

ASK THE CITY ETHICIST

#24: Disclosure and Recusal

by
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Question: *I've worked for the City for 20 years, ten of those at the agency I'm at now. I'm also a homeowner. My unit deals with construction companies. A couple of weeks ago I hired a contractor to do some concrete work on my house. Now, of course, my unit's got pretty strict rules against having financial relationships with contractors that deal with the agency. And when I hired him, he didn't. Now he does, and he hasn't finished the job at my house yet. Do I have to break the contract with him and hire another contractor?*

Answer: I suppose that is an option (if, indeed, you can break the contract without getting sued), although there may be easier avenues to pursue.

First of all, it's probably a good thing your agency has those strict rules against your being financially involved with contractors it deals with. The agency's reputation could pretty quickly go down the tubes if it started to look like its inspectors, contracting officers, (any employee, really) were steering business or giving special attention to contractors with whom they had private dealings. In fact, taking any official action at your City job that affects that contractor's City-related matters would not only violate your agency's rules, but would also be a violation of the City's Conflicts of Interest Law.

This is an important point. A violation of the law not only occurs if you try to use your position in some "corrupt" way—looking the other way on an inspection, disclosing confidential information, you name it—but when you take ANY action that affects your contractor's business with the City. This places a pretty high burden on you as a public servant. Perception in public integrity issues is crucial if you want to preserve the public trust. You are in a particularly prickly situation as a homeowner who happens to deal with construction people in your City job, because you seem to be set on a potential collision course with one of these perception issues any time you get work done on your house.

So, what do you do? Well one option is to never hire any contractor and do all the work yourself. That doesn't seem too practical. Neither does breaking the contract.

This is where two of the most important concepts in public integrity laws might be useful to you: *disclosure* and *recusal*. First, when you see a potential problem like this arise, disclose it. It's often said that "sunshine is the best disinfectant" when it comes to issues like these. Disclosing the matter puts it out in the open and shows the world your concern for the integrity of your position. How do you disclose it? Call the Conflicts of Interest Board and ask to speak to the Attorney of the Day. When do you disclose it? I say the earlier, the better. Just to be on the safe side, if I was in your situation, I would've called when I first realized that your contractor might seek business with your agency.

In your case, I would call ASAP, and I would also let my supervisor at my agency know about the situation, so that s/he doesn't assign me to any of that contractor's City projects.

It's likely that part of what the Attorney of the Day tells you will involve our second term—*recusal*. This basically means you don't take any action in your City job that would affect matters that this contractor has before ANY City agency. By agreeing to *recuse* yourself from any of those matters, you effectively remove any questions that might arise about potential conflicts between your City job and your private financial interests with this contractor. But remember: recusal isn't automatic, it's something your boss has to approve. You disclose the situation to your supervisor and you request to be relieved of all responsibility over the contractor. An approval is likely, but not automatic, as there might be situations where recusal is just plain impossible. (For example, if you're the sole expert in your agency on the kind of thing this contractor does, then you're probably the only one who can handle the contractor's matter and recusal would not be possible.)

The point, of course, in all this, is to help you protect your professional integrity, the integrity of your agency, and that of the City. That integrity isn't harmed when you hire a contractor to work on your private residence, as long you don't misuse your City position or contacts to do it. But when that contractor starts dealing with your agency, and you start working with that contractor in your agency capacity, people could easily start questioning the integrity of your official conduct. *Disclosure* and *recusal* may give you a relatively painless means to keep that from happening. (And it's probably easier than breaking your contract.) Give us a call at COIB if want to know more. The number is 212.442.1400.

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<http://nyc.gov/ethics>.