

BOARD OF ETHICS

WASHINGTON SUBURBAN SANITARY COMMISSION

ADVISORY OPINION # A-18-03

SUBJECT: CODE OF ETHICS § 1.70.190 (FORMERLY § 3-3)
EMPLOYMENT RESTRICTION - FORMER COMMISSIONERS AND
EMPLOYEES

By request dated December 12, 2018, a firm interested in bidding on a Commission procurement solicitation (Requestor) has asked the Board of Ethics (Board) to issue an advisory opinion as to whether the WSSC Code of Ethics (Code) restricts the company from including a former WSSC employee on the firm's Commission proposals. The company is interested in bidding on a particular solicitation that was referenced in the firm's request for an advisory opinion.

As background, the former employee separated from WSSC employment on April 21, 2017. When he was with WSSC, he was a Unit Coordinator (equivalent to the current Section Manager designation). In this capacity, the former employee oversaw a contract for acoustic inspection of water mains. The contract expired in 2017 and WSSC has not reissued it for re-award. Instead, the same section that the former employee managed has requested responses to a solicitation that covers some of the same work of the previous contract, but is expanded in scope.

Code § 1.70.190(B) (formerly § 3-3(b)) prohibits a former WSSC employee from acting "as an agent or representative of any person or entity in a business transaction with WSSC within 12 months of their separation from WSSC." As this request is made after the expiration of the twelve-month period referenced above, the employee is no longer subject to the general restriction regarding participation in WSSC matters.

Code § 1.70.190(A) (formerly § 3-3(a)) also addresses post-employment restrictions. It prohibits former WSSC employees from ever assisting or representing "a party in a case, contract or other specific matter for compensation involving WSSC *if the former employee participated significantly in the matter as an employee.*" (Emphasis added.) This provision, unlike Code § 1.70.190(B), has no time restriction. The current solicitation was developed and issued after the former employee left the Commission and there is no evidence that the former employee participated in its development during his tenure. This, coupled with the current solicitation not being merely a reissuance of the contract the former employee managed, indicates that the post-employment restriction criteria as provided for in the Code have not been met in this instance. However, if the firm should bid on a WSSC contract that involves a matter on which he did "participate significantly," as established in the Code, then § 1.70.190(A) would prohibit him from ever "assisting or representing" the company on that WSSC project.

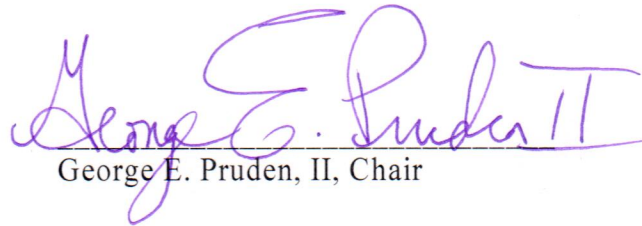
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In conclusion, based on the facts presented, the Board holds that the Code does not prohibit the Requestor from including the former employee on the aforementioned solicitation. The Board commends the Requestor for recognizing the Code of Ethics requirements and seeking the Board's advice in this matter.

This opinion applies to the specific facts presented herein. Should circumstances change or additional concerns arise, Requestor should seek further guidance from the Board.

On motion of Member Hausman, seconded by Member Moore, the Board agreed at its meeting held on **January 17, 2019**, to adopt the foregoing advisory opinion.



George E. Pruden, II, Chair