

Conflicts of Interest Technical Guidance

- I. **Background.** The Federal Office of Management & Budget (OMB) promulgated the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, commonly referred to as the “Uniform Guidance” (2 CFR Part 200). The Uniform Guidance requires Non-Federal Entities to maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. The Uniform Guidance also requires written standards of conduct covering organizational conflicts of interest. There are also State statutes, State rules, and State guidance regarding conflict of interest. To clarify all of these requirements, The Office of the State Controller issued a Policy entitled “Procurement Conflicts of Interest” (“Policy”). The purpose of this Technical Guidance is to assist State departments, employees, and individuals in complying with the Policy.

The Policy applies to all Workers and Subrecipients, as defined in the Policy, that receive funds from the State of Colorado. The Policy applies to Subrecipients that receive funds from other Subrecipients from the State of Colorado. The Policy does not apply to institutions of higher education or the Legislative and Judicial Branches, unless they choose to adopt this Policy.

II. Statutory Directives

1. Each employee shall perform his/her duties and conduct himself/herself in accordance with generally accepted standards and with specific standards prescribed by law, rule, or appointing authority. (CRS §24-50-116)
2. No employee shall engage in any employment or activity which creates a conflict of interest with his/her duties as a state employee. (CRS §24-50-117)
3. If a public servant exercises any substantial discretionary function in connection with a government contract, purchase, payment, or other pecuniary transaction, such individual shall give seventy-two hours’ advance written notice to the secretary of state and to the governing body of the government which employs the public servant of the existence of a known potential conflict of interest of the public servant in the transaction with reference to which he/she is about to act in his/her official capacity. Failure to disclose a conflict of interest is a class 2 misdemeanor. (CRS §18-8-308)
4. Rules of conduct for all employees, actions that are conflicts of interest, and the State Code of Ethics are included in CRS §24-18-101 et seq.

III. General Guidance

Definitions. For the purposes of this Technical Guidance, the following terms shall have the meanings ascribed to them below.

1. **Conflict of Interest Panel** - a group of employees authorized by the department's executive director to review and approve or deny management plans created to manage conflicts of interest.
2. **Endorsement** - Verbal, written or electronic approval or support of an Entity, vendor (whether a company or individual), contractor, etc. Endorsements include, but are not limited to, testimonials, quotes, and opinions. It also includes imagery such as State or department logos for use on vendor sites or promotional materials.
3. **Familial Interest** – Employee has an Immediate Family Member or an individual related by affinity whose close association with the employee is the equivalent of an Immediate Family Member with an interest of any kind, which, in view of all circumstances, is substantial enough that it would, or reasonably could, affect an employee's judgment with respect to transactions in which the State is a party and the employee has decision-making capacity or authority.
4. **Financial Interest** – A financial interest of any kind, which, in view of all circumstances, is substantial enough that it would, or reasonably could, affect an employee's judgment with respect to transactions in which the State is a party and the employee has decision-making capacity or authority.
5. **Immediate Family Member** – Any person related to the employee by blood, marriage, civil union, or adoption. Family members include one party with any of the following relationships to another party:
 - (i) Spouse, and parents thereof;
 - (ii) Children, and spouses thereof;
 - (iii) Parents, and spouses thereof;
 - (iv) Siblings, and spouses thereof;
 - (v) Grandparents and grandchildren, and spouses thereof;
 - (vi) Domestic partner and parents thereof, including domestic partners of any individual in (ii) through (v) of this definition; and
 - (vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
6. **Management Plan** - A plan created by an employee's manager to manage all identified actual, potential, and perceived or apparent conflicts of interest.
7. **Personal Interest** – Employee has a self interest such that this interest would, or reasonably could affect employee's judgment with respect to transactions in which the State is a party and the employee has decision-making capacity or authority.

8. **Procurement Official** – The highest procurement position in the department.
9. **Public Servant** – Any officer or employee of government, whether elected or appointed, and any person participating as an advisor, consultant, process server, or otherwise in performing a governmental function, but the term does not include witnesses. (CRS §18-1-901(3)(O))
10. **References** - Verbal, written or electronic inquiry and factual responses related to performance of an Entity, vendor (whether a company or individual), contractor, Worker, etc.

Conflict of Interest Examples

1. Conflicts of Interest that are Prohibited

The following conflicts of interest are prohibited for Workers:

- a. Participating in the selection, award, or administration of a contract in which that employee has a familial, financial, or personal interest.
- b. Having a familial, financial, or personal interest in any contract made by an employee in their official capacity or in any contract made by a body, agency, or board of which that employee is a member.
- c. Engaging in a transaction in which the employee has a familial, financial, or personal interest in an entity that the employee inspects, regulates, or supervises in the course of the employee's official duties.
- d. Assisting any person for a fee, contingent fee, or other compensation in obtaining any contract, claim, license, or other economic benefit from the State.
- e. Awarding by a Subrecipient to a parent, affiliate or subsidiary of the Subrecipient where the Subrecipient does not conduct procurement in accordance with OMB Uniform Guidance.
- f. Accepting a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value that would tend to improperly influence an employee to depart from the faithful and impartial discharge of public duties or that is primarily for the purpose of rewarding an employee for official action taken by the employee related to a contract or solicitation. A gift of substantial value includes anything with a fair market value as identified in CRS §24-18-104(5).
- g. Performing an official act that directly and substantially benefits a non-State entity in which that employee either has a Financial Interest or is engaged as counsel, consultant, representative, or agent.
- h. Performing an official act to the detriment of an entity in which that employee has a Financial Interest in a competing entity.

- i. Any other situation in which the interests of the employee or interests of the employee's Immediate Family Members unduly influence the employee's business judgments, decisions, or actions. Examples include:
 - (1) The department is hiring the consulting firm in which an employee's Immediate Family Member is a partner to perform consulting services.
 - (2) An employee or employee's Immediate Family Member is an owner or employee of an organization that has a department contract.
 - (3) An employee or employee's Immediate Family Member is a board member of an organization that has a contract or grant with the department.
 - (4) An employee or employee's Immediate Family Member is a volunteer with policy or decision-making influence of an organization that has a contract or grant with the department.

2. Conflicts of Interest that require further review

The following situations require further review:

- a. Employee has a Financial Interest in an entity that contracts or receives grants from the State of Colorado but the employee does not oversee, regulate, or have any authority over the contract with that entity.
- b. Employee is a Member in the board of directors or other governing body of an entity that contracts or receives grants from the State of Colorado but the employee does not oversee, regulate, or have any authority over the contract with that entity.
- c. Any potential or perceived conflict of interest in which the interest of the employee or the employee's Immediate Family Members may unduly influence the employee's business judgments, decisions, or actions.
- d. A vendor provides consulting services regarding a solicitation and then also participates in the solicitation.
- e. A potential vendor that holds in-depth discussions with employees prior to issuance of a solicitation, unless such discussions are solely related to the performance of an existing contract to which the vendor is a party.
- f. An employee is an owner, employee or board member of an organization that is currently or is planning to provide funding to the department.
- g. An outside entity that is a parent entity that subcontracts/subgrants with its own subsidiary, where the parent entity is a Subrecipient of the State and has monitoring responsibility of the subsidiary.
- h. Endorsement of vendors or contractors.

3. Situations that are not a Conflict of Interest

The following situations do not create a conflict of interest:

- a. An outside entity that enters into a contract with a parent entity that subcontracts with a subsidiary, where the parent entity is a contractor and does not have monitoring responsibility of the subsidiary.
- b. Providing References.
- c. Any other situation that does not create an actual, potential, or perceived Conflict of Interest.

IV. Suggested Practices

The following are suggested practices for departments that choose to issue further guidance regarding conflicts of interest:

1. Confirmation of compliance with the Policy,
2. Identification of conflicts of interest,
3. Review of conflicts of interest, and
4. Resolution of conflicts of interest.

1. Confirmation of compliance with the Policy

- a. All employees or volunteers who have authority to direct, manage, oversee or expend funds with contractors should sign an acknowledgement form annually in which the employee or volunteer Worker affirms that they:
 - i. Have received a copy of the Policy,
 - ii. Have read and understands the Policy, and
 - iii. Have agreed to comply with the Policy.

2. Identification of conflicts of interest

- a. A new employee should complete a conflict of interest disclosure form in which the employee discloses actual, potential, and perceived or apparent conflicts of interest within 30 days of the start of employment with the State.
- b. An employee shall report any new, perceived or potential conflict of interest to their manager and the Secretary of State as soon as identified and in no case later than 72 hours of becoming aware of such potential conflict of interest. (CRS §18-8-308)
- c. Every year, all employees or volunteers who have authority to direct, manage, oversee or expend funds with contractors should update their disclosures by completing a new Conflict of Interest Disclosure Form.

- d. A department should maintain the completed Conflict of Interest Disclosure Form and acknowledgement form for its employees.
- e. Employees shall notify their supervisor if they become aware of any actual, potential, or perceived conflict of interest for themselves or other employees. If the conflicted individual is the employee's supervisor, the employee should report this situation to the conflict of interest panel or follow the process designated in the department's policy. Employees shall also comply with CRS §18-8-308. A department should establish policies for reporting outside employment. Employees should include outside employment on the conflict of interest Form and managers should complete a management plan or follow the process designated in the department's policy.

3. Review of Conflicts of Interest

- a. Each manager should review the conflict of interest disclosure forms for the employees that report to that manager. If the manager determines that there is an employee who has a conflict of interest that involves procurement, the manager should contact the department's Procurement Official for resolution.
- b. If the conflict of interest is not procurement related or is broader than procurement, the manager with the employee's input should contact the department's human resources official for resolution. If the manager is unsure of how to classify the potential conflict of interest identified in the conflict of interest disclosure form, the manager should submit this form to the conflict of interest panel or follow the process designated in the department's policy.

4. Resolution of Conflicts of Interest

- a. Each department should have a resolution process for resolving conflicts of interest. Procurement related conflicts of interests should be sent to the department's Procurement Official for resolution. Other conflicts of interest may be addressed with a conflict of interest panel that should review management plans and conflict of interest forms, or with a process designated in the department's policy, where there is a question of how to classify the conflict of interest. If the employee who has the conflict of interest is also the executive director of the department or is a member of the senior management of the department and the executive director is unable to determine a resolution to the conflict of interest, then the department should submit this situation for review by an appropriate authority.
- b. If the department will use a Management Plan to resolve any conflict of interest, then the Management Plan should include:

- i. Identification of the conflict of interest or potential conflict of interest,
 - ii. Any necessary modification to the employee's duties, such as restrictions on work related to the conflict, or termination or reduction in projects related to the conflict,
 - iii. Any necessary modification of the employee's outside interests that create the conflict, such as divestiture of financial interests in an outside organization, stepping down from board membership of an outside organization, or formal termination of the conflicting outside interests,
 - iv. Identification of an individual to monitor any ongoing conflicts, and
 - v. At a minimum, annual review of the conflict to determine any impact to the employee's work activities.
- c. Department's conflict of interest panel or designated process
- i. Each department's conflict of interest panel or individuals involved in the department's designated process should review and approve, approve with modification, or deny all management plans submitted to the panel or to the individuals involved in the department's designated process.
 - ii. Decisions made by a conflict of interest panel regarding conflicts of interest should be binding, final decisions.
 - iii. Departments that develop an alternate process should have a final step for resolution of the conflict of interest.

V. Disclaimer

This is internal guidance to assist state Procurement professionals in interpretation and application of laws, rules and, or policies that govern Procurement practices. Every attempt is made to keep technical guidance information updated. For additional information, contact your department Procurement Official.