

# Ethical Guidelines – State of Utah

## Definitions

- (1) *Blind Trust* means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.
- (2) *Confidential Information* means any information which is available to an employee only because of the employee's status as an employee of this [State] and is not a matter of public knowledge or available to the public on request.
- (3) *Conspicuously* means written in such special or distinctive format, print, or manner that a reasonable person against whom it is to operate ought to have noticed it.
- (4) *Direct or Indirect Participation* means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.
- (5) *Financial Interest* means:
  - (a) ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past [year] has received, or is presently or in the future entitled to receive, more than [ \$\_\_\_\_\_ ] per year, or its equivalent;
  - (b) ownership of such interest in any property or any business as may be specified by the [Procurement Policy Board]; or
  - (c) holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
- (6) *Gratuity* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- (7) *Immediate Family* means a spouse, children, parents, brothers and sisters, [and such other relatives as may be designated by the Procurement Policy Board].
- (8) *Official Responsibility* means direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct [State] action.
- (9) *Purchase Request* means that document whereby a Using Agency requests that a contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by this Code.

## **Standards of Conduct**

### **§12-201 Statement of Policy.**

Public employment is a public trust. It is the policy of the [State] to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the [State]. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the [State] procurement organization.

To achieve the purpose of this Article, it is essential that those doing business with the [State] also observe the ethical standards prescribed herein.

### **§12-202 General Standards of Ethical Conduct.**

- (1) *General Ethical Standards for Employees.* Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust.

In order to fulfill this general prescribed standard, employees must also meet the specific standards set forth in: Section 12-204 (Employee Conflict of Interest); Section 12-205 (Employee Disclosure Requirements); Section 12-206 (Gratuities and Kickbacks); Section 12-207 (Prohibition Against Contingent Fees); Section 12-208 (Restrictions on Employment of Present and Former Employees); and Section 12-209 (Use of Confidential Information).

- (2) *General Ethical Standards for Non-Employees.* Any effort to influence any public employee to breach the standards of ethical conduct set forth in this Section and Section 12-204 through Section 12-209 of this Article is also a breach of ethical standards.

### **§12-203 Criminal Sanctions.**

To the extent that violations of the ethical standards of conduct set forth in this Part constitute violations of the [State Criminal Code], they shall be punishable as provided therein. Such sanctions shall be in addition to the civil remedies set forth in this Article.

### **§12-204 Employee Conflict of Interest.**

- (1) *Conflict of Interest.* It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:

- (a) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
  - (b) a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
  - (c) any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
- (2) *Financial Interest in a Blind Trust.* Where an employee or any member of the employee's immediate family holds a financial interest in a blind trust, the employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust has been made to the [Procurement Policy Board].
  - (3) *Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver.* Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the [Procurement Policy Board] in accordance with Section 12-401(3) ([Procurement Policy Board], Waiver) for an advisory opinion as to what further participation, if any, the employee may have in the transaction.
  - (4) *Notice.* Notice of this prohibition shall be provided in accordance with regulations promulgated by the [Procurement Policy Board].

#### **§12-205 Employee Disclosure Requirements.**

- (1) *Disclosure of Benefit Received from Contract.* Any employee who has, or obtains any benefit from, any [State] contract with a business in which the employee has a financial interest shall report such benefit to the [Procurement Policy Board]; provided, however, this Section shall not apply to a contract with a business where the employee's interest in the business has been placed in a disclosed blind trust.
- (2) *Failure to Disclose Benefit Received.* Any employee who knows or should have known of such benefit, and fails to report such benefit to the [Procurement Policy Board], is in breach of the ethical standards of this Section.
- (3) *Notice.* Notice of this requirement shall be provided in accordance with regulations promulgated by the [Procurement Policy Board].

#### **§12-206 Gratuities and Kickbacks.**

- (1) *Gratuities.* It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval,

disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- (2) *Kickbacks.* It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- (3) *Contract Clause.* The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefor.

### **§12-208 Restrictions on Employment of Present and Former Employees.**

- (1) *Contemporaneous Employment Prohibited.* Except as may be permitted by regulations or rulings of the [Procurement Policy Board], it shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed. Notice of this provision shall be provided in accordance with regulations promulgated by the [Procurement Policy Board].
- (2) *Restrictions on Former Employees in Matters Connected with Their Former Duties.*
  - (a) *Permanent Disqualification of Former Employee Personally Involved in a Particular Matter.* It shall be a breach of ethical standards for any former employee knowingly to act as a principal, or as an agent for anyone other than the [State], in connection with any:
    - (i) judicial or other proceeding, application, request for a ruling, or other determination;
    - (ii) contract;
    - (iii) claim; or
    - (iv) charge or controversy,  
in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the [State] is a party or has a direct and substantial interest.
  - (b) *One Year Representation Restriction Regarding Matters for Which a Former Employee Was Officially Responsible.* It shall be a breach of ethical standards for any former employee, within one year after cessation of the former employee's official responsibility, knowingly to act as a principal, or as an agent for anyone other than the [State], in connection with any:

- (i) judicial or other proceeding, application, request for a ruling, or other determination;
- (ii) contract;
- (iii) claim; or
- (iv) charge or controversy,

in matters which were within the former employee's official responsibility, where the [State] is a party or has a direct or substantial interest.

- (3) *Disqualification of Business When an Employee Has a Financial Interest.* It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than the [State], in connection with any:

- (a) judicial or other proceeding, application, request for a ruling, or other determination;
- (b) contract;
- (c) claim; or
- (d) charge or controversy,

in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where the [State] is a party or has a direct and substantial interest.

- (4) *Selling to the [State] After Termination of Employment is Prohibited.* It shall be a breach of ethical standards for any former employee, unless the former employee's last annual salary did not exceed [\$\_\_\_\_\_] to engage in selling or attempting to sell supplies, services, or construction to the [State] for one year following the date employment ceased.

The term "sell" as used herein means signing a bid, proposal, or contract; negotiating a contract; contacting any employee for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract; settling disputes concerning performance of a contract; or any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefor is subsequently negotiated by another person; provided, however, that this Section is not intended to preclude a former employee from accepting employment with private industry solely because the former employee's employer is a contractor with this [State], nor shall a former employee be precluded from serving as a consultant to this [State].

### **§12-209 Use of Confidential Information.**

It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

## Remedies

### **§12-301 Civil and Administrative Remedies Against Employees Who Breach Ethical Standards.**

- (1) *Existing Remedies Not Impaired.* Civil and administrative remedies against employees which are in existence on the effective date of this Code shall not be impaired.
- (2) *Supplemental Remedies.* In addition to existing remedies for breach of the ethical standards of this Article or regulations promulgated hereunder, the [Procurement Policy Board] may impose any one or more of the following:
  - (a) oral or written warnings or reprimands;
  - (b) suspension with or without pay for specified periods of time; and
  - (c) termination of employment.
- (3) *Right to Recovery from Employee Value Received in Breach of Ethical Standards.* The value of anything received by an employee in breach of the ethical standards of this Article or regulations promulgated hereunder shall be recoverable by the [State] as provided in Section 12-303 (Recovery of Value Transferred or Received in Breach of Ethical Standards).
- (4) *Due Process.* All procedures under this Section shall be in accordance with due process requirements and existing law. In addition, notice and an opportunity for a hearing shall be provided prior to imposition of any suspension or termination of employment.

### **§12-302 Civil and Administrative Remedies Against Non-Employees Who Breach Ethical Standards.**

- (1) *Existing Remedies Not Impaired.* Civil and administrative remedies against non-employees which are in existence on the effective date of this Code shall not be impaired.
- (2) *Supplemental Remedies.* In addition to existing remedies for breach of the ethical standards of this Article or regulations promulgated hereunder, the [Procurement Policy Board] may impose any one or more of the following:
  - (a) written warnings or reprimands;
  - (b) termination of transactions; and
  - (c) debarment or suspension from being a contractor or subcontractor under [State] contracts.

- (3) *Right to Recovery from Non-Employee Value Transferred in Breach of Ethical Standards.* The value of anything transferred in breach of the ethical standards of this Article or regulations promulgated hereunder by a non-employee shall be recoverable by the [State] as provided in Section 12-303 (Recovery of Value Transferred or Received in Breach of Ethical Standards).
- (4) *Right of the [State] to Debar or Suspend.* Debarment or suspension may be imposed by the [Procurement Policy Board] in accordance with the procedures set forth in Section 9-102 (Authority to Debar or Suspend) for breach of the ethical standards of this Article, provided that such action may not be taken without the concurrence of the [Attorney General].
- (5) *Due Process.* All procedures under this Section shall be in accordance with due process requirements, including, but not limited to, a right to notice and an opportunity for a hearing prior to imposition of any termination, debarment, or suspension from being a contractor or subcontractor under a [State] contract.

### **§12-303 Recovery of Value Transferred or Received in Breach of Ethical Standards.**

- (1) *General Provisions.* The value of anything transferred or received in breach of the ethical standards of this Article or regulations promulgated hereunder by an employee or a non-employee may be recovered from both the employee and non-employee.
- (2) *Recovery of Kickbacks by the [State].* Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the [State] and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

#### Part D – [Procurement Policy Board]

##### §12-401 [Procurement Policy Board].

- (1) *Regulations.* The [Procurement Policy Board] shall promulgate regulations to implement this Article and shall do so in accordance with the applicable provisions of the [Administrative Procedure Act] of this State.
- (2) *Advisory Opinions.* On written request of employees or contractors, the [Procurement Policy Board] may render written advisory opinions regarding the appropriateness of the course of conduct to be followed in proposed transactions. Such requests and advisory opinions must be duly published in the manner in which regulations of this [State] are published. Compliance with requirements of a duly promulgated advisory opinion of the [Procurement Policy Board] shall be deemed to constitute compliance with the ethical standards of this Article.

- (3) *Waiver.* On written request of an employee, the [Procurement Policy Board] may grant an employee a written waiver from the application of Section 12-204 (Employee Conflict of Interest) and grant permission to proceed with the transaction to such extent and upon such terms and conditions as may be specified. Such waiver and permission may be granted when the interests of the [State] so require or when the ethical conflict is insubstantial or remote.

**§12-402 Appeal of Decisions of the [Procurement Policy Board].**

- (1) *General.* Except as provided under Subsection (2) of this Section, a decision of the [Procurement Policy Board] under Section 12-301 (Civil and Administrative Remedies Against Employees Who Breach Ethical Standards) or Section 12-302 (Civil and Administrative Remedies Against Non-Employees Who Breach Ethical Standards) shall be reviewable in accordance with the [Administrative Procedure Act] of this State.
- (2) *Debarment or Suspension.* A decision of the [Procurement Policy Board] regarding debarment or suspension under Section 12-302(2)(c) (Civil and Administrative Remedies Against Non-Employees Who Breach Ethical Standards, Supplemental Remedies) shall be reviewable as provided in Section 9-402(2) (Time Limitations on Actions, Debarments and Suspensions for Cause).