

INSTRUCTIONS FOR DISCLOSURE BY MUNICIPAL EMPLOYEE UNDER G.L. c. 268A, § 20(b)

FINANCIAL INTEREST IN A MUNICIPAL CONTRACT

SUMMARY

You are a municipal employee. You wish to have a financial interest, directly or indirectly, in a contract made by a municipal agency other than the one you serve. To be eligible for an exemption under § 20(b) of the conflict of interest law, you must meet certain requirements, explained below, and you must file a § 20(b) disclosure with the city or town clerk. If the contract is for your personal services, you must get a written certification from the head of the agency that makes the contract and written approval of the exemption from the city council, board of aldermen, board of selectmen or town council.

WHEN TO USE THE § 20(b) DISCLOSURE FORM

You are either an **elected or non-elected municipal employee**, as defined by G.L. c. 268A, § 1(g). Section 20 of the conflict of interest law prohibits you from having a **financial interest, directly or indirectly, in a contract made by a municipal agency of the same city or town that you serve**. This financial interest may be:

- A **non-elected, compensated municipal position**, or
- A direct financial interest in a **contract between a municipal agency and you**; or
- An indirect financial interest in a municipal contract – in other words, you have a **financial stake in a contract or transaction between a municipal agency and someone else**, such as a company or organization.

You may be eligible for an **exemption under § 20(b)**, however, that will allow you to have such a financial interest in a municipal contract. To use a § 20(b) exemption, you must be able to meet the following requirements:

- 1) The municipal agency that you serve as a municipal employee (“your Municipal Agency”) is **not the same municipal agency** that makes the contract in which you have a financial interest (“the contracting agency”) – you are not already employed by the contracting agency;
- 2) Your Municipal Agency **does not regulate** the activities of the contracting agency;
- 3) In your position as a municipal employee, you **do not participate in or have official responsibility for** the activities of the contracting agency; and
- 4) The municipal contract was made after **public notice** (i.e., the city or town advertised the opportunity so members of the public could apply or compete for it) or through **competitive bidding**.

If you can meet all of these requirements, you must complete a **§ 20(b) disclosure** that fully discloses your interest and the interests of your immediate family in the municipal contract and file it with the city or town clerk.

PERSONAL SERVICES CONTRACTS

There are additional requirements if you have a financial interest in a **contract for personal services**, i.e., you will **work directly for a municipal agency** as an employee, independent contractor, consultant, etc. In that case, it must be true that:

- 1) the services will be provided **outside your normal working hours** as a municipal employee;
- 2) the services are **not required as part of your regular duties as a municipal employee**; and
- 3) you are compensated for your services under the personal services contract for **not more than 500 hours** during a calendar year;

For a personal services contract, you must complete a **§ 20(b) disclosure**, and

- a. the **head of the contracting agency** must make a **written certification** that no employee of that agency is available to perform those services as part of their regular duties, and
- b. you must get **approval of the exemption from the city council, board of aldermen, board of selectmen or town council; and**
- c. your Disclosure, showing the necessary certification and approval, **must be filed with the city or town clerk.**

FINANCIAL INTEREST IN A MUNICIPAL CONTRACT

A **financial interest** in a contract may be **direct or indirect, large or small, positive or negative** – a gain or a loss, a benefit or an obligation. Section 20 does not prohibit you from having a financial interest in a municipal contract by owning less than 1% of the stock of a corporation.

Examples of financial interests in a municipal contract are:

- You have a **non-elected, compensated municipal employee position** -- this is a **personal services contract** if you work directly for a municipal agency.
- **A municipal agency has a contract with you.**
- **You have a financial stake in a contract or transaction between a municipal agency and another person or an entity**, such as a company or organization.
- You work for a company or organization that has a contract with a municipal agency other than the one you serve as a municipal employee, and you are a **“key employee”** because the **contract identifies you by name or otherwise makes it clear that the city or town has contracted for your services in particular.**

KEEPING OR ADDING A FINANCIAL INTEREST IN A MUNICIPAL CONTRACT

Depending on the circumstances, you may use a **§ 20(b) disclosure** to report the following facts:

- You **ALREADY HAD** a financial interest in a municipal contract **BEFORE** you became a municipal employee, and you will continue to **KEEP** it, **OR**
- You already are a municipal employee, and you will **ADD** a **NEW** financial interest in a municipal contract.

The disclosure form indicates when **ELECTED** and **NON-ELECTED** municipal employees can use a § 20(b) exemption to **KEEP** or **ADD** financial interests in municipal contracts of the types listed above.

IF YOU ALREADY HAVE MORE THAN ONE MUNICIPAL EMPLOYEE POSITION, PLEASE CALL THE STATE ETHICS COMMISSION FOR ADVICE ABOUT § 20(b).

FILING THE § 20(b) DISCLOSURE

In the disclosure, enter information about your municipal employee position at the top of the form.

Enter information about the financial interest in a municipal contract in the next parts of the form.

- Answer questions in **BOX # 1** if you are an **ELECTED municipal employee.**
- Answer questions in **BOX # 2** if you are a **NON-ELECTED municipal employee.**

Not a personal services contract -

If the financial interest that you are reporting is **NOT a personal services contract**, complete and sign the disclosure and **file it with the city or town clerk**.

Personal services contract -

If the financial interest that you are reporting is a **PERSONAL SERVICES CONTRACT** with a municipal agency, a **Certification** at the end of the disclosure form must be signed by the head of the municipal agency which is hiring you. **Submit your completed Disclosure and the blank Certification form to the head of the contracting agency**. The head of the contracting agency should complete the Certification and provide you with a copy.

Next, submit the disclosure to the **city council, board of aldermen, board of selectmen or town council** for approval. Once approved, **the Disclosure must be filed with the city or town clerk**.

WHO DOES NOT NEED TO USE A § 20(b) DISCLOSURE

If your position has been designated as a **special municipal employee** position by the city council or board of selectmen, you may be able to use exemptions under **§ 20(c), § 20(d) or 930 CMR 6.13** instead of § 20(b).

If you are **adding an uncompensated municipal position**, use the exemption under **930 CMR 6.02**.

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.