

From: Wayne Barnett
To: Heimgartner, Christopher
Date: 7/13/2007 2:14 PM
Subject: Advice

CC: DeVenaro, Karen; Locsin, Genevieve; Rayray, Kim
Dear Chris,

You've asked for my advice on whether, consistent with the Ethics Code, you may contract with a business incorporated by a soon-to-be former employee when that employee leaves the City next week. I have concluded that you may. My analysis follows a brief discussion of the relevant facts.

Facts

Chris Turner is Seattle City Light's Systems Operations Director. He reports directly to you, City Light's Customer Service & Energy Delivery Officer. You report directly to the Superintendent.

Mr. Turner recently informed you of his intention to leave the City and establish a consulting business. You have informed me that no one else at City Light shares Mr. Turner's expertise on new federally mandated NERC standards -- he is a national expert -- and that his departure will make it very difficult for City Light to document its compliance with the approximately 900 NERC regulations that went into effect last month. You are in the process of identifying a recruiter to conduct a nationwide search for Mr. Turner's replacement.

You would like to contract with Mr. Turner's consulting business -- Turner Utility Consulting Incorporated (TUCI) -- to fill the void left by Mr. Turner's departure while you search for a new Systems Operations Director. The contract (or contracts) would have three foci: 1) day-to-day management of Systems Operations, 2) NERC compliance, and 3) representing City Light before various regional and federal bodies involved in managing or regulating the nation's power grid. You have informed me that the contract will not be competitively bid.

TUCI is, as is apparent from its name, a corporation. Your assistant has confirmed for me that Mr. Turner is the corporation's sole shareholder.

Analysis

1. Post-employment restrictions

SMC 4.16.075, the Ethics Code's post-employment provision, provides as follows:

A. No former officer or employee shall disclose or use any privileged or proprietary information gained by reason of his/her City employment unless the information is a matter of public knowledge or is available to the public on request;

B. No former officer or employee shall, during the period of one (1) year after leaving City Office or employment:

1. Assist any person in proceedings involving the agency of the City with which he/she was previously employed, or on a matter in which he or she was officially involved, participated or acted in the course of duty;

2. Represent any person as an advocate in any matter in which the former officer or employee was officially involved while a City officer or employee;

3. Participate as a competitor in any competitive selection process for a City contract in which he or she assisted the City in determining the project or work to be done or the process to be used.

C. A City officer, who contracts with a former City officer or employee for expert or consultant services within one (1) year of the latter's leaving City office or employment, shall promptly inform the Administrator about the agreement.

D. The prohibitions of Sections 4.16.075 B1 and 4.16.075 B2 shall not apply to former employees acting on behalf of a governmental agency unless such assistance or representation is adverse to the interest of the City.

In Advisory Opinion 95-19 -- <http://www.seattle.gov/ethics/etpub/pdfs/9519.pdf> -- the Commission held that these post-employment provisions do not prohibit a former employee from returning to work for the City, as an employee or as a contractor, because they prohibit assisting or representing *others*, not the former employee acting for him or herself. The Commission wrote that "the Code does not prohibit a former City employee from contracting with the City, as a sole proprietor, to do the same work the former employee had done or to work on the matters in which the former employee had been involved as a City employee.

Since the Code prohibits assisting another, however, for one year after leaving City employment, the former employee may not work as a subcontractor or employee of another to perform the work or be involved in the matters, in which the former employee was involved during City employment." While Mr. Turner's business is not a sole proprietorship *per se*, I do not believe his incorporation renders Advisory Opinion 95-19 inoperative. Mr. Turner will not be a "subcontractor or an employee of another" in any meaningful respect. There are no other private interests involved, only the interests of Mr. Turner and City Light.

I further note that paragraph (D), which holds that the restrictions on assisting or representing others do not apply when the former employee is acting on behalf of a governmental agency, would provide an alternative basis for Mr. Turner to perform the services, even if one were to take the position that TUCI and Mr. Turner are different "persons" for the purposes of the Ethics Code. The services as you've described them would appear to meet the definition of work "on behalf of" the City, a governmental agency. See Advisory Opinion 05-01 -- <http://www.seattle.gov/ethics/etpub/pdfs/0501.pdf>

2. Restrictions on current employees

SMC 4.16.070(2)(d) bars a City employee from having "a financial interest, direct or indirect, personally or through a member of his or her immediate family, in a business entity doing or seeking to do business with the City, and influenc[ing] or attempt[ing] to influence the selection of, or the conduct of business with, such business entity by the City."

In Advisory Opinion 95-19, the Commission opined that under this section a City employee bidding for a City contract could "not do anything more than other [bidders] to influence the selection of his proposal." Accordingly, it was appropriate for Mr. Turner to submit a proposal and it is appropriate for him to conduct himself like any other person seeking a City contract. It would not be appropriate for Mr. Turner to attempt to use his inside position to try to influence the award or the terms of his contract. I believe that the opportunities for Mr. Turner to misuse his position will be few, since you are his superior. (Were the tables turned, this section would be more of an issue.)

I also note that in his pursuit of this contract, it is inappropriate for Mr. Turner to use City resources, such as his computer, his telephone and his time, in his pursuit of this contract. Mr. Turner is pursuing this contract in his personal capacity, and he may not use City resources to further the interests of his private business.

Conclusion

A City employee's decision to leave the City can make for a difficult transition. The Ethics Code does not bar managers from contracting with departing employees, when those managers make the determination that such a contract best serves the public interest.

Don't hesitate to let me know if you have any further questions.

Regards,

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