



Robert L. Ehrlich, Jr., *Governor*
Michael S. Steele, *Lt. Governor*

Robert L. Flanagan, *Secretary*
Neil J. Pedersen, *Administrator*

Maryland Department of Transportation

MEMORANDUM

TO: All Consultants Doing Business with the
State Highway Administration

FROM: Neil J. Pedersen *Neil J. Pedersen*
Administrator

DATE: November 17, 2005

SUBJECT: Employment of former State Highway Administration
employees by consultants with State Highway Administration contracts

The State Ethics Laws and the Maryland Department of Transportation (MDOT) Consultant Services General Conditions include limitations on the hiring former MDOT/SHA employees (“former SHA employees”). The statutory prohibition is in State Government Article § 15-504(d) and the applicable contractual provisions include, among others, the “Non-Hiring of Employees” clause in paragraph 25 of the Consultant Services General Conditions (copy attached).

These limitations on hiring former SHA employees fall into two categories:

1. A subject-matter limitation of *unlimited duration* that prohibits a consultant from hiring a former SHA employee to work on a matter in which the former SHA employee “participated significantly” as a State employee. This restriction is part of the State Ethics Laws and is administered by the State Ethics Commission (Commission). It is a prohibition that is imposed on the consultant, through the contract language, and it is also imposed on the former SHA employee by State Government Article § 15-504(d).
2. A prohibition of *limited duration* on a former SHA employee from having a direct or indirect interest in an MDOT/SHA consultant contract. This prohibition extends for one year after the employee’s tenure with MDOT/SHA. This is a contractual provision, and the prohibition is imposed on the consultant through the contract clause. The portion of the clause that extends its effect to one year after the end of employment with MDOT/SHA is not part of the State Ethics Law and is not within the jurisdiction of the Commission.

The purpose of this memorandum is to address Item 2, above. Under it, a former SHA employee cannot, for one year from the end of his or her employment with MDOT/SHA, work for a consultant under an SHA consultant services contract, if the former SHA employee has any interest, direct or indirect, in that contract or in the proceeds of that contract. The SHA considers a former SHA employee to have such a direct or indirect interest when:

- the former SHA employee has an equity or financial interest in the consulting firm;
- the former SHA employee receives compensation that is determined, in whole or in part, by the profits or losses under an SHA consultant services contract; or
- the former SHA employee's employment with the consulting firm involves work on an SHA consultant services contract.

The SHA will consider a waiver of this one-year employment restriction only if:

- when the former SHA employee left State service, he or she was working in an area within MDOT/SHA that has been or is being outsourced or privatized in its entirety; or
- extraordinary circumstances exist, such that a waiver would be in the State's best interest.

This memorandum serves as a reminder to all consultant firms that do business with SHA that both categories of limitation on the hiring and use of former MDOT/SHA employees are to be strictly adhered to. Decisions regarding questions about the first prohibition can only be made by the State Ethics Commission. On SHA consultant services contracts, waivers to the second prohibition can only be granted by the State Highway Administrator.

If you have any additional questions or concerns regarding this matter, please contact Ms. Normetha Goodrum, SHA's Deputy Administrator for Finance, Information Technology and Administration, at 410-545-0402, toll-free 800-206-0770 or, by email, at ngoodrum@sha.state.md.us. She will be pleased to assist you.

Attachment

cc: Mr. Robert P. Gay, Acting Director of Consultant Services, SHA
Ms. Normetha D. Goodrum, Deputy Administrator for Finance, Information Technology and Administration, SHA
Edward S. Harris, Esquire, Counsel to the State Highway Administration
Mr. Douglas R. Rose, Deputy Administrator/Chief Engineer for Operations, SHA
Mr. Douglas H. Simmons, Deputy Administrator for Planning and Engineering, SHA
Senior Management Team
All SHA Managers

Addendum #1
to
General Conditions for
Consulting Services
dated January 1998

The General Conditions for Consulting Services - 1998, Section II of the Specifications for Consulting Engineers' Services, is modified to include the following:

Paragraph 22, Political Contribution Disclosure is deleted and replaced with the following:

"22. Political Contribution Disclosure

The Consultant shall comply with Article 33, Sections 30-1 through 30-4 of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Administrative Board of Election Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Administrative Board of Election Laws: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31."

The following paragraph is made a part of the General Conditions.

"44 Surety Bond Assistance Program

Assistance in obtaining bid, performance, and payment bonds may be available to qualifying small businesses through the Maryland Small Business Development Financing Authority (MSBDFEA). MSBDFEA can directly issue bid, performance, or payment bonds up to \$750,000.

Questions regarding the bonding assistance program should be referred to:

Maryland Department of Business and Economic
Development
Maryland Small Business Development Financing
Authority
217 E. Redwood Street, 22nd Floor
Baltimore, Maryland 21202
410-767-6359"

7/1/98
Revised 11/23/99

Paragraph 20, Non-discrimination in Employment, Sub-Paragraph A Compliance with State Law and Regulations, is deleted and replaced with the following:

"20 Non-discrimination Employment

A. Compliance with State Law and Regulations

The Consultant agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry or disability of a qualified individual with a disability; (b) to include a provision

similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause."

Paragraph 25, Non-hiring of Employees is deleted and replaced with the following:

"25 Non-hiring of Employees

No official or employee of the State of Maryland, as defined under State Government Article, §15-202, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall during the pendency and term of this contract and while serving as an official or employee of the State become or be an employee of the Consultant or any entity that is a subcontractor on this contract.

"Unless waived in writing by both the Department or Administration and appropriate federal agencies prior to award of the Contract, no member, officer, or employee of the Maryland Department of Transportation or of a local public body, whether elected or appointed, during his tenure or for one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof. In this paragraph, local public body means the State of Maryland, any political sub-division of the State, or any agency of the State or political sub-division.

"No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract to any benefit arising therefrom."

Revised 4/2/02