



# TEXAS ETHICS COMMISSION



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## ETHICS ADVISORY OPINION NO. 626

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June 12, 2025

### ISSUE

*Whether an employee of a state agency is subject to the Section 572.069 two-year waiting period before accepting employment for a particular employer after helping to select and purchase a software product from the potential employer. (AOR-729)*

### SUMMARY

Under the facts presented, the former state employee would not be able to work for the particular employer for two years after the contract was signed.

### FACTS

The requestor is a current employee of a state agency who wishes to accept employment with a company that provides software solutions to the public and private sector.

As a state employee, the requestor was involved in the purchase of software licenses from the same vendor that is now offering employment to the requestor. The vendor will be referred to as "Vendor 1" to help ensure the confidentiality of the requestor under Section 571.093 of the Government Code.

The requestor states:

My role in the procurement was to participate in identifying [Vendor 1] as the final solution. The [state agency] had looked at Vendor 1 and other CRM [Customer Relations Management] solutions prior to my employment at the [state agency], but did not move forward with any procurement at that time. After joining the [state agency] we were notified that our existing CRM . . . was being discontinued . . . It was expressed to me that the prior procurement had paused because the [state agency] wished to enter into an agreement with a vendor who could consolidate CRM needs across all departments into a single solution rather than the niche solution in use...

We began investigation potential solutions, and [Vendor 1] appeared to be

the best solution based on these needs and the flexibility of the solutions. I worked with [Vendor 1] to identify the number of licenses needed based on our existing solutions that would be replaced by [Vendor 1]. The procurement leveraged the existing state contract through [a reseller] and DIR . . . .

. . . The quote is on [Reseller's] letterhead but also contains [Vendor 1's] logo, states "[Vendor 1] Government at [Reseller]", and has links to [Vendor 1's] product descriptions, and [Reseller's] terms and conditions.

The contract was signed by representatives of the Reseller and the state agency. Neither the requestor nor Vendor 1 signed the contract.

The requestor has been part of the implementation team for Vendor 1's software after the contract was signed.

### ANALYSIS

A former state officer or employee who "participated on behalf of a state agency in a procurement or contract negotiation" is prohibited from accepting employment from a person "*involved*" in that procurement or contract negotiation for two years after the contract is signed or the procurement is terminated or withdrawn. Tex. Gov't Code § 572.069.

Unlike the other Chapter 572 "revolving door" prohibitions, this provision applies to all former state employees and does not merely prohibit former state agency employees from working on particular matters in their new employment. *Compare id.* § 572.054, *with id.* § 572.069. Instead, it prohibits former state agency employees from accepting *any* employment from certain persons for two years, even if the private employment is unrelated to anything they worked on during their state service.

For the reasons stated below we find that the requestor participated in a contract that involved Vendor 1 as a state employee and therefore is barred from accepting employment from Vendor 1 for two years after the date the contract involving Vendor 1 was signed.

#### **The purchase of Vendor 1's software products was a procurement.**

The Government Code does not define procurement or contract negotiation. However, we have said a procurement involves an agency's acquisition of goods and services including "defin[ing] the business need," "select[ing] the vendor that provides best value to the State," and "ensur[ing] that the awarded contract complies with applicable procurement law and contains provisions that achieve the procurement objectives." Tex. Ethics Comm'n Op. No. 571 (2022), *quoting* the State of Texas Procurement and Contract Management Guide.

The requestor stated that the decision to purchase Vendor 1's software began with a needs assessment to determine how to consolidate all of the agency's content management systems into one, unified content management solution. After the agency's needs were determined, the agency evaluated available products to select the one that would provide the best value to the state. Both the needs assessment and selecting the vendor that provides the best value to the state are parts of

the procurement process identified in the Texas Procurement and Contract Guide. Ultimately, the agency entered into a contract for the purchase of Vendor 1's software.

That the software products purchased from Company A were procured through a pre-negotiated DIR Cooperative contract does not change the conclusion. DIR Cooperative contracts allow a state agency to take advantage of contracts with many terms pre-negotiated. These pre-negotiated contracts help the state leverage its buying power across agencies to receive a better price and help ensure that the contract complies with applicable procurement laws. However, the negotiation of some contractual terms is only one component of a procurement.

**The requestor participated in the procurement.**

Although Section 572.069 does not define the word "participated," we have previously applied the definition found in a companion revolving door law prohibition, Section 572.054. *See* Tex. Ethics Comm'n Op. Nos. 568 (2021), 586 (2023). "Participated" means "to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action." Tex. Gov't Code § 572.054(h)(1). We apply that definition here.

The requestor stated he participated in evaluating the agency's needs, identified Vendor 1 as the best option for the agency, and worked directly with the vendor to determine the number of licenses needed.

**The procurement involved Vendor 1.**

The requestor is prohibited from accepting employments from Vendor 1 for two years after the contract was signed because the procurement that he participated in "involved" Vendor 1.

A contract involves a person identified in the contract as providing services under the contract even if the person is not a party to the contract. Tex. Ethics. Comm'n Op. No. 545 (2017).

Although the named party on the cooperative contract was Reseller, the contract was for products and or services provided by Vendor 1. Vendor 1 also actively participated in the procurement by negotiating the number of licenses to be purchased by the agency of its software. Therefore, the procurement involved Vendor 1.