



STATE OF ARKANSAS
**Department of Finance
and Administration**

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August 7, 2017

Tim Leathers
inVeritas Research and Consulting
650 South Shackleford, Suite 305
Little Rock, AR 72211

RE: Advisory Opinion No. 2017-07

Dear Mr. Leathers:

This letter is in response to your request for an advisory opinion, pursuant to Ark. Code Ann. §19-11-715(b), regarding whether the circumstances described below involving your former employment with the Department of Finance and Administration (“DFA”) and subsequent employment with inVeritas Research and Consulting (“inVeritas”) would violate ethical standards under Ark. Code Ann. §19-11-701 et seq., in the event inVeritas were to become a subcontracted advisor to the Arkansas General Assembly and Arkansas Bureau of Legislative Research (“BLR”). This opinion is based upon the following facts that have been presented to me. It should be noted that if one or more of these facts are later shown to be incorrect, that could result in a revised opinion.

1. Mr. Leathers was Deputy Director of DFA until retiring from state employment January 1, 2017;
2. Mr. Leathers began employment with inVeritas as Vice President of Consulting on January 2, 2017;
3. On July 21, 2017, BLR issued a request for proposal, number BLR1-7003, soliciting “Procurement Process Consulting Services”;
4. A company seeks to submit a response proposal to BLR1-7003 in which inVeritas would be a subcontractor;
5. As a subcontractor, inVeritas would provide assistance to the prime contractor, BLR, and the General Assembly by studying and advising on Arkansas procurement law and procedures, as well as the process of evaluating contract proposals;
6. All services performed by the prime contractor and inVeritas would be on behalf of and as an agent for BLR and the General Assembly.

Ark. Code Ann. §19-11-709(b)(1) prohibits former state employees from knowingly acting “as a principal or as an agent for anyone other than the state in connection with any: (A) Judicial or other proceeding, application, request for ruling, or other determination; (B) Contract; (C) Claim; or (D) Charge or controversy, in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the state is a party or has a direct and substantial interest.

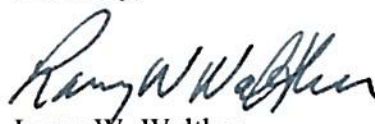
Based on the above facts, it appears this matter is indeed in connection with a contract. Further, given that the Office of State Procurement is an office within DFA, Mr. Leathers, as the former Deputy Director of DFA, was certainly “participating personally and substantially through decisions, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee” on the same matters now falling under the scope of this potential subcontracting performance of enVeritas, that being advising on Arkansas procurement law and procedures, as well as the contract evaluation process.

However, Mr. Leathers would be conducting the subcontracting services on behalf of and as an agent of, the state, in which the interests of inVeritas align with those of the state. Pursuant to the statutory language of Ark. Code Ann. §19-11-709(b)(1), as well as conflict of interest common law, the offending behavior occurs the former employee acts as a “principal or as an agent for anyone other than the state.”

Accordingly, I find that no conflict of interest would exist should a prime contractor use inVeritas as a subcontractor in a contract awarded for the services sought in BLR1-7003. As the subcontracting services would be rendered as an agent for the state, there is no conflict of interest.

This advisory opinion is issued in accordance with Ark. Code Ann. § 19-11-715(b). Compliance with the above course of conduct is deemed to constitute compliance with the ethical standards of the Act and Executive Order 98-04.

Sincerely,



Larry W. Walther
Director

cc: Edward Armstrong, Office of State Procurement