

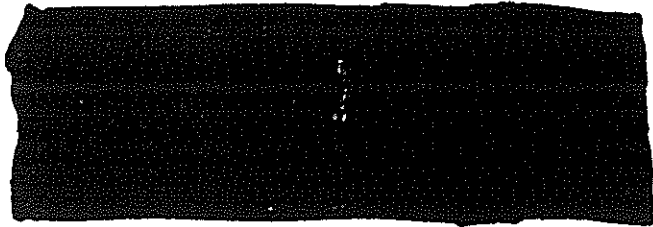


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July 31, 1996

**C O N F I D E N T I A L**

City of Chicago  
Richard M. Daley, Mayor



Board of Ethics  
Dorothy J. Eng  
Executive Director

Georges L. Eames  
Vice Chair

Harry L. DePriest  
Emily Nicklin  
Martin E. O'Donovan

Re: Interest in City Business  
Case No. 96038.Q

Room 303  
20 North Clark Street  
Chicago, Illinois 60610  
(312) 744-9660  
(312) 744-2793 (FAX)  
(312) 744-5996 (TTY)

Dear [REDACTED]

On July 24, you asked whether the Governmental Ethics Ordinance prohibits a City employee from being a subcontractor to the prime contractor of a City contract. Although there are employee subcontractor situations that are prohibited by the Ordinance, after reviewing the facts you presented, it is staff's opinion that City employees may be the prime contractor's security subcontractors on the [REDACTED] contract with the City.

The facts you presented to staff are as follows. A City contractor chosen to oversee and monitor activity at the [REDACTED] is also required to provide security services at the [REDACTED]. Pursuant to the terms of the City's contract, the prime contractor can hire its own subcontractors to provide the security needed. Since the current security subcontractor is not performing satisfactorily for the prime contractor, the prime contractor wishes to subcontract the security services to City employees who are also in the security business.

**LAW AND ANALYSIS:** The provision in the Ordinance most relevant to this subcontracting situation is Section 2-156-110, "Interest in City Business", which prohibits a City employee from having a financial interest in any contract, work, or business of the City. The term "financial interest" is defined in part as:

"...(i) any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500 per year; (ii) any



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interest with a cost or present value of \$5,000 or more; or (iii) any interest representing more than 10% of a corporation, partnership, sole proprietorship, firm, enterprise, franchise, organization, holding company, joint stock company, receivership, trust, or any legal enterprise organized for profit..."

Based on the facts presented and previous board opinions, set forth below, staff concludes that the City employee's proposed subcontracting agreement with the prime contractor of the [REDACTED] contract would not create a prohibited interest in City business. Therefore, the agreement is not prohibited by the Ordinance.

The Board has been faced with similar issues in several past cases. In Case No. 91052.A a City employee leased his building to a business that was funded by a City-subsidized loan. The City employee asked whether the leasing agreement gave him a prohibited financial interest in a City contract. The Board reasoned that because the lease was with the business, not the City, the lease agreement did not constitute a financial interest in a contract, work, or business of the City. The City employee had a financial interest only in the business with which he had the lease agreement.

In a case factually similar to this one, Case No. 93033.A, the Board also considered whether a City employee and part-owner of a security agency was prohibited by the Ordinance from accepting work as a subcontractor on a City contract. In coming to its decision in that case the Board considered the source from which the subcontractor's salary was paid, who hired the subcontractor and what kind of decision-making role, if any, the City had in the hiring process. The Board determined that because the City employee's company would be hired and paid by the general contractor, not the City, and because pursuant to the terms of the City contract, the choice of subcontractors was left to the discretion of the prime contractor, the proposed contract did not create a prohibited financial interest. The Board stated that although the City employee had a financial interest in the general contractor, the interest did not translate into a financial interest in a City contract.

The facts here show that the prime contractor, pursuant to the terms of the City contract, chooses its own subcontractor. In addition, the subcontractor will be paid directly by the prime contractor and not by the City.

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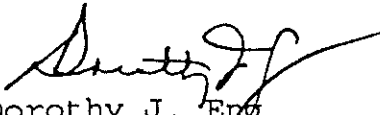
Therefore, just as the Board determined in Case No. 93033.A, it is staff's opinion that, in this case, the City employee would not violate the financial interest provision of the Ordinance if his company subcontracted with the prime contractor and provided security services of \$5,000 or more on the [REDACTED] contract. Although the City employee may have a financial interest in the prime contractor by virtue of his subcontracting agreement, that interest is not prohibited under the Ordinance.

**CONCLUSION:** Staff concludes that the Ordinance does not prohibit the City employee from subcontracting with the prime contractor to provide security service of \$5,000 or more on the [REDACTED] contract. Staff cautions, however, that its opinion in this case should not be construed to apply to all subcontracting arrangements on City contracts. Additionally, this staff opinion should not be understood to control those situations where general contractors identify subcontractors on bid documents to the City.

Please note that this staff opinion is based solely on application of the City's Governmental Ethics Ordinance to the facts presented in this letter and that other laws, rules, regulations, or agreements may apply to this situation. If any of the facts stated are incomplete or inaccurate, please inform us, as any change could alter our conclusion.

If we can be of further assistance please contact us.

Very truly yours,



Dorothy J. Eng  
Executive Director