

INSTRUCTIONS FOR DISCLOSURE UNDER 930 CMR 6.26(3)

FINANCIAL INTEREST IN A PUBLIC CONTRACT PRE-DATING PUBLIC SERVICE

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(3)** allows a public employee to retain a financial interest in some public contracts if the employee had the financial interest before being elected or appointed to his public position.

WHEN TO USE THIS DISCLOSURE

You are a **state, county or municipal employee** – a public employee. **Before you were elected or appointed to your public position**, you had a **financial interest in a contract with a public agency at the same level of government**. This exemption allows you to retain the financial interest **during the original term of the contract**. You also may retain it during an additional term if the contract can be **automatically extended** OR if the contract can be **renewed** upon notice by either party to the contract, and the renewal meets certain conditions. To satisfy the requirements of this exemption, you must file a disclosure, as instructed below.

CERTAIN TYPES OF CONTRACTS ARE EXCLUDED

Employment and legal or professional services. You may not use this exemption to retain a financial interest in a contract that pre-dated your election or appointment to a public position if your financial interest was 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.

Changes from the original contract. Also, this exemption cannot be used with regard to an extension or renewal of a contract if the same terms and conditions that applied in the original contract will not apply during the additional term. Changes in contract payments will not be considered a change in the terms and conditions as long as the methodology for computing such changes is specified in the original contract, such that no negotiations are needed or required. A “change order,” as defined by M.G.L. c. 7C, § 17, shall be considered a continuation of the same contract rather than an amendment of the contract, only if any added cost resulting from the change order is based upon pre-existing labor rates, unit costs and allowable mark-up for overhead and profit, or similar objective criteria, as established in the original contract.

You may not use this exemption to retain a financial interest in an amended contract. An exemption for a financial interest in an amended contract is provided by 930 CMR 6.26(5).

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** as requested.
- 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 **date when you acquired your financial interest** and the **public agency** that made the contract as requested in the disclosure.
- 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 how long you may retain your financial interest in the contract. Please provide the **commencement date** and the **termination date** of the contract.
- 8) Please answer the questions about **automatic extension** ONLY IF the contract was automatically extended. Automatic extensions must meet the stated requirements. If the statements in the disclosure about an automatic extension are accurate, please confirm the statements by writing an X.
- 9) Please answer the questions about **renewal** ONLY IF the contract was renewed. Renewals must meet the stated requirements. If the statements in the disclosure about renewal are accurate, please confirm the statements by writing an X.
- 10) 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.
- 11) 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**.

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.