



**ANNE ARUNDEL COUNTY
ETHICS COMMISSION**

January 25, 2008

By Electronic Mail Only

Re: AO-07-89

You have inquired whether and to what extent the post-employment provisions of the Public Ethics Law would prohibit you from participating in a contract with AAC to study the supply of available and the demand for new housing that will be generated by the Base Realignment and Closure Act that will bring new jobs to the Fort Meade area of the County. You are a former assistant planning and zoning officer and in that capacity you reviewed and signed off on small area plan documents that were used in the comprehensive rezoning plan. Your participation with these plans occurred between about 2000 and 2004. You resigned from your county employment in 2006 and are now employed as the technical director for a company that has submitted a bid on RFP #065R.

The RFP involved describes three separate studies. Your company is seeking to perform one of the studies. According to the RFP,

While availability of permitted but unconstructed, recently constructed and existing and available housing stock may match this demand, the location of the stock, the housing type, and ownership of those units and the cost to obtain the housing may not match the market created by this upcoming Federal action. Therefore, the jurisdictions of the City of Laurel (Prince Georges County), Anne Arundel and Howard Counties, and other areas within a 45-minute drive shed from the parameter of Fort Meade, Maryland, need to develop a clearer understanding of this match of supply and demand. Having a better understanding of the relationship between available housing supply and anticipated demand for that housing will be very important in contending with the impact of this Federal action.

The specific study for which your company bid is set forth in 2.2.2 of the RFP and provides:

Using documented sources of available information regarding existing housing stock in the aggregate for all areas of the City of Laurel (Prince George's County), Anne Arundel and Howard Counties, and other areas

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within a 45-minute drive shed from the parameter of Fort Meade, Maryland. Documented sources can be information from local governments, planning department approved subdivision and site plan information, estimated available housing stock by Baltimore Metropolitan Council's, and Washington Metropolitan Council of Government's transportation analysis zone (TAZ) geography. The Successful Offeror shall use MLS listings for existing/available housing stock and develop a trend analysis to establish housing costs for that existing stock. Deliverable for Task 2 will be a report providing the existing and estimated supply of total housing stock which is anticipated to be available for occupancy in the time frame from 2009 through 2015. The data shall be arrayed by TAZ and available in both mapped and tabular format. All assumptions and sources of data used to develop those assumptions shall also be documented in the Task 2 report.

The Public Ethics Law, §7-5-105, provides that:

A former employee may not assist or represent a party other than the County in a case, contract or other specific matter for compensation if the matter involves the County and:

- (1) the former employee participated significantly in the matter as an employee; or
- (2) the former employee had information not generally available to the public when the former employee undertook the assistance or representation.

The ethics commission advises that you may continue to participate in any contract that is generated by RFP #065R if the county awards the contract to your company. The commission concludes that your review of the small area plans for the Fort Meade portion of the county did not constitute participation in the "same matter" as the proposed contract. The "same matter" refers to "a discrete and isolatable transaction or set of transactions." ABA Commentary on Ethics And Professional Responsibility, Formal Op. 342 at 6 (1975).

The development of a small area plan is not the same matter as the subject of this RFP. The federal government, which has similar post-employment provisions as the county, provides a definition of a "particular matter" in 5 C.F.R. §737.5(c) where it states by way of exception, that, "[r]ulemaking, legislation, the formulation of general policy, standards or objectives, or other action of general application is not such a matter." The development of the small area plans is more similar to the formulation of policy or standards.

Even if your participation in the contract generated by the RFP would constitute participation in the same matter as the creation of the small area plans between 2000-2004, the commission believes that the waiver provision of §7-5-105(b) would be applicable in this situation. Your participation in a contract awarded by the county, to help the county manage the significant impact of the BRAC plan, will not adversely affect the county's interests. On the contrary, your company will be working to assist the county. This situation is similar to the

situation described in [AO-07-25](#). In that opinion, the ethics commission concluded that the former planning and zoning officer's participation in a fiscal impact analysis for the county, would not adversely impact the county's interests. Although the current planning and zoning officer did not respond to the ethics commission's request for an opinion as to the likelihood of adverse impact in this situation, the ethics commission concludes, for the reasons stated, that you may participate in any contract that is awarded pursuant to RFP #065R

Thank you for your inquiry.

The Anne Arundel County Ethics Commission

/s/

By: _____
Betsy K. Dawson, Executive Director