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IN THE MATTER OF	:	STATE ETHICS COMMISSION
DR. FATIMA MASUMOVA,	:	
PHYSICIAN SPEICALIST,	:	
RUTGERS UNIVERSITY	:	Commission Case No. 32-20
CORRECTIONAL HEALTH CARE	:	
	:	DECISION

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## BACKGROUND

Rutgers, The State University of New Jersey (Rutgers), has requested an exception to *N.J.S.A.* 52:13D-19 on behalf of Dr. Fatima Masumova (Dr. Masumova), a Physician Specialist Unclassified at Rutgers University Correctional Health Care (UCHC). Dr. Masumova seeks to contract with the New Jersey Office of the Public Defender (OPD) to serve as an approved expert for OPD.

Section 19(a) of the Conflicts Law prohibits a State employee from entering a contract valued at \$25.00 or more with any State agency except as provided in section 19(b). Pursuant to section 19(b) of the Conflicts Law, the State Ethics Commission is authorized to grant an exception to the prohibition in section 19(a) when the contract meets certain exceptions, including contracts that are awarded pursuant to public notice and competitive bidding.

OPD follows the New Jersey Department of the Treasury's public bidding statute, which is codified at *N.J.S.A.* 52:34-6 et seq. (State bidding laws). The expenditure for experts is a mandatory expense authorized by independent statutory authority as stated in Section II, J of Treasury Circular 01-04-OMB/DPP. Therefore, no public bidding is performed for experts for OPD.

Currently, OPD maintains a list of pre-approved experts by field of expertise, such as psychologists, psychiatrists, polygraph experts, handwriting experts, translators, firearms experts, and other medical doctors and experts as required. OPD utilizes a fee schedule based on that expert's area of expertise and credentials as listed on their Curriculum Vitae (resume). Once the expert is vetted and approved, the expert becomes a vendor of OPD and is added to the OPD Expert Database. Should staff or a private attorney need an expert, they would select an expert from the database and request approval from the managing attorney, who obtains OPD management approval to engage said expert.

Section 19 of the Conflicts Law prohibits a State officer or employee from entering into a contract valued at \$25.00 or more with any State agency. Section 19(b) exempts only three categories of contracts from this general prohibition:

1. Contracts made after public notice and competitive bidding;

2. Contracts that may be awarded without public advertising and competitive bidding pursuant to *N.J.S.A. 52:34-10* or similar provisions contained in the public bidding laws or regulations applicable to other State agencies, that may be made, negotiated or awarded without public advertising for bids; and

3. Any contract of insurance entered into by the Director of the Division of Purchase and Property, Department of the Treasury, pursuant to *N.J.S.A. 52:27(b)-62*.

## **APPLICATION OF STANDARDS**

In the present case, OPD is subject to the State bidding laws. Section 19(b) of the Conflicts Law only authorizes the Commission to permit Masumova to enter into a contract with OPD that is not awarded pursuant to public notice and competitive bidding if it meets one of the exceptions identified in *N.J.S.A. 52:34-10*. The Commission has previously approved requests by State employees to enter into contracts with State agencies, based on the Section 10 sole source exception. In this case, however, Dr. Masumova is not a sole source for the psychiatric services she seeks to provide to OPD. Further, no public exigency has been asserted. Section 19 permits dual employment by two different State agencies, but does not permit personal service contracts between a State employee and another State agency. Dr. Masumova's request to serve as an expert with OPD would be considered a personal service contract which does not fall within any of the section 19(b) exceptions. The contract is therefore not permissible.

## **DECISION**

The Commission denies Rutgers' request on behalf of Dr. Masumova for an exception permitting her to contract with OPD pursuant to *N.J.S.A. 52:13D-19(b)*.

DECISION RENDERED BY THE  
STATE ETHICS COMMISSION ON  
THE 29<sup>th</sup> DAY OF SEPTEMBER 2020