



Policy Type: Board

Category: Procurement

Policy Name: Conflicts of Interest, Disclosure and Disqualification Requirements and Ethical Business - Board Policy 5.2

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5.2

CONFLICTS OF INTEREST, DISCLOSURE AND DISQUALIFICATION REQUIREMENTS AND ETHICAL BUSINESS PRACTICES

5.2.1 Overview

This section addresses the conflicts of interest, disclosure, disqualification requirements and ethical business practices that relate to soliciting and contracting in the County.

5.2.2 Policy

It is the policy of the Board to promote business practices that facilitate compliance with conflicts of interest, disclosure and disqualification laws and requirements pertaining to Board members, other elected officials, appointed officials, commissioners and committee members, and County employees, contractors, consultants and agents, in their solicitation and contracting processes, and to ensure that the County conducts its contracting and solicitation processes in a legal and ethical manner while aiming to achieve the best outcome for the County.

5.2.3 Background



Public entities, public officials, public employees and contractors are required by law to engage in fair and ethical business practices in their public procurement process. The County is accountable to the taxpayers on how public funds are spent.

5.2.4 Purpose

The purpose of Section 5.2 is to establish a policy that safeguards against favoritism, fraud, and corruption and that prevents the misuse of public funds. Employees who knowingly fail to follow this policy may be subject to legal and/or disciplinary action.

5.2.5 Application of the Policy

5.2.5.1 Conflicts of Interest, Disclosure and Disqualification Requirements

Laws establishing conflict of interest, disclosure and disqualification requirements create the framework for how the County should conduct its soliciting and contracting processes. Examples of the legal requirements include, but are not limited to:

- (A) County officers (elected or appointed), employees, and consultants must not make contracts in which they are financially interested, unless the financial interest at issue falls under an exception approved by County Counsel.
- (B) Certain County officials are required to disclose assets, income, business positions and/or real property that may be materially affected by their official actions. In appropriate circumstances, such officials are disqualified from acting in order to avoid a conflict of interest.



- (C) A Board member is prohibited from participating “in a governmental decision in which he or she has a close personal interest that would tend to impair the exercise of independent judgment in the public interest.” “Personal interest” includes interest arising from blood or marriage relationships or very close personal associations that would constitute a conflict of interest under common law. This prohibition is found in the County’s Ordinance Code and is different from the financial interest test under the California Government Code.
- (D) A Board member is prohibited from taking action that would result in a financial conflict of interest.
- (E) A public official must not serve two masters at the same time and must exercise the powers conferred on him or her with disinterested skill, zeal, and diligence and primarily for the benefit of the public.

5.2.5.2 Ethical and Best Business Practices

Examples of practices that are prohibited and not consistent with best public procurement practices include:

(A) Segmenting or Splitting Contracts

Efforts to segment or split a contract (also commonly referred to as “incremental contracting”) into two or more contracts for the purpose of circumventing dollar limits or approval processes or other requirements are prohibited. To prevent incremental contracting, contracts for related and interdependent goods or services on a given project must be consolidated whenever feasible.

(B) Awarding Contracts to Unqualified Entities or Individuals



Agencies/Departments are prohibited from awarding contracts to any entity or individual that does not meet the required solicitation criteria for the award. If no entity or individual meets the required solicitation criteria, the Agency/Department must reevaluate its needs and the solicitation process that was conducted and engage in another solicitation process, if appropriate, that will result in the award of the contract to a qualified entity or individual. This prohibition includes the award of contracts to family members, friends or business associates who do not meet the established criteria for a given procurement process but are given an unfair advantage based on their pre-existing relationship with the County or an employee. In order to prevent these types of unfair awards, County employees and agents are required to disclose to their supervisor(s) ***any*** relationship to potential contract awardees as soon as they learn of such a relationship.

(C) Circumventing the Solicitation Process

Agencies/Departments are prohibited from selecting an inappropriate solicitation method as explained in Section 5.6 of this chapter, in order to circumvent the process, cut corners, or award the contract to a particular entity or individual.

(D) Contractor Conflict of Interest

A contractor that is awarded a contract to assist the County with drafting the selection requirements and/or criteria for a particular solicitation is prohibited from being awarded a contract resulting from that solicitation or any subsequent solicitation that is required, suggested, anticipated, or otherwise related to the original solicitation, unless the contractor was awarded a contract to do both the drafting of the selection requirements and criteria for the solicitation and performing the work resulting from that particular solicitation.



(E) County Employee's Travel Expenses

If a County employee has to travel to review and evaluate a vendor's proposal, the vendor bidding on that County contract is prohibited from paying the travel expenses of the County employee.

(F) Prohibition on Supervision

No County employee may negotiate or supervise a contract between the County and the employee's former private sector employer, or supervise work to be performed by the former private sector employer, within one year of leaving that employer. These restrictions do not prevent the County employee from providing information to the County, unless otherwise prohibited.

(G) Former County Employees

A former County employee is prohibited from engaging in certain activities related to a judicial, quasi-judicial or other legal proceeding if the subject contract of the proceeding is one in which the former employee participated, unless it falls within an exception approved by County Counsel.

(H) Accepting Gifts

County employees that are involved in the making of a contract, including monitoring the contract, are prohibited from accepting gifts from the contractor under that contract, unless it falls under an exception approved by County Counsel. These gifts include, but are not limited to, tickets to events hosted by the vendor.



5.2.5.3 Compliance with Policy

To ensure compliance with this policy, if a County official or employee is considering an action, matter or decision that may raise any issues related to conflict of interest, disclosures or disqualification, that individual should contact the Office of the County Counsel immediately for advice. To avoid violation of any of these laws or practices, County officials and employees must complete all required documentation and make all required disclosures, as well as refrain from participating in the decision-making process if there is a conflict of interest issue. Failure to comply with the applicable laws may result in the imposition of administrative, civil and/or criminal penalties on the individual. Also, a contract may be deemed void or voidable and/or a solicitation canceled due to violation of these laws.

5.2.6 Applicable Legal Authority

The applicable legal authority for this Section includes, but is not limited to the following: California Government Code Sections 1090 - 1099; 81000 et seq. (known as the Political Reform Act of 1974)

County of Santa Clara Ordinance Code Division A3; Sections A25-601 and A25-800

2 California Code of Regulations Section 18700, et seq.

Related Policies

None.

Related Forms and Information



County of Santa Clara

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- Memorandum Relating to Conflicts of Interest for Consultants/Contractors Involved in Assisting with County Contracting Activities -
[url]/sites/policies/FormsrelatedtoPolicies/Memo-Conflict-of-Interest-Consultants-Contractors.pdf \

History

Date	Changes Made
11/17/2015	Policy Amended. View legislative file.
3/19/2014	Policy Uploaded. (Kyle Larson)