

SUBJECT: CPA AS CONSULTANT- REQUIREMENT TO FILE STATEMENT OF ECONOMIC INTERESTS

SUMMARY:

A CPA who is hired by a public agency to evaluate bids or award contracts is a consultant for the purposes of the Ethics Reform Act and is required by Section 8-13-1150 to file a Statement of Economic Interests.

QUESTION:

The Executive Director of the SC Association of Certified Public Accountants asks the following question:

A consultant is required to file a Statement of Economic Interests. Does this extend to a CPA who, for example, is hired to assist an agency with computer systems or to assist in preparation of bid proposals?

DISCUSSION:

This opinion is rendered in response to a letter dated January 14, 1992 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act No. 248 of 1991; Section 8-13-100 et. seq., as amended, 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

Consultant is defined in Section 8-13-100(8) as:

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(8) "Consultant" means a person, other than a public official, public member, or public employee who contracts with the State, county, municipality, or a political subdivision thereof to:

- (a) evaluate bids for public contracts, or
- (b) award public contracts.

Further, Section 8-13-1150 provides:

A consultant must file a statement of economic interests for the previous calendar year with the appropriate supervisory office no later than twenty-one days after entering into a contractual relationship with the State or a political subdivision of the State and must file an update within ten days from the date the consultant knows or should have known that new economic interests in an

entity have arisen in which the consultant or a member of the consultant's immediate family has economic interests:

- (1) where the entity's bid was evaluated by the consultant and who was subsequently awarded the contract by the State, county, municipality, or a political subdivision of any of these entities that contracted with the consultant; or
- (2) where the entity was awarded a contract by the consultant.

The intent of the reporting provision in Section 8-13-1150 is full disclosure of an economic interest in a contract awarded in which the consultant has an interest. The Commission notes that Section 8-13-775 prohibits public officeholders from having an interest in a contract if that officeholder is authorized to perform an official function relating to the contract. Official function is therein defined as: "writing or preparing the contract specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract". The State Ethics Commission would, therefore, advise that the phrase "evaluate bids for public contracts" encompasses the writing and preparation of contract specifications, as well as a review of bids submitted by vendors or contractors. Such persons hired to assist in preparation of bid proposals would be required to file a Statement of Economic Interests in accordance with Section 8-13-1150.