

January 8, 2025 – Open Meeting Matter

To: The Board

From: Christopher M. Hammer
Katherine J. Miller

cmh
KJM

Date: January 2, 2025

Re: Proposed Amendments to Board Rules § 4-04: Contract Filers

Staff proposes that the Board repeal and replace Board Rules § 4-04, which interprets the “contract filer” requirement in the City’s Annual Disclosure Law. The current rule is attached as **Exhibit 1**; the draft proposed replacement is attached as **Exhibit 2**.

BACKGROUND

While most public servants are required to file an annual disclosure report because of their high-level positions, the Annual Disclosure Law also requires public servants of all levels to file an annual disclosure report if their duties included specific kinds of decision-making regarding City contracts or other significant matters. Specifically, Administrative Code § 12-110(b)(3)(a)(4) requires the filing of an annual disclosure report where the public servant was involved, during the preceding year, in “the negotiation, authorization or approval of contracts, leases, franchises, revocable consents, concessions and applications for zoning changes, variances and special permits.”¹ Public servants required to file annual disclosure reports under this Section have become known as “contract filers.”

¹ Administrative Code § 12-110(b)(3)(a)(4) states in full: “Each officer or employee of the city whose duties at any time during the preceding calendar year involved the negotiation, authorization or approval of contracts, leases, franchises, revocable consents, concessions and applications for zoning changes, variances and special permits, as defined by rule of the board and as annually determined by his or her agency head, subject to review by the board.”

The proposed changes to the contract filer rule arose out of the Board's recent experiences in deciding public servants' appeals of their designations as contract filers. In COIB Case No. 2022-552 (**Exhibit 3**), the Board concluded that an Assistant General Counsel is not a contract filer by virtue of communicating settlement offers to opposing parties because the attorney did not negotiate or determine the substantive content of the resulting settlements and the settlement offer had to be authorized by the attorney's agency supervisor, the New York City Law Department, and the Office of the New York City Comptroller. Similarly, in COIB Case No. 2023-431 (**Exhibit 4**), the Board determined that a different Assistant General Counsel is not a contract filer by virtue of performing a legal review of a contract to ensure that a contract is a valid legal agreement that accurately reflects the terms negotiated, authorized, and approved by others.

In considering these appeals, the Board looked to Board Rules § 4-04 and found that it lacked clarity to assist it, particularly in circumstances where agency counsel is performing legal work that, while necessary to ensure the proper resolution of the matter, does not involve its "negotiation, authorization, or approval." Where the rule does not provide the Board with clarity to resolve appeals, it does not provide agencies with clarity in designating contract filers. Thus, as a result of these experiences, Board Staff is proposing changes to the rule that would assist the Board in determining appeals of agency designations of contract filers and assist City agencies in designating their employees as contract filers.

ANALYSIS

Staff's approach in drafting the new rule was to return to the specific conduct identified in the Annual Disclosure Law that triggers the requirement to file as a contract filer. Additionally, because many of the public servants required to file annual disclosure

reports as contract filers are not high-level public servants, Staff sought to balance the proposed rule's impact on the privacy concerns of middle- and lower-level public servants with the need for transparency where a public servant's duties could lead to significant conflicts of interest. The draft rule endeavors to define in a more targeted way what it means to have duties that involve "negotiation, authorization, or approval" of contracts and the other matters listed in the Annual Disclosure Law. In drafting the proposed rule, Staff engaged in an extensive review of relevant City policies and laws pertaining to procurement, concessions, franchises, real property leases, revocable consents, and zoning and consulted with agency personnel who are familiar with these processes.

By looking to adhere more closely to the language in the Annual Disclosure Law, the draft rule would make some substantive changes to the existing rule. First, the existing rule requires a public servant who "determines the content of or promulgates City procurement policies, rules, or regulations" (Board Rules § 4-04(a)(7)) to be designated as a contract filer, even if they do not negotiate, authorize, or approve any individual contracts or other matters. Under proposed Board Rules § 4-04(b)(1), public servants who develop general policies, rules, or regulations would not be required to file based on those duties alone, although they may be required to file under different provisions of the Annual Disclosure Law, such as by being designated as a policymaker or by holding an M4-level managerial position.

Second, under proposed Board Rules § 4-04(b)(4), decision-making with respect to procurements under the micropurchase limit, including retail goods purchased with a City-issued Purchasing Card, would not trigger the requirement to file as a contract filer. This amendment would reflect a change in policy; in COIB Case No. 2019-156 (**Exhibit 5**), the Board required a Conservation Easement Manager to file as a contract filer

because his duties involved identifying and contracting with a vendor entering into a micropurchase contract with a vendor. While the existing rule has the benefit of drawing a bright line, the proposed rule would focus on instances where the City engages in the formal contracting process and thus limit its scope to those decisionmakers whose duties might be impacted by significant conflicts of interest.

Finally, the draft rule addresses the circumstances of the two appeals identified above by clarifying that a public servant is not a contract filer where their work in connection with contracts is limited to ensuring that the substantive content negotiated by other agency employees was implemented in a valid legal agreement. Another issue arising in COIB Case No. 2023-431 involved the drafting of a gift agreement between the City and a donor. Since gift agreements do not involve the expenditure of City funds, Staff proposes in § 4-04(b)(6) to codify that participation in these matters does not, by itself, require a public servant to file an annual disclosure report as a contract filer.

CONCLUSION

With the Board's approval, Staff will formally submit the proposed Board Rules § 4-04 to the New York City Law Department and the Mayor's Office of Operations for review and approval as required by the City Administrative Procedure Act prior to publication in the *City Record* and the holding of a public hearing. See Charter Section 1043(d). Thereafter, we will come back to the Board with any substantive revisions requested by the Law Department or Office of Operations or, if there are none, schedule a public hearing.

Existing Rule to be Repealed

§ 4-04 City Employees Whose Duties Involve the Negotiation, Authorization, or Approval of Contracts and of Certain Other Matters.

- (a) For purposes of Administrative Code § 12-110(b)(3)(a)(4), a City employee shall be deemed to have duties that involve the negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances, and special permits if the employee performs any of the following duties:
- (1) Determines the substantive content of a request for proposals or other bid request or change order;
 - (2) Makes a determination as to the responsiveness of a bid or the responsibility of a vendor or bidder;
 - (3) Evaluates a bid;
 - (4) Negotiates or determines the substantive content of a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order;
 - (5) Recommends or determines whether or to whom a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order should be awarded or granted;
 - (6) Approves a contract, lease, franchise, revocable consent, or concession or change order on behalf of the City or any agency subject to Administrative Code § 12-110; or
 - (7) Determines the content of or promulgates City procurement policies, rules, or regulations.
- (b) Clerical personnel and other public servants who, in relation to the negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances, and special permits, perform *only* ministerial tasks shall not be required to file a Financial Disclosure Report pursuant to Administrative Code § 12-110(b)(3)(a)(4). For example, public servants who are under the supervision of others and are without substantial personal discretion, and who perform only clerical tasks (such as typing, filing, or distributing contracts, leases, franchises, revocable consents, concessions, or zoning changes, variances, or special permits or calendaring meetings or who identify potential bidders or vendors) shall not, on the basis of such tasks alone, be required to file a financial disclosure report. Similarly, public servants who write a request for proposals, bid request, change order, contract, lease, franchise,

revocable consent, concession, or application for a zoning change, variance, or special permit or procurement policy, rule, or regulation under the direction of a superior but who do not determine the substantive content of the document shall not, on the basis of such tasks alone, be required to file a Financial Disclosure Report.

1 **New York City Conflicts of Interest Board**

2
3 **Notice of Public Hearing and Opportunity to Comment on Proposed Rules**
4 **Regarding Contract Filers**

5 **What are we proposing?** The Conflicts of Interest Board is proposing to amend its rule
6 concerning annual disclosure filers whose duties involve the negotiation, authorization,
7 or approval of contracts, leases, franchises, revocable consents, concessions and
8 applications for zoning changes, variances and special permits.

9 **When and where is the hearing?** The Conflicts of Interest Board will hold a public
10 hearing on the proposed rule. The public hearing will take place at [time] on [date]. The
11 hearing will be at [TBD].

12 This location has the following accessibility option(s) available: [TBD].

13 **How do I comment on the proposed rules?** Anyone can comment on the proposed
14 rules by:

- 15 • **Website.** You can submit comments to the Conflicts of Interest Board through
16 the NYC Rules website at <http://rules.cityofnewyork.us>.
- 17 • **Email.** You can email comments to rules@coib.nyc.gov.
- 18 • **By speaking at the hearing.** Anyone who wants to comment on the proposed
19 rule at the public hearing must sign up to speak. You can sign up before the
20 hearing by contacting the Conflicts of Interest Board by telephone at [phone
21 number] or by email at [email]. You can also sign up in the hearing room before
22 the hearing begins on [date]. You can speak for up to three minutes.

23 **Is there a deadline to submit comments?** Yes, you must submit written comments by
24 [date].

25 **Do you need assistance to participate in the hearing?** You must tell us if you need
26 a reasonable accommodation of a disability at the hearing, including if you need a sign
27 language interpreter. You can advise us by telephone at [phone number] or by email at
28 [email]. You must tell us by [date].

29 **Can I review the comments made on the proposed rules?** You can review the
30 comments made online on the proposed rules by going to the website at
31 <http://rules.cityofnewyork.us/>. Copies of all comments submitted online, copies of all
32 written comments, and a summary of oral comments concerning the proposed rule will
33 be available to the public on the Conflicts of Interest Board's website
34 ([https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-](https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page)
35 [hearings.page](https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page)) as soon as practicable.

1 **What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043
2 and 2603 of the City Charter and Section 12-110(b)(3)(a)(4) of the Administrative Code
3 authorize the Conflicts of Interest Board to make this proposed rule. This proposed rule
4 was included in the Conflicts of Interest Board’s regulatory agenda for this Fiscal Year.

5 **Where can I find the Conflicts of Interest Board rules?** The Conflicts of Interest
6 Board Rules are in title 53 of the Rules of the City of New York.

7 **What rules govern the rulemaking process?** The Conflicts of Interest Board must
8 meet the requirements of Section 1043 of the City Charter when creating or changing
9 rules. This notice is made according to the requirements of Section 1043 of the City
10 Charter.

11 **Statement of Basis and Purpose**

12 New York City Administrative Code § 12-110(b)(3)(a)(4) requires the filing of an
13 annual disclosure report by:

14 Each officer or employee of the city whose duties at any time during the
15 preceding calendar year involved the negotiation, authorization or
16 approval of contracts, leases, franchises, revocable consents,
17 concessions and applications for zoning changes, variances and special
18 permits, as defined by rule of the board and as annually determined by his
19 or her agency head, subject to review by the board.

20 In 2004, the Board adopted a rule to define this category of filer, commonly
21 known as “contract filers.” In the 20 years since, the Board has found that its “contract
22 filer” rule has not provided enough clarity to facilitate the identification of employees
23 whose City job duties make them sufficiently involved in the City matters identified in the
24 Administrative Code such that their private financial interests should be available for
25 public inspection in annual disclosure reports. In drafting the proposed rule, the Board
26 looked to the specific conduct – “negotiation, authorization, or approval” – of contracts
27 and other similar City matters enumerated in the Annual Disclosure Law to ensure that

1 only those who duties are sufficiently significant to lead to a conflict of interest are
2 required to share their private financial interests in a public annual disclosure report.

3 The Board proposes to repeal the existing Board Rules § 4-04 and replace it with
4 a new rule. Proposed paragraph (a) would define with much greater specificity when a
5 public servant’s work meets the requirements of Admin. Code § 12-110(b)(3)(a)(4), by
6 describing the job duties with increased precision and detail and by referencing
7 applicable City rules and processes. This paragraph would operate in harmony with
8 proposed paragraph (b), which would identify tasks that do not, by themselves, meet the
9 requirements of Admin. Code § 12-110(b)(3)(a)(4). For instance, the Board proposes to
10 clarify that a public servant who provides legal advice to their agency regarding a
11 contract, such as by ensuring its legality or that it contains the agency’s standard
12 contract terms and conditions, is not required to file pursuant to Admin. Code § 12-
13 110(b)(3)(a)(4) because that work does not constitute “negotiation, authorization, or
14 approval” of contracts.

15 In addition to these clarifications, the Board proposes one substantive change to
16 the category of contract filers. Under existing Board Rules § 4-04(a)(7), a public servant
17 who determines the content of City procurement policies, rules, or regulations is
18 required to file pursuant to Admin. Code § 12-110(b)(3)(a)(4). Under proposed Board
19 Rules § 4-04(b)(1), that public servant would not be required to file, since involvement in
20 the development of general policies does not constitute “negotiation, authorization, or
21 approval” of contracts.

22 **Text of Proposed Rule**

23 New material is underlined.

1 Section 4-04 of Chapter 4 of Title 53 of the Rules of the City of New York is
2 REPEALED and new Section 4-04 is added to read as follows:

3 **§ 4-04 Contract Filers.**

4 (a) Public servants required to file an annual disclosure report pursuant to
5 Administrative Code § 12-110(b)(3)(a)(4) include, but are not limited to, those
6 who during the preceding calendar year held the title of agency chief contracting
7 officer, deputy agency chief contracting officer, chief financial officer, or chief
8 operations officer or who, except as provided in paragraph (b), did one or more of
9 the following:

10 (1) Procurement or Concessions. Pursuant to Procurement Policy Board
11 Rules, Franchise and Concession Review Committee Rules, or other similar
12 City or State law, policy, or rule:

13 (i) Conducted a presolicitation review to define the existing market for the
14 goods, services, or construction required, estimate the expected cost, or
15 determine the most appropriate method of procurement;

16 (ii) Was substantially involved in determining the material specifications of an
17 invitation for bids, request for proposals, or other similar solicitation
18 method for goods, services, construction, or a concession;

19 (iii) Approved an invitation for bids, request for proposals, or other similar
20 solicitation method for goods, services, construction, or a concession;

21 (iv) Evaluated a bid or proposal, including but not limited to serving on a
22 selection committee; or

23 (v) Negotiated or approved: a contract, including its material terms; contract

1 amendment; change order; task order; modification; renewal; or buy-
2 against contract.

3 (2) **Franchises.** Pursuant to Charter § 363, or other similar City or State law,
4 policy, or rule, approved a franchise authorizing resolution or agreement.

5 (3) **Real Property Leases.** Pursuant to Charter § 381 or § 384 or other similar
6 City or State law, policy, or rule, negotiated or approved the purchase, lease,
7 or sale of real property.

8 (4) **Revocable Consents.** Pursuant to Charter § 364 or other City or State law,
9 policy, or rule:

10 (i) **Determined that a petition for a revocable consent could proceed in**
11 compliance with applicable requirements; or

12 (ii) **Approved a revocable consent plan or agreement.**

13 (5) **Zoning.** Pursuant to the Uniform Land Use Review Procedure, approved an
14 application for a change to the zoning resolution, a variance, or a special
15 permit.

16 (b) **Public servants, other than those identified by title in paragraph (a), are not**
17 required to file an annual disclosure report pursuant to Administrative Code § 12-
18 110(b)(3)(a)(4) if the only work they performed on procurement or concessions,
19 franchises, real property leases, revocable consents, or zoning during the
20 preceding calendar year was that they:

21 (1) **Developed general policies, rules, or regulations;**

22 (2) **Provided legal advice without negotiating or determining the contract's**
23 substantive content, including by ensuring that the content of a contract is

- 1 implemented in a valid legal agreement or by incorporating an agency's
2 standard contract terms and conditions;
3 (3) Performed ministerial tasks, including clerical tasks such as typing, filing, or
4 distributing materials;
5 (4) Participated in procurements under the micropurchase limit, such as retail
6 goods purchased with a City-issued Purchasing Card;
7 (5) Participated in the certification that an as-of-right development satisfies
8 zoning regulations; or
9 (6) Participated in the acceptance of gifts to the City.

**THE CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD**

_____X

In the Matter of

The Annual Disclosure Appeal of:

COIB Case No. 2022-552

Michelle Babbitt

_____X

**FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

Upon consideration of all the evidence presented in this matter, and upon the full record herein, the New York City Conflicts of Interest Board (the “Board”) finds that, pursuant to Sections 12-110(b)(3)(a)(3) and 12-110(b)(3)(a)(4) of the New York City Administrative Code (“Admin. Code”) and Sections 1-02, 4-03, and 4-04 of the Rules of the Board, Title 53, Rules of the City of New York (the “Board Rules”), Michelle Babbitt is not required to file an annual disclosure report for calendar year 2021.

Procedural History

This appeal involves Michelle Babbitt, who was an Agency Attorney Level III at the New York City Department of Transportation (“DOT”) during the relevant time period, serving as an Assistant General Counsel in the DOT Office of the General Counsel. In April 2022, Babbitt was notified that she was required to file an annual disclosure report for calendar year 2021 pursuant to Admin. Code Sections 12-110(b)(3)(a)(3) and 12-110(b)(3)(a)(4).¹ In accordance with the appeals process, Babbitt fully and timely appealed the designation as a required filer to DOT and the Board.

Analysis

Admin. Code Section 12-110(b) sets forth the categories of required filers of annual disclosure reports. In the present appeal, whether Babbitt is required to file an annual disclosure report depends on whether she meets the filing criteria of a policymaker or a contract filer.

A. Policymaker

Admin. Code Section 12-110(b)(3)(a)(3) requires a City employee to file an annual disclosure report if the employee “holds a policymaking position.” Board Rules Section 4-03 clarifies that an employee holds a “policymaking position” if he or she has been designated as having “substantial policy discretion.” Pursuant to Board Rules Section 1-

¹ Annual disclosure reports pertaining to a particular calendar year are filed in the next calendar year. Thus, reports covering 2021 are filed in 2022.

02(a), an employee has substantial policy discretion “if he or she has major responsibilities and exercises independent judgment in connection with determining important agency matters.” Each year, agencies are required to submit a list to the Board identifying the employees at their agency who have substantial policy discretion. See Board Rules Section 1-02(a)(2).

DOT argues that Babbitt is required to file an annual disclosure report because of her involvement with litigation, grants compliance, and parking permits. Specifically, Babbitt worked on litigation matters under the supervision of a DOT supervisor, the New York City Law Department (“Law Department”), and the Office of the New York City Comptroller (“Comptroller’s Office”); assisted DOT’s Grants Compliance Officer to draft procedures and guidance documents; and facilitated hearings to suspend or revoke parking permits and reviewed findings from the hearing officers.

Based on the available evidence, the Board concludes that Babbitt did not have substantial policy discretion at DOT. DOT did not include Babbitt on its list of employees with substantial policy discretion for 2021 or 2022, and the evidence provided by DOT does not show that Babbitt exercised “independent judgment in connection with determining important agency matters” in the performance of her job duties at DOT. Accordingly, Babbitt does not meet the filing criteria of a policymaker under Admin. Code Section 12-110(b)(3)(a)(3).

B. Contract Filer

Admin. Code Section 12-110(b)(3)(a)(4) requires a City employee to file an annual disclosure report when the employee’s:

duties at any time during the preceding calendar year involved the negotiation, authorization or approval of contracts, leases, franchises, revocable consents, concessions and applications for zoning changes, variances and special permits, as defined by rule of the board and as annually determined by his or her agency head, subject to review by the board.

Board Rules Section 4-04 clarifies which employees with these duties are required to file, including any employee who “[n]egotiates or determines the substantive content of a contract.”²

DOT argues that Babbitt is a contract filer because she was involved in the settlement of litigation matters, including claims against DOT.³ Based on the available

² Board Rules Section 4-04(a)(4).

³ In 2009, in denying appeals by seven Claims Specialists II at the Comptroller’s Office, the Board concluded that negotiating the settlement of a claim against the City constitutes negotiating a contract and held that the Claims Specialists II were contract filers. See *Matter of Tirado, et al.*, FD Order 2009 (July 14, 2009), upheld by the New York State Supreme Court in *In re: the Application of Vanessa Tirado v. New York City Conflicts of Interest Board*, Sup. Ct., New York County, July 1, 2010, Madden, J., Index No. 112955/2009; see also *Matter of Roman*, FD Order No. 2019-01 (January 31, 2019).

evidence, the Board concludes that Babbitt was not responsible for negotiating or determining the “substantive content” of those settlements.⁴ When Babbitt communicated a settlement offer to an opposing party, she did so only after the settlement amount was approved by a DOT supervisor, the Law Department, and the Comptroller’s Office. Accordingly, Babbitt does not meet the filing criteria of a contract filer under Admin. Code Section 12-110(b)(3)(a)(4).

Conclusion

The Board concludes that the available evidence fails to demonstrate that Babbitt is required to file an annual disclosure report as a policymaker or contract filer.

WHEREFORE, IT IS HEREBY ORDERED, pursuant to Admin. Code Sections 12-110(b)(3)(a)(3) and 12-110(b)(3)(a)(4), that Michelle Babbitt is not required to file an annual disclosure report for calendar year 2021.

The Conflicts of Interest Board



By: Milton L. Williams Jr., Chair

Fernando A. Bohorquez Jr.
Wayne G. Hawley
Ifeoma Ike
Georgia M. Pestana

Dated: October 14, 2022

cc: Michelle Babbitt
Janice M. Stroughter, DOT

⁴ See Board Rules Section 4-04(a)(4).

**THE CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD**

_____X

In the Matter of

The Annual Disclosure Appeal of:

COIB Case No. 2023-431

Ewa Sromek

_____X

**FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

Upon consideration of all the evidence presented in this matter, and upon the full record herein, the New York City Conflicts of Interest Board (the “Board”) finds that, pursuant to Section 12-110(b)(3)(a)(4) of the New York City Administrative Code (“Admin. Code”) and Section 4-04 of the Rules of the Board, Title 53, Rules of the City of New York (the “Board Rules”), Ewa Sromek is not required to file an annual disclosure report for calendar year 2022.

Procedural History

Sromek was an Agency Attorney Level III at the New York City Department of Transportation (“DOT”) serving as an Assistant General Counsel in DOT’s Division of Legal Affairs, Office of the General Counsel (“DOT Legal”) from January 1 through May 6, 2022. On May 8, 2022, Sromek started working at the New York City Taxi and Limousine Commission. In March 2023, Sromek was notified that she had been designated by DOT as a required filer pursuant to Admin. Code Section 12-110(b)(3)(a)(4) and was required to file an annual disclosure report for calendar year 2022.¹ In accordance with the appeals process, Sromek fully and timely appealed her designation as a required filer to DOT and the Board.

Analysis

Admin. Code Section 12-110(b) sets forth the categories of required filers of annual disclosure reports. In the present appeal, whether Sromek is required to file an annual disclosure report depends on whether she meets the filing criteria set forth in Admin. Code Section 12-110(b)(3)(a)(4). This section requires a City employee to file an annual disclosure report when the employee’s:

duties at any time during the preceding calendar year involved the negotiation, authorization or approval of contracts, leases, franchises, revocable consents, concessions and applications for zoning changes,

¹ Annual disclosure reports pertaining to a particular calendar year are filed in the following calendar year, like tax returns. Thus, reports covering 2022 are filed in 2023.

variances and special permits, as defined by rule of the board and as annually determined by his or her agency head, subject to review by the board.

Board Rules Section 4-04 clarifies which employees with these duties are required to file, including any employee who “[n]egotiates or determines the substantive content of a contract.”² DOT argues that Sromek meets these filing criteria because she was involved in the drafting of maintenance agreements, a franchise agreement, and a gift agreement during 2022.

Sromek worked on two maintenance agreements – one with a Business Improvement District (“BID”) and another with a not-for-profit corporation that managed a BID (the “Maintenance Entities”) – to install and maintain streetscape amenities such as planters, benches, bicycle corrals, illuminated signage, and special street lighting poles and fixtures. For both agreements, staff from DOT’s Manhattan Borough Commissioner’s Office (“MBCO”) communicated with the Maintenance Entities about the terms and conditions of the agreement and informed DOT Legal when an agreement, or an amendment to an agreement, was needed. Sromek reviewed the draft maintenance agreements and recommended revisions to the text to accurately reflect the amenities to be provided and the terms and conditions identified by MBCO’s staff. There is no evidence that Sromek negotiated with the Maintenance Entities or determined the substantive content of the agreements.

Sromek also worked on an amendment to a franchise agreement between DOT and a private transportation company (the “Franchisee”) to provide public bus service in Brooklyn; the private company charged a fare to riders and paid a percentage of its revenue to DOT. Sromek communicated with DOT’s Franchise Unit to obtain details about the changes to be made to the agreement and, based on the information provided, recommended adding a new table and revising the text to accurately reflect the requested changes. There is no evidence that Sromek negotiated with the Franchisee or determined the substantive content of the amendment.

Lastly, Sromek worked on a gift agreement between DOT and a private entity (the “Donor”), which had installed additional lighting equipment and fixtures and wanted to donate them to the City. An MBCO Senior Borough Planner sent a draft gift agreement to Sromek for review. Sromek recommended that an inapplicable clause be removed from the agreement. There is no evidence that Sromek negotiated with the Donor or determined the substantive content of the amendment.

While Sromek was involved in the drafting of these agreements, she was not responsible for negotiating or determining their substantive content. Sromek’s involvement was limited to providing legal guidance to ensure that the content negotiated and determined by the programmatic DOT units was implemented in a valid legal agreement.

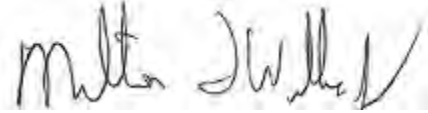
² Board Rules Section 4-04(a)(4).

Conclusion

The Board concludes that, based on the available evidence, Sromek's duties during 2022 did not meet the filing criteria of Admin. Code Section 12-110(b)(3)(a)(4) and Board Rules Section 4-04.

WHEREFORE, IT IS HEREBY ORDERED, pursuant to Admin. Code Section 12-110(b)(3)(a)(4), that Ewa Sromek is not required to file an annual disclosure report for calendar year 2022.

The Conflicts of Interest Board



Milton L. Williams Jr., Chair

Fernando A. Bohorquez Jr.
Wayne G. Hawley
Ifeoma Ike
Georgia M. Pestana

Dated: October 17, 2023

cc: Ewa Sromek
Janice M. Stroughter, DOT

**THE CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD**

_____x

In the Matter of

The Financial Disclosure Appeal of:

FD No. 2019-03

Duncan Schmitt

_____x

**FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

Upon consideration of all the evidence presented in this matter, and upon the full record herein, including all papers submitted to, and recommended findings of, the neutral arbitrator of the Office of Collective Bargaining (“OCB”), the Conflicts of Interest Board (“COIB” or “the Board”) adopts the recommendation of OCB neutral arbitrator Mary O’Connell that, pursuant to § 12-110(b)(3)(a)(4) of the New York City Administrative Code (“Admin. Code”) and Board Rules § 4-04, Duncan Schmitt is required to file a financial disclosure report for calendar year 2017.

Duncan Schmitt is an employee of the New York City Department of Environmental Protection (“DEP”). Mr. Schmitt was notified by DEP of the requirement, pursuant to Admin. Code § 12-110(b)(3)(a)(4), to file a financial disclosure report for calendar year 2017.¹ He fully and timely appealed the designation as a required filer to the agency head and the Board, and the matter was heard before an OCB neutral arbitrator.²

Admin. Code § 12-110(b)(3)(a)(4) requires the filing of a financial disclosure report by:

Each employee whose duties at any time during the preceding calendar year involved the negotiation, authorization or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances and special permits, as defined by rule of the conflicts of interest board and as annually determined by his or her agency head or employer, subject to review by the conflicts of interest board.

¹ Financial disclosure reports pertaining to a particular calendar year are filed in the next calendar year. For example, reports relating to 2017 were filed in 2018.

² The appeal was heard pursuant to the Financial Disclosure Appeals Process (Exhibit A), the procedure for hearing appeals that was previously agreed to among COIB, the City’s Office of Labor Relations, and DC 37. The appeal was heard by Mary O’Connell who submitted her Report and Recommendation (“Schmitt Report”) on February 8, 2019 (Exhibit B).

The Rules of the Board clarify which employees with the responsibilities set forth in that Section are required to file financial disclosure reports, colloquially termed “contract filers.” Any employee who is involved in the substantive determination of any aspect of the contracting process, whether in the drafting of a contract, the evaluation of a bid, the approval of documents relating to a contract, or the determination of contract policies, rules, or regulations, is required to file.³ Included in the category of contract filers is any employee who “Negotiates or determines the substantive content of a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order,”⁴ “**Recommends or determines** whether or to whom a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order should be awarded or granted.”⁵ Exempted from this particular category of employees required to file financial disclosure reports are clerical personnel and other public servants who perform only ministerial tasks.⁶ City Charter § 2601(15) defines “ministerial matter” as “an administrative act . . . which does not involve substantial personal discretion.”⁷

Mr. Schmitt served as the Conservation Easement Manager in the Bureau of Water Supply and was responsible for the enforcement of 180 conservation easements with landowners in the Upstate New York Watershed.⁸ He monitored the easements by conducting property inspections twice a year.⁹ By agreement, the inspections are conducted on the ground in the fall and aerially in the spring.¹⁰ Upstate aerial inspections require a micro-purchase order to procure the services of a private aircraft.¹¹

In 2017, Mr. Schmitt was involved in the procurement of such a vendor. Due to the requirement of using a Minority- or Women-Owned Business Enterprise (“M/BWE”) vendor, he could not utilize the services of the vendors he had used in the past.¹² As a result, Mr. Schmitt contacted only one potential vendor, Lisa Litts.¹³ Ms. Litts had a private plane and was seeking to form her own aviation company that would qualify as an M/WBE vendor in the Catskills area.¹⁴ Mr. Schmitt admits that he made the decision not to conduct a search for other vendors and instead only contacted Ms. Litts, who he knew from a prior association with another aviation company, River Aviation.¹⁵ Ms. Litts was awarded the micro-purchase order.¹⁶

³ Board Rules § 4-04.

⁴ Board Rules § 4-04(a)(4).

⁵ Board Rules § 4-04(a)(5)(emphasis added).

⁶ Board Rules § 4-04(b).

⁷ The Board applies the definition of “ministerial matter” found in City Charter § 2601(15) to its interpretation of “ministerial tasks” in Board Rules § 4-04(b).

⁸ Schmitt Report at 5. Ms. Schmitt’s civil service title is Associate Project Manager II.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 6.

¹³ *Id.* at 6-7.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 8.

While admitting that he made the micro-purchase order in 2017, Mr. Schmitt argues that he is not subject to the filing requirement because a micro-purchase order, unlike “larger contracts,” fails to put him at a significant risk for conflicts of interest.¹⁷ He further contends that any discretion he may have is limited by M/WBE rules and the small number of vendors in the Upstate area.¹⁸ Mr. Schmitt’s arguments are unavailing. It is well-established that the monetary value of a purchase order or contract has no bearing on the filing requirements.¹⁹ Moreover, although Mr. Schmitt may have been limited in his choice of vendors, the evidence demonstrates that he had substantial discretion to make decisions in selecting a vendor to perform the aerial inspections ranging from deciding not to conduct searches for vendors to only contacting one potential vendor who was ultimately awarded the micro-purchase. Therefore, his duties in 2017 demonstrate that he was involved in recommending the award of a micro-purchase order and thus, is required to file under Admin. Code §12-110(b)(3)(a)(4) and Board Rules § 4-04(a)(5).

Conclusion

Board Rules § 4-04 was enacted to, among other things, “limit financial disclosure filing to those public servants who are at risk of conflicts of interests...[and] to ensure that rules for determining who is a ‘contract’ filer are uniform and uniformly applied throughout the City.”²⁰ That objective is furthered by concluding that Duncan Schmitt is required to file a financial disclosure report for calendar year 2017.

To be exempt from the filing requirement, public servants performing contracting responsibilities must perform **only ministerial duties**.²¹ Mr. Schmitt was directly and substantially involved in the discretionary process of recommending to whom the micro-purchase should be awarded, and thus, did not perform merely ministerial tasks. He performed activities, regardless of purchase value, that are precisely the kind that have the potential to pose a conflict of interest. Thus, as the neutral arbitrator correctly concluded, Mr. Schmitt is required to file a financial disclosure report for calendar year 2017.

¹⁷ Notice of Appeal to Conflicts of Interest Board, dated August 23, 2018 (Exhibit C); Letter to Conflicts of Interest Board, dated October 18, 2018 (Exhibit D).

¹⁸ Letter to Conflicts of Interest Board, dated October 18, 2018 (Exhibit D).

¹⁹ *See Matter of Roman*, FD Order 2019-01 (January 31, 2019).

²⁰ Statement of Basis and Purpose for Board Rules § 1-15 (now Board Rules § 4-04).

²¹ Board Rules § 4-04(b) (emphasis added).

WHEREFORE, IT IS HEREBY ORDERED, pursuant to Admin. Code §12-110(b)(3)(a)(4), that Duncan Schmitt is required to file a financial disclosure report for calendar year 2017 no later than April 11, 2019.

Duncan Schmitt has the right to appeal this Order to the Supreme Court of the State of New York.

The Conflicts of Interest Board



By: Richard Briffault, Chair

Fernando A. Bohorquez, Jr.
Anthony Crowell
Jeffrey D. Friedlander
Erika Thomas

Dated: March 12, 2019

cc: Duncan Schmitt, DEP
Morlan Ty Rogers, DEP
Aaron Amaral, DC37
Onya Brinson, DC37