



OFFICE OF CORPORATION COUNSEL

PAUL BARGREN
Corporation Counsel

MARK A. GRADY
COLLEEN A. FOLEY
Deputy Corporation Counsel

TIMOTHY R. KARASKIEWICZ
MOLLY J. ZILLIG
ALAN M. POLAN
JENNIFER K. RHODES
DEWEY B. MARTIN
JAMES M. CARROLL
PAUL D. KUGLITSCH
KATHRYN M. WEST
JULIE P. WILSON
CHRISTINE L. HANSEN
Assistant Corporation Counsel

Date: January 28, 2016

To: Supervisor Dimitrijevic

cc: Members of the Committee on Health and Human Needs
Director Colon, DHHS
Chief Judge White
Committee Coordinator Smith
Research Analyst Hayden
Chief of Staff Bablitch
Other Interested Parties

From: Paul Bargren *PB*
Corporation Counsel

Re: Lincoln Hills School

Dear Supervisor,

At yesterday's meeting of the Committee on Health and Human Needs, you directed a number of questions to me, which I have set out below with my answers. The questions related to the current questionable conditions at the Lincoln Hills School secure juvenile detention facility for boys, operated by the Wisconsin Department of Corrections, and similar conditions at DOC's Copper Lake facility for girls. I'll refer to them collectively as "Lincoln Hills." The facilities are in Irma, about 3½ hours by car north of Milwaukee. Lincoln Hills is the only state-run secure juvenile detention facility¹. At least until the current investigations came to light, about 140 boys and 18 girls from Milwaukee County were at Lincoln Hills.

Please do not hesitate to contact me with any additional questions or requests for information.

- **What emergency provisions are available to the Board or the Executive to address alternatives to the Irma facilities, and what additional authority or funding would those emergency provisions make available?**

By ordinance, if the County Board by resolution "determines that damage or threatened damage creates an emergency in which the public health or welfare of the county is endangered," then "construction, repair, remodeling or improvement contracts for any public work" do not need to go through a low-bid/qualified-bidder process. MCO 44.01. This exception could be helpful if the Board is presented with a plan to, for example, remodel vacant House of Correction dormitories or BHD space into secure juvenile detention wards. The Board could pass a resolution stating that the Lincoln Hills

¹ Other than the Mendota Juvenile Treatment Center for juveniles who were sent to Lincoln Hills but found to have mental health issues requiring treatment elsewhere.

situation constitutes an emergency and allow the work to be let to a responsible contractor without the time-consuming bidding process. I have attached a copy of MCO 44.01.

Also, either the director of transportation or the director of administration could proceed with emergency public works worth up to \$20,000 without bids in case of an emergency, reporting to the Executive and the Board within 72 hours on the action taken and why. *See* MCO 44.14, attached.

Finally, under MCO 56.30(5)(a), (attached), a department is not required to use an RFP for a professional services contract if an emergency exists, as long as there is a report to the Executive and the Board within 72 hours. This could be useful if contract staff is needed on short notice for a new secure detention facility operated by the County in place of Lincoln Hills.²

- **What funding sources would be available for emergency work?**

Funding for emergency work generally would be by two-thirds vote of the County Board, plus Executive signature or veto override, using money from a contingency fund or surplus. Under Board rules and the Open Meetings Statute, an item could be added to a Board agenda up to 24 hours before the meeting. In the case of a true emergency, as little as two hours' notice might be possible.

- **Can the County extend the Delinquency & Court Services Division's authority to hold juveniles in the MCAP program to 365 days instead of the current 180 days?**

The County Board has the ability by statute to do this, although my understanding is that DCSD does not feel that a 365-day stay in MCAP is appropriate treatment.

MCAP is the Milwaukee County Accountability Program. DCSD created MCAP as a program the courts could consider as an alternative placement instead of Lincoln Hills. The target group is juvenile males who are on court-ordered supervision who are at risk of being sent to Lincoln Hills due to violating the conditions of court-ordered supervision or because of a new offense. Youths who are not under supervision but who are at risk of being sent to Lincoln Hills may also be considered.³

Juveniles sent to MCAP are to be placed in secure detention at the County Grounds for up to 180 days, followed by a period of aftercare in the community under probation supervision with community-based supervision. A monitor is assigned to the youth from the Targeted Monitoring Program. The youth appears before the judge every 60 days for the first six months of the program to discuss his progress. Youths in detention attend regular public school classes offered at the facility. There are a number of other program features outlined at the website in the footnote.

At the time the program was approved by the County Board in July 2012, statutes authorized the Board to approve secure detention programs of up to 180 days. That authority was extended to 365 days in the 2013 budget. *See* 938.34(3)(f). My

² Note that two similar ordinance provisions allowing no-bid actions by administrators – MCO 56.30(4)(b)(3)(b) [professional services] and MCO 32.28 [purchasing] – were deleted from the ordinances last year as part of a compromise over giving final approval to energy assistance program contracts that had originally been let on an emergency basis.

³ *See* <http://county.milwaukee.gov/ImageLibrary/Public/DCSE/Policies/MCAPPolicy001.Original.pdf>

understanding is that DCSD did not return to the County Board to seek additional authorization to 365 days because MCAP is designed to be a short-term placement with extended after-care programming. It is designed as an alternative to the “deep-end,” prison-like Lincoln Hills placement, consistent with DCSD’s philosophy to place juveniles in the least restricting setting while balancing public safety. DCSD’s expressed position is that out-of-home placements are disruptive to both the child and the family, and the sooner a child is returned into the community, the less traumatization will occur both for the child and for the family. DCSD believes its limit of 180 days is reflected in programs in other counties, including Racine and Fond du Lac.

- **Can the County remove children from Lincoln Hills to some other facility?**

If a Milwaukee County Circuit Court judge sitting in Juvenile Court deems it necessary to place a juvenile at Lincoln Hills, the Wisconsin Department of Corrections acquires jurisdiction over the juvenile. Wis. Stat. § 938.505(1).⁴ Mentally ill youths sent to Lincoln Hills may then be sent to Mendota Juvenile Treatment Center, but beds there are limited.

Technically, DOC has the option to place juveniles in secure facilities other than Lincoln Hills and Mendota, such as a secured residential care center.⁵ However, as a practical matter, there are no options for DOC because current Wisconsin Department of Children and Families licensing regulations do not allow for secured residential care centers, and the old Ethan Allen secure facility in Waukesha County was closed in 2011.

DOC continues jurisdiction during aftercare,⁶ which can be compared to parole. If DOC finds violations of aftercare conditions, DOC can order return to Lincoln Hills.

Thus DOC, not our Courts, has control over placement and release of Milwaukee County juveniles at Lincoln Hills.

Removing a Milwaukee County juvenile from Lincoln Hills requires our Court to modify dispositional order and make placement with an agency other than DOC. Application for modification can come from the child (through attorney, parent, guardian or custodian), from the DA, from DCSD, or from the Court itself.

However, the request for modification of placement must include a proposal for placement in a new facility,⁷ and the new facility must be willing to accept the placement. I’m advised few facilities are willing to accept Milwaukee County placements directly from Lincoln Hills, and under current statutes they cannot be forced to accept.

⁴ Wis. Stat. § 938.505(1): RIGHTS AND DUTIES OF DEPARTMENT OF CORRECTIONS OR COUNTY DEPARTMENT. When a juvenile is placed under the supervision of the department of corrections under s. 938.183, 938.34 (4h), (4m) or (4n) or 938.357 (4) or (5) (e) or under the supervision of a county department under s. 938.34 (4n), the department of corrections or county department, whichever has supervision over the juvenile, shall have the right and duty to protect, train, discipline, treat, and confine the juvenile and to provide food, shelter, legal services, education, and ordinary medical and dental care for the juvenile, subject to the rights, duties, and responsibilities of the guardian of the juvenile and subject to any residual parental rights and responsibilities and the provisions of any court order.

⁵ § Wis. Stat. 938.357(4)(a).

⁶ The Milwaukee County Department of Delinquency and Court Services is set to take control of DOC aftercare in 2017, but that was not part of the current budget for 2016.

⁷ Wis. Stat. §§ 938.357(1)(am), 938.363(1)(a) (if request is initiated by Court).

Milwaukee County Ordinances

MCO 44.01. - Public bid required; exceptions.

All construction, repair, remodeling or improvement contracts for any public work shall be awarded by competitive bids to the lowest qualified, responsible, responsive bidder when the estimated project cost exceeds twenty thousand dollars (\$20,000.00). A responsible bidder is hereby defined as one qualified in conformance with chapter 43 and who responds to all the terms and conditions of the bid solicitation. This section shall not apply:

- (a) Where the county board, by three-fourths vote of all members entitled to a seat, provides that any class of work or any part thereof may be done directly by county work forces.
- (b) To repair or reconstruct public facilities when the county board, by resolution, determines that damage or threatened damage creates an emergency in which the public health or welfare of the county is endangered.

MCO 44.14. - Award of public works contracts (emphasis added).

- (1) The appropriate director of transportation (or designee) or the director of administrative services (or designee) shall, in his or her sole discretion, establish procedures for awarding all public works contracts where the aggregate amount of any such contract is less than five thousand dollars (\$5,000.00). **Except as provided in the preceding sentence and in subsection (4) below**, a minor public works contract less than twenty thousand dollars (\$20,000.00) may be awarded to the lowest qualified responsible bidder after solicitation of three (3) informal bids, or may be performed by county forces, provided sufficient county funds are available. Contracts greater than twenty thousand dollars (\$20,000.00) shall be awarded to the lowest, responsive, responsible bidder after solicitation of formal bids.
- (2) The appropriate director of transportation (or designee) or the director of administrative services (or designee) shall award and execute all public works contracts where the amount of any such contract is five thousand dollars (\$5,000.00) or more.
- (3) All public works contracts shall be administered by the department of public works pursuant to s. 59.52, Wis. Stats.
- (4) **In the event of any emergency where immediate action is necessary to preserve property or protect life, health or welfare of persons, the director is authorized to take any action necessary to construct or repair, provided that a report is submitted thereon to the county executive and the county board within seventy-two (72) hours.**

MCO 56.30(5)(a) Request for proposal.

(a) *When required.* When it is estimated that a contract for professional services has a value of fifty thousand dollars (\$50,000.00) and over, it is required that a request for proposal (RFP) be used to attempt to solicit a minimum of three (3) proposals. Department administrators shall give appropriate notice to prospective vendors of services to be retained. At a minimum, such notice shall include publication of an ad in a newspaper serving the Milwaukee area. The use of an RFP is discretionary for any professional services contract with a value of less than fifty thousand dollars (\$50,000.00). If an RFP is used or not, it still is required to document the process and the reasons shall be documented in writing by the administrator and retained in departmental files for a period of seven (7) years after contract completion. Documentation shall include the RFP, memos, proposals, score sheets, analyses, contracts and any other document used in determining the award of a contract.

(1) For a contract with an estimated value between fifty thousand dollars (\$50,000.00) and one hundred thousand dollars (\$100,000.00), the request for proposal procedure need not be used if it is determined by an administrator to be cost effective to the county not to seek proposals. Such action shall be reported, in writing, with an explanation as to the benefits derived from not seeking proposals, to the county board when the contract is submitted for approval.

(2) The request for proposal procedure need not be used for a contract with an estimated value of fifty thousand dollars (\$50,000.00) or more, if immediate action is required to preserve property or protect life, health or welfare of persons. Such action shall be reported in writing within forty-eight (48) hours after the initial emergency action to the county board, county executive and department of administration. Payments shall not be restricted by normal budget limitations. Appropriation transfers, if required, shall be initiated in accordance with fiscal procedures.

(3) The request for proposal procedure must be used for all contracts with an estimated value of one hundred thousand dollars (\$100,000.00) or more unless action is required to protect property or protect life, health or welfare of persons, or in circumstances where contractual services are approved by specific county board action.