

# **EXHIBIT 1**

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# Scott Kubly

3rd

Director at Seattle Department of Transportation  
Greater Chicago Area | Transportation/Trucking/Railroad

Previous Alta Bicycle Share, City of Chicago Department of Transportation, District of Columbia Department of Transportation

Education University of Pennsylvania - The Wharton School

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## Background



### Experience

#### Director

Seattle Department of Transportation  
July 2014 – Present (1 year 11 months) | Greater Seattle Area

#### Senior Advisor

Alta Bicycle Share  
January 2014 – July 2014 (7 months) | Chicago



#### Managing Deputy Commissioner

City of Chicago Department of Transportation  
September 2011 – December 2013 (2 years 4 months) | Chicago

#### Associate Director

District of Columbia Department of Transportation  
March 2009 – July 2011 (2 years 5 months)

Expanded DC Circulator bus service by 13% through implementation of turnkey contracting. Secured funds for a 25% expansion in FY2011.

Developed industry-leading performance dashboard. <http://circulatordashboard.dc.gov/>

Developed DC Streetcar system plan, built a dedicated team, and initiated construction on 2.75 miles of streetcar line in the District of Columbia and planning on a 0.75 mile extension.

Secured \$50M in capital funds for the DC Streetcar system in FY2010 budget

Formulated and implemented successful legislative strategy to overturn a 120-year ban on overhead wire streetcar power supply.

Expanded the District's bikesharing system by a factor of 10, increasing the number of bikes to 1,000, increased usage by a factor of 25.

Led agencywide restructuring that reduced agency headcount (800 FTE) and personnel cost by 12% without a diminution of service levels or quality.

#### Program Manager

District of Columbia Office of the City Administrator  
January 2007 – March 2009 (2 years 3 months)

Delivered the first "clean" audit in five years while acting as Director of the Office of Unemployment Compensation (June 2008 – March 2009). Responsible for \$20M, 80 person operating unit and \$150M in annual transfer payments and \$100M in tax collection.

## People Also Viewed



**Leah Treat**  
Director at Portland Bureau of Transportation



**Lynn Peterson**  
Transportation Planner



**Dongho Chang**  
City Traffic Engineer at City of Seattle



**Gabe Klein**  
Special Venture Partner at Fontinalis Partners, LLC



**Paulo Nunes-Ueno**  
Principal Consultant at Nunes-Ueno Consulting, LLC



**Sam Zimbabwe**  
Associate Director, Policy, Planning and Sustainability at District Department of Transportation



**Hannah McIntosh**  
Chief of Staff at Seattle Department of Transportation



**Kevin O'Neill**  
Planning and Urban Design Manager at Seattle Department of Transportation



**Quang Nguyen, PE**  
Traffic engineer II at City of Shoreline



**Kristen Simpson**  
Move Seattle Manager and Special Projects at City of Seattle, Department of Transportation

## How You're Connected



You

x

## **EXHIBIT 2**



## Rival: City's bike-sharing program 'tainted'

BY FRAN SPIELMAN City Hall Reporter fspielman@suntimes.com March 17, 2012 12:46AM

<http://www.suntimes.com/11341996-417/rival-citys-bike-sharing-program-tainted.html>

CHICAGO - AUGUST 6: A bicyclist rides near protective concrete barriers in front of the Dirksen Federal Building August 6, 2004 in Chicago, Illinois. A man has been charged with planning to bomb the building. (Photo by Tim Boyle/Getty Images)

A rival bidder is trying to put the brakes on Chicago's plan to launch the nation's largest bike sharing program — by claiming the path was greased for an Oregon company where Mayor Rahm Emanuel's transportation commissioner once worked.

Josh Squire, owner of Bike Chicago, charged that Transportation Commissioner Gabe Klein "tainted the process" by failing to disclose his prior relationship with winning bidder Alta Bicycle Share and did not really recuse himself from the selection process as he claimed to the Chicago Sun-Times.

Squire, who plans to file a formal protest, further charged that:

- Klein received carbon copies of all correspondence tied to the bike sharing competition and hand picked Chicago Department of Transportation representatives on the selection committee. Rival bidders were told the five-member committee would "recommend" a contractor, but that Klein would have the final say, Squire said.
- Klein and his managing deputy Scott Kubly had conversations with Alta President Mia Birk after the city issued its request for proposals, but before bids were due, in violation of city procurement rules. It happened when Birk was seated at the commissioner's table at a 25th anniversary celebration for the Active Transportation Alliance. City Hall insists the selection process was not discussed and that Kubly was not at the table.
- The city issued a "requests for proposal" on Sept. 25 with a quick, 30-day turnaround, attracted only three bidders, then cancelled the bids and issued a second request without releasing the first-round proposals or explaining why they were cancelled.

City Hall insisted that "major specification changes" were made in the second round that altered the number of bikes-per-station, changed the compensation model from profit-sharing to performance-based and required docking stations to accept credit cards. First round bids were not released because it could have given someone an "unfair competitive advantage," the city said.

- During their stint together in Washington D.C., Klein and Kubly awarded a no-bid bike sharing contract to Alta by piggybacking onto an existing Arlington, Va., contract. The Emanuel administration said the move was made to save money and make the process more efficient — not to favor Alta.

- The son-in-law of Robert Wislow, CEO of U.S. Equities Realty, went to work for Alta and lobbied CDOT officials for the bike sharing contract without registering as a lobbyist. U.S. Equities is the Chicago Park District's master concessionaire. Bike Chicago has long held the Park District's bike rental contract at Navy Pier, North Avenue Beach and Millennium Park.

City Hall says Kubly had no idea who Bob Wislow was, "never once had a discussion" with Wislow's son-in-law about the request for proposals and stopped talking to the son-in-law "the moment he realized" the family had business dealings with the city.

Klein acknowledged this week that Alta paid him \$10,000 in 2011 to analyze the company's response to New York City's bike sharing request for proposals. The commissioner claimed that he recused himself from the Chicago selection process for that reason.

Squire doesn't buy it and released the correspondence — with Klein carbon-copied — that he says proves it.

"When you're a paid consultant by the bidder who wins, how is that a fair process? And even if he did remove himself from the process, why didn't they tell us that from the beginning? Everybody in the industry is shocked," Squire said.

"I'm so happy Chicago is doing bike sharing. I just wish everybody had a fair shot instead of there being a predetermined result. Why did they re-issue the bid? What was wrong with the first bid? Too many strange things happened here. It needs to be looked into."

A spokesman for the city's Department of Transportation countered that Klein "had absolutely no input" in the selection of Alta and was not obliged to "announce" his past relationship with the company to bike sharing bidders.

"The bike share procurement process was fair and competitive," the spokesman said, calling Alta "by far the best respondent ... to run a bike share program of Chicago's size and scope."



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Chicago, Illinois 60657  
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312.540.1800 fax  
josh@bikechicago.com  
bikechicago.com

April 26, 2012

**VIA HAND DELIVERY**

Jamie Rhee  
Chief Procurement Officer  
Chicago Department of Procurement Services  
City of Chicago  
121 N. LaSalle St., Room 403  
Chicago, IL 60602

Re: ***RFP for the Purchase, Installation and Operation of a Bicycle Sharing System  
in the City of Chicago - Specification No.: 100320A***

Dear Ms. Rhee:

This bid protest is being submitted by Bike Chicago, in accordance with the Solicitation and Contracting Process Protest Procedures applicable to Bids, Requests for Qualifications and Requests for Proposals (the "Protest Procedures") set forth by the Chicago Department of Procurement Services (the "Department"). As fully set forth herein, the Department violated multiple statutes and local regulations by awarding the bicycle sharing contract to Alta through a non-transparent process involving undisclosed insider dealings. As a result, the City will initially spend millions more dollars than necessary to implement its bicycle sharing system and Chicago taxpayers face the risk of being forced to bail-out a contractor (Alta's supplier and partner, Bixi) with a proven track-record of failure.

**1. Name, address, telephone and facsimile numbers of the protestor:**

Josh Squire  
Bike Chicago  
3240 N. Sheffield Ave. #1  
Chicago, IL 60657  
T: (773) 251-9757  
F: (312) 540-1800



**2. Number of the specification/contract solicitation:**

100320-A – Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago (the “RFP”)

**3. All information indicating that the protestor is an interested party:**

The Protest Procedures define “Interested Party” as “any person (a) who is an actual bidder or prospective bidder in the procurement involved; (b) whose direct economic interest would be affected by the award of the contract or by a failure to award the contract; and (c) who demonstrates compliance with the procedures, the terms of the invitation for Bids, and the contract documents (if bid) or Request for Qualifications (RFQ) or Request for Proposals (RFP), as applicable.”

Bike Chicago was an actual respondent to the RFP. Further, Bike Chicago’s response was in full compliance with the procedures and terms of the RFP. A copy of Bike Chicago’s response to the RFP is attached hereto as Exhibit A.

**4. A written statement of the grounds for the protest and in particular the Federal or State law or local regulation alleged to have been violated. This statement should be accompanied by any relevant support documentation. Include a statement regarding the course of action the protesting party desires that the Chief Procurement Officer takes.**

The process undertaken by The City of Chicago with regard to the RFP, violated various sections of the Chicago Municipal Code, the Illinois Municipal Purchasing Act, the Illinois Open Meetings Act, and numerous local regulations. Perhaps most egregious here, are the various violations of the public trust placed in the City of Chicago and its elected and appointed leadership team.

**A. RELEVANT BACKGROUND**

**1. The Bike Chicago Team**

In order to respond to the RFP with the best overall proposal to the City, Bike Chicago formed a team of qualified partners who could implement and operate the best possible bike sharing system for Chicago at the lowest possible start-up costs and with the highest possible annual revenue going back to the City. The team includes: (1) Bike Chicago; (2) I-Go Car Sharing; (3) B-Cycle, LLC; (4) Jasculca-Terman and Assoc.; (5) Quantum Crossings, LLC; (6) Doejo, LLC; and (7) West Town Bikes. Critical to this protest is an understanding of the strength and experience of both Bike-Chicago and B-Cycle.

**a. Bike Chicago**

Bike Chicago has been operating in Chicago since 1993, is the originator of bicycle sharing in Chicago and is the only local Chicago-based company that responded to the RFP. Bike Chicago

currently operates bicycle rental, bicycle sharing, Segway tours, concessions and bicycle repairs throughout Chicago. Some of Bike Chicago's representative locations include: Millennium Park, Navy Pier, Wabash and Wacker, 63<sup>rd</sup> Street Beach House, Museum Campus, Oak Street Beach, Chicago River Riverwalk, and Foster Beach.

**b. B-Cycle, LLC**

B-Cycle was established in 2008 by strong U.S. partners, including Trek Bicycle Corporation, which is headquartered 90 minutes north of Chicago. B-Cycle's goal is to change the way city dwellers and visitors get around. Currently, B-Cycle operates bicycle sharing systems in Chicago, Illinois; Boulder, Colorado; Denver, Colorado; Omaha, Nebraska; Des Moines, Iowa; Madison, Wisconsin; San Antonio, Texas; Louisville, Kentucky; Spartanburg, South Carolina; Honolulu, Hawaii; and Broward County, Florida. As fully described below, Bike Chicago's team presented more experience and capabilities than the winning bidder, Alta, and its proposal would have cost the City nearly \$8 million less to implement the requested bike sharing system than the contract awarded to Alta.

**2. The Initial RFP, Specification No. 100320**

In September 2011, the Department issued Specification No. 100320, Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago ("RFP #1"). (See RFP #1, attached hereto as Exhibit B). Three respondents: Bike Chicago, Alta and Tracetel all submitted proposals to RFP #1, but on December 2, 2011, the Department notified all three respondents that it had cancelled RFP #1 and decided to instead, re-issue a new RFP. (See December 2, 2011 correspondence, attached hereto as Exhibit C). Notably, the Department's correspondence also set forth that all three responses to RFP #1 were deemed responsive and therefore encouraged all three respondents to resubmit proposals. However, as discussed more below, Alta's proposal never should have been deemed responsive and Alta should have been disqualified after its submission in response to RFP #1.

**3. The New RFP, Specification No. 100320-A**

On December 5, 2011, the Department advertised a new bicycle sharing RFP, Specification No. 100320-A (the "RFP"), which is the subject of the instant protest. (See the RFP, attached hereto as Exhibit D.) While the RFP is nearly identical to RFP #1, there are slight immaterial changes including: (1) a change in the dock-to-bike ratio; (2) a change to allow all bike sharing stations to accept credit cards; (3) a change in the proposed pricing structure, removing profit sharing and replacing it with a proposed operating cost and proposed performance incentives; and (4) a change in the due date for submission of the proposals.

The same three respondents that submitted proposals to RFP #1 also submitted proposals in response to the RFP. Alta was selected as the most qualified respondent and was the only respondent invited to negotiate contract terms with the City.



**4. Bike Chicago's Proposal Was Significantly Less Expensive Than The Contract Negotiated Between Alta And The City**

Alta was not the lowest responsible bidder. In fact, Bike Chicago's RFP Proposal (Exhibit A) was superior to Alta's contract in every quantitative category. (See Chicago City Ordinance No.: 02012-1342, attached hereto as Exhibit E.) Between equipment capital costs, installation costs and start-up costs, Bike Chicago's proposal was \$7,994,719 lower than Alta's contract with the City<sup>1</sup>:

	<b>Proposed Alta/City of Chicago Agreement</b>	<b>Bike Chicago's RFP Proposal</b>	<b>Difference In Favor Of Bike Chicago's Proposal</b>
<b>Equipment Capital Costs</b>	\$17,027,714	\$11,181,350	\$5,846,364
<b>Installation Costs</b>	\$2,454,755	\$990,000	\$1,464,755
<b>Start-Up Costs</b>	\$1,558,700	\$875,100	\$683,600
<b>Total</b>	\$21,041,169	\$13,046,450	\$7,994,719

(See Exhibit J.)

In addition to costing the City nearly \$8 million more in initial procurement and start-up costs, Alta's proposal also exposes Chicago to significant financial risk during year 1 and beyond. For example, under Alta's proposal, in year 1, the City is responsible for 90% of the shortfall between actual costs incurred and revenue. (See Exhibit K.) This risk to the City was not present in Bike Chicago's proposal.

After year 1, under Alta's proposal, the City will continue to bear unnecessary financial risks, whereas Bike Chicago's proposal was favorable to the City. (See Exhibit K.) For example, subsequent to year 1, under Alta's plan, Alta keeps up to 70% of annual revenue, whereas under Bike Chicago's proposal, between 50-70% of revenues are paid to the City. (See Exhibit K.)

<sup>1</sup> In violation of the Municipal Purchasing Act and the Freedom of Information Act ("FOIA"), the Department has twice refused to provide Bike Chicago's counsel with copies of Alta's RFP proposal. In response to its first FOIA request (Exhibit F) the Department refused to produce Alta's responses pursuant to 5 ILCS 140/7(1)(h). (See Exhibit G.) In response to its second FOIA request for Alta's responses (Exhibit H), made after the City Council vote on April 18, 2012, the Department responded and said it needed a five-day extension of time to respond to the request. (See Exhibit I.) Accordingly, all financial comparisons contained herein are made between Bike Chicago's RFP response (Exhibit A) and the financial details contained in Ordinance #02012-1342. (Exhibit E.)

Finally, there is the issue of loss caps contained in the Alta contract. Under Alta's plan, Alta has the right each year to renegotiate a cap on its annual losses and if operating costs exceed operating revenues, Alta is only responsible for absorbing losses up to a pre-negotiated cap, exposing the City of Chicago to unlimited risk. (See Exhibit K.)

#### **5. Alta Did Not Disclose The Financial Instability And Prior Failures Of Its Partner, Bixi**

Alta's Canadian supplier of bicycles for the Chicago program, Bixi, has a storied history of financial failure and government-funded bail-outs. Without a complete history of Bixi's poor past performance and mismanagement, it was impossible for the City to make an informed decision to select Alta.

Bixi was established solely with public funds by virtue of various loan guarantees by the City of Montreal in favor of Bixi. Bixi's operations include two components: (1) operation of the Montreal bike share program; and (2) exportation of bicycle equipment for other bike share programs outside of Montreal.

Beginning in 2010, Bixi came under scrutiny in Montreal due to its large operating losses and use of public funds to pursue commercial export activities. Specifically, in a report dated December 31, 2010, the Auditor General of Montreal reported that: (1) the Montreal City Council had not provided the necessary legislative authority to allow SCSM to incorporate Bixi and operate Montreal's Bike Share Program, and (2) that as a publicly funded entity, Bixi was not authorized to market and export bicycle equipment and services outside of Montreal as a commercial enterprise (*see* Auditor Report attached hereto as Exhibit L). Section 3.2.2 of the Audit Report also identifies Bixi's extensive operating losses since its inception. According to the Audit Report, Bixi's financial statement as of January 31, 2010 showed an operating loss of \$6,900,000, and accumulated deficits of \$7,800,000. (Exhibit L, p. 93.)

Further, on May 17, 2011, Montreal was forced to provide a loan of \$37M to Bixi, in addition to guaranteeing a line of credit for Bixi in the amount of \$71M. Notably, in conjunction with this financial bailout, Montreal required Bixi to divest itself of its commercial bike export business, and required that any purchaser of Bixi's export business compensate Montreal for prior deficits incurred in operating the Bixi system. (Exhibit L, p. 95-96.)

As such, Bixi's bike export business is currently for sale, however, any potential purchaser will be required to compensate Montreal for prior deficits in operating the Bixi system. (Exhibit L, p. 96-97.) Currently, Bixi's export business remains unsold. Further, in November 2011, Bixi's President, Roger Plamondon, announced his resignation. Since the announcement of Plamondon's resignation, 5 of Bixi's key board members also have resigned.

As fully set forth above, Bike Chicago has been stone-walled by the Department in its attempts to rightfully review Alta's RFP response. However, it is Bike Chicago's assumption, that Alta's RFP response is silent with respect to all of the risks and problems associated with its partner/supplier, Bixi.

All of the negative history and future risks associated with Bixi should have been directly compared with Bike Chicago's proposal, including the strength of Bike Chicago's supplier, B-Cycle. Alta's failure to disclose ongoing problems with Bixi was material and prohibited the Department, the evaluating committee, and the City Council from properly considering the strength of the respective bids before the selection of Alta was made.

**B. THE RFP AND SELECTION PROCESSES VIOLATED SEVERAL SECTIONS OF THE CHICAGO CODE OF GOVERNMENTAL ETHICS, CHAPTER 2-156 ET SEQ.**

Chicago's Code of Ethics provides safeguards to protect Chicago's citizens from inside deals and breaches of the public trust. When the Code of Ethics is violated, as it was here by the Director of the Department of Transportation ("DOT"), Gabe Klein ("Klein"), and his subordinates, the citizens of Chicago end up with a contract that favors the contractor (Alta) and places the risk of significant financial burden on the taxpayers.

The RFP process relating to the bike share program and the ultimate selection of Alta as the preferred contractor by the Department was replete with evidence of insider dealing and the appearance of impropriety, all of which constitute violations under Chicago's Ethics Code. These improprieties begin at the top, with Klein, and extend all the way down to a former DOT employee and current Alta employee who allegedly wrote RFP #1. As fully set forth herein, Klein violated at least four separate subsections of the Code of Ethics and likely also violated at least two subsections involving financial disclosures.

**1. Klein Likely Violated 2-156-150(a)(iii), Statements Of Financial Interest And 2-156-160, Content of Statements.**

Pursuant to the Code of Ethics, each appointed official (including Klein), is a reporting individual, required to file with the Board of Ethics, statements of financial interest. Pursuant to the Code, these statements shall contain:

- (a) The name, address and type of any professional, business or other organization (other than the city) in which the reporting individual was an officer, director, associate, partner, proprietor or employee, or served in any advisory capacity, and from which any income in excess of \$2,500.00 was derived during the preceding calendar year;
- (b) The nature of any professional, business or other services rendered by the reporting individual ... and the name and nature of the person or entity (other than the city) to whom or to which such services were rendered if, during the preceding calendar year, (1) compensation in excess of \$5,000.00 was received for professional or other services by the reporting individual ...
- (d) The name of any unit of government, other than the city, which employed the reporting individual during the preceding calendar year...
- (i) The name of any person doing

business with the city in relation to which person the reporting individual had a financial interest during the preceding calendar year, and the title or description of any position held by the reporting individual in such person;

2-156-160, Content of statements.

It is Bike Chicago's understanding that Klein failed to make complete disclosure to the Board of Ethics as required by the Code, and that his conflict of interest was not publicly disclosed until the Chicago *Sun-Times* printed a story about it on March 17, 2012. (See *Sun-Times* article, attached hereto as Exhibit M.) The following timeline and relationship between Klein, his deputy, Scott Kubly, and Alta, would have been revealed prior to Alta's selection, had such disclosures been made:

- Prior to his appointment as Director of the Chicago Department of Transportation in **April 2011**, Klein was employed by Washington, D.C. as its Director of Transportation for approximately two years. (See *Washington Post* article, attached hereto as Exhibit N.)
- During Klein's tenure in D.C., his Deputy Director was Scott Kubly. (See Exhibit M.)
- While in Washington, D.C., Klein and Kubly launched Capital Bikeshare. This was a no-bid contract given by Klein and Kubly to Alta for the largest bikeshare program in the United States as of that time. (See Exhibit M.)
- **December 8, 2010** - Klein left the D.C. Department of Transportation. (See Exhibit N.)
- **January, 2011 - March, 2011** - Klein worked as a paid consultant for Alta Bike Share. In his role as Alta's paid consultant, Klein assisted Alta in responding to New York City's bicycle sharing RFP. (See Exhibit N.)
- **April 6-8, 2011** - Klein was hosted in Portland, Oregon (the location of Alta's headquarters) by the Sustainable Cities Initiative at the University of Oregon ("SCI"). During that three-day visit, Klein participated in a public seminar with Alison Cohen of Alta Bicycle Share on the "*Lessons Learned from Capital Bikeshare*." SCI wrote, "On Friday, Klein headed up to Portland, where he lectured with Alison Cohen and Mia Birk [**Alta's President**] as part of Portland State University's Transportation Seminar Series. The night ended with a downtown happy hour hosted by Rail-Volution, a national movement working to develop livable communities and transit-oriented developments." (See Exhibit O.)
- **April 19, 2011** - Mayor Rahm Emanuel announced that Klein would become the Commissioner of the Chicago Department of Transportation. (See Exhibit P.)
- **July 16, 2011** - Scott Kubly left D.C. to work for Klein in Chicago as his Deputy Commissioner. Kubly previously had worked closely with Alta on the implementation of bike share in

Washington, D.C. Kubly would later be appointed by Klein as a voting member of the evaluation committee for the RFP (so much for complete recusal by Klein).

- **October 13, 2011**, while the RFP was pending, Klein and Kubly attended the Active Transport Alliance (“ATA”) anniversary celebration. This dinner was sponsored by a number of organizations, including respondents to the RFP. During this event, while the RFP was pending, Klein and Kubly were seen having private conversations with Mia Birk, Alta’s CEO, in violation of the City’s procurement rules and ethical rules. Birk and Klein both were speakers at the event and sat beside one another at the celebration dinner. (See Exhibit Q.)
- **March 14, 2012** - Klein’s paid consulting work for Alta and the relationship with its principal, Birk, was first publically disclosed when he was quoted in the Chicago Sun-Times as saying, “I did a very limited engagement to look at their [Alta] response to the New York City RFP, which I did help them with. Which is why I did recuse myself from the entire Bike-Sharing RFP” (See Exhibit N.)

However, Klein’s disclosure of a conflict of interest, made to the Sun-Times on March 14, 2012, did not satisfy his disclosure requirements under the Code of Ethics. Klein was required to make his disclosure to the Board of Ethics, and neither he, nor his staffers, particularly Kubly, should have been allowed to participate in the RFP in any capacity.

Although Klein purports to have recused himself from the entire RFP and selection process, Kubly, at Klein’s direction, participated as a member of the evaluation committee. Furthermore, Klein met with prospective bidders (including Bike Chicago) prior to the release of the RFP to discuss bike sharing in Chicago, and Klein also was a carbon copy recipient on correspondence sent by the Department regarding RFP #1 and the RFP. (See Exhibit C.) Alta ultimately was awarded the contract by the City, even though its proposal is much more expensive and its supply partner, Bixi, has suffered significant financial losses and currently is up for sale. Bike Chicago’s response contained far lower procurement costs, higher revenue sharing and far less risk to the City over time, yet Alta, the company that previously employed Klein, was awarded the contract.

## **2. Klein Violated Section 2-156-111, Prohibited Conduct, When He Hired Jeremy Pomp To Write RFP #1**

In June, 2011, Klein violated the Code of Ethics when he hired Jeremy Pomp, previously an Alta employee working for Alta in D.C. on Capital Bikeshare, to draft RFP #1, knowing that Alta intended to respond to RFP #1.

No elected official, or the head of any city department or agency, shall retain or hire as a city employee or city contractor any person with whom any elected city official has a business relationship. For purposes of this section, “business relationship” shall have that meaning attributed to it in Section 2-156-080(b)(2)(ii) of the Municipal Code.



2-156-111, Prohibited Conduct.

At the time that Pomp was hired by Klein, Pomp was just a few months removed from his time spent as an Alta employee working in Washington, D.C. on Capital Bikeshare, and Klein had just completed his work as a Paid Alta consultant. It is clear that Pomp was hired by Klein to draft RFP #1, and as soon as RFP #1 was completed, Pomp left the City of Chicago to return to his employment with Alta. (See Exhibit R.) Clearly, Pomp's hiring by Klein constitutes an ethical violation that should have disqualified Alta.

**3. Section 2-156-100 Of The Code Of Ethics, Post-Employment Restrictions On Assistance And Representation Also Was Violated During The RFP Process**

Incredibly, Alta currently employs Pomp, a former City of Chicago employee who wrote RFP #1. This was never disclosed by Alta, nor Klein, before the contract was awarded.

No former official or employee shall, for a period of one year after the termination of the official's or employee's term of office or employment, assist or represent any person in any business transaction involving the city or any of its agencies, if the official or employee participated personally and substantially in the subject matter of the transaction during his term of office or employment; provided, that if the official or employee exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract.

2-156-100, Post-employment restrictions on assistance and representation.

Here, Jeremy S. Pomp, a former consultant at Capital Bikeshare (the Alta-owned bicycle share operator that was granted a no-bid bicycle share contract in Washington, D.C. by Klein and Kubly) was hired by Klein in June, 2011 to work for the Chicago Department of Transportation. According to Pomp's resume, he "drafted \$20M Chicago Bike Share RFP and financial model; conducted interviews of bike share coordinators and consultants across the U.S. and developed strategic plan for a successful launch of Chicago Bike Share in 2012." (See Exhibit R.)

In August 2011, immediately after leaving his post with the City of Chicago Department of Transportation, Pomp was named General Manager of Bike Chattanooga, an Alta Bicycle Share operation. (See Exhibit R.)

**4. Klein and Kubly Violated Section 2-156-130, Improper Influence, By Presenting Alta To The City Council**

No official or employee shall make, participate in making or in any way attempt to use his position to influence any city governmental decision or action in which he knows or has reason to know that he has any economic interest distinguishable from its effect on the public generally.

No elected official, or any person acting at the direction of such official, shall contact either orally or in writing any other city official or employee with respect to any matter involving any person with whom the elected official has a business relationship, as defined in Section 2-156-080(b)(2). In addition, no elected official may participate in any discussion in any city council committee hearing or in any city council meeting or vote on any matter involving the person with whom the elected official has a business relationship.

2-156-030, Improper influence.

On April 13, 2012, Kubly, acting on Klein's behalf and at Klein's discretion, and Deputy Commissioner Harney made a presentation to the City Council Committee on Pedestrian and Traffic Safety advocating for the authorization of the proposed Alta contract. While Klein did not testify before the City Council, he instead directed Kubly to participate in the presentation, wherein Klein, through Kubly, recommended to the Committee that the City Council authorize the execution of a contract between the City and Alta. This presentation constitutes yet another blatant violation of the Code of Ethics.

**C. THE RFP AND SELECTION PROCESSES VIOLATED SEVERAL SECTIONS OF THE ILLINOIS MUNICIPAL PURCHASING ACT FOR CITIES OF 500,000 OR MORE POPULATION 65 ILCS 5/8-20, ET. SEQ.**

The Municipal Purchasing Act (the "Act") protects Illinois taxpayers from awarding contracts to insiders who seek to use their connections, rather than their competitive bids to generate business from the City. Here, in violation of the Act, the City has awarded a contract to Alta, a contractor with business ties to Klein even though Alta's proposal will cost the City many millions more than Bike Chicago's proposal.

**1. Violations of 65 ILCS 5/8-10-3, Purchase Orders and Contracts; Competitive Bids**

... all contracts ... shall be let by free and open competitive bidding after advertisement, to the lowest responsible bidder, or in the appropriate instance, to the highest responsible bidder, depending upon whether such municipality is to extend or to receive money.

65 ILCS 5/8-10-3, Purchase orders and contracts; competitive bids.

Here, as fully set forth above, Bike Chicago's proposal contained an initial procurement cost of nearly \$8 million less than Alta's. (See Exhibit J.) Furthermore, Alta's proposal contains long-term financial risks for the city that are not contained in the Bike Chicago proposal. (See Exhibit K.) Accordingly, pursuant to the Purchasing Act, Bike Chicago and not Alta should have been selected and awarded the contract.

**2. 65 ILCS 5/8-10-9, Opening Bids, Was Violated When The Department, CDOT And The Committee On Pedestrian And Traffic Safety All Refused To Release Alta's Bid To The Public**

... all such bids shall be open to public inspection in the office of the purchasing agent for a period of at least 48 hours before award is made.

65 ILCS 5/8-10-9, Opening of bids

In this case, the earliest date that the contract could have been awarded to Alta was on April 18, 2012, when the City Council voted to authorize the execution of a contract with Alta; yet the three responsive bids were kept from the public domain prior to April 18, 2012. In fact, as of the date of this filing, the Department still refuses to release the responses to Bike Chicago.

On March 15, 2012, the Department of Procurement Services sent me a letter, informing me that Bike Chicago was not selected as the most highly qualified respondent to the RFP. (See Exhibit S.) In that letter, I was instructed "If you have any questions regarding this RFP, you may submit a formal written request to review documents under the Freedom of Information Act."

On or about March 22, 2012, through its legal counsel, Bike Chicago submitted a FOIA request to the Department of Procurement Services. (See Exhibit F.) One of the items requested was a copy of Alta's response to the RFP. The request was denied by the Department of Procurement Services on March 29, 2012, based on FOIA exemption 5 ILCS 140/7(i)(h). (See Exhibit G at p. 7.) A request also was made for copies of Alta's bid to the prior related, but canceled RFP Specification No. 100320, but that request also was denied for the same reason. Bike Chicago was informed that copies of bid and proposal documents would not be made available until *after* a final contract was awarded.

Requests under FOIA for Alta's bid also were made to the Department of Transportation and the Chicago City Council Committee on Pedestrian and Traffic Safety. (See Exhibits T and U.) Each of those requests similarly were denied based on FOIA exemption 5 ILCS 140/7(i)(h). (See Exhibits V and W.)

The failure to make the bids public prior to the award of the contract is of particular importance in this case, where the Chicago City Council was required to authorize the Department's execution of the contract with Alta. By withholding the competing bid from the public (and presumably from members of the City Council), it was impossible for an educated decision to be made prior to the final award on April 18, 2012. Furthermore, increased transparency in procurement, a stated goal of the Department and of Mayor Emanuel, was not met here. In fact, as fully set forth herein, this process was replete with secrets. The City Council voted on Ordinance #02012-1342 while operating in a bubble, and voting based solely on information provided to it by Klein's staff, when Klein had a conflict of interest. Even as of the filing of this protest, the Department still refuses to produce copies of Alta's RFP response. (See Exhibit I.)



#### **D. VIOLATIONS OF THE ILLINOIS OPEN MEETINGS ACT 5 ILCS 120/1 ET SEQ.**

In addition to violations of the Act, the contract also was awarded in violation of the Illinois Open Meeting Act (the "OMA"). Pursuant to the OMA, "[a]n agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." 5 ILCS 120/2.02, Public notice; agenda.

Here, the Committee on Pedestrian and Traffic Safety did in fact meet at 10:00 A.M. on April 13, 2012. Ordinance No. 02012-1342 was item number one on the agenda for that meeting. However, the agenda was not posted 48 hours in advance of the meeting as required by the OMA. Instead, the agenda was file-stamped by the City Clerk at 11:50 A.M. on April 13, 2012 (only 46 hours prior to the meeting, in violation of the open meetings Act). (See Exhibit X.) Worse yet, the agenda was not posted or made available online by the City Clerk until approximately three hours after it was file-stamped, in further violation of the OMA. Accordingly, the meeting was held and the RFP was discussed without opposition, in violation of the OMA. This late notice and rushed hearing follows the pattern of non-transparency that was displayed throughout the entire procurement process.

#### **E. VIOLATION OF LOCAL REGULATIONS**

In addition to violating the Municipal Purchasing Act, the Open Meetings Act and the Chicago Municipal Code, the selection of Alta also violated a local regulation contained within the RFP. As set forth above, the RFP process here was not typical, in that RFP #1 was cancelled and replaced by the RFP without meaningful substantive revisions. When this occurred, Bike Chicago received a letter from the Department on December 2, 2011. (See Exhibit C.) The letter stated that "[a]ll proposals submitted were deemed responsive and the City of Chicago encourages all Respondents to resubmit proposals."

However, the Department's statement in this regard was false. In fact, pursuant to local regulations, Alta could not have been deemed responsive to the initial RFP because it did not maintain a City of Chicago business license at the time of its response to the initial RFP. Therefore, Alta should have been disqualified as a bidder.

Pursuant to RFP #1, Section V 6., Business License / Authority to do Business in Illinois, in order to be a qualified respondent to RFP #1, Alta was required to possess a City of Chicago business license. Responses to RFP #1 were due no later than October 25, 2011. As of that date, when Alta submitted its response, City records demonstrate that Alta was not licensed to do business in Chicago, and therefore should have been disqualified. According to City records, Alta did not receive its license to do business in Chicago until November 14, 2011.

Subsequently, the RFP was re-issued and the due date for submissions was moved to December 16, 2011. Accordingly, the Department deemed Alta qualified when in fact it was not, and therefore Alta's selection is in violation of local regulations.

**F. THE DEPARTMENT HAS INDICATED THAT IT INTENDS TO IGNORE ITS OWN ADMINISTRATIVE PROCEDURES BY REFUSING TO ENTERTAIN THE INSTANT PROTEST**

On March 19, 2012, after learning that Bike Chicago had not been selected for the bike share program, I sent an email to Jacoby Radford, the person designated by the RFP as the contact at the Department. In that email, I stated:

In accordance with the City's protest rules [] it asserts on page 5 that a post award protest must be filed within 10 days after the "award." Please confirm the bike share contract award date. If this has not occurred yet, please notify me immediately of the official day and time of such award via email and phone so we may file a timely protest. In addition, if there are any other times that I may file a formal protest, please let me know. My contact information is listed below. Please confirm receipt of the above requests.

(See Exhibit Y.)

On the same day, March 19, 2012, Mr. Radford replied as follows: "Mr. Squire. I have received your request. The contract has not been awarded." (See Exhibit Z.) Never did Mr. Radford indicate that a protest would not be entertained by the Department.

Two days later, on March 21, 2012, Richard A. Devine, an attorney and registered lobbyist for Bike Chicago contacted Mr. Radford. Mr. Devine notified Mr. Radford that it was Bike Chicago's intention to file a protest pursuant to the Protest Procedures. Mr. Radford confirmed to Mr. Devine that the contract had not yet been awarded by the Department of Procurement Services on March 15, 2012 (when the selection of Alta was announced), and that a final award would not be made by the Department until after the City Council authorized execution of a contract between the City of Chicago and Alta. This conversation was confirmed in a letter. (See Exhibit AA.)

Despite these express acknowledgments that no contract had yet been awarded and that Bike Chicago was eligible to pursue a protest, on April 10, 2012 and again on April 18, 2012, James McIsaac, General Counsel of the Department, first notified Bike Chicago that the Department did not intend to entertain Bike Chicago's protest, claiming that:

... the contract was awarded not by the Chief Procurement Officer, but by the City Council... The CPO has no authority to review action taken pursuant to City Council Authority."

(See Exhibits BB & CC.)

Mr. McIsaac's twisted and circular interpretation of the Department's administrative protest rules contradicts the express provisions of the Chicago Municipal Code, the Department's published regulations, and the provisions of the RFP.

The Department's Protest Procedures clearly state that an Interested Party may file a protest within ten-days after a contract is awarded. The Protest Procedures apply to all requests for proposal issued by the Department. The Protest Procedures do not list a single exception, nor do they exclude certain requests for proposal from eligibility. (See Protest Procedures, attached hereto as Exhibit DD.) Accordingly, there is no factual, legal, practical or logical basis for the Department's absurd position that the Protest Procedures do not apply to the RFP. The only thing transparent about this entire RFP process is the Department's desire to protect Klein and Alta by silencing Bike Chicago and refusing to entertain this valid protest.

**1. Pursuant to Section 2-92-010 Of The Chicago Municipal Code And 65 ILCS 5/8-10-18, Only The Chief Procurement Officer Is Authorized To Issue The Contract At Issue**

Section 2-92-010 of the Chicago Municipal Code sets forth that the Chief Procurement Officer's ("CPO") "powers, functions, duties and obligations are provided for by the Municipal Purchasing Act."

No department, office, institution, commission, board, agency or instrumentality of any such municipality, or any officer or employe (sic) thereof, shall be empowered to execute any purchase order or contract as defined in Section 8-10-3 except as herein specifically authorized, but all such purchase orders or contracts shall be executed by the purchasing agent in conformity with the provisions of this Division 10.

See 65 ILCS 5/8-10-18.

Accordingly, pursuant to the Act, only the CPO, and not the City Council, has the power to award the contract at issue to Alta. While the City Council may have voted to *authorize* the CPO to execute the contract, it did not award it. Mr. McIsaac's statements to the contrary are subterfuge and were expressly intended to cause Bike Chicago to waive its administrative rights. Such misconduct in itself expressly gives rise to a valid court challenge of the fairness of this RFP process.

**2. The Department Cannot Arbitrarily Opt-Out Of Its Published Administrative Protest Procedures**

In support of the Department's untenable position that its own protest procedures do not apply to this RFP, Mr. McIsaac cited to a single sentence contained in the RFP "Execution of a contract by the CDOT Commissioner must be authorized by City Council."<sup>2</sup> (See Exhibit D at p. 16.) Neither in the

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<sup>2</sup> As an aside, Klein, who supposedly recused himself from the RFP process, has no authority to execute this contract.

one sentence cited by the Department, nor anyplace else in the RFP, does it state that the City Council and not the CPO would be awarding this contract (because only the CPO has the power to award the contract). Furthermore, the RFP does not state that the Department's participation in the contract award process would be limited in any way, or that its published regulations with respect to the protest of awarded contract would not apply to the process. The Department's sudden refusal to consider this protest constitutes an obvious attempt to avoid addressing head-on the various violations that occurred during the course of this RFP process, and to strip Bike Chicago of an administrative remedy, to which it clearly is entitled.

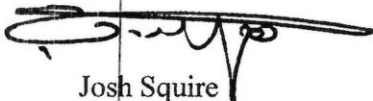
**5. Statement regarding the course of action the protesting party desires that the Chief Procurement Officer takes**

For all of the reasons set forth above, Bike Chicago requests that the Chief Procurement Officer disqualify Alta as a respondent and instead award the contract to Bike Chicago. Bike Chicago is a local company and qualified respondent that submitted the best proposal to the City. Bike Chicago and its partners, B-Cycle (Trek), I-Go Car Sharing and others have a strong local presence and the ability to implement and operate the best possible bicycle sharing system at the lowest possible cost to the City of Chicago. Bike Chicago also will pay the highest percentage of revenue to the City of any qualified respondent and has a proven record of success, minimizing long-term risk to the City.

**6. All Information establishing timeliness of the protest**

Bike Chicago hereby expressly incorporates by reference Section 4F above as though fully set forth herein. This protest is timely pursuant to the Protest Procedures, which require that post-award protests "must be filed no later than ten (10) days after the date of award. (See Exhibit DD.) In this case, as has been confirmed in writing by the Department, the earliest the award could have been made was made on April 18, 2012 and therefore, at the earliest, the protest must be submitted no later than April 28, 2012. By filing this protest with the CPO by hand delivery on April 27, 2012, Bike Chicago has filed a timely protest.

Regards,



Josh Squire

## Former transportation chief dishes free advice to Divvy operator

By Thomas A. Corfman January 23, 2014

Since resigning as Chicago transportation commissioner, Gabe Klein is trying to launch his own firm while doling out free advice to other companies, including Alta Bicycle Share Inc., which won a \$65 million contract with the city during his tenure.

"I give free advice to a whole lot of different companies, to be honest," said **Mr. Klein**, who stepped down in November. "I am not getting paid by Alta or any of the other startups that I'm advising."

In March 2012, the Emanuel administration gave Alta Bicycle a 15-year bike-rental contract.

Mr. Klein's role as unpaid adviser underscores the close relationship between the Portland, Ore.-based company and two former high-ranking Chicago transportation officials. Scott Kubly, who until last month was the department's managing deputy commissioner, has a contract with Alta to help develop new business.

City employees who take positions with a company that has city business must follow restrictions imposed by an ethics ordinance passed last year and executive orders issued by Mayor Rahm Emanuel.

Mr. Klein said he spends 80 percent of his time on his new firm, which he said will combine his expertise in car and bicycle sharing, bus rapid transit and planning. Before coming to Chicago, Mr. Klein was director of the transportation department for the District of Columbia, where in 2010 Alta also won a contract to run bike-sharing.

### LOSING BIDDERS PROTESTED

In Chicago, Alta's selection prompted two losing bidders to file formal protests, claiming the choice was tainted in part by Mr. Klein's work as a consultant to Alta before joining the Emanuel administration. The city's inspector general also conducted a **probe**.

The protests were ultimately rejected and the contract was awarded. The status of the inspector general probe could not be determined.

The Emanuel administration, Mr. Klein and Alta executives have denied any impropriety. The administration contends the contract was awarded by the Chicago City Council, not the administration.

Although popular with tourists, Divvy, the Chicago bicycle program, was delayed for more than a year, in part because of problems with a key supplier, **which said Jan. 20 it would file for protection from creditors**. The Chicago contract runs for 15 years.

Mr. Klein declined to say how he has advised Alta but is unapologetic about his relationship with the firm, calling himself a "friend of the company."

"I don't think there are any prohibitions against advice," he said.

Despite the controversy over Alta, Mr. Klein has generally developed a national reputation for his expertise in urban transportation. He has been named a senior visiting fellow at the Urban Land Institute, a Washington-based nonprofit that focuses on planning. The appointment lasts through June.

### 'GAME-CHANGER'

"Gabe is a game-changer whose innovative ideas about transportation planning have upended long-held notions about how people get around in cities," ULI Chief Executive Patrick Phillips said in a statement.

In an email, Mia Birk, a vice president and principal in Alta Bicycle, said Mr. Klein "is not currently employed by or under any paid consulting relationship with Alta."

"Mr. Kubly is under contract to Alta Bicycle Share, advising on new business development," she added, declining to answer further questions.

Mr. Klein also said he is "working on forming partnerships" for his new company, but he declined to say whether Alta is one of the 10 companies he has contacted.

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