



ANNE ARUNDEL COUNTY
ETHICS COMMISSION

August 15, 2008

By Electronic Mail Only

Re: AO-08-46

You inquired whether a former program manager, who until recently, administered the county's watershed management program, may now, as the employee of a private consultant, bid on watershed field assessment and data assembly contracts administered through this program. For the reasons set forth in this opinion, the ethics commission advises that the former employee may bid on, and participate in, watershed assessment contracts.

You advised that while employed by the county, the former employee conducted watershed assessments and was instrumental in developing the "Scope of Work," that accompanies every Request for Proposals. The scope of work generally describes the type of information sought from the consultant, the tasks to be accomplished, the timeline for performing the tasks, and the formats to be used by the contractor in the collection of data. The scope of work is tailored to suit each project, including for example, the geographical area and size of the particular watershed.

The data collected by the consultant contractors is then evaluated by the county watershed management program staff, using computer models that were developed under the direction of the former employee.

The former employee proposes to participate in future watershed assessment proposals, not on any particular project in which the former employee previously participated.

The ethics law provision concerning former employees is §7-5-105. It provides, in relevant part, 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 . . . the former employee participated significantly in the matter as an employee; or . . . had information not generally available to the public when the former employee undertook the assistance or representation.

You advised that the information known to the former employee in this instance is all public information. While you acknowledge that the former employee may have a

better understanding of this public information and of the way that the watershed assessment process works, you also acknowledge that this information can be readily acquired by others who seek to contract with the county. Therefore, the only question before the ethics commission is whether the former employee participated significantly in the same contract or *other specific matter* while the former employee worked for the County.

In determining whether bidding on or participating in a particular watershed assessment contract is a specific matter within the meaning of §7-5-105, the ethics commission followed the definition of “particular matter” developed by the Office of Government Ethics in interpreting 18 U.S.C. § 207(a)(2) of the United States Code, a criminal provision prohibiting certain types of post-employment activities. The commission’s reliance on this interpretation is consistent with previous ethics commission opinions. See, e.g., AO-07-89.

The regulation, 5 C.F.R. 2637.201(c), describes the phrase “particular matter” as follows:

Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identifiable parties.
Rulemaking, legislation, the formulation of general policy, standards or objectives, or other action of general application is not such a matter.

By way of example the regulation describes a government employee who formulated the policy objectives of an energy conservation program. Upon leaving government employment, the former employee is not restricted from representing a client which seeks a grant or contract for work emerging from such a program. Another example involves a government employee who is regularly involved in the formulation of policy, procedures, and regulations governing departmental procurement and acquisition functions. Upon leaving government employment, the former employee is not prohibited from participating in matters involving the application of such policies, procedures, or regulations.

These examples are similar to the situation that you described in this inquiry. Based upon this regulation and these examples, the ethics commission has concluded that bidding on, or participating in, watershed field assessment and GIS data assembly contracts, does not constitute the same specific matter as developing a broad scope of work or designing computer formats for watershed data assessment. The commission therefore advises that the former employee may participate in future watershed assessment consulting contracts with the County.

Thank you for your inquiry. Please call if you have additional questions or concerns.

The Anne Arundel County Ethics Commission

/s/

By: _____
Betsy K. Dawson, Executive Director