

Soliciting Post-City Employment
Charter Section 2604(d)(1)

Advisory Opinion No. 95-4

The Board has received a request for an opinion from a public servant as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, he may respond to a Request for Qualifications ("RFQ") issued by the Department of Housing Preservation and Development ("HPD") to purchase and manage certain properties from HPD's inventory.

For the reasons discussed below, the Board has determined that the public servant may respond to the RFQ, provided that he acts in accordance with the conditions discussed below.

Background

The RFQ to which the public servant would like to respond has been issued in connection with HPD's Neighborhood Entrepreneurs Program (the "Program"), which is an effort to renovate and revive properties concentrated in the City's low-income communities. During the first phase of the Program, ten applicants will be accepted to manage these properties and will assume responsibility for the management, maintenance

and rehabilitation of the buildings for a period of up to three years. If performance requirements are met, the applicant will then be allowed to purchase the buildings.

The public servant does not work for HPD and has no involvement, as a City employee, with HPD. In addition, he has advised the Board that he would resign from City service if he meets the prequalification requirements and is accepted into the Program.

Discussion

If the public servant is deemed qualified for the Program, he will be expected to assume a position managing one of HPD's properties. The public servant has stated that he would resign from City service at that time. Accordingly, his request for an opinion raises two issues. First, the Board must consider whether the public servant may respond to the RFQ. Next, if the Board determines that the public servant may respond to the RFQ, and he is deemed qualified by HPD, the Board must then consider whether the public servant may participate in the Program after leaving City service.

Charter Section 2604(d) sets forth the

restrictions on the activities of public servants who leave, or contemplate leaving, City employment. Charter Section 2604(d)(1) provides that, "no public servant shall solicit, negotiate for or accept any position (i) from which, after leaving City service, the public servant would be disqualified under this subdivision, or (ii) with any person or firm who or which is involved in a particular matter with the city, while such public servant is actively considering, or is directly concerned or personally participating in such particular matter on behalf of the city."¹

By responding to the RFQ issued by HPD, the public servant is, in effect, soliciting a position with the Program. He must, therefore, comply with Charter Section 2604(d)(1). The public servant has stated that, during his tenure as a City employee, he has had no involvement or contact with HPD as a part of his

¹ "Particular matter" means any case, proceeding, application, request for a ruling or benefit, determination, contract limited to the duration of the contract as specified therein, investigation, charge, accusation, arrest or similar action which involves a specific party or parties, including actions leading up to the particular matter. See Charter Section 2601(17).

official City duties. Thus, he is not actively concerned with or personally participating in any matters before his agency which may concern the Program. As a result, his response to the RFQ would not violate Charter Section 2604(d)(1)(ii).

In this case, none of the post-employment provisions of Chapter 68 would disqualify the public servant from participating in the Program after he left City service. Such participation would neither require him to appear before his former agency for one year after having left City service nor to participate in any particular matters he worked on while employed by the City. See Charter Sections 2604(d)(2) and (d)(4), respectively. In addition, the public servant's participation in the Program would not require the public servant to disclose or use for private advantage any confidential information concerning the City. See Charter Section 2604(d)(5).

Since the public servant, as a City employee, has had no involvement or contact with HPD, his response to the RFQ would not violate Charter Section 2604(d)(1). Furthermore, the public servant's participation in the Program after he left City service would not violate

any of the post-employment restrictions. Accordingly, the public servant may respond to the RFQ and, if deemed qualified by HPD, he may participate in the Program after leaving City service.

Conclusion

Since the act of responding to the RFQ is equivalent to negotiating for or soliciting a position with the Program, and since such solicitation is consistent with Charter Section 2604(d)(1) under the circumstances described above, it is the opinion of the Board that it would not violate Chapter 68 for the public servant to respond to HPD's RFQ. It is also the determination of the Board that the public servant may, if he is deemed qualified by HPD and is accepted into the Program, participate in the Program after leaving City service.

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