



## DELAWARE PUBLIC INTEGRITY COMMISSION

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TO: Cabinet Secretaries  
State Procurement Officers

FROM: State Public Integrity Commission

DATE: January 29, 1996

**SUBJECT: Ethics Bulletin 003 -- Public Notice and Bidding**

The State Public Integrity Commission recently received an inquiry seeking a determination of the effect of the State Code of Conduct provisions concerning public notice and bidding as it relates to the public notice and bidding laws under 29 Del. C. §6903, the State Procurement Law.

The State Code of Conduct provides that:

No state employee, no state officer and no private enterprise in which a state employee or state officer has a legal or equitable ownership of more than 10% (more than 1% in the case of a corporation whose stock is regularly traded on an established securities market) shall enter into any contract with the State (other than an employment contract) unless such contract was made or let after public notice and competitive bidding. Such notice and bidding requirements shall not apply to contracts not involving more than \$2,000 per year if the terms of such contract reflect arms' length negotiations. 29 Del. C. § 5805 (c).

The procurement provision of 29 Del. C. § 6903, with certain exceptions, provides that:

All material required by an agency shall be purchased, except where hereinafter provided, and all work of a nonprofessional nature, except as hereinafter provided, which is not to be performed by employees of the agency shall be performed under a contract entered into pursuant to this subchapter and after competitive bidding as provided for in this section, except that an agency may purchase materiel or contract for work to be performed without competitive bidding in the following instances:  
(1) If the probable cost of the purchase or contract does not exceed \$10,000.  
29 Del. C. § 6903(a)(1).

To the extent the Code of Conduct, by placing the \$2,000 and above requirement on contracts that require notice and public bidding, is considered to alter the procurement law, it might be considered an "implied amendment." See, 1A Sands, Sutherland Stat. Constr., §22.13 (5th ed.). (Legislative act that purports to be independent, but which in substance alters, modifies or adds to a prior act is considered an "implied amendment.") Amendments by implication, like repeals by implication, are disfavored and will not be upheld unless the terms are so inconsistent with the provisions of the prior law that they cannot stand together<sup>1</sup>. Id.; See Also, Woodward v. Department of Corrections, Del. Super., 415 A.2d 782, 785 (1980). Here, it appears that the provisions could stand together. Therefore, the Public Integrity Commission believes that there is no conflict between these two statutes.

Although the procurement law permits contracts of less than \$10,000 without notice and public bidding, if the amount of the contract is greater than \$2,000 and a state employee, officer or a business enterprise in which such persons have the requisite financial interest seeks the contract, then the Code of Conduct applies and public notice and bidding would be required.

cc: Governor Thomas R. Carper  
Lawrence Lewis, Esq.

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<sup>1</sup>The State Code of Conduct provision became effective on January 23, 1993; the procurement provision became effective on July 17, 1990 (prior to that time, the amount in the procurement provision was \$5,000). In enacting a statute, the Legislature is presumed to have knowledge of existence and effect of prior law. State v. Barshay, Del. Super., 364 A.2d 830, 832 (1976).