

From: Smith, Jeff

Sent: Wednesday, December 08, 2010 11:57 AM

To: 'Kozicki, David A., Sheriff'; '2862@sanjoseca.gov'; 'Gordon, Ken';

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Gibbs, John; Flores Shelton, Andrea; DeMellopine, Pattie; Chaudhry, Rabia; Graves, Gary

Cc: 'atilles@shulmanrogers.com'; McCammon, Bill, ACFD; Lucia, Rich, Sheriff; Houghtelling, Dennis, Sheriff

Subject: RE: BTOP Intent to Participate

Dear Mr. Kozicki,

Your email of 12/7/10 (attached) is quite a peculiar ultimatum. It raises a number of very troublesome issues that I have addressed to some extent within this e-mail. In order to be certain that our response to your ultimatum is not misunderstood, I have taken the liberty to direct a copy of this letter and your email directly to Assistant Secretary Strickling of the NTIA and to Mr. Zinser of the OIG.

You have asked if we intend to participate in the BTOP grant that was awarded to Motorola because the company and Sheriff Ahern asserted that many Bay Area governmental jurisdictions (including Santa Clara County) were partners in the application.

The answer to this question is quite simple. The County of Santa Clara supports the ultimate goal of this project and intends to participate in this program **unless** the following statements are true or other information is brought to our attention raising additional concerns about the integrity of this program and/grant:

1. The NTIA application fraudulently claimed that it was made by a public-private partnership, and the parties to the application knew at the time that Sheriff Ahern did not have the authority to represent all of the legitimate governmental entities that were mentioned in the application.
2. The technical details of the application were inappropriately shielded from the public partners (and the public in general) in the application in order to hide the true cost of the total project and prevent the governing bodies of the agencies from engaging in a full consideration of required

resources and making an appropriate formal allocation of resources to effectuate the project.

3. The Bay Area UASI General Manager, without authority from the Approval Authority, utilized UASI staff and inappropriate processes in order to rig a local RFI process that favored her prior employer, Motorola.
4. The Motorola response to the RFI was not the most economical, qualified response.
5. In order to avoid the procurement requirements of the fiscal agent for UASI (the City and County of San Francisco) and the explicit requirements of the UASI MOU, staff members inappropriately transferred UASI funds designated for a pilot broadband program to the Alameda Sheriff.
6. The rights to the 700 MHz wavelength are held by the Cities of Oakland, San Francisco, and San Jose, and cannot be used or unilaterally transferred without the consent of these Cities despite Sheriff Ahern's false representation that he could transfer those rights to Motorola as part of the application and project build out.
7. The true local cost of the BTOP project has not been honestly or truthfully communicated to the involved governmental jurisdictions—and it is far higher than has been represented.
8. Because of the use of improper processes by BAUASI staff, the governing bodies of all of the involved Bay Area jurisdictions have not approved the use of their public resources for this project in a manner consistent with state and local law.
9. Relevant Federal law and regulations suggest that the NTIA should declare the Motorola application null and void because it was misleading and inaccurate as to critical issues of substance.

If there is any evidence to believe that any of these statements are true, please let me know. I will expect that our staff is invited to and welcomed at ALL planning sessions for the project.

Now that I have answered your question, please answer mine below:

- I. By what authority do you threaten to exclude any Bay Area governmental jurisdiction from the BTOP program?
- II. Are you, or is anyone in the Alameda County Sheriff's office, an agent or representative for the NTIA applicant—Motorola?
- III. Do you speak for the NTIA, or represent the NTIA? If so, how were you chosen to represent the NTIA?
- IV. Don't you think it might have been a good idea to ask for this letter before the Motorola application was made, and before Sheriff Ahern made representations that he spoke for many of the Bay Area governmental agencies?

V. Is it true that Motorola was a major financial contributor to the Urban Shield program run by the Alameda Sheriff's office? If so, don't you think that creates an appearance of a conflict of interest for the office?

Also, please forward to me, as you must pursuant to the California Public Records Request Act, records of any and all communications (within the last three years) regarding BTOP, BAUASI, Project Cornerstone, or BayRICS that have occurred between the Alameda Sheriff's office (including any representatives of the Sheriff and the OESHS) and any of these entities/individuals—Motorola, NTIA, Laura Phillips, Clement Ng, or any of their representatives.

Thanks so much, I look forward to working with you in the future.

Sincerely,

Jeffrey V. Smith, MD, JD
County Executive
Santa Clara County

PS: I believe that any effort to exclude a BAUASI member from BTOP process or project would be highly likely to trigger litigation. Thus, I recommend that you avoid such action. I will be updating the Santa Clara Board of Supervisors about this issue during closed session on Monday—under the heading of potential litigation. You will get more written information next week.

(hard copy to follow)