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MEMORANDUM

CONFIDENTIAL

To: [REDACTED]
[REDACTED]

From: *Albert F. Hofeld*
Albert F. Hofeld
Chairman, Board of Ethics

Re: Case No. 90063.A
ADVISORY OPINION

Date: October 24, 1990

On October 16, 1990, you telephoned about a post-employment question which in part required our immediate response. Your question raised two issues. This memorandum addresses the first issue, a contract bid which meets all of the Department's requirements. The second issue is more complex and requires further research. As we discussed over the telephone, that issue will be addressed at a later date.

FACTS: INDIVIDUAL A was the former Senior EE DEALING WITH SMALL ORDERS IN YOUR DEPT. on the Contract Administration Division of the Purchasing Department. He was in charge of small order purchases (under \$10,000) of construction, electrical, health, and miscellaneous supplies for your Department. These orders did not require a contract due to the amount of the purchase. His last day of employment was March 16, 1988.

INDIVIDUAL A now works for CORPORATION & SUPPLY. This company has done business with the City for some time and dealt with INDIVIDUAL A on small purchases while he worked for the City.

You reported that CORPORATION recently submitted a sealed bid for a contract. The successful bidder for this contract would supply [REDACTED] mounted [REDACTED]. The amount of this contract is [REDACTED].



over \$10,000. These ██████████ are to be used for a project initiated by THE CITY ██████████. You asked if ██████████ Department may accept ██████████ bid, as the low bidder, and award it the contract.

You reported that ██████████ also continues to do business with the City by filling small orders for the ██████████ Department. You would like to know if the Department can continue to deal with ██████████ if ██████████ INDIVIDUAL A ██████████ is assisting them with their small order bids.

As you know, on October 17, 1998, our staff spoke with ██████████, INDIVIDUAL B, INDIVIDUAL A'S FORMER SUPERVISOR ██████████ Williams former supervisor, about INDIVIDUAL A'S job duties while with the City. According to ██████████, INDIVIDUAL A ██████████ was only involved with small orders and never worked on contracts. His duties were to identify small local and minority businesses with which to work, send bid invitations for small orders, and assist in the granting of the order award.

██████████ explained that the bid process works as follows. A City department which needs a supply submits a requisition to the Purchasing Department. The Purchasing Department uses its computer system to compile a list of small local, women, and minority businesses which have the capacity to fill the order. An invitation to bid is sent to the qualifying businesses with all of the specifications which need to be filled. The department receives and evaluates the bids and awards the order to the lowest and most responsible bidder. A notification of award is sent to the successful bidder. Mr. Williams was involved in each of these steps.

According to INDIVIDUAL B ██████████, INDIVIDUAL A ██████████ was not responsible for following the order after the award was given. Another division or the department ordering the supply would be responsible for following up with the contractor to make sure the order was correctly filled.

ISSUE: Whether INDIVIDUAL A ██████████ is permitted to assist or represent ██████████ Supplies in obtaining a contract with the Purchasing Department, in particular the contract to sell wall light fixtures.

LAW: Section 2-156-100(b) (prior code § 26.2-10(b)) of the Governmental Ethics Ordinance, governing post-employment activities, applies to this situation.

No former official or employee shall, for a period of one year after the termination of the official's or employee's term of office or employment, assist or

represent any person in any business transaction involving the City or any of its agencies, if the official or employee participated personally and substantially in the subject matter of the transaction during his term of office or employment; provided, that if the official or employee exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract.

Section 2-156-010(g) (prior code §26.2-1(g)) defines "contract management authority:"

"Contract management authority" means personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.

According to these sections, a former City employee is subject to two restrictions on his employment after leaving City service: a one-year prohibition and a permanent prohibition. A former City employee is prohibited, for one year after leaving City service, from assisting or representing any person in any business transaction involving the City if (1) the transaction involves a subject matter or area of City business in which the person participated as a City employee; and (2) the person's participation in this subject matter or area was personal and substantial. A former City employee is prohibited permanently from assisting or representing someone in a business transaction involving the City if (1) the transaction is a contract; and (2) the person exercised "contract management authority," as defined above, with respect to this particular transaction while acting as a City employee.

ANALYSIS: INDIVIDUAL A's duties while he was employed with the Department did not involve contracts. His duties involved finding vendors to fill small orders of construction, electrical, health, and miscellaneous supplies for the City.

The transaction in this case is a large contract pursuant to which ^{CORP.} will provide the City with lighting fixtures. According to you and INDIVIDUAL B, one division of the Purchasing Department handles contracts while the other division handles filling small orders. The Board also reviewed the Department structure set forth in the attached Exhibit A. Since INDIVIDUAL A was not involved in the contract bidding process while he was a City employee, he is not prohibited from representing or assisting a

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person who is bidding for a contract with the [REDACTED] Department.

As you noted, [REDACTED] Case No. 90012.A, is similar to the present case in that it dealt with a former employee, Individual C, from the same Department. [REDACTED] INDIVIDUAL C worked on [REDACTED] contracts and was prohibited from assisting or representing his new employer with its bids for similar [REDACTED] contracts. The difference between INDIVIDUAL C and INDIVIDUAL A is that INDIVIDUAL A did not work on contracts while with the City. Rather, he filled small orders which did not require a contract or go through the contract bidding process.

The Board determined that INDIVIDUAL A may assist and represent CORPORATION Q [REDACTED] with regard to their contract bid for [REDACTED] [REDACTED]. Therefore, the [REDACTED] Department may accept [REDACTED] bid if it so desires. The staff will prepare the second issue which you raised for a later Board meeting.

The attached notice of reliance and reconsideration is being forwarded in order to fulfill the obligations of the Board with respect to advisory opinions. We sincerely thank you for requesting our opinion and bringing these matters to our attention. We will provide our opinion with regard to the second issue at a later date. If you have any questions, please call.

Sincerely,


Albert Hofeld
Chairman

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