

**CONFIDENTIAL**

Xxxxxx xx, 2005

Mr. John Smith  
123 Main Street  
Chicago, Illinois 606xx

Re: Case No. 05051.Q; Post Employment

Dear Mr. Smith,

On xxxxx xx, 2005, you contacted this office requesting an opinion as to whether the City of Chicago Governmental Ethics Ordinance (the "Ordinance") prohibits you, a former City employee, from accepting an offer of employment from X Corporation ("X"), an MBE subcontractor on Contract T between the City of Chicago and Y Corporation ("Y"). Board staff has reviewed the facts presented by you, Y and the City, as well as the relevant law and existing Board precedent. Based on the foregoing, it is our conclusion that you are not prohibited from accepting such employment as you have described it below.

FACTS

From the time you began your City employment in xxxxx 19xx until your retirement in xxxxxxxx 20xx, you worked in the Department of Z ("Z"). Upon your retirement, you were the District Foreman of [Facilities]. In that position, you were responsible for supervising [Facility] inspectors in Z, and reported directly to Mr. Green, a District Superintendent of Z.

Y has had two contracts with the City. The first contract, which has already been completed, began in 19xx. It was a three-year DUR contract, with a one-year extension. Currently, Y only has Contract T with the City. Contract T, which began in xxxxxxxx 20xx, is also a three-year Depends Upon Requirements contract (hereinafter "DUR contract") with 2 option years, one of which has already been exercised. Under this contract, Y provides engineering services for Z, as assigned by Mr. Black, the Acting Deputy Commissioner of Services, through a task order process. That work is performed alongside City employees, such as yourself, but is supervised by Mr. Black. X, your potential employer, is a subcontractor to Y under that contract, and thus also works alongside City employees. X's work, as a subcontractor, is supervised exclusively by Y personnel, not City personnel. As a City employee, you did not perform work under either of Y's contracts; however, under the current contract, the Y and X employees work in a position parallel to your former position, and assisted both you and other City personnel in performing your City duties.

As explained by both you and Mr. Black, under the contract, Y and its subcontractors would come to a job site and do the same work that City workers completed whenever there was a shortage of City employees to complete a particular task. Both of you affirmed that you did not supervise any Y employees at any time, nor did you supervise the employees of any its subcontractors, including X. You worked alongside Y and its subcontractors. Y's subcontractors, including X, were, and continue to be, supervised by Y and Y was, and continues to be, supervised by Mr. Black.

During your City employment, Mr. Black affirmed that you were in no position to, nor did you, supervise or direct the actions of Y, or its subcontractor, X. In performing its duties under the contract, Mr. Brown, the Construction Manager of Y, stated that X personnel all report either directly to him or other Y personnel. Y, in turn, reports to Mr. Black. X personnel do not report to, nor are they supervised by, City employees. Mr. Black explained that he would request that Y work on a specific task order, on an as-needed basis. Under the task order, Y, and any subcontractors it has, work alongside the City employees, but are not subordinate to the City employees. Both Mr. Black and Mr. Brown confirmed your statement that you had no involvement of any kind in the letting, award, negotiation, execution, or supervision of performance of the contract. Nor were you involved with the payment under the contract.

#### LAW AND ANALYSIS

The Ordinance places two restrictions on City employees upon leaving City employment – both a one-year prohibition and a permanent prohibition. The language of the Ordinance reads as follows:

**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(b).**

This section prohibits you, as a former City employee, for one year after leaving City service, from assisting or representing any person in any business transaction involving the City if you participated “personally and substantially” in the subject matter of that transaction during your City employment. In this case, since you retired from City service more than one year ago, the one-year prohibition is no longer applicable, and the only question is whether you are subject to the Ordinance's permanent prohibition. That provision permanently prohibits you from assisting or representing any person on a specific contract if, during your City employment, you exercised “contract management authority” over that contract

Under the Ordinance, “contract management authority” is defined as personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including,

without limitation, the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.<sup>1</sup> Based on what Messrs. Black and Brown told staff, as well as your own statements regarding your City employment, you did not participate in preparing specifications, evaluating bids or proposals, or in the negotiation of contract terms. Nor did you supervise any performance by either Y or X under the contract. As such, staff concludes that you did not exercise contract management authority over Contract T and thus the permanent prohibition does not apply.

#### OTHER PROHIBITIONS

In addition to the post-employment restrictions, the Board brings your attention to Section 2-156-070 of the Governmental Ethics Ordinance, entitled “Use or Disclosure of Confidential Information,” which reads as follows:

**No current or former official or employee shall use or disclose, other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his position or employment. For purposes of this section, “confidential information” means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.**

Under this Section, you, as a former City employee, are prohibited from using or disclosing any confidential information gained in the course of your City employment. Please note that this is a permanent prohibition.

#### DETERMINATIONS

Based on the facts presented, Board staff concludes that neither the one-year prohibition nor the permanent prohibition in §2-156-100(b) of the Governmental Ethics Ordinance prohibit you from performing the work described in this letter on behalf of X. If, however, your duties with X differ from those described in this letter, or you pursue employment with or perform services for others having contracts with Z, we advise you to contact us for further advice, as the Ordinance’s permanent prohibition may restrict your ability to perform such duties.

Staff’s conclusions are based solely on the application of the City’s Governmental Ethics Ordinance to the facts stated in this letter. If the facts stated are incorrect or incomplete, please notify us immediately, as any change may alter these conclusions.

Thank you for your willingness to abide by the rules of the Governmental Ethics Ordinance. If you have any additional questions, please do not hesitate to contact us at (312) 744-9660.

Very truly yours,

Briana N. Milton  
Attorney/Investigator

---

<sup>1</sup> §2-156-010(g).

Approved by:

Dorothy J. Eng  
Executive Director