



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 477

August 21, 2007

Whether a former employee of a regulatory state agency who worked on the standard specification manual used for agency contracts is prohibited by Government Code section 572.054(b) from working on a private company's bid for contracts that utilize those specifications. (AOR – 540)

A former employee of the Texas Department of Transportation (TxDOT) has asked the Texas Ethics Commission to consider a question about the application of the “revolving door” provision in Government Code section 572.054(b). That provision provides as follows:

A former state officer or employee of a regulatory agency who ceases service or employment with that agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility.

Gov't Code § 572.054(b).¹ “Particular matter” means “a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest, or judicial or other proceeding.” Gov't Code § 572.054(h)(2).

The requestor states that as a TxDOT employee he chaired a committee that wrote the “700 Items – Maintenance” portion of the Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges Manual (hereafter “standard specifications”). TxDOT adopted the standard specifications that are used by persons bidding on TxDOT contracts, in 2004 after extensive review by the agency and other interested parties, and after a period of public comment. The standard specifications were not written specifically for one specific project but rather are standard specifications that are used for unspecified projects and that have been used for hundreds of TxDOT contracts. The standard specifications have been public knowledge since 2004 and are available on TxDOT's website.

The former employee is now employed by a private consultant who contracts with TxDOT. The former employee asked whether his involvement in the development of the standard specifications prohibits him from working on TxDOT contracts for organizations that bid on TxDOT contracts that utilize the standard specifications. The question before the commission is whether the standard specifications are a separate matter from a contract that utilizes those standard specifications.

In a previous opinion we have concluded that the matter of assuring compliance with an agency rule or policy is not part of the same matter as the matter of drafting or adopting the agency rule or policy. Ethics Advisory Opinion No. 365 (1997). Similarly, in this instance we find that the bidding on a contract that utilizes the standard specifications the employee helped develop is not part of the same matter as the matter of writing the standard specifications. Consequently, the requestor would not be violating Government Code section 572.054(b) by working on a private company's bid for a contract that utilizes the standard specifications described in this request.

We note that our decision is based in part on the fact that the specifications at issue are standard specifications that are not written specifically for a project. We recognize that in some instances specifications for a contract and a subsequent bid for that contract may be the same matter.

SUMMARY

A former employee of a regulatory agency would not violate Government Code section 572.054(b) by working on a private company's bid for an agency contract that utilizes the standard specifications as described in this request that the requestor participated in writing as an agency employee.

¹ The prohibition in section 572.054(b) applies to former employees who were compensated at or above a certain level. *See* Gov't Code §572.054(c)(2); [Ethics Advisory Opinion No. 397](#), n.1 (1998).