



**ANNE ARUNDEL COUNTY
ETHICS COMMISSION**

January 31, 2008

By Electronic Mail Only

Re: AO-07-08

You inquired whether you may award a county contract to the apparent low bidder where the president and vice-president of the low bid entity are employees of the fire department. The ethics commission advises that the president and vice president of this entity may not participate in any way in the bid, award, or execution of this contract. While the ethics law does not expressly prohibit you from awarding the contract, the award would create a conflict of interest for the president and vice-president of the entity.¹

The contract is being administered through the bureau of engineering in the department of public works. It is part of the department's capital improvement program. The work to be conducted is the replacement of 300 water service lateral connections to residences in the northern part of Anne Arundel County. The cost range for the project is between \$250,000 and \$500,000. The president of the apparent low-bidding entity, who is a county firefighter, signed the Experience and Equipment Certification Statement, showing that both the president and the vice-president are owners of the entity. They are listed as two of the four principal members of the entity. They list 15 and 20 years respectively of utility construction work.

Section 7-5-104(a) of the Public Ethics Law provides that:

¹ The procurement provisions of Title 8 of the Anne Arundel County Code, §8-2-104(m) provide that a contract shall be awarded to the lowest "responsible" bidder. Subsection (3) states that in determining responsibility, the purchasing agent shall consider, among other things, the character, integrity, reputation, and judgment of the bidder. While the ethics commission does not administer this law, it questions whether this bid would qualify under that provision.

(a) **Generally.** Except as provided in subsection (b), an employee may not, other than in the course of the employee's official duties, assist or represent a person in any matter:

- (1) before any governmental unit or employee of the County; or
- (2) in which the County has an interest.

(b) **Exceptions.** Subsection (a) does not apply to:

- (1) the performance of usual and customary constituent services without additional compensation; or
- (2) assistance to or representation of an employee without compensation in an employment- related matter by an employee other than an elected or appointed employee; or
- (3) assistance or representation that is authorized by law or contract.

The reason for this provision of law is to ensure that county employees do not find themselves in the position of having to divide their loyalties between their primary employer, the county, and their secondary employers. As [AO-98-154](#), dealing with the predecessor provision to the current §7-5-104(a), stated,

By wholly prohibiting employment by a county employee with any person in connection with matters in which the county has an interest, the law anticipates that an employee cannot be unbiased in the secondary employment relationship. This reasoning may be based on the common law notion that an employee cannot serve two masters, or put another way, that an employee owes ". . . an undivided and unselfish loyalty. . ." to the employer. See for example, *Maryland Metals, Inc. v. Metzner*, 282 Md. 31(1978). The ethics commission has generally concluded that in §3-105(c)(1), the matter in which the county has an interest must be potentially adversarial to the interest of the secondary employer before the prohibition will apply to the secondary employment.

As contract disputes are not infrequent, there is a significant potential for an adversarial relationship to develop between the contracting parties in the present case.

The ethics commission has issued a number of opinions interpreting this provision

of law, most recently in [AO-07-55](#). In that opinion, a member of the county council with an employment relationship in a private entity was advised that §5-7-104(a) prohibited the council member from working on any contract with the county that might be awarded to the employer entity. Specifically, the opinion stated:

To the extent that you are able to delegate your duties to other employees of the entity, this prohibition should present no problems. However, if the duties cannot be wholly delegated to others, the ethics law would prohibit your continuing employment with this entity. There is no exception or waiver to this prohibition in the ethics law. As a council member with an interest in a contract, any communications you would have with county employees charged with administering this contract could reasonably create an appearance of undue pressure or favoritism. This prohibition would not prevent the award of the contract to the entity with which you are employed, but it would prevent your continued employment with that entity.

In the present case, as it is unlikely that these firefighters, as the owners and officers of the corporate entity that has bid on this contract, would be able to delegate their duties under the contract. Indeed, since the president has already participated in the bidding process, it is rather clear that their participation is essential and unavoidable.

For the reasons stated herein, and unless the firefighters are able to unequivocally prove that their participation in this contract is wholly unnecessary, the ethics commission advises that you refrain from awarding this contract to the entity owned and managed by these firefighters.

The Anne Arundel County Ethics Commission

By: _____
Betsy K. Dawson, Executive Director