



Department of Transformation and Shared Services

Governor Sarah Huckabee Sanders

Secretary Joseph Wood

June 9, 2023

Ms. Allison Plowman Hatfield
General Counsel
Arkansas Department of Commerce
1 Commerce Way
Little Rock, Arkansas 72202

RE: Advisory Opinion No. 2023-08
Contract No. 4600052827
Winrock International
Lighthouse Advisors, LLC - Edward A. Dickey
Rockwood Advisors, Inc. – Stanley D. Green

Dear Ms. Hatfield:

This letter is in response to a written request for an advisory opinion and a waiver pursuant to Arkansas Code Annotated §19-11-715(b) and (c), which was sent to me in a letter dated June 7, 2023, and updated on June 9, 2023, regarding the above-referenced proposed contract and Winrock International (Winrock) subcontracting to Lighthouse Advisors, LLC (Lighthouse) and Rockwood Advisors, Inc. (Rockwood).

This opinion is based upon the following information that you and Arkansas Department of Commerce (Department) staff have presented to me and upon which I am relying. It should be noted that if one or more of these information items are later shown to be incorrect, that could result in a revised opinion.

1. The Arkansas Economic Development Commission (AEDC) was authorized by Act 1265 of 2007 to create a statewide technology commercialization center known as Innovate Arkansas and to establish a contract with a non-profit organization to staff and manage this effort;
2. AEDC entered into its first contract with Winrock on January 1, 2008, as the result of a Request for Proposals solicitation;
3. Two subsequent contracts were procured as sole source contracts;
4. The current contract, which expires on June 30, 2023, was solicited through a Request for Qualifications;
5. The Department has requested approval of a three-month contract (Contract No. 4600052827) as a special procurement in order to allow the new administration time to review, evaluate, and assess the historical effectiveness of the Innovate Arkansas Program prior to submitting a solicitation for a new contract;
6. The term of the proposed contract is July 1, 2023, to September 30, 2023;
7. During the special procurement process, Winrock disclosed that two of its subcontractors, Lighthouse and Rockwood, employ individuals subject to the disclosure requirements of

- Executive Order 98-04 due to their positions of control and at least 10% ownership interest in the business entities;
8. Lighthouse disclosed Edward A. Dickey as being a current member of the University of Arkansas Board of Trustees. Mr. Dickey's term is March 2020 to March 2030, and his position of control in Lighthouse is Managing Member with a 50% ownership interest;
 9. Rockwood disclosed Stanley D. Green as being a former member of the Arkansas Development Finance Authority from February 2015 to April 2022. Mr. Green's position of control in Rockwood is Owner with 100% ownership interest;
 10. Prior to the proposed contract, neither the contractor nor subcontractors provided disclosures;
 11. Winrock advises that the total monetary value of the three-month subcontract term for Lighthouse/Dickey is \$123,000.00, and the total monetary value of the three-month subcontract term for Rockwood/Green is \$21,249.99;
 12. In support of its advisory opinion request, the Department emphasizes the following factors:
 - a. The long-standing relationship between AEDC and Winrock in the implementation of the Innovate Arkansas program independent of the involvement of Messrs. Dickey and Green as subcontractors to Winrock;
 - b. The lack of any formal role or involvement by the University of Arkansas Board of Trustees or the Arkansas Development Finance Authority Board of Directors in the administration of the Innovate Arkansas program, which negates any risk of self-dealing by Messrs. Dickey and Green;
 - c. Mr. Dickey's involvement on behalf of Lighthouse pre-dates his appointment to the University of Arkansas Board of Trustees, which fully mitigates any likelihood of self-dealing by him;
 - d. Mr. Green is no longer a member of a state board, having completed his term in April of 2022, which also fully mitigates any likelihood of self-dealing by him; and
 - e. The current special procurement is short-term and will be succeeded by an RFP later in the year;
 13. Mr. Dickey has been a subcontractor on each of the Winrock contracts as follows:
 - a. 4600027530 January 1, 2008, to June 30, 2015;
 - b. 4600032948 January 1, 2015, to June 30, 2015;
 - c. 4600035157 September 28, 2015, to June 30, 2016; and
 - d. 4600037486 July 1, 2016, to June 30, 2023;
 14. Mr. Green has not been listed as a subcontractor on any contracts or amendments; and
 15. Rockwood first submitted invoices for reimbursement during Fiscal Year 2019 (July 1, 2018, to June 30, 2019).

I. Relevant Law

Arkansas Code Annotated § 19-11-701(8) defines "employee," as "an individual drawing a salary from a state agency, whether elected or not, and any non-salaried individual performing personal services for any state agency." "State agency" is defined in Arkansas Code Annotated § 19-11-701(16) as meaning "any office, department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, judicial, or legislative branch of this state."

Arkansas Code Annotated § 19-11-701(2) defines “business” to mean “any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other legal entity.” The term “financial interest” is defined in Ark. Code Ann. §19-11-701(9) as meaning:

- (A) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than one thousand dollars (\$1,000) per year, or its equivalent;
- (B) Ownership of more than a five percent (5%) interest in any business; or
- (C) Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management;

The ethical strictures set forth in Arkansas Code Annotated § 19-11-705(a)(1)(A) prohibit state employees from participating directly or indirectly in any particular matter pertaining to any state agency contracts in which an employee or an employee's immediate family member has a financial interest. *See* Arkansas Code Annotated § 19-11-705. Arkansas Code Annotated § 19-11-705(a)(2) defines “direct or indirect participation” as including, but not being limited to, “involvement through decision, approval, disapproval, recommendation, preparation of any part of a procurement request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.”

In addition, Executive Order 98-04 Section II addresses approval of contracts and grants and provides in pertinent part as follows:

Agencies shall be prohibited from entering into or renewing any contract ... with any current or former: ... board or commission member ... or with any entity in which any such person holds (i) any position of control, or (ii) any ownership interest of 10% or greater.

The prohibition provided in the previous sentence shall not apply to:

- (i) Contracts ... that are the result of competitive sealed bidding, or a request for proposal, which requires public notice and public opening of bids or proposals; ...
- (ii) Contracts ... subject to competitive bidding, for which the total consideration is less than \$10,000; ...
- (iii) Any contract ... not subject to competitive sealed bidding or a request for proposal, for which the total consideration is \$10,000 or greater, and the prior written approval of the Chief Fiscal Officer of the State is obtained, notice of which approval is given to the Governor and the Legislative Council.

Executive Order 98-04 Section III addresses the disclosure of subcontractors and provides in pertinent part as follows:

Agencies shall require, as a condition of obtaining or renewing a contract ... with any state agency, that any individual or entity desiring to contract with any state agency shall require that any subcontractor ... (hereinafter ‘Third Party’), shall disclose whether such Third Party is a current or former ... board or commission member ... or if any of the

persons described in this sentence hold any position of control or any ownership interest of 10% or greater in the Third Party, and shall report any such disclosure by the Third Party to the agency. The disclosure requirements of this paragraph shall apply during the entire term of the contract ... without regard to whether the subcontract ... is entered into prior or subsequent to the contract date.

Agencies shall require, as a further condition of obtaining or renewing any contract or agreement with any state agency, that the individual or entity desiring to contract shall incorporate into any agreement with a Third Party, previously defined, the language of Paragraph XI of this order, and any other necessary language as provided by rules and regulations promulgated to enforce this order, which provides that failure of the Third Party to disclose the identity of any person or entity described in the previous paragraph shall be considered a material breach of the agreement.

Executive Order 98-04 Section XI addresses failure to disclose and violations and provides in pertinent part as follows:

Every agreement executed by an Agency, whether a contract, lease purchase agreement, or grant, shall be required to contain the following condition as a term of the agreement and shall be further required to provide that this condition shall be contained in any subcontract, sublease, or other assignment of the terms of the agreement to any Third Party, as defined in Paragraph V:

The failure of any person or entity to disclose as required under any term of Executive Order 98-04, or the violation of any rule, regulation or policy promulgated by the Department of Finance and Administration pursuant to this Order, shall be considered a material breach of the terms of the contract, lease, purchase agreement, or grant and shall subject the party failing to disclose or in violation to all legal remedies available to the Agency under the provisions of existing law.

Executive Order 98-04 Section V addresses disclosure of contracts and grants and provides in pertinent part as follows:

Agencies shall disclose ... (ii) all goods and services sold or leased to them by current or former members of the following: ... board and commission members ... or business entities in which person described in this sentence hold (i) any position of control, or (ii) any ownership interest of 10% or greater. ...

II. Analysis

Based on the above representations, Mr. Dickey's position as a current member of the University of Arkansas Board of trustees classifies him as a state employee, and Mr. Green's position as a former member of the Arkansas Development Finance Authority subjects him to the requirements of Executive Order 98-04. The proposed contract, Contract No. 4600052827, would constitute a state contract in which they would have a financial interest. The statutory prohibition proscribes Mr. Dickey's direct or indirect participation in the Department's special procurement contract process, and the Executive Order requirements apply to Mr. Green in his capacity as a subcontractor in the proposed contract between Winrock and the Department.

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In this case, you have represented Mr. Dickey's subcontractor services as being performed from January 1, 2008, through June 30, 2023. His performance of services predates his appointment to the University of Arkansas Board of Trustees by approximately twelve (12) years, which factor mitigates against the potential for conflict in the proposed contract on the basis of his role as a state employee. In addition, you state that the University of Arkansas Board of Trustees has no formal role or involvement in the administration of the Innovate Arkansas program, which factor is also significant.

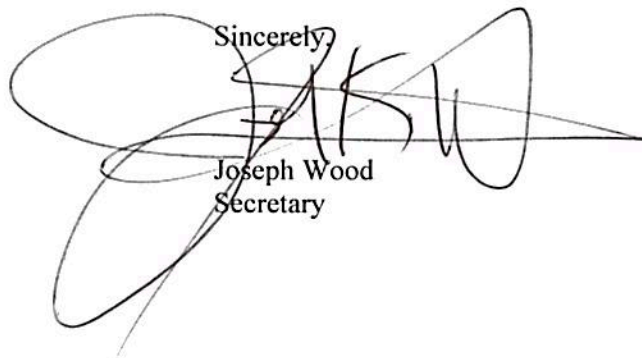
Mr. Green has provided services to the state through Rockwood from Fiscal Year 2019, which services were initiated after the commencement of the current contract on July 1, 2016, and continues to do so after he ended his involvement with the Arkansas Development Finance Authority. I am persuaded by your affirmation that there is no formal role or involvement by the Arkansas Development Finance Authority Board of Directors in the administration of the Innovate Arkansas program in determining that Mr. Green also was not involved in the current contract solicitation or the proposed special procurement process.

These express representations persuade me that there has been no impropriety in the Department's selection or decision-making process to seek special procurement authority for the proposed contract. As a result, I find that the circumstances demonstrate that a conflict is insubstantial or remote so as not to taint the current or future procurement processes.

I would be remiss, however, if I did not bring to your attention the fact that the Department has not been in compliance with the subcontractor disclosure requirements contained in Executive Order 98-04. The contractor and each subcontractor had the respective duty to disclose Mr. Dickey's provision of services since the inception of these state contracts on January 1, 2008, and Mr. Green's provision of services since July 1, 2018. While I commend the Department for reviewing, evaluating and assessing the historical effectiveness of this program under the auspices of a new administration, I would also recommend that the Department's contracts be reviewed to ensure compliance with applicable requirements, especially those identified in this advisory opinion.

III. Decision

Thank you for seeking my counsel and approaching the issue with transparency. I am persuaded that under the representations as stated above, any ethical conflict that might exist is insubstantial or remote based on the Department's express affirmations. Therefore, I grant permission to proceed to such extent and upon such terms and conditions as specified in this letter. This decision grants a waiver in the interests of the state and in accordance with Arkansas Code Annotated § 19-11-715(c); compliance with the above course of conduct is deemed to constitute compliance with the ethical standards of the Arkansas Code Annotated § 19-11-701 *et seq.*

Sincerely,

Joseph Wood
Secretary