



BEFORE THE MONTGOMERY COUNTY ETHICS COMMISSION

Advisory Opinion No.10-12-021B

Under the County's procurement law, the County must not award a contract to a bidder or offeror that is "not responsible." A Maryland company asks whether it can submit a proposal in response to a County request for proposals (RFP) relating to the County's red light and speed camera programs. One of the company's employees previously worked on those programs as a County employee. The company explains that this former County employee will not work on its proposal or any resulting contract. Although the Commission does not foresee any violation of the ethics law on the part of the former County employee, it cannot respond to the company's question because it asks a question of procurement law, not ethics law.

Section 11B-20 of the County's procurement law states that the County must not award a contract to a bidder or offeror that is "not responsible." A responsible bidder or offeror means "a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will help assure good faith performance." § 11B-1(q). While the notion of a "responsible" offeror has some overlap with the ethics law, and the County might well determine that an offeror who violates the ethics law is not "responsible," it seems clear that the term "responsible" as defined in the procurement law encompasses a broader range of concerns than the County's ethics law.

The Commission does not have jurisdiction to opine on this provision of the procurement law. There are ethics provisions in the procurement law over which the Commission has jurisdiction. *See, e.g.*, §§ 19A-7(a), 11B-51, and 11B-52(a). But this is not one of those provisions.

If the County department issuing the RFP is concerned that an ethics law violation might render a responding company "not responsible", it should express this concern to the company and direct it to request an advisory opinion from the Commission that the conduct of its employee (the former County employee) would not violate the ethics law.

In reaching this decision, the Commission has relied upon the facts as presented by the requestor.

FOR THE COMMISSION:

December 14, 2010
Date



Nina Weisbroth, Chair