



THE PRINCE GEORGE'S COUNTY GOVERNMENT
Board of Ethics

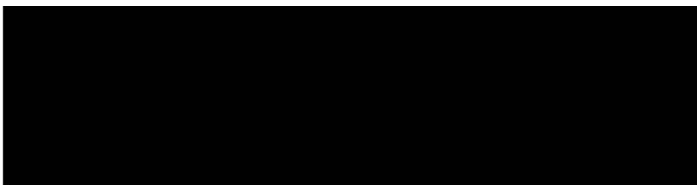
Rushern L. Baker, III
County Executive

Robin Barnes-Shell
Acting Executive Director

BOARD OF ETHICS

OPINION

January 30, 2014



RE: Conflict of Interest

Dear [REDACTED],

You have requested an opinion from the County Board of Ethics on whether a conflict of interest arises from your role as Executive Director of [REDACTED] and your wife's current and prospective contracts with vendors who may bid on or are awarded competitively procured contracts with the [REDACTED] (for efficiency, the circumstance of your wife's clients being a party to or bidding on [REDACTED] contracts is referred to herein as the "Circumstance"). You informed the Board that as the [REDACTED] Executive Director you participate in certain procurement activities and inquired as to whether you should recuse yourself from such activities where the Circumstance exists.

The Board finds that the Code of Ethics prohibits your participation in the contract between the Subject Vendor and the [REDACTED].¹ However, based upon our analysis and consideration of the facts and circumstances of this case, and under the authority vested in this Board under the Code of Ethics, the Board will allow your participation of administration, supervision and management of the contract between the Subject Vendor and the [REDACTED] through the expiration or termination of that contract.

The Board further prohibits your participation in the following procurement activities whenever the [REDACTED] solicits goods or services from any firm likely to contract for the goods

¹ For purposes of this opinion, participation includes doing any of the following in connection with a matter identified herein verbally or in writing, in person, via conference call or via any electronic means: attending meetings, communicating opinions, making recommendations and making decisions.

and/or services your wife offers: 1) decisions to solicit goods and services; 2) the preparation of solicitations; 3) the evaluation of proposals submitted in response to solicitations; and 4) making recommendations of contract awards to the members of the [REDACTED]. The Board requires that you disclose in writing to the [REDACTED] members any prospects of the [REDACTED] solicitation of such services before any procurement activities commence with regard thereto and delegate to another [REDACTED] representative the procurement activities you would otherwise perform.

Finally, during the term of any contract resulting from the solicitation of such services, the Board finds the making of any contract between the parties of such contract and your wife, or any business your wife has an economic interest in to be prohibited activity under the Code of Ethics.

Our detailed analysis follows:

Background

As we understand, your wife is an interior decorating professional who frequently contracts with architectural and similar firms for the provision of interior decorating services in the Washington, D.C. metropolitan area. You informed the Board that your wife is currently a party to a contract with a vendor (the "Subject Vendor") who was recently awarded a contract competitively procured by the [REDACTED]. You also informed the Board that your wife's contract with the Subject Vendor is for services she provides on a non-[REDACTED] project in Washington, D.C. You stated that your wife does not provide any services on the Subject Vendor's contract with the [REDACTED]. Also, as we understand, you personally are not an official or employee of the Subject Vendor and have no contracts or interest, financial or otherwise, in or with the Subject Vendor.

Analysis

Section 15B-126 of the [REDACTED] enabling statute requires the [REDACTED] compliance with the County's Code of Ethics (the "Code"). The [REDACTED] employees and officials are therefore subject to the conflict of interest provisions of the Code. Section 2-291 of the Code defines the words "official" and "employee" as "any person elected to, appointed to, or employed by the County or any County agency, board, commission, or similar entity whether or not paid in whole or in part with County funds and whether or not compensated." As the Executive Director of the [REDACTED] is appointed pursuant to the FIFTH Section of the [REDACTED] Charter, the Executive Director is indisputably a County official.

County officials are subject to the following relevant participation restrictions set forth in Section 2-293(a) of the Ethics Code.²

Except as permitted by Board regulations or opinion, an official or employee may not participate in:

- (1) Any matter . . . if, to his knowledge . . . his spouse . . . has an interest therein.

² Some of the participation prohibitions are omitted as inapplicable to the Circumstance.

(2) Any matter, when any of the following is a party thereto:

...

(B) Any business entity of which [his spouse] ... is an officer, director, trustee, partner, or employee;

(C) Any business entity with which [his spouse] is negotiating or has any arrangement concerning prospective employment;

(D) Any business entity which . . . the official or employee knows is a party to a contract with [his spouse], if the contract could reasonably be expected to result in a conflict between the private interests of the official or employee and his official duties;

(F) Any business entity which the official or employee knows is [the] creditor or obligee . . . of [his spouse] . . . with respect to a thing of economic value and which, by reason thereof, is in a position to affect directly and substantially the interest of [his spouse].

...

Application of the foregoing provisions first requires identification of the procurement activities that may warrant your participation as Executive Director of the [REDACTED]. Based upon the facts provided, the Board identifies those activities as follows: 1) decisions to solicit goods and services; 2) the preparation of solicitations; 3) the evaluation of proposals submitted in response to solicitations; and 4) making recommendations of contract awards to the members of the [REDACTED] (all such matters are collectively referred to hereafter as ("Procurement Activities")). Below we apply the Code provisions to these Procurement Activities first with regard to the Subject Vendor's contract with the [REDACTED] and secondly with regard to future solicitations.

The Subject Vendor's Contract with [REDACTED]

The Board does not believe Section (1) above applies because the matter at issue is the contract between the [REDACTED] and the Subject Vendor. While your wife may have a contract with the Subject Vendor for work on a D.C. project, that contract is separate from and unrelated to Subject Vendor's contract with the [REDACTED]. Unless your wife provides services on Subject Vendor's contract with the [REDACTED], which you have informed us she does and will not, the Subject Vendor's contract is not a matter your wife has any identifiable interest in.

Similarly, the Board does not believe subsections B and C in Section (2) above are implicated by the Circumstance. While Subject Vendor is your wife's client, none of the information provided to this Board evidences that she is an officer, director, trustee, partner, or employee of Subject Vendor or that she is negotiating or has any arrangement concerning prospective employment with Subject Vendor.

The Board finds that subsection D of Section (2) above *may* be implicated by the Circumstance. You are obviously aware of the contract between Subject Vendor and your wife. Thus, you are prohibited in participating in the matter of the Subject Vendor's contract with the [REDACTED] if (and only if) ". . . the contract [between Subject Vendor and your wife] could reasonably be expected to result in a conflict between [your] private interest and [your] official duties." None of the facts you have shared with this Board indicate to us that the contract between the

Subject Vendor and your wife has or is expected to result in a conflict between your private interest and your duties as Executive Director of the [REDACTED]. As such, your participation in the Procurement Activities does not appear to violate this subsection of the Code. However, if at any time the Circumstance affects your private interests in any manner, the Board requires that you disclose in writing such affect to the members of the [REDACTED] and seek a supplemental opinion from this Board.

The Board finds that subsection F of Section (2) above expressly prohibits your participation in the contract between the Subject Vendor and the [REDACTED]. Clearly, your wife's contracted provision of services to the Subject Vendor obligates it to compensate your wife. This places the Subject Vendor in a position to affect your wife's financial interest directly and, presumably, substantially. Consequently, one could perceive any decision you make that affects the Subject Vendor, favorably or adversely, as a product of improper influence. Such perception could call to question your impartiality and independent judgment as Executive Director.

Notwithstanding the foregoing, Code Section 2-293(a) (4) makes the participation prohibition inapplicable if allowed by this Board. In accordance with this exception, the Board hereby partially waives the participation prohibition in this instance for several reasons. First, as Executive Director of the [REDACTED], your participation in the administration, supervision and management of [REDACTED] contracts is necessary and indeed crucial to the operation of the [REDACTED]. As the Subject Vendor is currently providing services to the [REDACTED] under contract, termination of the contract or your employment with the [REDACTED] are the only options to achieve compliance with the Code. The Board has no evidence of the improper influence, collusion or nondisclosure that would warrant either of those drastic remedies. To the contrary, your conduct of seeking an opinion from this Board, volunteering to attend, and attending, the Board's Executive Session regarding this matter, and provision of additional and substantial background and facts on the Circumstance during such Executive Session disinclines this Board to take any adverse enforcement action in this matter. The Board therefore allows your participation in the matter of the Subject Vendor's Contract for the duration of its current term and requires your disclosure and permission from the members of the [REDACTED] prior to any extension thereof.

Prospective Solicitations

Contracts between any vendor and your wife that have expired or terminated as of the date of this writing will not implicate the participation prohibitions of the Code in future [REDACTED] procurements. However, there is a prospect that the Subject Vendor and other vendors who contract for your wife's services now or in the future will bid on future [REDACTED] solicitations. With respect to those procurements, the Board prohibits your participation in some of the procurement activities.

Specifically, for the reasons explained below, the Board hereby prohibits your participation as Executive Director of the [REDACTED] in the following procurement activities whenever the [REDACTED] solicits goods or services from any firm likely to contract for your wife's goods and/or

services (referred hereafter as the “Trigger Solicitations”) as reasonably estimated by a person with your level of professional knowledge and experience:

- 1) Decisions to issue Trigger Solicitations;
- 2) The preparation of Trigger Solicitations;
- 3) Evaluation of proposals submitted in response to Trigger Solicitations;
and
- 4) Recommendations to the members of the [REDACTED] to award contracts under Trigger Solicitations.

Your participation in these activities could result in the perception that your decision making is improperly influenced by your wife’s current or prospective financial interest. The Board requires that you disclose in writing to the [REDACTED] members any prospects of the [REDACTED] issuance of Trigger Solicitations before any Procurement Activities with regard thereto commence and seek their appointment of another [REDACTED] representative to perform the Procurement Activities above that you would otherwise perform. The Board hereby waives and allows your participation as Executive Director in the administration, supervision and management of any contract resulting from a Trigger Solicitation.

The Board finds that the making of any contract between your wife, or any business your wife has an economic interest in, during the term of any contract awarded under a Trigger Solicitation can lead to prohibited activity.

Except as expressly waived, authorized or allowed herein, your compliance with all provisions of the Prince George’s County Code is required. This includes without limitation the conflict of interests provisions of County Charter Article X, Section 1002, which provide that no officer of the County, whether elected or appointed, shall in any manner whatsoever be interested in, or receive any benefit from, the profits or emoluments of any contract, job, work, or service for the County.

Sincerely,

A handwritten signature in black ink, appearing to read "Covette Rooney", with a long, sweeping horizontal stroke extending to the right.

Covette Rooney
Board Chair