

18IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

IN RE: EMMETT BURTON, )  
 )  
 ) No. 15-EEC-015  
 ) Appeal of OEIG  
 ) Revolving Door  
 ) Determination

DECISION

This cause is before the Executive Ethics Commission (“Commission”) on appeal by Emmett Burton (“Burton”) from a determination by the Office of the Executive Inspector General for Agencies of the Illinois Governor (“OEIG”).

FINDINGS OF FACT

The record of proceedings has been reviewed by the members of the Executive Ethics Commission. The record consists of Burton’s December 11, 2014 Appeal of an OEIG Revolving Door “Restricted” determination, the Attorney General’s December 15, 2014 Objection to the Appeal, a December 11, 2014 Statement and addendum from a Wells Fargo official, and Burton’s December 18, 2014 Supplemental Argument.

Based upon this record, the Commission makes the following findings of fact:

1. On December 5, 2014, the OEIG made a revolving door determination pursuant to 5 ILCS 430/5-45(f) with respect to Emmett Burton’s proposed employment opportunity with Wells Fargo Bank, NA (“Wells Fargo”). The OEIG determined that Burton was restricted from accepting that employment opportunity. The basis for this determination has not been disclosed in any documents presented to the Commission.
2. Burton has been employed by the Governor’s Office of Management and Budget (“GOMB”) since October 12, 2012 as a Bond Analyst I and Bond Analyst II. As a Bond Analyst II, Burton was responsible for, among other things, serving on scoring teams to evaluate responses to Invitations for Bid by banks for services related to bond issues and other capital market transactions.
3. Pursuant to his duties as a Bond Analyst for GOMB, Burton served as a member of different teams that scored or evaluated responses to Invitations for Bid or Requests for Proposals that resulted in the award of contracts to his prospective employer, Wells Fargo.
4. For the first contract, in September or October of 2013, Burton was one of three scorers of responses to an IFB that resulted in a three-year agreement between the State and a

syndicate led by JP Morgan, including Wells Fargo. According to this agreement, which was posted on October 11, 2013, the State paid the syndicate \$2.35 million annually (AG Objection 11).

5. For the second contract, in the fall of 2013, Burton assisted his supervisor and a third-party contractor in developing a request for proposal to create a list of rotating senior underwriters. He also served on a panel of four employees who evaluated the proposals. Wells Fargo's proposal was among 15 that Burton's panel qualified. The 15 qualified proposals were ordered by way of a random drawing, and Wells Fargo received the second spot, entitling them to underwrite the second bond offering of \$750 million in May of 2014 (18-19, 101-102).
6. For the third contract, GOMB posted an invitation for bid on March 5, 2014 seeking remarketing services as a remarketing agent for Series 2003 Bonds. This resulted in a May 16, 2014 contract, paying Wells Fargo \$120,000 per year for five years (19). According to another employee, approximately 20-25 bids were received and Burton was one of three who reviewed, scored, and calculated the average score for each bid (109).
7. According to Burton's supervisor, Burton scored the bids independently (104). The GOMB Ethics Officer agrees that Burton was one of three scorers of this IFB (19). Burton agrees that he was one of three who scored the IFB responses (Burton response 2).
8. According to Burton's OEIG interview report, Burton assisted his supervisor and a third-party contractor in developing this RFP/IFB (AG Objection 102). (The Commission notes that the document in question, posted By GOMB on the Procurement Bulletin on March 5, 2014, is designated as an IFB.)
9. Burton disputes the OEIG's characterization of these interview remarks, claiming that he had no role in developing the IFB or the scoring rubric (Burton response, Ex. "C"). Burton also provides a statement from another GOMB employee in which she agrees that the rubric and RFP were developed by the Director of Capital Markets and a third party contractor (Burton response, Ex. "D").
10. Although the procurement document in question is designated by GOMB as an IFB, which awards to the lowest bidder and normally involves less exercise of discretion in making an award, the Commission's review of this document suggests that it contains elements that tend to be found in an RFP. For example, the instruction section of the document, at paragraph A. 16, states "If the State issues an award, the award will be made to the Responsive/Responsible bidder who submits the bid deemed to best address the State's needs." (Attachment A). Also, the IFB Format of Bids section clarifies that the bidders are being evaluated according to a number of criteria, many of which are subjective in nature. (Attachment B).
11. Burton argues that he was only one of three evaluators and that all three, including Burton, ranked Wells Fargo as the highest bidder. Burton also argues that he scored

Wells Fargo as the lowest of the three evaluators (Burton response 3). Respondent has not revealed these scores or the scores he gave to other bidders. Contrary to his assertion, these documents are not confidential, and must be made available to the public per 30 ILCS 500/20-155(b).

12. Emmett Burton has been designated by the Office of the Governor to be among those who, by the nature of his duties, may have the authority to participate personally and substantially in the award of State contracts per 5 ILCS 430/5-45(c).
13. Burton anticipates starting employment as an Analyst with Wells Fargo on December 22, 2014.
14. In accordance with 5 ILCS 430/5-45(g), the Executive Ethics Commission has sought written public comment on this matter by posting the appeal on its website and posting a public notice at its offices in the William Stratton Building.

#### CONCLUSIONS OF LAW

1. An Executive Inspector General's determination regarding revolving door restrictions may be appealed to the Commission by the person subject to the decision or the Attorney General no later than the 10th calendar day after the date of the determination. 5 ILCS 430/5-45(g).
2. Emmett Burton's appeal of the OEIG's December 5, 2014 revolving door determination is properly before the Commission and the Commission has jurisdiction to consider the appeal.
3. Subsection (a) of the revolving door section of the State Officials and Employees Ethics Act provides:

(a) No former officer, member, or State employee, or spouse or immediate family member living with such person, shall, within a period of one year immediately after termination of State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the officer, member, or State employee, during the year immediately preceding termination of State employment, participated personally and substantially in the award of State contracts, or in the issuance of State contract change orders, with a cumulative value of \$25,000 or more to the person or entity, or its parent or subsidiary.

5 ILCS 430/5-45(a)

4. Subsection (g) of the same section provides:

(g)...In deciding whether to uphold an Inspector General's determination, the appropriate Ethics Commission or Auditor General shall assess, in addition to any

other relevant information, the effect of the prospective employment or relationship upon the decisions referred to in subsections (a) and (b), based on the totality of the participation by the former officer, member, or State employee in those decisions.

5 ILCS 430/5-45(g)

5. Burton is among those former State employees subject to 5 ILCS 430/5-45(c), who, by the nature of his duties, may have the authority to participate personally and substantially in the award of State contracts or in regulatory or licensing decisions.
6. With respect to the first contract awarded to a syndicate of banks including Wells Fargo, Burton's personal and substantial participation in the award ended in October of 2013. This is more than one year before his anticipated termination of State employment and therefore, does not trigger the revolving door prohibition.
7. With respect to the second contract, involving the underwriting of \$750 million in bonds in May 2014, it appears that Burton's personal and substantial participation in the award of that contract ended in the fall of 2013 when he developed the request for proposal and evaluated the proposals, ranking Wells Fargo among the top 15. This is more than one year before his anticipated termination of State employment and therefore, does not trigger the revolving door prohibition.
8. With respect to the third contract, Burton's scoring of the IFB constitutes personal and substantial participation in the award of a State contract with a cumulative value of \$25,000 or more to his prospective employer within one year of his proposed termination of State employment. The Commission makes no determination as to whether Burton had any involvement in the preparation of the IFB or the scoring rubric.
9. The Commission is not required to find evidence of a quid pro quo or an actual effect of the prospective employment upon a contracting decision made by the employee in order to affirm the Executive Inspector General's determination that an employee is restricted from taking a position.
10. An employee may have "participated personally and substantially in the award of State contracts" even though the employee did not make the final determination to award a State contract.
11. An employee may have "participated personally and substantially in the award of State contracts" even though the employee was only one of a panel of employees who made the final determination to award a State contract.
12. During the year prior to his proposed termination of State employment, Emmett Burton scored an IFB, constituting personal and substantial involvement in the award of a State contract with a cumulative value of \$25,000 or more to his prospective employer.

13. Considering all relevant information and the effect of the prospective employment upon the contracting decisions referred to in subsection (a) of 5 ILCS 430/5-45, based upon the totality of the participation by the employee in those decisions, the Commission finds that Emmett Burton participated personally and substantially in the decision to award a contract to his prospective employer within one year of his proposed termination of State employment.

WHEREFORE, for the foregoing reasons, the Commission denies Emmett Burton's appeal and affirms the Office of the Executive Inspector General's December 5, 2014 determination. Emmett Burton's employment opportunity with Wells Fargo, NA would violate the revolving door provision of the State Officials and Employees Ethics Act. Based upon the information provided to the Commission, it appears that if Burton continues his State employment until one year after his personal and substantial involvement in the decision to award the contract in question, i.e., around April 15, 2015, he would then be permitted to accept an employment opportunity with Wells Fargo, NA.

ENTERED: December 22, 2014

The Executive Ethics Commission

By:   
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Chad D. Fornoff  
Executive Director