Can I sell my goods or services to a State agency?

State employees who have a business outside of their official duties and responsibilities frequently ask JCOPE: Can I sell my goods or services to a State agency? Take, for example, an employee with the NYS Office of Information Technology Services (ITS) who also owns a software business on the side and wants to market and sell audit management software to ITS and other State agencies.

That employee’s first step should be to contact their agency Ethics Officer to discuss ITS’s outside activity policies and JCOPE’s regulations on the subject. An agency may have outside activity policies and rules that are more restrictive than the State’s ethics code requirements. The employee’s Approving Authority is supposed to be made aware of any outside activity in which they anticipate becoming engaged before that activity actually begins.

Since the proposed outside activity involves seeking a contract with the State, it is important to be aware of certain restrictions contained in the Public Officers Law (POL) regarding State employees doing business with the State:

- **Procurement:** Under POL § 73(4), State officers and employees are allowed to sell goods and services worth more than $25 to a State agency, but only if the award or contract is issued after public notice and competitive bidding. Note that while the State Finance Law does not require a State agency to solicit competitively-bid contracts in all circumstances — for example, goods or services bid as a "sole source"\(^1\) or “single source”\(^2\) procurement -- this restriction strictly prohibits a State employee/officer from submitting a bid for any sole source, single source, or other no-bid State contract.

- **Prohibited Compensation:** POL § 73(7) prohibits State officers and employees from receiving compensation for appearing in support of a bid on a State contract or rendering other services in connection with such a bid. For example, officers/employees are prohibited from

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\(^1\) A Sole Source procurement is one in which only one vendor can supply the commodities, technology and/or perform the services required by an agency.

\(^2\) A Single Source procurement is one in which two or more vendors can supply the commodity, technology and/or perform the services required by an agency, but the State agency selects one vendor over the others for reasons such as expertise or previous experience with similar contracts.
being paid to appear at a bidders’ conference or from helping to prepare a written bid submission, whether it be on their own behalf or for another person or entity.

- **Conflicts of Interest:** Finally, be aware that POL § 74 restricts a State employee from engaging in any business that substantially conflicts with their State job. For instance, POL § 74(3)(i), prohibits a State employee from selling goods or services to any person or entity that is licensed or whose rates are fixed by the employee’s State agency.

In the example above, can the ITS employee respond to a competitive bid request from their own agency? We may need more information to determine whether there is a conflict of interest, including a description of the employee’s State job duties. If, for instance, the employee plays no role in awarding the contract or developing the bid criteria, it might very well be permissible.

These issues are challenging to resolve on one’s own, since determining whether there is a conflict of interest requires consideration of all relevant facts on a case-by-case basis. One must not forget that the agency Ethics Officer and JCOPE’s Attorney of the Day are available to provide guidance in navigating these issues.

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**Dear JCOPE**

My co-worker told me in confidence that she has an outside job with a vendor who has a State contract with her unit. I think there may be a conflict of interest under the State’s ethics laws. How do I report a potential violation to your agency?

Signed, **What Do I Do?**

**Answer:**

**Dear WDID:**

JCOPE’s website, at reportmisconduct.ny.gov, provides two primary means to report alleged violations of the State’s ethics and lobbying laws:

- **Submit a tip:** Any person may fill out a brief tip form on the website, anonymously or with specific contact information. All tips will be reviewed by Commission staff to determine whether the tip alleges a violation of law under the Commission’s jurisdiction. JCOPE also maintains a tip phone line, 1-800-87-ETHICS, staffed by the Commission’s Investigations and Enforcement Division, during regular business hours.

- **File a complaint:** Any person may file a complaint with the Commission on the JCOPE website, anonymously or with specific contact information. The complaint should identify the individual alleged to have violated the law and include facts or evidence that allege a violation of State ethics laws.
Should you have any further questions about this process, contact JCOPE’s Attorney of the Day for further guidance.

**Enforcement Actions**

**FINANCIAL DISCLOSURE & CONFLICTS OF INTEREST**

The Chief of Systemwide Accessibility for New York City Transit admitted that he disclosed confidential selection committee information related to a request for proposal to a bidding vendor, in violation of Public Officers Law § 74(3)(c). He further admitted to failing to report outside income from his position as president of the board of a not-for-profit corporation and not accurately disclosing this position of authority on his financial disclosure statements, in violation of Public Officers Law § 73-a. In settlement of the matter, he agreed to pay a fine of $5,000 and to file accurate amended financial disclosure statements for the three years in question.