



PROCUREMENT CODE OF ETHICS  
Administrative Rule Adopted by the County Administrator  
ARA-FIN-3.12

### 1. PURPOSE

To direct County employees, elected officials, and volunteers in ethical and responsible procurement and contracting practices ensuring compliance with applicable laws, regulations, policies, and procedures.

### 2. SCOPE

This Policy is applicable to the Public Officials of the County and all County component units, including, but not limited to County service districts, urban renewal agencies, and the Housing Authority of Clackamas County.

### 3. AUTHORITY

This Policy is established by the County Administrator's administrative rule-making authority pursuant to County Code 2.09.060.E.

### 4. REFERENCES

This policy conforms to the guidance found in the following source publications:

- [Clackamas County Local Contract Review Board Rules](#)
- [County Code 2.05.170](#)
- [ORS 279, 279A, 279B, 279C \(Public Contracting Code\)](#)
- [ORS 244 \(State Ethics Laws\)](#)
- [Federal Acquisition Regulations Systems Title 48, Chapter 1, Subchapter A, Part 3](#)

### 5. DEFINITIONS

Generally this Policy refers to and is generally based on the definitions described in ORS 244.020.

1. "Actual conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a Public Official, the effect of which would be to increase the private pecuniary benefit or detriment of the person or the person's Relative or any business with which the person or a Relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (7) of this section.
2. "Gift" means something of economic value given to a Public Official, or a Relative or member of the household of the Public Official:
  - a. Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not Public Official or the Relatives or members of the household of public officials on the same terms and conditions; or
  - b. For valuable consideration less than that required from others who are not Public Official.
3. "Gift" does not mean:

- a. Contributions as defined in ORS 260.005.
- b. Gifts from Relatives or members of the household of the Public Official.
- c. An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be less than \$25.
- d. Informational or program material, publications or subscriptions related to the recipient's performance of official duties.
- e. Admission provided to or the cost of food or beverage consumed by a Public Official, a Relative of the Public Official accompanying the Public Official, a member of the household of the Public Official accompanying the Public Official or a staff member of the Public Official accompanying the Public Official, at a reception, meal or meeting held by an organization when the Public Official represents the County.
- f. Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code, for attendance at a convention, fact-finding mission or trip, conference or other meeting if the Public Official is scheduled to deliver a speech, make a presentation, participate on a panel or represent the County.
- g. Contributions made to a legal expense trust fund established under ORS 244.209 for the benefit of the Public Official.
- h. Reasonable food, travel or lodging expenses provided to a Public Official, a Relative of the Public Official accompanying the public official, a member of the household of the Public Official accompanying the Public Official or a staff member of the Public Official accompanying the Public Official, when the Public Official is representing the County:
  - i. On an officially sanctioned trade-promotion or fact-finding mission; or
  - ii. In officially designated negotiations, or economic development activities, where receipt of the expenses is approved in advance.
- i. Food or beverage consumed by a Public Official acting in an official capacity:
  - i. In association with the review, approval, execution of documents or closing of a borrowing, investment or other financial transaction, including any business agreement between the County and a private entity or public body as defined in ORS 174.109;
- j. Waiver or discount of registration expenses or materials provided to a Public Official at a continuing education event that the Public Official may attend to satisfy a professional licensing requirement.
- k. Expenses provided by one Public Official to another Public Official for travel inside this state to or from an event that bears a relationship to the receiving Public Official's office and at which the official participates in an official capacity.
- l. Food or beverage consumed by a Public Official at a reception where the food or beverage is provided as an incidental part of the reception and no cost is placed on the food or beverage.

- m. Entertainment provided to Public Official or a Relative or member of the household of the Public Official that is incidental to the main purpose of another event.
  - n. Entertainment provided to a Public Official or a Relative or member of the household of the Public Official where the Public Official is acting in an official capacity while representing the County for a ceremonial purpose.
  - o. Anything of economic value offered to or solicited or received by a Public Official or a Relative or member of the household of the Public Official:
    - i. As part of the usual and customary practice of the person's private business, or the person's employment or position as a volunteer with a private business, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, not-for-profit corporation or other legal entity operated for economic value; and
    - ii. That bears no relationship to the Public Official's holding of, or candidacy for, the official position or public office.
4. "Honorarium" means a payment or something of economic value given to a Public Official in exchange for services upon which custom or propriety prevents the setting of a price. Services include, but are not limited to, speeches or other services rendered in connection with an event.
  5. "Income" means income of any nature derived from any source, including, but not limited to, any salary, wage, advance, payment, dividend, interest, rent, Honorarium, return of capital, forgiveness of indebtedness, or anything of economic value.
  6. "Member of the household" means any person who resides with the Public Official.
  7. "Potential conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a Public Official, the effect of which could be to increase the private pecuniary benefit or detriment of the person or the person's Relative, or a business with which the person or the person's Relative is associated, unless the pecuniary benefit or detriment arises out of the following:
    - a. An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.
    - b. Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's Relative or business with which the person or the person's Relative is associated, is a member or is engaged.
    - c. Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.
  8. "Public Official" as defined in ORS 244.020(14) and broadly means elected public officials, appointed public officials, public employees as well as agents and volunteers, compensated or not, that serve the County.
  9. "Relative" means:
    - a. The spouse, domestic partner, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the Public Official;
    - b. The parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the spouse or domestic partner of the Public Official;

- c. Any individual for whom the Public Official has a legal support obligation; or
- d. Any individual for whom the Public Official provides benefits arising from the Public Official's public employment or from whom the Public Official receives benefits arising from that individual's employment.

## 6. POLICY STATEMENT

It is the policy of Clackamas County that all business shall be conducted in a manner above reproach and, except as authorized by statute, County Code, or County policy, with complete impartiality and without preferential treatment. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid any conflict of interest or even the appearance of a conflict of interest in government-contractor relationships. While many laws and regulations place restrictions on the actions of Public Officials, their official conduct must, in addition, be such that they have no reluctance to make a full public disclosure of their actions.

This Policy addresses ethical and responsible procurement and contracting practices in the following sections:

- Section 1: Procurement Ethics
- Section 2: Interaction With Vendors
- Section 3: Prohibited Procurement Conduct
- Section 4: Conflict of Interest

### **Section 1: Procurement Ethics and Conflict of Interest**

The following Policy section provides guidance in the ethical and objective practices associated with procuring goods and services at Clackamas County. All purchases and contracts must be conducted in a manner that utilizes the highest ethical standards. Any purchases or contracts not conducted in compliance with this Policy could potentially result in a financial conflict of interest.

#### **1-1: Financial Gain or Avoidance of Financial Loss**

Public Officials are responsible for being good stewards of the resources entrusted to them. As such, Public Officials are prohibited from using or attempting to use their positions to gain financial benefit or to avoid a financial cost for themselves, a Relative, or a member of their household or their business if the opportunity is available only because of the position held by the Public Official.

Public Officials should not engage directly or indirectly in a personal financial transaction that primarily relies upon information obtained through County employment and is not otherwise common knowledge. It is inappropriate for Public Officials to purposely direct or influence a County purchase in a manner that provides the Public Official with personal financial gain that would not be available to them or the avoidance of a financial loss, if it were not for their position as a County Public Official.

#### **1-2: County Public Official Honorariums Guideline**

County Public Officials may not solicit or accept Honorariums from other entities in excess of \$50 for providing services related to their official duties. The County Public Official may accept Honorariums in excess of \$50 if the services provided are in connection with private activity of the County Public Official and that activity does not relate to their official duties.

### **1-3: Other Government Public Officials Honorarium Guideline**

The County may not contract with or pay an Honorarium in excess of \$50 to State of Oregon or other Oregon public body Public Officials for which the Honorarium is being paid in connection with that Public Official's official duties.

### **1-4: Personal Purchases using County Funds**

County Public Officials may not make personal purchases using County funds or any funds that are in any way managed or facilitated through the County.

### **1-5: Personal Purchases using County Contracts as a County Public Official**

County Public Officials may not use County contracts or a relationship with a contracted vendor to obtain more favorable pricing, terms and/or conditions for a personal purchase than is available to the public or other employee groups in private or public sectors.

## **Section 2: Interaction with Vendors**

### **2-1: Vendor Gifts or Entertainment**

1. A Public Official, Relative, or member of the Public Official's household may not receive Gifts with an aggregate value in excess of \$50 during a calendar year, or receive payment for expenses for entertainment from a single source that has an interest in the County.
  - a. Public Officials are strongly encouraged to decline any kind of Gift of any dollar amount from vendors. If a Gift has been received, it is more appropriate for the Gift to be shared department wide (e.g. cookies would be placed in breakroom for department wide consumption).
2. A Public Official, Relative, or member of the Public Official's household may not accept a Gift, favor, gratuity, or special consideration from vendors or contractors seeking to do business with the County in order to influence a purchase or secure a contract. There is no minimum value Gift, favor, gratuity or special consideration under this rule.

### **2-2: Vendor Employment Promises**

1. Public Officials may not solicit or accept an employment offer, pledge or promise of future employment based on an understanding that the Public Official will influence a purchase or contract award for their future employer while still employed by the County.
2. Public Officials involved in the preparation, solicitation, evaluation, award, or approval of a solicitation or execution of a Contract may not be employed by the Contractor and work on the County contract for a period of two (2) years after the date the contract was authorized.

### **2-3: Impartiality**

Public Officials will conduct themselves and represent the County in a manner which exhibits fair and impartial treatment to all Vendors. The County shall take reasonable measures to ensure that no person who prepares or assists in the preparation of solicitation documents, specifications, plans or scope of work, and no business with which the person is associated, realizes a material competitive advantage in a procurement that arises from the County's use of the solicitation documents, specifications, plans or scopes of work.

### **2-4: Endorsement**

1. The County does not generally endorse goods or services offered by vendors. Rare exceptions may only be made upon entering into an endorsement agreement approved by both County Counsel and the County Administrator. Public Officials shall refrain from representing or implying that the County will endorse a vendor's goods or services. Vendors may list the County as a client if the County has a current or past contract with the vendor.
2. Public Officials may personally (non-professional capacity) endorse or recommend goods or services offered by vendors as long as any such endorsement or recommendations in no way gives the appearance that the endorsement or recommendation is an official representation of the County.

### **2-5: Marketing or Press Releases**

Departments are not authorized to approve any marketing or press releases by vendors that are for or on behalf of the County without the express approval of the director of the Department of Public and Government Affairs. Generally the County does not approve press releases for the sole purpose of advertising that the County has entered into a contract with the vendor.

## **Section 3: Prohibited Procurement Conduct**

Employment at the County is a public trust. The ethical standards that County Public Officials must maintain encompass the highest standards of honesty, integrity, impartiality and professionalism in conducting business on behalf of the County. As Public Officials responsible for maintaining the integrity of the solicitation, procurement and contracting processes, and as stewards of the County and taxpayers dollars, it is especially important that County Public Officials avoid even the perception of a conflict of interest.

### **3-1: Authority to Purchase or Enter into Contracts**

Public Officials may not procure goods or services or enter into contracts outside of the Public Official's budget authority, purchase authority, or contract signature authority. In accordance with the Clackamas County Local Contract Review Board Rules ("LCRB"), only those individuals specifically designated may enter into any type of contract or agreement on behalf of the County. Contracts entered into by individuals not designated as authorized contract officers will be voidable at the sole discretion of the Board of County Commissioners or its designee. The County may take appropriate action in response to execution of contracts contrary to the LCRB or this Policy.

### **3-2: Purchase/Payment Fragmentation**

Public Officials shall not fragment purchases or payments in order to avoid following any applicable LCRB rule, statute, regulation, policy, or procedure requirements. The applicable procurement process and contract signing authority requirements are based on the Total Contract Value. The Total Contract Value is the maximum amount of payments that the County is authorized to pay under a contract or for a project, including consulting fees, reimbursable expenses, direct payments, incentives, and contingency amounts, if the contractor fully performs under the contract. The Total Contract Value takes into account of the length of the contract based on the intent of the department and the anticipated length of the needed services.

### **3-3: Process Circumvention**

Public Officials may not circumvent statutory, LCRB, regulations, policies or procedures by using personal funds for the purchase and then seeking reimbursement or by using an alternate funding source or contracting method which will be indirectly reimbursed or paid for by the County.

### **3-4: Bid Shopping**

Public Officials involved in the procurement process will not disclose a vendor's price to competitors in order to have a different competitor beat the vendor's price. Price results may only be given to other vendors once the final selection is made. All vendors must be provided the same amount of time to respond to any bid/proposal/quote solicitation.

### **3-5: Collusion**

Public Officials shall not engage in collusive behavior. Collusive behavior includes, but is not limited to, making agreements or understandings between two or more persons to commit a fraudulent, deceitful, unlawful or wrongful act in order to provide an unfair advantage or to in any way circumvent required procurement or contracting processes. Public Officials may not take any action that is intended to limit open competition by deceiving, misleading, or defrauding others or involve any type of bid rigging, kickbacks, or misrepresenting the independence of the relationship between the colluding parties.

### **3-6: Document Fabrication**

Altering, fabricating, destroying, misrepresenting, or forging contracts or documents for personal gain or an unfair advantage is prohibited.

## **Section 4: Conflict of Interest**

### **4-1: Purchasing from or Contracting with County Public Officials, Relatives of County Public Officials or Members of the County Public Official's Household**

Any purchase or contract for the provision of goods or services, regardless of the dollar value, is subject to the provisions of this Policy. The County may only purchase from or contract with County Public Officials, Relatives of County Public Officials, or members of the County Public Official's household if the County Public Official is not involved in the selection, award, or administration of the purchase or contract and all of the following requirements are met:

1. The County Public Official must complete the “Disclosure of Real or Potential Conflict of Interest” form and submit to the Procurement Division for review.
2. It has been determined by Procurement Division or County Administrator, through the procedure below, that no real conflict of interest exists.
3. The County Public Official, Public Official’s Relative, or member of the Public Official’s household must be determined to be an independent contractor for the services being proposed. In the case of a County Public Official as a vendor, the goods or services sought for purchase or contract must be substantially different from the work the employee performs in their employment with the County.

**Procedure:**

1. The County Public Official must submit a purchase request and the completed “Disclosure of Real or Potential Conflict of Interest” form to the Procurement Division at [PACSRequest@clackamas.us](mailto:PACSRequest@clackamas.us). Procurement must determine that:
  1. There are no current County contracts in place for the subject goods and services that will meet the department’s needs;
  2. A best effort is made to obtain price comparisons, documenting that the purchase or contract represents the best value to the County;
  3. The County Public Official, Relative, or member of the household has no additional knowledge or information about the purchase that would place them in an unfair advantage to receive this business from the County; and
  4. An appropriate process has been conducted to resolve or mitigate the real or potential conflict of interest while complying with the County ethics policies and other applicable regulations.

The Procurement Division may consult with County Counsel, Human Resources, or other County management as part of any determination of the review. The department requesting the purchase may work with the Procurement Division to develop any necessary mitigation plan.

Purchases or contracts that violate this policy may be considered an unauthorized purchase or contract and, if considered in violation of the policy, will follow the process for Unauthorized Purchases or Contracts contained in Procurement and Contracting Ethics Policy Section 3.

Violations involving federally funded projects are subject to Conflict of Interest Violations Pertaining to Use of Federal Funds in Procurement and Contracting Ethics Policy Section 4-3.

**4-2: Declaration of Conflict or Potential Conflict of Interest for the Procurement and Contracting Process**

The procurement of goods and services at the County must be free of the undue influence of outside interests. There may be situations in which financial or other personal considerations may compromise, or have the appearance of compromising, a Public Official's professional judgment in the execution of any part of the procurement or contracting process. Any conflicts or potential conflicts of interest regarding the procurement or contracting process must be reported to the Procurement Division before making the procurement or executing the contract. Conflicts of interest regarding grant proposals or awards are managed through the



Office of Grants Financial Management which can be accessed through the Grants Management Manual.

**Procedure:**

1. Actual or potential conflict of interests may be resolved by full disclosure as well as making appropriate arrangements that clearly mitigate the conflict of interest.
2. Public Officials should promptly disclose any real or potential conflicts of interest by filling out the “Disclosure of Real or Potential Conflict of Interest” form located on the Procurement Division’s intranet page and submitting to the Procurement Division for review and advice on mitigating the conflict of interest.
3. The Procurement Division will review the disclosure and determine if there is a conflict of interest and if the conflict of interest can be mitigated in order to eliminate the conflict.
4. In some instances, actual or potential conflicts of interest may need to be referred to County Counsel, Human Resources, or other County management.

**4-3: Conflict of Interest for Evaluators of Public Procurements**

Public Officials and public representatives participating as an evaluator of a public procurement must be able to execute the County Declaration of No Conflict of Interest before participating in the evaluation or selection of a contractor or vendor for a formal procurement process.

**4-4: Conflict of Interest Violations Pertaining to Use of Federal Funds**

In compliance with all applicable Code of Federal Regulations (Improper Business Practices and Personal Conflicts of Interest, [48 CFR 3.1](#) (2017)) code of conduct requirements, County standards of conduct must provide for disciplinary actions to be applied for violations of such standards by Public Officials of the federal fund recipient.

**Procedure:**

In cases where a violation of the LCRB or Procurement or other County Policies and Procedures pertaining to Conflicts of Interest is suspected, the Procurement Division will work with County Counsel, the Office of Grants Financial Management, and Human Resources in order to advise the Department Director responsible for overseeing the Public Official. In consultation with these departments, that Department Director or designee will determine an appropriate disciplinary action for the Public Official responsible for the violation, pursuant to applicable County policy or an applicable collective bargaining agreement.

**4-5: Segregation of Procurement and Accounting Activities**

Administrators should structure the entire function and cycle of procurement so that purchasing, purchasing approvals and payment are adequately segregated to ensure ethical practices. These duties should be divided among departmental personnel so that there is a distinct separation of those duties. Separating the functions within the cycle of procurement should provide a series of checks and balances of all facets of purchasing. It is important that administrators are aware of the purchasing activities within their department and provide oversight and review of those activities, ensuring the continued separation of purchasing duties.

#### **4-6: Annual Affirmation of Review and Compliance with this Policy**

All Public Officials with any budget authority, purchase authority, or contract signature authority shall annually sign a statement that the Public Official has reviewed and will comply with this Policy.

#### **7. KEY RESTRICTIONS**

None

#### **8. EXHIBITS & APPENDIX**

Exhibit A – Disclosure of Real or Potential Conflict of Interest Form. Note that this Form may be updated from time to time and will be posted to the Procurement and Grants Financial Management intranet sites.

#### **9. QUESTIONS & RESOURCES**

For questions related to this policy, please contact the Finance Department – Procurement Division.

#### **10. HISTORY**

Adopted by the County Administrator: 06/28/2018

Effective: 06/28/2018

Revised: TBD