



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

April 17, 2006

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EXECUTIVE DIRECTOR

Erich Seamon
Erich Seamon and Associates
2261 Market Street, Suite 297
San Francisco, CA 94114

Dear Mr. Seamon:

You have requested a formal opinion letter¹ from the Ethics Commission regarding whether the City's post-employment restrictions disallow you from doing contractual work for one of the City's approved computer store vendors.

The Ethics Commission provides two kinds of advice: written formal opinions and informal advice. *S.F. Charter Section C3.699-12*. Written formal opinions are available to individuals who request advice about their responsibilities under local laws. Formal opinions provide the requester immunity from subsequent enforcement action if the material facts are as stated in the request for advice, and if the District Attorney and City Attorney concur in the advice.² *See id.* Informal advice does not provide similar protection. *See id.* Because you seek advice on actions you may take in the future, the Commission is treating your request as a request for formal advice.

Questions Presented

You asked the following questions:

As a former employee of the Department of Telecommunications and Information Services (DTIS), are there any post-employment restrictions that would disallow you from contractually working for one of the City's approved computer store vendors? Would you be permitted to work as a subcontractor for any of the vendors on a competitively-bid City project?

¹ Although your letter references a waiver request, in a telephone conversation with Commission staff, you indicated that you did not seek a waiver from the post-employment restrictions.

² The Ethics Commission does not act as a finder of fact. Advice is prepared based upon the facts presented by you in this letter. The advice in this letter may provide immunity, but only to the extent that the material facts related to a future enforcement action are presented here.

Short Answers

As a general rule, the City's post-employment restrictions do not bar you from contracting with any one of the City's approved computer store vendors or with any person or entity. The restrictions apply only to activities, not to employment. The one-year post-employment restriction bars you from communicating with DTIS on behalf of any other person with the intent to influence a government decision for one year after your termination of employment from DTIS. In addition, you are permanently barred from representing a person or entity other than yourself or the City before any court or any state, federal or local agency to influence a decision in connection with a particular matter in which you personally participated as a City employee in which the City has a direct and substantial interest. You are also prohibited from accepting employment or otherwise receiving compensation from any person or entity that has a contract with the City where you personally and substantially participated in the award of the contract.

Brief Statements of Facts

You state that you were employed as an IS manager with DTIS from December 2000 to October 21, 2005, when you moved out of state. In a telephone conversation with staff, you indicated that as an IS manager, you worked on electronic mapping of the City for the City's website and as a customer service manager in which you interacted with other City departments regarding their needs for technology. During your last two to three years of employment, you were not involved in the making or development of any contracts with any vendors. You continue to work in your field of interest and maintain a business address in San Francisco, where you frequently visit. In your letter, you identified the City's approved computer store vendors as Central Computer System, Ciber, Cornerstone Systems, En Pointe Technologies, Micromenders, and Xtech.

Relevant Law and Discussion

There are three general post-employment restrictions under local law. *See* San Francisco Campaign and Governmental Conduct ("C&GC") Code § 3.234. First, former City officers and employees are permanently prohibited from switching sides on particular matters in which they participated personally and substantially while with the City. *See* C&GC Code § 3.234(a)(1)(A) and (B). Second, former City officers and employees are prohibited from communicating with the officers and employees of their former department for a period of one year after they leave City service. *See* C&GC Code § 3.234(a)(1)(D). Third, former City officers and employees are prohibited, for a period of one year after termination of City service or employment, from being employed by or otherwise receiving compensation from a person or entity that has entered into a contract with the City within the officer or employee's last 12 months in City service where the officer or employee personally and substantially participated in the award of the contract. *See* C&GC Code § 3.234(a)(2)(A).³ The application of each of these restrictions to your set of facts is discussed below.

³ You would also be subject to other laws of general applicability. Section 3.228 of the C&GC Code, for example, prohibits you from disclosing any confidential or privileged information that you obtained during your employment with the City.

A. *The Permanent Prohibition*

Section 3.234(a)(1)(A) provides:

No former officer or employee of the City and County, after the termination of his or her service or employment with the City, shall, with the intent to influence, act as agent or attorney, or otherwise represent, any other person (except the City and County) before any court, or before any state, federal, or local agency, or any officer or employee thereof, by making any formal or informal appearance or by making any oral, written, or other communication in connection with a particular matter:

- (i) in which the City and County is a party or has a direct and substantial interest;
- (ii) in which the former officer or employee participated personally and substantially as a City officer or employee;
- (iii) which involved a specific party or parties at the time of such participation; and
- (iv) which is the same matter in which the officer or employee participated as a City officer or employee.

Section 3.234(a)(1)(B) prohibits former officers and employees from assisting others on matters in which they would be prohibited from personally participating under subsection (a)(1)(A). You have not provided us with any facts to suggest that you plan to participate, on behalf of any of the vendors, in any matters in which you participated personally and substantially while employed with the City. As discussed with staff, if the facts change and you are presented with a matter in which you participated personally and substantially while with the City, you should contact the Commission before participating in the matter.

B. *The One-Year Restriction*

Section 3.234(a)(1)(D) provides:

No former officer or employee of the City and County, for one year after termination of his or her service or employment with the City, shall, with the intent to influence a government decision, communicate orally, in writing, or in any other manner on behalf of any other person (except the City and County) with any officer or employee of the department, board, commission, office or other unit of government, for which the officer or employee served.

The express language of this subsection precludes you from communicating, with the intent to influence a government decision, on behalf of any other entity, with representatives of DTIS for one year after you leave your employment with the City.

Nonetheless, section 3.234(a)(1)(D) does not prohibit your appointment to a contractual position with any of the vendors. This section merely prohibits you from communicating on behalf of the vendors with representatives of DTIS for one year after you leave City service. Furthermore, the law expressly provides that the Commission may waive the application of this section to any situation that would not create the potential for undue influence or unfair advantage. You may

request that the Commission grant to you such a waiver for your communications on behalf of the vendors.

C. Employment with City Contractors

Section 3.234(a)(2)(A) provides:

No officer or employee of the City shall, for a period of one year after termination of City service or employment, be employed by or otherwise receive compensation from a person or entity that entered into a contract with the City within the 12 months prior to the officer or employee leaving City service where the officer or employee personally and substantially participated in the award of the contract.

You have informed the Commission that you did not personally and substantially participate in the development or award of any contract between the City and any vendors within the last two to three years of your employment with DTIS. Accordingly, by its express terms, section 3.234(a)(2)(A) does not prohibit you from being employed by or otherwise receiving compensation from any City vendor.

Conclusion

I hope you find this information helpful. If you have additional questions, please do not hesitate to contact us.

Sincerely,

John St. Croix
Executive Director

By: Mabel Ng
Deputy Executive Director