

STATE ETHICS COMMISSION

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INFORMATIONAL MEMORANDUM #10

January 11, 2016

Financial Disclosure – Non-Salary Contracting Criteria

The Public Ethics Law defines “public official” to include an individual in an executive unit who, regardless of compensation level, has decision-making authority or acts as a principal advisor to one with decision-making authority in drafting specifications for, negotiating, or executing contracts which commit the State or any executive unit to expend in excess of \$10,000 per year. Individuals identified as public officials must file financial disclosure forms. The State Ethics Commission, with advice of the Department of Budget and Management, determines which positions meet the statutory criteria.

The following questions and answers should assist departments and agencies in applying the statutory criteria to persons engaged in contract activities.

- 1. Should the list submitted include employees who are public officials by virtue of compensation and other duties?**

No.

- 2. Must an employee meet all of the criteria (i.e., act as a decider or principal advisor to one in decision-making authority in: (1) drafting specifications for; (2) negotiating contracts; and (3) executing a contract in order to be included?**

No. An employee who meets any one of the criteria must be included.

- 3. What does “decision-making authority or principal advisor to one with decision-making authority” mean with regard to drafting specifications for contracts?**

Decision-making authority means a general authorization within the person’s job description permitting or directing the person to prepare specifications that form the basis for part or all of a contract. It does not include persons who prepare parts of documents but do not have discretion regarding the contents of the documents. Thus, typists, similar clerical personnel and certain technical support personnel would not be required to file financial disclosure statements.

- 4. What does “decision-making authority or principal advisor to one with decision-making authority” in regard to negotiating contracts mean?**

Decision-making authority in regard to negotiating contracts means general authorization within the person's job description that permits or directs the person to negotiate a contract. Negotiation generally follows the specification phase and includes communications or conferences with potential contractors in an attempt to arrange the terms of a purchase, lease or other contract. It also relates to the actual discussions with vendors regarding the terms of an agreement or purchase. In this category of public official, the individual's job description should include sufficient authority and responsibility to have a significant impact on the ultimate terms of the contract. In addition to those who do the actual negotiating, this category also includes those with supervisory responsibilities or advisory roles regarding specific contract negotiations.

5. What does “decision-making authority or principal advisor to one with decision-making authority” in regard to executing a contract mean?

Execution of a contract means the act necessary to render a contract complete. Generally, the person who executes a contract is the agency official who signs the agreement. This category captures the individual who can sign the agreement on behalf of the agency and make it binding without the signature of another person within the department or agency. It includes those individuals whose job descriptions include providing major advice in the substantive decisions regarding whether a contract should be signed. This category does not include those who provide routine approval, such as a legal advisor as to the legal sufficiency of the contract, an employee who provides routine approval in a control agency regarding form and procedure, or an employee who provides routine review of a contract as it proceeds through the contractual process.

6. What is a contract that commits the State or any of its boards, agencies or departments to expend in excess of \$10,000 in a year?

This criterion relates to a contract that commits the State or any of its boards, agencies or departments to expend in excess of \$10,000 in one contract. The job description of the individual captured by this criterion must include advisory or actual involvement in individual contracts of more than \$10,000. Contracts in this category may include purchases, leases, grants, loans, or other types of agreements involving fund expenditures or commitments by the State. This category includes individuals whose job descriptions authorize them to advise or actually be involved in contract changes or amendments that involve additional expenditures or commitments of more than \$10,000 and those whose job descriptions include substantial involvement in contractual employment contracts over \$10,000.

7. What should I do if I have questions about this memorandum or how to prepare the required response?

If you have questions regarding interpretation of the Public Ethics Law or the decisions ultimately to be made by the State Ethics Commission, consult your Financial Disclosure Filer Identification Manual, or call 410-260-7770. If you do not have a copy of the Manual, you may download a copy from the Commission's website at <http://ethics.maryland.gov>.