

STATE OF NEW YORK: COUNTY OF SUFFOLK
SUFFOLK COUNTY BOARD OF ETHICS

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In the Matter of the Inquiry of

██████████ in capacity as a
Suffolk County Department Head

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STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion 2019-01
March 6, 2019

NOTICE: THIS ADVISORY OPINION IS SUBJECT TO REVISION OR WITHDRAWAL

Applications requesting its modification, clarification, or withdrawal must be made in accordance with Suffolk County Board of Ethics rules unless an application for the revision or withdrawal of an advisory opinion is timely received, it shall become final. Nothing shall prohibit the Suffolk County Board of Ethics, on its own motion, from reconsidering, revising or withdrawing an advisory opinion at any time.

Summary: This is a Department head requested advisory opinion regarding the County ethics laws applying to a proposed contract award and a former employee of the Department. Here, the Board concludes that it is a conflict of interest for a business owned by an “associated person” as defined by the Suffolk County Code of Ethics to be awarded a County contract (RFP #13355915) because the owner is related to the former County employee whose job duties involved the procurement of the proposed vendor. The Suffolk County Board of Ethics has previously opined on this topic in Advisory Opinion number 2016-23 which is distinguishable in that the employee was not involved in procurement of the vendor.

Facts: As set forth by the requestor and through Board fact finding, the facts are as follows. Ms. ██████████ was an employee of Brookhaven National Laboratory in Brookhaven (aka BNL) in the title Advanced Applications Engineer, Environmental and Climate Sciences, at the time she submitted her application to Civil Service in 2018. From July 9, 2018 to November 3, 2018 ██████████ was employed with the Suffolk County Real Property Tax Service Agency (RPTSA) in the title Mapping Products Developer. While employed by the County, ██████████ drafted a scope of work and completed all the appropriate forms to post a request for a proposal on the GSA web, proposals were due October 26, 2018. On or about October 12, 2018 ██████████ gave RPTSA notice of her intent to leave with her last day being November 3, 2018. ██████████ President submits Proposal to GSA to the attention of ██████████ since she appears as the RPTSA contact on the GSA site. ██████████ is ██████████ father and is the sole owner of IDS. Ms. ██████████ returned to the employ of BNL after November 2, 2018. The value of the proposed contract is \$158,788.00, all members of the RFP Committee submitted “Evaluation Committee No Conflict of Interest Statements”, and the former employee’s last day of work was after the submission date of the bid. Purchasing subsequently inquired with the Department Head if there was a conflict.

Analyzed Laws and Rules: The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Chapter 77, Sections 77-3(C), Suffolk County Board of Ethics Rules, § 77-9 and 77-7.

Procedural History: This Advisory Opinion was requested on 2/14/2019. The Board voted on this Advisory Opinion request on 3/6/2019 determining there is a conflict of interest under the facts presented.

Opinion: The Requestor is a County Real Property Supervisory Official. The Requestor has asked if it is a conflict of interest to award a County vendor contract when a former department employee is a familial “associate person”. The former County employee, holding the title “Mapping Projects Developer” in the Suffolk County

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Real Property Tax Service Agency. (*SCBE - Exhibit #1*). The value of the proposed contract is \$158,788.00, all members of the RFP Committee submitted "Evaluation Committee No Conflict of Interest Statements", and the former employee's last day of work was after the submission date of the bid.

In considering this inquiry, the Board employed the following three-step analysis to determine whether a prohibited conflict of interest would exist:

- a) Does the requestor have standing to obtain an Advisory Opinion from the Suffolk County Board of Ethics;
- b) Is the requestor seeking advice on proposed future conduct;
- c) Whether a conflict of interest exists in procurement due to familial "associated" person who was working in the Department awarding the contract?

The Board determined that standing exists for this Advisory Opinion request due to the requestor's position as a Suffolk County Supervisory public official which mandates compliance with the Suffolk County Ethics Laws¹ (*Suffolk County Administrative Code §A30-1, Chapter 77, §77-1*, NYC COIB Advisory Opinion 2009-4). The Board further determined as the contract had not been awarded yet, that the request is regarding proposed future conduct and is within the Board's jurisdiction².

As to potential conflicts of interest, the law states in pertinent part at § 77-3(C), Prohibited Conduct, "No public servant shall use his or her official position or office, or take or fail to take any action, in a manner which he or she knows or has reason to know may result in a personal financial benefit to a person associated³ with the public servant. Under § 77-7(A), Recusal and Disclosure, "a public servant shall promptly recuse himself or herself from acting on any matter when acting on the matter, or failing to act on the matter, would ... financially benefit ... a person or firm associated with the public servant"⁴.

As applied, the Board finds that the County employee's father (the owner of the bidder) is statutorily defined an associated person under § 77-1. Under § 77-3(C) and § 77-7(A), the Board finds that awarding the contract to the County employee's father who owns a firm receiving Suffolk County funding, does constitute a personal financial benefit to a person associated with the County employee. As the facts as presented reflect owned by the former County employee job duties did related to procurement or vendor oversight of this proposed RFP, there is a prohibited conflict.

These job duties of the former employee, included the resulting procurement specifications. Thus, the Board, under § 77-7(A) and § 77-7(B), finds that had recusals been necessary on all official actions relating to the associated person, recusals would not have been sufficient to avoid such a direct conflict. (*See SCBE Advisory Opinions No.0023-2018, 713 N.Y.S.2d 361 (2nd Dept. 2000)*).

Conclusion: As set forth above, the Board finds that pursuant to § 77-3(C) and § 77-7(A) that it is a conflict to award a County contract when proposed the vendor is an "associate person" to a former County employee whose job duties did involve procurement or oversight of the proposed vendor owned 100% by the employees parent. Additionally, the Board finds it notable that pursuant to § 77-9, "PENALTIES FOR OFFENSES", upon a determination by the Board that a violation of § 77-1 or § 77-2 involving a contract, sale or other transaction has occurred, the County may elect to void the contract, sale or transaction in question.

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Pursuant to Suffolk County Board of Ethics Resolution 004/2013 passed on January 30, 2013, the requester shall have 15 business days from the time this Advisory Opinion has been rendered (excluding Saturday, Sunday, or a legal holiday) to file a request for reconsideration supported by new material facts submitted to the Board.

The forgoing is the opinion of the Board.

Dated: Great River, New York
3/6/2019



Eric Kopp, Chair

¹ N.Y. Gen Mun. Law § 810 (6). Additional definitions; Suffolk County §77-1 definitions.”

² § A30-3 Advisory opinions shall be issued only with respect to proposed future conduct or action by a public servant. A public servant whose conduct or action is the subject of an advisory opinion shall not be subject to penalties or sanctions by virtue of acting or failing to act due to reasonable reliance on the opinion, unless material facts were omitted or misstated in the request for an opinion. The Board may amend a previously issued advisory opinion after giving reasonable notice to the public servant that it is reconsidering its opinion

³ § 77-1. Definition of Associated: A person or firm associated with a public servant includes a spouse, domestic partner, child, parent or sibling; a person with whom the public servant has a business or other financial interest; and each firm in which the public servant has an interest.

⁴ 77-7(A). RECUSAL AND DISCLOSURE. A public servant shall promptly recuse himself or herself from acting on any matter when acting on the matter, or failing to act on the matter, would constitute prohibited conduct under the Code of Ethics or would financially benefit the public servant, a person or firm associated with the public servant, a customer or client or any person from whom the public servant has received a gift, or any goods or services for less than market value in the preceding 12 months.

B. Whenever a public servant is required to recuse himself or herself under the Code of Ethics, he or she shall:

- (1) Promptly inform his or her immediate supervisor, if any;
- (2) Promptly file with the Board a signed statement disclosing the nature and extent of the conflict; and
- (3) Immediately refrain from participating further in the particular matter.