

June 30, 2005  
Re: IO-05-38

You inquired whether an inspector whom you supervise may enter into a contract with a business entity that is coincidentally involved in a pending violation with your agency. The answer is that the inspector may not, under the circumstances described, participate in any private contractual dealings with this entity.

Specifically, during a routine site visit to the entity's property, the inspector learned that the entity was in a service related business that provided the type of services the inspector needed for the inspector's private residence. When told that the inspector had need of such services, the entity offered to provide the services at no cost, or at a reduced fee. Realizing that this offer could not be accepted, the inspector instead requested the entity to provide a written estimate to do the work on the inspector's property.

The ethics law, §5-102, prohibits an employee from having a contract with any entity that is "subject to the authority of the employee or of the employee's [department]". The obvious reason for this prohibition is to avoid real or perceived pressure or favoritism that can result from private contracts entered into between a regulatory agency and its regulated entities.

Section 5-107 prohibits an employee from using the prestige of office or position to incur a private benefit. There is at least an implied suggestion in the communication between the inspector and the entity that a discount would be both available and welcomed. The entity may reasonably expect that it has everything to gain by doing private business at a discounted rate for an inspector of a department from which the entity currently holds a building permit and with which it is coincidentally dealing with a pending violation.

The ethics commission advises that the inspector may not contract with the entity to perform any private services. Further, because of the appearance of a conflict of interest created by the inspector's initiation of a conversation about obtaining services from the entity, the inspector should seek competing bids from other entities that provide the services sought by the inspector.

Thank you for your inquiry. If you have any other questions, please contact me.

Sincerely,

Betsy K. Dawson  
Executive Director