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Formal Advisory Opinion 2005-3 City Employees Doing Business with the City

Opinion Summary

A city employee may provide goods and services to the city through a privately or personally owned business only under limited circumstances. The business with the city must be conducted through sealed competitive bidding or requests for proposal where the bids are opened and awarded at meetings open to the public.

Question Presented

When may city employees provide goods and services to the city through a personal business or company?

Facts

The City Internal Auditor has requested a formal advisory opinion on whether the Standards of Conduct in the Code of Ordinances allow city employees to serve as city vendors. During an audit on the city's payroll, her staff found that at least two city employees were providing goods and services to the city. She gives the following two examples:

- An employee was paid \$768 in 2004 to provide pins and key chains to his office. The items were provided through purchase orders that were not put up for bid.
- An employee received \$3,611 since 2002 for installing carpet and tile at his work location. This work was provided through purchase orders that were not put up for bid.

In addition, the Finance Department has asked whether it should pay an employee who performed services for the city outside his normal work week, and the Ethics Office has received inquiries from both employees who seek to provide services to the city and from departments who want to purchase supplies from their employees. These transactions raise an issue concerning whether it is a conflict of interest under the Code of Ethics for employees to do business with the city.

Discussion

The major provision addressing whether it is a conflict of interest for an official or employee to do business with the city is found in section 2-820 on incompatible interests. It prohibits employees from owning, being employed by, or having any connection with a company that does business with the city except through sealed bids or requests for proposals where the selection is made in public meetings.

(c) No official or employee shall own stock in or be employed by or have any business, financial or professional connection with or ownership interest in any business, company or concern which does business with the city, **unless such business with the city is conducted through sealed competitive bidding or requests for proposal where such bids are opened and the awards are made at meetings open to the public.** Such involvement shall not be considered as doing business with the city so as to cause any conflict of interest; provided, however, that any such person shall remain subject to sections 2-812 and 2-813 governing participation in contracts and disclosure of interests. This section is not intended to apply to ownership of less than ten percent of any publicly traded stock.

See § 2-820 (emphasis supplied.) The Code of Ethics defines a “business” as any “corporation, partnership, proprietorship, organization, self-employed individual and any other entity operated for economic gain.” See § 2-801.

Two other provisions regulate the actions of officials and employees when they or their company seeks to do business with the city. Section 2-812 prohibits any involvement in developing, evaluating, or deciding any bid or contract in which the official or employee has a financial or personal interest, and section 2-813 requires disclosure in writing of any interest in any decision pending before the individual or the individual’s agency. If the official or employee works in one of the positions listed in sections 2-813 or 2-814, the individual must disclose on a city financial disclosure statement the nature of any business that the official, employee, or his or her outside employer does with the city.

The city’s code enables employees to provide goods and services to the city only when the business is conducted through an open and competitive process. Based on the plain language of the Code of Ethics, a city employee may engage in business with the city if the contract is awarded through competitive sealed bids or requests for proposal and the selection is made at a public meeting. The employee may not participate in any decisions related to the city’s development of the bid or award of the contract and must disclose any financial or personal interest on the city financial disclosure statement and conflicts of interest disclosure statement. The Ethics Office has developed a form that is available online for officials and employees to complete when they are disqualified due to a conflict of interest.

The code does not permit employees to provide materials, equipment, supplies, or services through purchase orders that are not put up for bid or allow departments to choose a city employee as a vendor based on quotes or any other informal selection process. The rationale for this distinction is that the competitive bid process has safeguards to ensure that all interested parties have an equal opportunity to do business with the city, the public receives the best value for its money, and contracts are awarded based on price and quality, not friendship or favoritism.

Reviewing the examples provided by the City Internal Auditor, the work that the two employees did for the city violated section 2-820 (c). Each employee operated a “business” as a self-employed individual and provided either goods or services to the city through a purchase order; the business was not conducted through sealed competitive bids or requests for proposal in which the bids were opened and awarded at a public meeting. Because the business conducted by the employees with the city did not meet the rules for an open, competitive bid process, the transactions are an incompatible interest under the City of Atlanta’s Code of Ethics.

Adopted May 19, 2005

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