

BOARD OF ETHICS
WASHINGTON SUBURBAN SANITARY COMMISSION

WAIVER REQUEST W-13-04

SUBJECT: CODE OF ETHICS § 3-2 RESTRICTIONS ON OTHER EMPLOYMENT AND FINANCIAL INTERESTS

By request received September 30, 2013, a WSSC employee (Requestor) has asked the Board of Ethics (Board) to issue a Waiver of the Code of Ethics § 3-2(b), allowing the Requestor to teach for an organization that does business directly with the same Department for which the Employee works. The Requestor is a member of the WSSC Procurement Management Team, and has direct and indirect dealings with the organization.

As a Manager in Procurement, Employee directs and manages the overall activities and operations for the acquisition of goods, supplies and professional services throughout WSSC. Acquisition of goods and supplies typically includes such items as inventory, stocking multiple warehouses; chemicals that supplies all of our production plants; capital equipment used by various WSSC Teams; and maintenance, repair and operations for various products, supplies and services that support the Customer Care, Logistics and Production Teams. Acquisition of professional services, includes but is not limited to services of professionals or consulting services for WSSC such as legal, information technology, training, human resources, temporary, medical, research and development, educational, financial, external auditing, building management, appraisal, safety, security and all equipment and computer related services in support of the Information Technology Department.

Requestor desires to teach for the National Institute for Government Purchasing (NIGP). The NIGP is a national, membership-based non-profit corporation that develops, supports and promotes public procurement practitioners through educational and research programs, technical services and advocacy initiatives. It also provides and maintains educational certification for WSSC Procurement professionals as well as other Employees throughout WSSC. The NIGP has had annual contracts with WSSC for several years. The most recent contract with NIGP covers the period of July 1, 2013 through June 30, 2014; it has the renewal option for one additional year.

Section 3-2(a) of the Code generally restricts an employee from engaging in outside employment if it is of such a nature which does or may create a conflict of interest or the appearance of a conflict of interest. Furthermore, Section 3-2(b) states that “unless the Board grants a waiver” or “as permitted by an advisory opinion,” “an employee must not:”

- (1) be employed by, or have a financial interest in any business that:
 - (A) is regulated by WSSC;
 - (B) negotiates or has entered into a contract with WSSC; or
 - (C) is a subcontractor for any business that has a contract with WSSC;

- (2) hold any other employment relationship that would impair the impartiality and independence of judgment of the employee; or
- (3) be employed by an entity that is a party to a contract that binds or purports to bind WSSC if the duties of the employee include matters substantially relating to or affecting the contract and the contract binds or purports to bind WSSC to pay more than \$1,000.

The standards that the Board must follow for consideration of a waiver request are set forth in Section 2-3(a)-(b). Section 2-3(a) enforces the standard that the best interest of WSSC should always outweigh any potential conflict of interest. Section 2-3(b) pertains specifically to requests for waivers related to secondary employment and allows the Board to grant a waiver if it finds that "the proposed employment is not likely to create an actual conflict of interest."

Under the circumstances presented here, the Board denies the Waiver. Assuming that Requestor's proposed outside employment will not conflict with the Requestor's normal WSSC work hours, the Board finds that Requestor's proposed secondary employment as a NIGP Instructor, whether online or in the classroom, is a conflict of interest. As a Manager in Procurement, Requestor has the authority to approve Employee's request for NIGP membership and educational opportunities. Memberships as well as NIGP courses are provided at a cost to WSSC. As noted in WSSC's contract with NIGP, it is an indefinite-quantity agreement under which WSSC may request services from NIGP on an as-needed, when-needed basis. The contract further provides that a minimum number of students must be provided by WSSC depending on the length of the course before NIGP will provide instructional services. NIGP reserves the right to cancel courses when deemed financially prudent by NIGP. Furthermore, a member of Procurement's administrative staff serves as Procurement Officer for the NIGP contract.

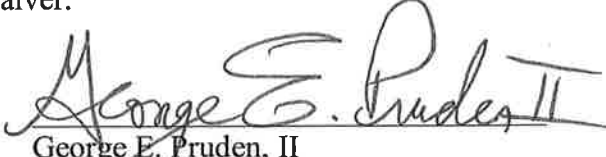
Currently, there is an initiative in the Procurement Department to ensure that all procurement staff obtain NIGP certification. If allowed to be compensated as a NIGP Instructor while serving as a Manager in Procurement, there are potentially several conflicts, including but not limited to:

- Accessibility to the management and administration of the NIGP contract;
- Service as the NIGP representative on behalf of WSSC;
- Management and administration of the NIGP contract as well as approval of or advising on the approval of contract terms, renewals and extensions;
- Creation and approval of Employees' development and improvement plans; or
- Approving/disapproving Employees requests for NIGP courses including certification.

As stated in the Request for Waiver, Requestor serves as "the agency representative for NIGP – representing WSSC." In essence, Requestor would play two conflicting roles if participating in any of the matters noted above while working for NIGP. As a result, the Requestor cannot accept outside employment with NIGP. NIGP currently does business with WSSC, and it has an identifiable financial interest, which may affect the Requestor in performance of the Requestor's official duties as a WSSC Employee.

Should circumstances change or additional concerns arise, Requestor must seek further guidance from the Board.

On motion by Robert Moore, seconded by Dr. Hausman, the Board agreed at its meeting held on December 12, 2013 to deny the Waiver.


George E. Pruden, II
Chair

12 DECEMBER 2013
Date