

INSTRUCTIONS FOR DISCLOSURE UNDER 930 CMR 6.26(5)

FINANCIAL INTEREST IN A PUBLIC CONTRACT ENTERED INTO OR AMENDED AFTER ELECTION OR APPOINTMENT THAT IS SUBSTANTIALLY SIMILAR TO AN EARLIER PUBLIC CONTRACT

PROHIBITION AND EXEMPTION

For a state employee, § 7 sets limits on having a financial interest in a contract made by a state agency.

For a county employee, § 14 sets limits on having a financial interest in a contract made by the same county that he serves.

For a municipal employee, § 20 sets limits on having a financial interest in a contract with the same city or town that he serves.

The exemption under **930 CMR 6.26(5)** allows a public employee to have a financial interest in a public contract that is entered into or amended after he was elected or appointed to his public position under certain circumstances.

WHEN TO USE THIS DISCLOSURE

You are a **state, county or municipal employee** – a public employee. You have acquired a **financial interest in a contract with a public agency** at the same level of government which was entered into or amended **after you were elected or appointed** to your public position.

Within five years before you were elected or appointed to your position,

- **you** had a financial interest in a **substantially similar public contract, OR**
- an **immediate family member** – your spouse, parent, brother, sister or child, or your spouse's parent, brother, sister or child -- had a financial interest in a **substantially similar public contract**, and after your election or appointment to your public position, your family member **transferred** the financial interest to you because of his or her incapacitating disability, or you **inherited** the financial interest from your family member.

A contract is **substantially similar** to another contract if the two contracts involve the same type of services, goods, benefits (such as insurance coverage), or access to and/or use of premises. Contracts may be substantially similar even though the parties or the contract terms are not the same.

The new or amended contract must meet some **additional requirements**. You should complete this disclosure only if the new or amended contract was awarded pursuant to a **competitive bidding process**, or, alternatively, if the contract terms of the new or amended contract are **non-negotiable**, and the contract is available to the public generally and/or to all who meet the eligibility requirements for the contract, in accordance with a standard process that incorporates objective standards and eligibility criteria.

A contract is **non-negotiable** if the contract is a **standard form contract** containing only terms and conditions available to any similarly situated public agency, person or entity, and is not a contract developed for, or containing negotiated terms specific to, a particular transaction between a public agency and the contractor.

You also must meet the following requirement. In any **public position** you hold or have held, it must be true that you **did not participate in, or have official responsibility for, the contents, design, making**

or award or management of the new or amended contract, and did not participate in or have official responsibility for determining the **eligibility requirements for the contract**.

CERTAIN TYPES OF CONTRACTS ARE EXCLUDED

Employment and legal or professional services. You may not use this exemption to have a financial interest in a new or amended contract if your financial interest is in a contract regarding **being employed by the public agency** at the same level of government, or **having employment funded by the public agency**, or **providing legal or other professional services** to the public agency.

ADDITIONAL OBLIGATIONS

While you retain your financial interest in a public contract, you must comply with some other restrictions.

- You **may not communicate** with any public agency concerning any public contract in which you have a financial interest.
- You **remain subject to other prohibitions in the conflict of interest law**. Please seek further advice from the Ethics Commission about what those are.

COMPLETING THE DISCLOSURE

- 1) When completing the disclosure, first provide information about your **public position**.
- 2) Next, provide information about the **public contract**. Is the contract between a public agency and you? Or is the contract between a public agency and an entity, and you have a financial interest in the contract because you own that company or shares in that company? Please write an X beside the appropriate statement.
- 3) Please provide information about the **commencement date** of the public contract, the **date when you acquired your financial interest**, and the **public agency** that made the contract.
- 4) As explained above, **this exemption cannot be used** with regard to certain types of **contracts regarding employment or legal or professional services**. Please confirm that the public contract is **not this type of contract** by writing an X.
- 5) Please provide information about the **subject matter of the contract**..
- 6) The next question is about **your financial interest** in the public contract. Please provide information about the amount of money you will be paid under the contract, how much you own of the company that has the contract, etc.
- 7) The next set of questions is about the **similarity** between the new or amended public contract and an **earlier public contract**. First, the disclosure asks whether **you** had a financial interest in the earlier contract or, alternatively, whether an **immediate family member** had a financial interest and you acquired it by transfer because of your **family member's incapacitating disability** or by **inheritance**. Please write an X beside the statement that explains who had the financial interest.
- 8) Please provide the **termination date** of the **earlier public contract**.

- 9) Please explain in what way the new or amended public contract is **substantially similar** to the earlier public contract.
- 10) The next question is about **additional requirements** that the new or amended contract must meet. Was the contract **competitively bid** or, alternatively, is it **non-negotiable**, and does it meet the other conditions stated? Please write an X beside the requirement that you meet.
- 11) The disclosure next requires you to confirm a statement about having **no past participation in, or responsibility for, the new and amended contract as a public employee**. Please confirm the statement by writing an X.
- 12) Finally, the disclosure lists some **additional obligations** that you have under the conflict of interest law. Please write an X by each statement to confirm that you understand these obligations.
- 13) Please **sign** the disclosure and write the **date**.

FILING THE DISCLOSURE

If you are a **non-elected public employee**, file the disclosure with your **appointing authority**.

If you are an **elected public employee**, file the disclosure in a public manner **as instructed at the bottom of the disclosure below**.

If you need advice about completing the disclosure, please call the Attorney of the Day at (617) 371-9500 or e-mail the State Ethics Commission at requestadvice@massmail.state.ma.us.