

Advisory Opinion 22-07

This advisory opinion is in response to a request from the BCPS [REDACTED] regarding the application of the Ethics Code to a BCPS vendor that has an existing contract with BCPS for the sale of athletic apparel. This contract provides, in relevant part, that “[a]ll Vendors are expected to comply with any and all Board Ethics Policies that may apply to them individually or as a business entity.” The contract further provides that “[a]ll Vendors should review carefully the conflict of interest policies. Specific attention should be accorded to the Board Ethics Policies (Board Policy 8363) prohibiting Baltimore County Public Schools employees from benefitting from business with the school system.” Additionally, the contract provides that “[a]ll Vendors are placed on notice that all questions/interpretations concerning the Board Ethics Policies may be submitted to the Ethics Review Panel in accordance with Board Policy 8366.”

The request for an advisory opinion stems from a Maryland Public Information Act (“MPIA”) request from the vendor to BCPS stating that:

[o]ur company would like to email all the Baltimore County public schools [sic] principals and administrative secretaries to see if they would like to attend a luncheon to showcase one of our vendors, San Mar. A representative from San Mar will show the 2023 product line and answer questions about the products, this is a great opportunity to see and feel the products that the schools will be buying throughout the school year.

Upon learning of the MPIA request, a representative of the BCPS Office of Purchasing contacted the vendor and expressed concern about the timing of the showcase event, noting that BCPS has an open solicitation for athletic apparel, with proposals due August 15, 2022. The Purchasing representative told the vendor that the timing of the showcase, when aligned with the timing for the solicitation “is simply not appropriate” and recommended that the vendor postpone the showcase until after the Board had approved the new contract, scheduled for October 11, 2022. The vendor responded that once schools start, the principals and secretaries would be very busy and felt that the timing of the showcase would be a “perfect fit” given the schedules of the parties. The Purchasing representative responded that “[u]nder other conditions I would agree, but the presence of an open solicitation process changes the dynamic and creates the appearance of impropriety.”

With regard to the open solicitation, the [REDACTED] has advised the Panel that “[a]lthough neither the principals nor the secretaries will make ultimate decisions concerning the selected vendors, they will be selecting items for purchase.”

In considering the request for an advisory opinion, a threshold question must be addressed, namely, whether the Ethics Code applies to the vendor. The Ethics Code at Policy 8360, *Applicability and Definitions*, states that the “Ethics Code of the Board of Education of Baltimore County (Board) applies to members of the school Board, candidates to be members of the school board, the Superintendent and employees.” See, Policy 8360 § I.A. Additionally, the Ethics Code at Policy 8361, *Statement of Purpose and Policy*, states that the “Ethics Code establishes recommended behavior for members of the school board, candidates to be members of the school board, the Superintendent and employees.” See, Policy 8361, § II.A.

Given the scope of the Ethics Code as set forth in Policies 8360 and 8361, the Panel advises that the Ethics Code does not apply to the vendor. The Panel appreciates and applauds the concerns of BCPS staff who seek to ensure that BCPS’ vendors avoid situations where even the appearance of impropriety may arise. The vendor’s proposed showcase appears to implicate the Gift restrictions set forth in Policy 8362, for example. However, as noted, the Ethics Code constrains the actions of Board members, candidates to be members of the Board, the Superintendent and employees, rather than vendors.

This Advisory Opinion has been adopted by the Ethics Review Panel members on August 23, 2022.

Tim Topoleski, Ph.D.
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