

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: TRACIE MAJORS

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No. 16-EEC-004

Exemption from Prohibitions
In Section 50-13 of the
Illinois Procurement Code

EXECUTIVE ETHICS COMMISSION

DECISION

This cause is before the Executive Ethics Commission (“Commission”) on a request for exemption from the prohibitions contained in Section 50-13 of the Illinois Procurement Code filed by Ellen H. Daley as the Chief Procurement Officer for General Services.

FINDINGS OF FACT

1. On October 22, 2015, the Chief Procurement Officer for General Services filed a request seeking an exemption pursuant to Section 50-20 of the Illinois Procurement Code (30 ILCS 500/50-20) from the prohibitions of Section 50-13 of the Illinois Procurement Code (30 ILCS 500/50-13) for Tracie Majors, an Assistant Professor of Accountancy at the University of Illinois College of Business.
2. The Executive Ethics Commission (“Commission”) conducted a public hearing on the Chief Procurement Officer’s request for an exemption on November 9, 2015 in Room 349C of the William Stratton Building in Springfield, Illinois. Deputy General Counsel, Joanna Belle Gunderson, served as the Hearing Officer.
3. Notice of the date, time and location of the hearing was published in the on-line bulletin and on the Commission’s web site at least fourteen (14) days prior to hearing.
4. Prior to the hearing, the Hearing Officer set a scheduling order that requested written testimony addressing certain factual matters. Written testimony was due on November 5, 2015.
5. Written testimony was received from Deloitte Consulting LLP, represented by Thomas Sheehan, and the Department of Central Management Services, represented by Deputy General Counsel Amy Gerloff.
6. The hearing was held on November 9, 2015 at 10:00 AM. Attendees included Professor Majors and representatives from Deloitte Consulting LLP, Central Management Services, the Chief Procurement Office for General Services, and the Procurement Policy Board.

A summary of the written testimony received was given. There was no other testimony offered or objections received at the hearing.

7. Deloitte Consulting LLP's written submission contained the testimony of three individuals: Professor Majors, her husband Mr. Edward Majors, and Roy Matthews.
8. Professor Majors has been an Assistant Professor of Accountancy at the University of Illinois College of Business since August 16, 2013. In her current position, her duties include teaching advanced auditing (ACCY 515) and conducting academic research.
9. Professor Majors' current salary, for her second year at the University, is \$205,000. This was an increase from her first year salary of \$200,000, and was effective on August 16, 2014. Professor Majors' salary of \$205,000 is more than 60% of the Illinois Governor's annual salary of \$177,412.
10. Professor Majors has no responsibility or input into any contracts entered into between the State of Illinois and any of its vendors.
11. Professor Majors is married to Edward Majors who works for Deloitte Consulting, LLP.
12. During the time that her husband has been working with Deloitte Consulting LLP, Professor Majors has not discussed with him any contracts that Deloitte Consulting has with the State of Illinois, nor have they discussed any procurements issued by the State of Illinois for which Deloitte Consulting LLP was submitting a proposal.
13. Professor Majors was unaware that Deloitte Consulting had submitted a proposal and had been awarded a contract for the IT Services Organization Design and Implementation project (Procurement Bulletin Reference No. 22036807) until October 15, 2015 when she was contacted by Deloitte about participating in this proceeding.
14. Professor Majors was unaware of Deloitte Consulting's participation in the above-referenced procurement and had no involvement whatsoever in the preparation of the proposal by Deloitte Consulting.
15. Professor Majors had no involvement in the State of Illinois' review and evaluation of proposals or in the decision to award the contract. Professor Majors was completely uninvolved and unaware of that procurement and award until she was contacted about this exemption proceeding.
16. Professor Majors is not familiar with nor has she ever been involved with any procurement issued by the State of Illinois nor any proposals prepared and submitted by Deloitte Consulting LLP, including any proposals submitted to the State of Illinois.
17. Professor Majors' husband, Edward Majors, has been a Principal with Deloitte Consulting, LLP in Chicago since March 2012. Mr. Majors' current income exceeds the

salary of the Governor (\$177,412). His income consists of a salary and a distributive share of the Deloitte Consulting partnership.

18. Mr. Sheehan asserts Majors' income is received in bi-weekly draws (akin to a salary) and quarterly distributions, but it is all "distributive income" from the Deloitte partnership and does exceed the Governor's salary.
19. In his current position, Mr. Majors' duties include managing the design and implementation of performance management systems for organization in the private sector. He does not perform any services related to any contracts between Deloitte Consulting and that State of Illinois. Mr. Majors is not responsible for, nor has he ever been responsible for, preparing proposals for Deloitte Consulting to submit to the State of Illinois.
20. Mr. Majors was unaware that Deloitte Consulting had submitted a proposal and had been awarded a contract for the IT Services Organization Design and Implementation project (Procurement Bulletin Reference No. 22036807) until October 15, 2015, when he was contacted by Deloitte about participating in this proceeding.
21. Mr. Majors will not perform any of the work on the IT Services Organization Design and Implementation project (Procurement Bulletin Reference No. 22036807).
22. Mr. Majors has been married to Tracie Majors since 10/13/2007. Mr. Majors provided the information about Tracie's employment to Deloitte Consulting in June 2013 when Tracie was hired by the University. It is Mr. Majors' understanding that her job has been disclosed as required in all State of Illinois procurements.
23. Mr. Majors has not discussed with his wife any contracts that Deloitte Consulting has with the State of Illinois, nor have they discussed any procurements issued by the State of Illinois for which Deloitte Consulting submitted a proposal.
24. Mr. Majors is not familiar with nor has he ever been involved with any procurement issued by the State of Illinois nor any proposals prepared and submitted by Deloitte Consulting to the State of Illinois.
25. Roy Mathew is currently a Principal with Deloitte Consulting, LLP ("Deloitte Consulting") and was responsible for submitting the Deloitte Consulting proposal for the IT Services Organization Design and Implementation project (Procurement Bulletin Reference No. 22036807) ("IT Services Proposal"). Mr. Matthew managed the entire process of compiling the proposal response and was responsible for all contact by Deloitte Consulting with the State of Illinois with regard to the procurement.
26. Neither Mr. Matthew nor the team involved discussed the IT Services Proposal with Edward Majors, nor did Edward Majors provide any input into the IT Services Proposal. Mr. Matthew did not discuss the IT Services Proposal with Tracie Majors. Tracie Majors

did not provide any input into the IT Services Proposal. Mr. Matthew did not ask Tracie Majors to discuss the IT Services Proposal with anyone at the State of Illinois.

27. Mr. Matthew obtained the information about Tracie Majors' employment with the University of Illinois from the Illinois Procurement Gateway and disclosed the information, as required, in Deloitte's proposal.
28. The contract award to Deloitte Consulting LLP at issue in this proceeding is valued at \$3.1 million. In addition, Deloitte also has approximately \$150 million in existing contracts with other State agencies including Central Management Services, the Department of Healthcare and Family Services, and the Governor's Office of Management and Budget. The existing contracts are not at issue in this matter.
29. Central Management Services ("CMS") is not aware of any role or participation, nor was there any requirement for any role or participation from Professor Majors or any other employee of the University of Illinois regarding this particular procurement.
30. CMS is not aware of any role or participation, nor was there any requirement for any role or participation from Mr. Majors or any other employee of Deloitte, regarding this particular procurement.
31. The procurement method utilized was a Request for Proposal ("RFP"). Under Section 1-15.75 of the Code, RFP means the process by which a purchasing agency requests information from offerors, including all documents, whether attached or incorporated by reference, used for soliciting proposals. The RFP is a competitive, sealed procurement process under the Illinois Procurement Code.
32. The notice of the RFP, and the RFP itself, was published on the Illinois Procurement Bulletin ("IPB") on August 13, 2015. The RFP was available to anyone interested in submitted a sealed offer and the public. The IPB further provided notice that a potential offeror meeting would be held at 9:00am on August 20, 2015 during which time any attendees would be provided an overview of the requirements outlined in the RFP. Several dozen attendees participated in this meeting. Attendees were given the option to attend the meeting in person or by telephone. Attendees asked multiple questions to which the State provided verbal answers. Written answers were later published on the IPB as an addendum to the original notice. Sealed offers were due on Monday afternoon September 14, 2015.
33. On the due date, after offers were publicly opened, a panel of 5 evaluators began reviewing the mandatory and technical responses of the offerors. Evaluators did not review pricing in accordance with Section 20-15 of the Code. Each evaluator provided a technical score for each of the technical questions in accordance with the criteria set forth in the RFP. The pricing scores were separately and independently calculated by agency procurement staff after the technical evaluation was complete. The price scores were combined with the technical scores. The result of this process was that one offeror had

the highest combined technical and pricing score consistent with the criteria set forth in the RFP.

34. The technical evaluation took into consideration the experience each offeror had attained, the complexity and volume of similarly situated engagements each offeror participated in, and the type and focus of each of those engagements. Each of the offerors had participated to different degrees in multiple engagements. Some of the offerors described engagements that were more in line with the specific needs and the situation in the State of Illinois.
35. Deloitte's technical score was the second highest technical score among the five offerors and Deloitte also offered the second lowest price among the five offerors. The offeror who scored the highest technical score had the highest price. The offeror who provided the lowest price scored the fourth highest technical score. Once the numbers were combined, Deloitte had the highest combined technical and pricing score among the five responding offerors.
36. CMS asserts that, to the extent Deloitte would be prohibited from receiving this award as a result of a technical conflict of interest under 50-13(a) or (b), there would be a significant impact to the State of Illinois that is not in the best interest of the public. This significant impact to the State of Illinois would be the fiscal impact of the result of selecting the combined price of the second highest scoring offer to the State, which was over five times as expensive as the price offered by Deloitte. While the technical scores of the highest and second highest scoring offers were relatively close-in fact, the second highest scoring offeror's combined technical score was slightly higher than that of Deloitte, the price difference was so significant that the State would be severely impacted from a total cost perspective if it were to consider an award of the contract to the second highest scoring offeror. It is unlikely that the State would be able to award a contract to the second highest scoring offeror as it would not be in the State's best interest to pay five times the price for the same services with the limited funds available and considering all of the State's current other fiscal issues.
37. CMS asserts that if the public policy evidenced by Section 50-13 of the Code results in an otherwise viable and competent vendor being prohibited from providing services to the State of Illinois at competitive rate(s), as a result of a technical conflict of interest where no actual conflict of interest (or even the appearance of a conflict of interest) exists, such a result is not in the best interest of the State and reduces the competitive environment in the State of Illinois.

CONCLUSIONS OF LAW

1. The Executive Ethics Commission has jurisdiction over this matter pursuant to Section 50-20 of the Illinois Procurement Code. (30 ILCS 500/50-20).
2. Section 50-13 of the Illinois Procurement Code provides in two parts:
 - (a) Prohibition. It is unlawful for any person holding an elective office in this State, holding a seat in the General Assembly, or appointed to or employed in any of the offices or agencies of State government and who receives compensation for such employment in excess of 60% of the salary of the Governor of the State of Illinois, or who is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority, or who is the spouse or minor child of any such person to have or acquire any contract, or any direct pecuniary interest in any contract therein, whether for stationery, printing, paper, or any services, materials, or supplies, that will be wholly or partially satisfied by the payment of funds appropriated by the General Assembly of the State of Illinois or in any contract of the Capital Development Board or the Illinois Toll Highway Authority.
 - (b) Interests. It is unlawful for any firm, partnership, association, or corporation, in which any person listed in subsection (a) is entitled to receive (i) more than 7 1/2% of the total distributable income or (ii) an amount in excess of the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein.

(30 ILCS 500/50-13)

3. Section 50-20 of the Illinois Procurement Code provides:

Exemptions. The appropriate chief procurement officer may file a request with the Executive Ethics Commission to exempt named individuals from the prohibitions of Section 50-13 when, in his or her judgment, the public interest in having the individual in the service of the State outweighs the public policy evidenced in that Section. The Executive Ethics Commission may grant an exemption after a public hearing at which any person may present testimony. The chief procurement officer shall publish notice of the date, time, and location of the hearing in the online electronic Bulletin at least 14 days prior to the hearing and provide notice to the individual subject to the waiver and the Procurement Policy Board. The Executive Ethics Commission shall also provide public notice of the date, time, and location of the hearing on its website. If the Commission grants an exemption, the exemption is effective only if it is filed with the Secretary of State and the Comptroller prior to the execution of any contract and includes a statement setting forth the name of the individual and all the pertinent facts that would make that Section applicable, setting forth the reason for the exemption,

and declaring the individual exempted from that Section. Notice of each exemption shall be published in the Illinois Procurement Bulletin. A contract for which a waiver has been issued but has not been filed in accordance with this Section is voidable by the State. The changes to this Section made by this amendatory Act of the 96th General Assembly shall apply to exemptions granted on or after its effective date.

(30 ILCS 500/50-20)

4. The public policy evidenced in Section 50-13 of the Illinois Procurement Code is that State employees should not be in a position to influence the award of State contracts that inure to their direct benefit or the benefit of family members. *In re Beth Bartolomucci*, 12-BEC-009, at no. 5, pg. 5 (April 27, 2012).
5. There is no evidence to support any finding other than the public has an interest in having Tracie Majors continue in the service of the State as an Assistant Professor of Accountancy at the University of Illinois College of Business.
6. The public interest in having Professor Majors continue in the service of the State outweighs the public policy evidenced in Section 50-13 because:
 - a. There is no evidence that Professor Majors or her husband, Edward Majors, influenced or were in a position to influence the award of the contract at issue.
 - b. Mr. Majors does not work on any State projects and there is no evidence Mr. Majors worked on the Deloitte proposal for the procurement at issue.
 - c. There is no evidence either Professor Majors or Mr. Majors were aware or involved in the offer submitted by Deloitte Consulting LLP for this procurement.
 - d. There is no evidence either Professor Majors or Mr. Majors were aware or involved in the evaluation of proposals submitted for this procurement.
 - e. The contract awards were made by Central Management Services pursuant to a competitive process.
 - f. Deloitte was neither the top scored technical offeror nor the lowest price, but its combined overall score resulted in being the highest combined score.
7. In order for Section 50-13(a) alone to apply to the current case, the following additional requirements would exist:
 - a. Professor Majors, who is employed by the University of Illinois, would need to "...receive compensation for such employment in excess of 60% of the salary of the Governor of the State of Illinois." and she or her spouse (Edward Majors) would also "...have or acquire any contract, or any direct pecuniary interest in any contract therein...."
 - b. The requirements of Section 50-13(a) appear to be directly related to receiving a certain compensation level as an employee of the State of Illinois in combination with having or acquiring a contract directly with the State of Illinois.

8. While Professor Majors does receive compensation from the State of Illinois in excess of 60% of the salary of the Governor, neither of the Majors "...have..." nor are they in the process of "...acquiring a contract directly with the State of Illinois that will be wholly or partially satisfied by the payment of funds appropriated by the General Assembly of the State of Illinois...." Since part (a) of Section 50-13 is directed toward prohibiting this type of combined interest, then as a result, Section 50-13(a) alone does not apply to this current case before the Commission.
9. In order for Section 50-13(b) to apply to the current case, the following additional requirements would exist:
 - a. Deloitte would be a "...corporation, in which any person listed in Section 50-13(a) is entitled to receive (i) more than 7 1/2% of the total distributable income or (ii) an amount in excess of the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein" if Mr. Majors was entitled to receive either: more than 7 1/2 % of the total distributable income or an amount in excess of the salary of the Governor.
 - b. Professor Majors is a 'person listed in (Section 50-130 subsection (a))' which we have established above.
10. Professor Majors does receive compensation from the State of Illinois in excess of 60% of the salary of the Governor and as a result is a person listed in subsection (a). In addition, Mr. Majors is entitled receive an amount of distributable income in excess of the salary of the Governor.
11. Section 50-13(b) specifies that in order for it to be unlawful for any "...corporation to have or acquire any such contract or pecuniary interest therein" the person listed in subsection (a) (together with his or her spouse) must be "entitled to receive an amount in excess of the salary of the Governor as distributable income." Mr. Majors does appear to be entitled to receive distributable income in excess of the salary of the Governor.
12. Tracie Majors' present salary, coupled with Edward Majors' interest in Deloitte Consulting LLP, as applied by Section 50-13(a) and (b), renders contracts between Deloitte and the State of Illinois, payable from funds appropriated by the General Assembly, unlawful in the absence of a Section 50-20 waiver provided by the Commission that exempts named individuals (in this case Tracie Majors and Edward Majors) from the prohibitions of Section 50-13.

WHEREFORE, for the foregoing reasons, the Commission has determined the requirements of 30 ILCS 500/50-13 are triggered and the statutory conflicts of interest described therein apply to the case before us concerning the interests of Professor Tracie Majors, Edward Majors, and Deloitte Consulting LLP regarding the Professor's employment and the contract that Deloitte currently has been awarded by Central Management Services (IPB Reference No. 22036807).

Our review of all of the facts and evidence presented to the Commission shows there to be no evidence there was or is an actual conflict of interest as a result of the actions or inactions of Professor Majors or Edwards Majors. The evidence shows this procurement was conducted in a

competitive manner, without influence by Professor Majors or Edward Majors. In addition, the evidence only supports a finding that it is in the public's interest to continue Professor Majors' employment at the University of Illinois at Urbana-Champaign as an Assistant Professor of Accountancy in the College of Business.

As a result, the Commission exempts Professor Tracie Majors and Edward Majors from the prohibitions of Section 50-13(a) of the Illinois Procurement Code and Deloitte from the associated prohibitions of Section 50-13(b) of the Illinois Procurement Code for the current pending contract award with Central Management Services (Illinois Procurement Bulletin Reference No. 22036807).

ENTERED: November 18, 2015