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THE PRINCE GEORGE'S COUNTY GOVERNMENT BOARD OF ETHICS

Cassandra Burckhalter, Chair
The Honorable Covette Rooney, Member
Curtis Eugene, Member
Sharon Theodore-Lewis, Esq., Member

BOARD ADVISORY OPINION

March 11, 2019

[REDACTED]
System Preservation Services
One North Charles Street, Suite 1101
Baltimore, Maryland 21201

RE: Advisory Opinion 19-0191, Post Employment

Dear M [REDACTED]:

This letter is in response to your appeal of the informal ethics advice rendered by the Office of Ethics and Accountability ("OEA") on February 21, 2019, in regards to your post-employment restrictions. You have asked the Board to reconsider the post-employment restrictions outlined by OEA in its advice concerning the re-advertisement of the canceled Request for Proposal ("RFP") S16-001, and your request to submit a bid on the same. For the following reasons, we advise that you are permitted to bid on the full scope of the upcoming RFP from your former agency without restriction.

Section 2-293(b)(2)(A) of the Prince George's County Code of Ethics ("Ethics Code") states, with the exception of former members of the County Council, a former official or employee may not assist or represent any party other than the County for compensation in a case, contract, or other specific matter involving the County, if the matter is one in which he or she significantly participated in as an official or employee. There is no time limitation to this prohibition.

As a general matter, section 2-293(b)(2)(A) should not be interpreted as to strictly prohibit all post-employment with an entity involved in matters relating to a former agency or an individual's appearance before the agency.¹ Rather, it looks to identify a particular matter in which

¹ The County's post-employment language in the Ethics Code must be similar to the State. Md. Code Ann. GP § 5-808 (2016).

the individual was involved in any “significant” way in the context of their service and forbids assistance or participation as to these on behalf of another party.

You have not noted a disagreement with the underlying facts in this matter as detailed by the OEA in its opinion. Thus, for the purposes of this opinion, the Board will incorporate those facts herein. You resigned from your position at [REDACTED] of the County’s Department of Public Works & Transportation (DPW&T) in July 2018. Since your retirement, you have established your business, Systems Preservations Services, LLC. Your company specializes in offering consultation services for transportation management services. You now wish to pursue a County contract either as a sub-consultant with another firm or as a joint venture partner for the re-advertisement of RFP S16-001.

When considering post-employment limitations, several factors are considered including, but not limited to, whether the post-employment opportunity involves the same basic facts, related issues and information, the same or related parties, and whether it is one in which there exists a continuing existence of an important County interest. The post-employment restriction is not interpreted to serve as an absolute bar on all employment with an entity involved in matters relating to a former agency, or an individual’s appearance before the agency. Rather, it looks to identify particular or specific matters in which a former employee or official was involved in a significant way during their tenure with the County. Accordingly, the Ethics Code forbids assistance or representation as to *those* matters on behalf of another party.

In determining the significance of a former employee’s participation with RFP development, the State Ethics Commission provides another factor, i.e. specifications assistance.² Generally, if a [County] employee or official assists in an RFP’s specifications, that official or employee cannot be in the employ of a bidder when the bid is submitted. The Commission in Advisory Opinion 99-05³ contextualizes specification assistance to mean “specification drafting” or either serving as a “major player in the proposal evaluation process” or “monitor as to projects developed” under the RFP.

In applying the aforementioned factors to the instant matter, you are a former appointed official of DPW&T with the intent to assist another party other than the County, either as a subcontractor or joint venture partner, in a contract for which County funding will be provided. Sometime beginning in 2014, a Performance Analysis Group (PAG) was formed for the purposes of creating RFP S16-001 and reviewing the bids submitted thereto. [REDACTED], you had administrative authority to approve, recommend or make decisions regarding the RFP. [REDACTED] Chief of the Engineering Services Division in the Office of Project Management for DPW&T, was the Chair of the PAG. [REDACTED] and [REDACTED] were also members of the PAG. All three were employees of DPW&T and subject to your supervisory authority. You were responsible for signing the PAG’s request letters that were submitted to other agencies asking them to identify a technical person within their offices to serve as a PAG member.⁴ Those names

² See Advisory Opinion 01.02. <http://www.dsd.state.md.us/comar/comarhtml/advisoryo/advisoryo.2001.02.htm>


³ See also Advisory Opinion 99-05 <http://www.dsd.state.md.us/comar/comarhtml/advisoryo/advisoryo.1999.05.htm>

⁴ A PAG is an issue specific group which is responsible for the defining and drafting of Requests for Proposals, soliciting responses, evaluating responses, and recommending the top three evaluated providers to the Director of

were submitted to the Office of Central Services (OCS). Members of the PAG did not report to you on matters concerning the RFP, but instead reported to the PAG Chair and a procurement officer from OCS.

You have indicated that you requested the PAG to add transit professional services to the RFP scope of work. According to PAG Chair [REDACTED], you had no direct involvement in the actual drafting of the transportation planning services specifications. Instead, [REDACTED] stated that her point of contact on the matter was [REDACTED] for the DPW&T Office of Transportation Services. [REDACTED] also stated that the addition of the transit services to the RFP was done out of legal necessity. [REDACTED] advised that the County's transit services had to be improved in order to be compliant with State and Federal minimums standards. Although you were provided a copy of the completed RFP prior to it being available to the public; this detail does not give you a marketable advantage in the upcoming solicitation. The RFP was available to the public through the eMaryland Marketplace website and by purchase directly from DPW&T's Office of Engineering and Project Management. Additionally, [REDACTED] advised that when the bids on the RFP were submitted, you were not involved in their review. There were only three (3) other DPW&T employees aside from the three (3) serving on the PAG who were privy to the submitted bids according to [REDACTED]⁵. Their involvement was administrative only. The RFP was subsequently cancelled at the behest of the County Executive Office and OCS, for reasons that are not germane to the instant issue.

Your action of directing the PAG to include a scope of work into the RFP under these circumstances does not equate to significant participation. You were not involved in evaluating the submitted proposals or selecting potential awardees. All matters involving the RFP were handled by the PAG Chair, [REDACTED]. Thus, after reviewing the extent of your involvement in RFP S16-001, or in this case the lack thereof, the Board concludes that your tangential participation in the RFP does not rise to a level of significant participation as contemplated by Section 2-293(b)(2)(A) of the Ethics Code. Moreover, the upcoming re-advertisement was not created during your time of employment with the County. Thus, you will have had no prior involvement in the matter in which you now seek to participate. For the foregoing reasons, and after reviewing your request, the facts as outlined in OEA's opinion, the additional information provided by [REDACTED] and the application of the Ethics Code, it is the opinion of the Board of Ethics that you are not prohibited from bidding on any portion of the upcoming RFP.

Sincerely,


Cassandra Burckhalter
Board Chair

Central Services, as Purchasing Agent, for contracts for which competitive bidding is inappropriate. Prince George's County Code § 10A-101(a)(32).

⁵ J [REDACTED] and [REDACTED] assisted with the preparation of the RFP prior to bid. N [REDACTED] helped with the fee negotiations.