Ethical Principles and Code of Conduct Opinion

Opinion Number: 1005-11

Issued: October 27, 2011

Issue

Whether or not it is a violation of the Ethical Principles and Code of Conduct (EP&COC) for a partnership owned, in part, by the spouse of a UK employee to contract with a UK college where the spouse of one of the partners is employed?

Facts

The College of Fine Arts (hereinafter CFA) solicited bids for a firm to design and develop new web pages for the CFA. A committee composed of CFA Dean Michael Tick, CFA Marketing Director Jennifer Sciantarelli and CFA marketing staff member Dwight Newton selected Bullhorn as the best firm. Dean Tick states, "This firm best fit our needs as they can design/develop within a Drupal CSM. Also, their bid was $20K less than the lowest of three others firms. It is crucial that we contract with a firm that can handle our College's extensive calendar needs, heavy reliance on video, and absolute commitment to an overall aesthetic...."

Bullhorn is a full service marketing firm that, among other services, specializes in digital marketing, including web design. Bullhorn is a partnership, with each of the two partners owning 50% of the partnership. The Bullhorn partners are Griffin VanMeter and Brad Flowers. Mr. VanMeter's spouse is Sarah Wylie VanMeter; Ms. VanMeter is a full-time lecturer (faculty employee) in the CFA. Ms. VanMeter has no ownership interest in Bullhorn. On a couple of occasions in the past, Ms. VanMeter has been a contract employee with Bullhorn; appropriately, an IRS Form 1099 was issued to Ms. Van Meter for payment of her services as an independent contractor.

The proposed CFA contract with Bullhorn is valued at approximately $16,000. Both the CFA and Bullhorn feel that Ms. VanMeter is a necessary and valuable contributor to this project. To facilitate Ms. VanMeter's being a part of the project, Bullhorn has agreed to reduce the contract amount from $16,000 to $8,000. The UK Information Technology (IT) department will place Ms. VanMeter on an "Overload" to perform appropriate tasks on this project; the approximately value of those tasks will be $8,000. This overload permits Ms. VanMeter to be an integral part of the project and is consistent with the University policy on faculty internal overload.

Opinion

Based on the facts in this situation and with the conditions noted (below), it is not a violation of the EP&COC for a partnership, in which the spouse of a UK employee has a half interest, to have a contract with the University, specifically with the CFA. The following are mandated conditions to this proposed contract: (1) The contract was awarded by a committee after other proposals were considered; the contract was reviewed by the Legal office. (2) The spouse of one of the owners of the partnership may work on the project through an overload from a unit outside the CFA. (3) This opinion applies only to this one contract in CFA at this time; any future contract between Bullhorn and UK will be reviewed on a case by case basis by Purchasing and, if needed, the University Ethics Committee. (4) The UEC requires appropriate monitoring of the regular full-time University duties of the lecturer whose spouse is one of the owners of the partnership; the monitoring shall be by an appropriate official of the Department of Art, and the UEC recommends that official be the Department of Art Chair, Dr. Ben Withers.

Applicable Regulations

Applicable Sections of EP&COC

Conflict of Interest

"The public's respect and confidence in the University of Kentucky must be preserved. Confidence in the University of Kentucky is put at risk when the conduct of University members does, or may reasonably appear to, involve a conflict between private interests and obligations to the University. All University members shall avoid conduct that might in any way lead members of the general public to conclude that he or she is using an official position to further professional or private interests or the interests of any members of his or her family. In conducting or participating in any transaction, full disclosure of any real or perceived conflict with personal interests and removal from further participation in such matters is required.

Administrative Regulation 7:2 Conflict of Interest and Financial Disclosure Policy – Research sets forth specific relationships and activities that pose a potential conflict of interest for faculty, staff, and students involved in research and related activities. The University recognizes that actual or potential conflicts of interest may occur in the normal conduct of research and other activities. A conflict of interest can also arise if an employee's professional judgment is or may appear to be influenced by personal interests. It is essential that potential conflicts be disclosed and reviewed by the University. After disclosure, the University can make an informed judgment about a particular activity and require appropriate oversight, limitations, or prohibitions in accord with this policy. It is important to remember that each relationship is different, and many factors often will need to be considered to determine whether a conflict of interest exists."

Financial Advantage

"Members of the University community must exhibit personal integrity, honesty, and responsibility in all actions. Official position or office shall not be used to obtain financial gain or benefits for oneself or members of one's family or business associates. Any action that creates the appearance of impropriety should be avoided. Purchases and contracts shall not be made with an employee of the University of Kentucky for any item of supply, equipment, or service, nor may an employee have any interest, directly or indirectly, in any purchase made by the University of Kentucky (*Business Procedures Manual B.2.C*). An indirect interest may be defined as a real or perceived use of a university position or office with respect to a purchase or contract, leading to financial or other benefits to the individual or a member of his or her family. An indirect interest includes situations where a business owned or controlled by a family member does business with the University area where the employee is assigned."

Rationale / Discussion

One of the two sections of the EP&COC that is applicable to this factual situation is the section on "Conflict of Interest." The Committee members do not believe that the facts in this situation present a violation of the Conflict of Interest section. With the conditions stated above, the Committee Members do not believe that the facts meet the standard required for an appearance of a conflict. The EP&COC GR was not intended to prevent all persons who have any relationship with the University or one of its employees from doing business with UK.

The second section of the EP&COC that is applicable to this factual situation is the section on "Financial Advantage." The company (Bullhorn) with which the CFA proposes to contract received the contract after proposals from other companies were considered. The UK employee-spouse has no ownership interest in the partnership other than potential sharing of spousal income. In addition to no interest in the company, she has never been an employee of the company. The spouse will perform needed services on the project through an overload with UK IT. In the past, the spouse has been an independent contractor with Bullhorn; to be an independent contractor with Bullhorn on this particular project would mean that the spouse has an interest in the contract, and that relationship would be prohibited.

The UK employee-spouse had no part in the selection process whereby the CFA officials decided to propose contracting with Bullhorn.

Applicable Regulations

Applicable Section of the Kentucky Revised Statutes:

KRS 164.390, entitled, “Interest in contracts prohibited,” reads as follows:

“No president, professor, teacher, member of the executive council or other officer or employee shall be interested in any contract or purchase for the building or repair of any structure or furnishing of any supplies for the use of a university or college.”

Rationale / Discussion

KRS 164.390 states that no employee of a university may have any interest in any contract or purchase of any supplies for the use by a university. The statute does not address family members; it simply speaks to employees of the university. The Ethics Committee believes that a contract with a business in which the employee has no ownership, is not an employee, is not an officer, and has no financial interest (other than shared-family household income) and where the company is solely (or, in this case, half) owned by an employee’s spouse does not fall within the prohibition of this statute. If the employee-spouse is an owner or share-holder in the company, the answer may not be the same. The Committee Members do not believe that simply being a member of a family where one family member’s (who is not a university employee) business has a contract with the University is a violation of this statute.

In the original proposal, Bullhorn indicated that Ms. VanMeter would be an independent contractor for this project. Both Bullhorn and CFA administration were unaware of the law that prohibits Ms. VanMeter performing under the contract. Prior to this year, Ms. VanMeter was a part-time UK employee and, during the past couple of years, she had worked on the web pages for two other UK colleges. Being aware of her work with those colleges, CFA administration was pleased that she would be a part of the project. When the conflict with the law was noted, the compromise position is that Ms. VanMeter work for IT for her portion of this project. Thus, the assignment of duties seems to alleviate any compliance with statute issues, avoid any conflict of interest, and manage the project to the best interest of UK and the CFA, as well as be in agreement with the can rental.

ADDITIONAL CONDITION:
The UEC has an additional condition that it is adding to the approval of this contractual arrangement. Since Ms. VanMeter is a full-time lecturer and is devoting her full-time efforts to her lecturer duties, the UEC feels that it is necessary to take extra caution to ensure that the students in her lecture classes are fully served and that the additional duties of the assignment in IT do not interfere or lessen the quality of duties owed to her students. The UEC thus conditions this approval of this contractual relationship on an agreement by the Chair of the Department of Art that he provide appropriate monitoring of Ms. VanMeter’s full-time obligations to the students enrolled in the classes for which she serves as lecturer.

Members of the Ethics Committee

Dr. Jeannine Blackwell, Dean, The Graduate School

Dr. Jeffery Bieber, Associate Professor, College of Education & University Senate Representative

David Melanson, College of Pharmacy & Staff Senate Representative

Brett Short, Chief Compliance Officer, UK HealthCare

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