

Municipality of Anchorage



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BOARD OF ETHICS

Request for Advisory Opinion 2011-05 (confidentiality not waived)

The Board of Ethics (“BOE”) has reviewed Request for Advisory Opinion (“RAO”) 2011-5. Based on the information contained in the RAO, and the applicable provisions of the Anchorage Municipal Code of Ethics (“Code”), the BOE issues the following Opinion. If material facts have not been disclosed or have been misrepresented, this Opinion is without force and effect.

Introduction

According to the RAO, the Municipality, on your behalf, entered into a sole source contract (“Contract”) with a person (“Contractor”) who was serving on a municipal Commission (“Commission”), a membership he or she continues to maintain. The question is whether a sitting municipal commission member may subsequently acquire an interest in a sole source municipal contract such as the one at issue here.

Relevant Sections of the Code

AMC 1.15.030 I. Acquisition of an economic interest in municipal contracts and business, states as follows:

A member of the public appointed to serve on a public body of the municipality or a member of such person’s household shall not acquire directly or indirectly an economic interest in a municipal contract or engage in business with the municipality unless the municipal contract is competitively solicited and all other requirements of this subsection are satisfied. This prohibition applies in all respects to any entity in which the appointed member of the public or a household member has an economic interest.

Discussion

Under the Code, a member appointed to a municipal commission shall not acquire an interest in a municipal contract, *unless the municipal contract is competitively solicited.*¹ This code provision prevents a municipal commission member from having an improper

¹ In addition, all other requirements of subsection I, including subsections 1-8, must also be satisfied in the event the position is competitively solicited.

advantage obtaining a contract with the Municipality, in addition to addressing concerns regarding conflicts of interest and appropriate public disclosure.

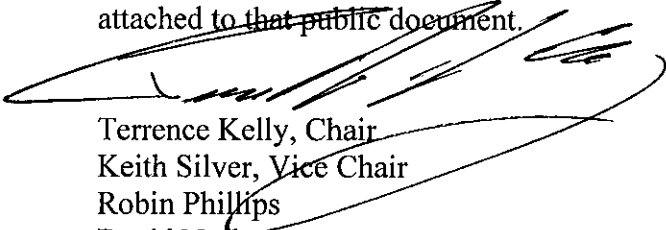
In this case, the Contractor was an appointed member of a municipal commission and subsequently entered into a sole source contract with the Municipality, i.e. a contract that was not competitively solicited. The BOE concludes that the Contract is prohibited by AMC 1.15.030 I.

Recommendation

Because the Contractor could not enter into this Contract as a sitting member of a municipal commission, it would be insufficient for the Contractor simply to resign from the Commission and continue with the Contract. Commission resignation does not cure the fact that the Contractor was a Commission member at the time he or she entered into the Contract.

Options for the Contractor could include: (1) resign from the Commission and, *only after doing so*, enter a new sole source contract, (2) continue as a commission member with no Contract.²

The BOE is concerned that the dual role of Commission member and Contractor in this case has created at least the appearance of conflict of interest issues that must be addressed if the Contractor is to continue either as a commission member or as a contractor. While the Code does not address a specific remedy for such a conflict, in the interest of open and honest government, the BOE concludes that the public must be informed which role the Contractor is assuming. If the Contractor continues in either role, it is the recommendation of the Board of Ethics that an informational document receiving public notice provide disclosure of the action taken, and that this Opinion be attached to that public document.



Terrence Kelly, Chair
Keith Silver, Vice Chair
Robin Phillips
David Nesbett

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² The BOE appreciates that this Contract is in the nature of a sole source contract. The option of competitively soliciting the contract is not the solution.