



CANCER PREVENTION & RESEARCH
INSTITUTE OF TEXAS

MEMORANDUM

To: OVERSIGHT COMMITTEE CHAIR WILL MONTGOMERY
From: WAYNE ROBERTS, CHIEF EXECUTIVE OFFICER
Subject: SECTION 102.1062 WAIVER—DONALD BRANDY
Date: AUGUST 8, 2018

Waiver Request and Recommendation

I request that the Oversight Committee approve a conflict of interest waiver for FY 2019 for Mr. Donald Brandy, CPRIT’s Purchaser and HUB Coordinator, pursuant to Health & Safety Code Section 102.1062 “Exceptional Circumstances Requiring Participation.” The Oversight Committee approved the same waiver for Mr. Brandy since FY 2015.

Mr. Brandy is not involved in the grant application or reporting process in his official capacity as purchaser of goods and services for the agency. However, the waiver ensures transparency regarding Mr. Brandy’s relationship with some universities that receive CPRIT grants. Furthermore, CPRIT’s Code of Conduct makes it clear that the agency’s conflict of interest provisions apply to any expenditure of CPRIT funds. Although it is unlikely that CPRIT will procure goods and services from a university receiving grant funds from CPRIT, having the conflict of interest waiver in place ensures that Mr. Brandy can perform his duties. Together with the waiver’s proposed limitations, adequate protections are in place to mitigate the opportunity for a conflict of interest to unduly influence agency purchases.

Background

Mr. Brandy serves as the agency purchaser, responsible for planning, organizing, coordinating, and preparing bid specifications and procurement documents to acquire goods and services from vendors and outside contractors used by the agency. The agency purchaser role requires little, if any, involvement with CPRIT’s grant award process because CPRIT’s grant award contracts are not vendor or outside service contracts.

At the time CPRIT hired Mr. Brandy, he requested approval to continue his outside employment as a referee for tennis tournaments held in and around Austin. In addition to refereeing for adult and junior-level tournaments, he serves occasionally as a referee for NCAA tennis matches held at area universities, including The University of Texas at Austin. The university athletic department pays Mr. Brandy for his services as an independent contractor when he referees collegiate matches.

CPRIT employees may engage in outside employment so long as the employment does not detract from the employee's ability to fulfill his or her responsibilities to CPRIT. Employees must receive written approval from the CEO to engage in outside employment and I notify the Audit Subcommittee regarding any approvals. I also annually report to the Oversight Committee all approved outside employment. I notified the Audit Subcommittee regarding my approval for Mr. Brandy's outside employment and the subcommittee first discussed it at the December 18, 2014, subcommittee meeting.

Exceptional Circumstances Requiring Mr. Brandy's Participation

To approve a conflict of interest waiver, the Oversight Committee must find that there are exceptional circumstances justifying the conflicted individual's participation in the review process or other expenditure of CPRIT funds.¹

This conflict of interest waiver is different than other waivers I have requested in that it is not seeking a waiver for actions related to CPRIT's grant review or grant monitoring process. As CPRIT's purchaser, I do not anticipate that Mr. Brandy will play any role in the review process for grant applications or grant reports. The purchaser deals only with agency procurement matters and has no influence over the grant award processes of the agency. To the extent that his outside employment necessitates involvement with university personnel, it is with collegiate athletic department staff that have no interaction with researchers working on or applying for grants. Nevertheless, if Mr. Brandy must be part of the review process or grant monitoring activities, he will comply with CPRIT's conflict of interest notification and recusal requirements.

However, as part of his official duties there may be circumstances requiring Mr. Brandy to procure goods or services on CPRIT's behalf from a university that has also employed him as a tennis referee. This is unlikely to occur; to date, CPRIT has had only one services contract (now closed) with an academic institution, Texas Tech University. However, as CPRIT's lead contact for agency purchases, Mr. Brandy should be able to perform his official duties as fully as possible. Any involvement with university athletic department personnel resulting from his outside employment is unlikely to be the same individuals at the university responsible for contracting with CPRIT.

Proposed Waiver and Limitations

In granting the waiver of the conflict of interest set forth in Health & Safety Code Section 102.106(c)(3), I recommend that the Oversight Committee permit Mr. Brandy to perform all duties assigned as purchaser, subject to the limitations stated below:

¹ CPRIT's Code of Conduct Section III.B(2) states that, "The conflict of interest statutory and administrative rule provisions **apply to any decision to commit CPRIT funds**, whether or not the commitment is part of the grant award process or to a Grant Applicant." (emphasis added)

1. Provide the Chief Operating Officer a list of universities that have used his services as referee during the past twelve months;
2. Notify the Chief Operating Officer prior to taking any action on a contract or other procurement document that would result in payment of CPRIT funds to a university on the list referenced above; and
3. The Chief Operating Officer, in conjunction with the CEO, Chief Compliance Officer and General Counsel, can review the circumstances and determine whether Mr. Brandy should be recused from involvement in the procurement.

Important Information Regarding this Waiver and the Waiver Process

- The Oversight Committee may amend, revoke, or review this waiver, including but not limited to the list of approved activities and duties and the limitations on duties and activities. Approval of any change to the waiver granted shall be by a vote of the Oversight Committee in an open meeting.
- CPRIT limits this waiver to the conflict of interest specified in this request. To the extent that Mr. Brandy has a conflict of interest not address in this waiver, then Mr. Brandy will follow the required notification and recusal process.