



STATE OF ARKANSAS  
**Department of Finance  
and Administration**

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October 24, 2017

Kermit B. Channell II  
Executive Director  
PO Box 8500  
Little Rock, AR 72215

RE: Advisory Opinion No. 2017-11

Dear Mr. Channell,

This letter responds to your request for an extension to a conditional and temporary waiver from the application of an Ark. Code Ann § 19-11-705, which was granted after I rendered an advisory opinion regarding an Arkansas State Crime Lab (ASCL) employee's conflict of interest under Ark. Code Ann. § 19-11-715(c). The conflict of interest pertains to the ASCL, an ASCL employee, and her family member, regarding the procurement of services for validation of current and new equipment for laboratory purposes and for standards used for validation and testing at the ASCL.

This opinion is based upon the following facts presented to me through your initial request, follow up emails, and your October 19, 2017 extension request. It should be noted that if one or more of these facts are later shown to be incorrect, it could result in a revised opinion.

1. The Arkansas State Police (ASP) is a mandatory reporter to the Federal Fatal Analysis Reporting System (FARS);
2. The ASP sends motor vehicle accident samples to ASCL for comprehensive toxicology testing;
3. Samples are received from federal, state, and local law enforcement agencies;
4. In 2015, the ASCL received 4,908 cases consisting of law enforcement, coroner, and medical examiner cases;
5. Due to the large number of cases received in 2015, the ASCL only performed drug screen testing on motor vehicle accident cases if the blood alcohol results were less than the legal limit of .080%;
6. ASP notified ASCL that the FARS reporting program requires drug confirmation for all motor vehicle accident cases, regardless of blood alcohol level;
7. With the ASCL infrastructure existing at the time, it would have been difficult to perform and maintain acceptable turn-around times, and would have potentially jeopardized current laboratory accreditations, and would have delayed the release of Death Certificates of victims of criminal acts to family members;
8. ASP and ASCL met to create a plan of action to address the issues created by FARS reporting;

9. To assist in meeting the FARS mandates, ASP and ASCL concluded there was a need for validation of the Liquid Chromatography Mass Spectrometers (LC/MS/MS and LC/TOF) to provide ASCL with the capability and infrastructure to perform comprehensive drug testing on all motor vehicle accidents, to purchase new LC/MS/MS along with validation of that new equipment, and the continuous purchase of drug standard plates needed to perform validation of the equipment and controls in case work;
10. ASCL requested competitive bids for validation of the current LC/MS/MS along with validation of new equipment after purchase;
11. Bids were sent via email to 3 vendors and only one response was received;
12. PinPoint Testing, LLC, (PinPoint) a corporation that was assisted in its development by UAMS Bio Ventures, was selected to provide services;
13. PinPoint has four (4) interest holders that are current or former state employees – Jeffery Moran, Nancy Rush, Kathryn Seely, and Charles Kokes;
14. Jeffery Moran, Nancy Rush, and Charles Kokes are currently employed by or are adjunct faculty at UAMS;
15. Kathryn Seeley is employed by the Arkansas Department of Health;
16. Cindy Moran is the current Scientific Operations Director at ASCL and is married to Jeffery Moran;
17. Charles Kokes is the Chief Medical Examiner at the ASCL;
18. Cindy Morn developed the specifications for the bid and suggested vendors to solicit bids from;
19. The initial contract to validate current equipment was for \$37,000 and the contract to validate the new equipment ASP purchased was for \$15,000;
20. On September 1, 2016, I issued an advisory opinion and written waiver, stating therein: (a) there was no conflict of interest related to Jeffery Moran, Nancy Rush, Charles Kokes and Kathryn Seeley; (b) the conflict of interest related to Cindy Moran was waived; and (c) the waiver was issued on the condition that the contract only be granted for a period of one (1) year, during which time ASCL should prepare to engage in an appropriate competitive procurement without any involvement from Cindy Moran or any other employee with a potential financial interest in the procurement;
21. Accordingly, ASCL executed the contract with PinPoint;
22. During the year, ASCL was able to validate two LC/MS/MS for the Toxicology Section, and the vendor performed validations, enabling the ASCL analysts to continue casework and keep cases turnarounds to thirty (30) days.
23. However, various delays in the installation of the instruments and supporting equipment occurred due to receiving damaged equipment that necessitated on-site technical support.
24. ASCL now requests an extension of the written waiver until June 30, 2018 in order to complete the instrument installation and corresponding validations.

Ark. Code Ann. § 19-11-705, prohibits state agencies, including state-supported institutions of higher education, from contracting with a business in which an employee or an employee's immediate family member has a financial interest if the employee participates, either directly or indirectly, in the procurement of such contracts. "Employee" is defined broadly to include volunteer members of state boards and commissions, Ark. Code Ann § 19-11-701(8). "Direct or indirect participation" is defined under Ark. Code Ann. § 19-11-705(a)(2), and includes without limitation, "involvement through decision, approval, disapproval, recommendation, preparation of any part of a procurement request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity." The position of employment and an employee's participation in the procurement process, both directly and indirectly, are examined on a case-by-case basis.

Based on the information you provided, as stated previously, it is clearly a conflict of interest for your agency to contract with PinPoint given Cindy Moran's connection to an interest holder (Jeffery Moran) and her direct involvement in the procurement of the contract with PinPoint.

According to Ark. Code Ann. § 19-11-715(c), the Director may grant a waiver or permission to proceed with the transaction that may otherwise involve an ethical conflict when interests of the state so require or, alternatively, when the ethical conflict is insubstantial or remote. The waiver may contain terms and conditions upon which such waiver is based.

In this matter, the conflict involving Cindy Moran is substantial and is not remote. Accordingly, although I found the interests of the state required a waiver, I imposed a condition on the waiver by limiting it to one (1) year. I stated ASCL should utilize that time to prepare to engage in an appropriate competitive procurement without any involvement from Cindy Moran or any other employee with a potential financial interest in the procurement.

A year since its request for a waiver, the ASCL has informed me that the mandates set out by FARS and the substantial workload placed on ASCL in meeting those mandates, which can only be managed by implementing the plan of action developed by ASP and ASCL, have resulted in delays. These delays have not allowed PinPoint finish its full performance.

I believe that it remains in the state's interest for the contract work to be finalized without any prejudice to the ASCL. However, steps should be taken immediately to replace the contract with a competitively solicited contract that is procured without any involvement from Cindy Moran or any other ASCL employee with a potential financial interest in the procurement. If the waiver is extended until June 30, 2018, that should allow the ASCL sufficient time to undertake a competitive solicitation prior to the contract's expiration. Consequently, I am granting an extension of the conditional waiver until June 30, 2018. If ASCL starts working to develop its solicitation now, this waiver extension should allow ASCL enough time to complete a competitive solicitation and avoid a disruption of service.

This advisory opinion is issued in accordance with Ark. Code Ann. § 19-11-715. Compliance with the above course of conduct is deemed to constitute compliance with the ethical standards established by law and Executive Order 98-04.

Sincerely,



Larry W. Walther  
Director