am also disturbed that an “open-ended” and vaguely defined contract will be awarded to a contractor without considering costs. There is little definition to the scope of work or qualifications necessary to meet contract expectations. There are no asbestos pollution liability insurance requirements specified for those removing the asbestos from our beaches. These are tough economical times in Illinois. The IDNR has recently undergone drastic cuts in staff and programs. Control over excessive costs is crucial for your department.

This contract does not appear to have any control over costs that will be incurred by taxpayers due to a confusing and controversial scope of work. There are still outstanding questions regarding the past and current safety of the Park beaches. There are also questions regarding why taxpayers are paying for continuous asbestos pollution caused by others. I trust you will accept my questions as constructive criticism that will benefit both your department and Illinois taxpayers. I look forward to a prompt written response to my questions.

Cordially,

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Illinois Licensed Asbestos Professional

c: Joel Brunsvold, Director IDNR
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