



Department of Transformation and Shared Services

Governor Sarah Huckabee Sanders

Secretary Joseph Wood

August 29, 2023

Ms. Ruthie Brown
210 Maranes Circles
Maumelle, Arkansas 72113

RE: Advisory Opinion No. 2023-12

Dear Ms. Brown:

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 August 22, 2023, regarding a proposed contract in which Veteran Janitorial Service and the Arkansas Department of Human Services (DHS) are parties.

This opinion is based upon the following information that you 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. You have been employed with the Department of Human Services for 34 years, and you are the Division of County Operation Assistant Director of General Operations;
2. In your current position with DHS, you direct subordinate supervisory personnel responsible for the DCO FNS SNAP Quality Control and CMS Medicaid Payment Error Rate Measurement processes in compliance with federal guidelines;
3. You direct subordinate supervisory personnel responsible for: Special Investigations to detect case errors and prevent inaccurate payments; the Client Assistance Call Center; the activities of divisional personnel through lower-level managers and supervisors by determining overall general operations goals and objectives and by managing subordinate staff, including interviewing, hiring, providing training, assigning and reviewing work, evaluating the performance of immediate subordinates, and serving as performance evaluation reviewing official for lower-level divisional employees;
4. You monitor DCO sub-grantees and contracts to assist with adding funds and initiating renewals timely;
5. You assist with developing proposals for procurement and acts as liaison between the division and DHS Office of Procurement;
6. You monitor the submission of federal/ state reports for timely submission and work with appropriate personnel to develop reporting and programmatic corrective actions as needed;
7. You assist with system development and oversee subordinate supervisory staff who maintain DCO Assets and complete inventory reconciliation in compliance with state/ federal guidelines;

8. You act as Division liaison for providing responses to Freedom of Information Act requests and perform numerous financial activities for the division by monitoring expenditures and generating expenditure projections based upon previously formulated expenditure trend analysis;
9. You collaborate across DHS Divisions/ Offices and other state agencies to develop policy and assist with implementing and administering programs assigned to DCO;
10. You represent the division by attending national conferences, providing testimony at state legislative committee meetings, serving on interdepartmental task forces, as well as offering technical assistance to both local community organizations and advocacy groups on a national scale;
11. You are not involved with the solicitation, evaluation, selection, or identification of requirements for janitorial vendor contracts;
12. The janitorial contract process is as follows:
 - a. The Solicitation Unit works with the Leasing Director and the County Administrators on the particulars that's needed for a contract;
 - b. Once this is determined, the Solicitation Unit handles the solicitation, posts the contract and the price sheet, and completes the evaluation process;
 - c. The Solicitation Unit selects the vendor with the lowest bid and emails the vendor's information to the Leasing Director to review and make comments;
 - d. Once the Solicitation Unit receives feedback from the Leasing Director, it emails the information to the Developing Team (Danny McCluskey);
 - e. The Developing Team develops the contract, inputs the vendor's information into AASIS and the Portal;
 - f. Mr. McCluskey works with staff to process and complete the 9190 form. Once the 9190 form is completed, staff emails it to the DCO Finance Unit to review;
 - g. The DCO Finance team reviews and approves the 9190 form and forwards it back to the Developing Team;
 - h. Once the janitorial contract is completed, the Developing Team emails the contract to my supervisor, Mary Franklin, Director at County Operation to sign;
 - i. Ms. Franklin signs all the janitorial contracts and emails them back to the Developing Team (Mr. McCluskey); and
 - j. The Developing Team (Mr. McCluskey) emails the vendor and Ms. Franklin a copy of the contact;
13. If updates are needed once the contract is completed, the AASIS Unit will complete the updates;
14. Your son, Bryant D. Brown, is the owner and manager of Veteran Janitorial Service, which has been selected as an awardee of a service contract with the Department of Human Services;
15. You do not own, nor do you have a role in, Veteran Janitorial Service; and
16. Also, you do not receive any financial benefits from Veteran Janitorial Service.

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."

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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.”

II. Analysis

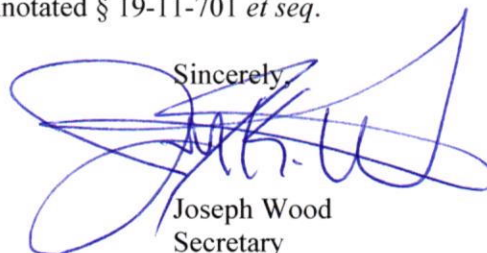
Based on the above representations, your employment as Department of Human Services Division of County Operation Assistant Director of General Operations classifies you as a state employee, and your parental relationship to Bryant Brown, owner and manager of Veteran Janitorial Service, establishes that you may have a financial interest in a proposed state agency contract.

In support of your request, you have stated that you (a) are not involved with the solicitation, evaluation, selection, or identification of requirements for janitorial vendor contracts, (b) do not own, nor do you have a role in, Veteran Janitorial Service, and (c) do not receive any financial benefits from Veteran Janitorial Service, which is owned and managed by your son, Bryant D. Brown. In addition, the contract process that you have outlined supports your representations. As a result, I am persuaded that the circumstances demonstrate that a conflict is insubstantial or remote so as not to taint the procurement process in this case.

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, and 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