

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

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In the Matter of the Inquiry of Deputy Inspector [REDACTED]  
in capacity as a Supervisory Official in the  
Suffolk County Police Department  
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COUNTY BOARD OF ETHICS  
Advisory Opinion 2020-14

**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:** It is not a violation of the Ethics Code for an **Automated External Defibrillators** (hereinafter “AED”) vendor to be awarded to a County vendor contract on the grounds that the proposed vendor’s adult child is a County employee whose job duties do not involve procurement or oversight of the proposed vendor. The Board conducted additional fact finding including a review of SCBE precedent and the County RFP procurement process. As this is a Supervisory Official request, the Board hereby recommends that the Department advise the County employee of this issued Advisory Opinion and of the recusal laws set forth in § 77-7(A) and § 77-7(B). (*see SCBE AO 2016-23*).

**Analyzed Laws and Rules:** The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Chapter 77, Sections 77-2(B), 77-3(C), Suffolk County Board of Ethics Rules, 77-7, and Suffolk County Board of Ethics Advisory Opinion 2017-2.

**Procedural History:** This Advisory Opinion was requested on 12/10/2020. Fact-finding concluded on 12/28/2020. The Board voted on this Advisory Opinion request on 1/6/2020 determining there is no conflict of interest under the facts presented.

**Opinion:** The Requestor, a Police Department Supervisory Official, has asked if it is a conflict of interest to purchase AEDs from a vendor pursuant to a bid, where the contact listed on the bid is the father of an Emergency Medical Services Officer assigned to the Department Police Academy EMT Training Unit. Fact finding determined that the proposed vendor company is owned 100% by the County employee’s parents (*Requestor’s Exhibit #1*). The County employee, a civilian EMT instructor in the Police Department, has no financial interest in the proposed firm and was not involved in the procurement or oversight of the proposed vendor submission of prices. (*SCBE - Exhibit #1*).

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 automatically exists in procurement due to a familial “associated” person to the proposed vendor?

The Board determined that standing exists for this Advisory Opinion request due to the requestor’s position as a Suffolk County Police Department Supervisory Official, with the Department awarding the vendor contract which

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mandates compliance with the Suffolk County Ethics Laws<sup>1</sup> (*Suffolk County Administrative Code §A30-1, Chapter 77, §77-1*, NYC COIB Advisory Opinion 2009-4). The Board further determined that because the contract had not yet been awarded, the request is regarding proposed future conduct and, therefore, is within the Board's jurisdiction<sup>2</sup>.

As to prohibited interests, the County law states at 77-2(B), "No County employee shall have an ownership interest in a firm which such employee knows is engaged in business dealings with the County". Ownership interest is defined under the County law as, "An interest in a firm held by a public servant, or the public servant's spouse, domestic partner or unemancipated child, which exceeds 5% of the firm or an investment of \$25,000 in cash or other form of commitment, whichever is less". As applied, and evidenced by the submitted documents to the Board, the County employee does not have an ownership interest in the firm owned by his parents. Therefore, the Board opines that there is no prohibited interest by a public servant with this proposed vendor.

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 associated<sup>3</sup> 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"<sup>4</sup>.

The County employee, in the instant matter, did not play any role in developing the bid specification requirements, nor did he provide information to those developing the specifications. Upon investigation, it was determined that the County employee did not play a role in any aspect of the evaluation or procurement process. Accordingly, the County employee did not take any action in a manner which may result in personal financial benefit to a person associated with him.

Additionally, as to the application of the County definition of "associated persons" pursuant to the local County Ethics laws, the Suffolk County Board of Ethics has previously opined in SCBE Opinion number, *AO 2016-23*, it is not a conflict of interest for a sole responder to be awarded a County vendor contract solely because the vendor is an "associated person". In pertinent part, as requested by a Supervisory Official from the County Law Department, the Suffolk County Board of Ethics opined:

"It is not a conflict of interest for a sole responder to be awarded a County vendor contract solely because the vendor is an "associated person" to a County employee whose job duties do not involve procurement or oversight of the proposed vendor." (*see AO 2016-23, at page 1*).

As applied, the Board finds that the County employee's parents' company is in consideration to be a County vendor due to their status as a low bidder whose proposed unit meets the necessary requirements. The facts as presented show no interest owned by the County employee, and no job duties related to procurement or vendor oversight. Based on the foregoing, there is no prohibited conflict of interest for this contract award ( *see § 77-3(C) and § 77-7(A)* ).

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In the event that job duties, or a job title changes occurs resulting in procurement or vendor responsibilities, the Board, under § 77-7(A) and § 77-7(B), finds that recusal is necessary on all official actions relating to the employee's associated person. (See *NYC Conflicts of Interest Board Advisory Opinion No. 90-04*, Peterson v. Corbin, 713 N.Y.S.2d 361 (2<sup>nd</sup> Dept. 2000)).

**Conclusion:** As set forth above, the Board finds that pursuant to § 77-3(C) and § 77-7(A) it is not a conflict for this AED vendor, who is the lowest bidder whose proposed unit meets the necessary bid requirements, to be awarded a County vendor contract solely because the vendor is an "associated person" to a County employee whose job duties do not involve procurement or oversight of the proposed vendor.

As this is a supervisory official request versus a direct employee request, the Board recommends that the Department advise the County employee of this issued Advisory Opinion and of the recusal laws set forth in § 77-7(A) and § 77-7(B).

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: Hauppauge, New York

  
Eric A. Kopp - Chair  
SUFFOLK COUNTY BOARD OF ETHICS

<sup>1</sup> N.Y. Gen Mun. Law § 810 (6). Additional definitions; Suffolk County §77-1 definitions

<sup>2</sup> § 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

<sup>3</sup> § 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.

<sup>4</sup> 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:

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- (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.