

OSP SECTION 2: ETHICS AND CONFLICT OF INTEREST (INCLUDING ORGANIZATIONAL CONFLICT OF INTEREST)

The commissioner of Administration, in accordance with the direction in [Minn. Stat. § 16C.04](#), has developed policies regarding code of ethics and conflicts of interest designed to prevent conflicts of interest for state employees involved in the acquisition of goods, services and utilities. A copy of the policy follows this section.

Applying the Conflict of Interest Statutes and Policies

A conflict of interest is any situation in which **your** judgment, actions or non-action may, might or could be interpreted to be influenced by something that would benefit **you**. The situation exists either directly when you gain something, or indirectly when a friend, relative or acquaintance receives something. The situation may be fuzzy to you, and perfectly clear to others, or vice versa.

Statutory Guidance

There are a number of guidelines on the issue of conflict of interest in Minnesota statutes. Additionally, most state agencies have agency specific statutes, rules and policies. This section does not attempt to cover all of these, but focuses on the major four statutory standards and on some of the obligations and responsibilities that flow from them. If you have a question as to whether or not something is a conflict of interest, contact your agency ethical practices officer.

Note: each state employee, as an individual, is responsible for NOT putting himself/herself and the state in a position where a conflict of interest might exist or could give the appearance of existing.

[Minn. Stat. § 15.43](#), states in part (emphasis added):

No employee of the state or of the University of Minnesota in direct contact with suppliers or potential suppliers to the state or the university, or who may *directly or indirectly* influence a purchasing decision or *contract* by establishing specifications, testing purchased products, evaluating contracted services, or otherwise has *official involvement in the purchasing or contracting process* may:

- (1) Have any financial interest or have any personal beneficial interest **directly or indirectly** in contracts or purchase orders for goods or services used by, or purchased for resale or furnished to a department or agency of the state or the university; or

(2) Accept *directly or indirectly from a person, firm, or corporation to which a contract or purchase order has been or may be, awarded, a rebate, gift, money, or anything of value other than items of nominal value.* No such employee may further accept any promise, obligation or contract for future reward.

[Minn. Stat. § 43A.38](#) establishes a code of ethics for executive branch employees and states in part (*emphasis added*):

Subd. 5. Conflicts of interest. The following actions by an employee in the executive branch *shall be deemed a conflict of interest* and subject to procedures regarding resolution of the conflicts, [section 43A.39](#) or disciplinary action as appropriate:

(a) use or attempted use of the employee's official position to secure benefits, privileges, exemptions or advantages *for the employee or the employee's immediate family or an organization with which the employee is associated which are different from those available to the general public;*

(b) acceptance of other employment or contractual relationship that will affect the employee's independence of judgment in the exercise of official duties;

(c) actions as an agent or attorney in any action or matter pending before the employing agency except in the proper discharge of official duties or on the employee's behalf; or

(d) the solicitation of a financial agreement for the employee or entity other than the state when the state is currently engaged in the provision of the services which are the subject of the agreement or where the state has expressed an intention to engage in competition for the provision of the services; unless the affected state agency waives this clause.

Subd. 6. Determination of conflicts of interest. *When an employee believes the potential for a conflict of interest exists, it is the employee's duty to avoid the situation. A conflict of interest shall be deemed to exist when a review of the situation by the employee, the appointing authority or the commissioner determines any one of the following conditions to be present:*

(a) *the use for private gain or advantage of state time, facilities, equipment or supplies or badge, uniform, prestige or influence of state office or employment;*

(b) *receipt or acceptance by the employee of any money or other thing of value from anyone other than the state for the performance of an act which the employee would*

be required or expected to perform in the regular course or hours of state employment or as part of the duties as an employee;

(c) employment by a business which is subject to the direct or indirect control, inspection, review, audit or enforcement by the employee;

(d) the performance of an act in other than the employee's official capacity which may later be subject directly or indirectly to the control, inspection, review, audit or enforcement by the employee.

[Minn. Stat. § 16C.04](#), focuses directly on employees involved directly or indirectly in the acquisition process (including professional/technical service contracting) at any level. It is repeated here to provide a basis for understanding the actual policy that follows (emphasis added).

Subd. 1. DUTY. An employee of the executive branch involved directly or indirectly in the acquisition process, at any level, is subject to the code of ethics in [section 43A.38](#).

Subd. 2. CONFLICT OF INTEREST POLICY DEVELOPMENT.

(a) The commissioner [of administration] must develop policies regarding code of ethics and conflict of interest designed to prevent conflicts of interest for [state] employees involved in the acquisition of goods, services, and utilities. The policies must apply to [state] employees who are directly or indirectly involved in the acquisition of goods, services, and utilities, developing requests for proposals, evaluating bids or proposals, awarding the contract, selecting the final vendor, drafting and entering into contracts, evaluating performance under these contracts, and authorizing payments under the contract.

(b) The policies must contain a process for making [state] employees aware of policy and laws relating to conflict of interest, and for training [state] employees on how to avoid and deal with potential conflicts.

(c) The policies must contain a process under which an [state] employee who has a conflict of interest or a potential conflict of interest must disclose the matter, and a process under which work on the contract may be assigned to another [state] employee if possible.

The message delivered by these statutes is clear and simple.

Each state employee, as an individual, is responsible for NOT putting himself/herself and his/her state agency in a position where a conflict of interest might exist or could give the appearance of existing.

Any activity, influence or input related to any part of the acquisition process IS covered by these standards - from getting the idea to approving the payment and everything in between.

When anyone in a position of responsibility in a state agency becomes aware of a potential conflict of interest THAT PERSON MUST ACT to remove the state employee from ANY involvement with the acquisition in question.

Commissioner of Administration's Directions

Based on the statutory requirement in [Minn. Stat. § 16C.04](#), it is the requirement of the commissioner of Administration to create a policy to prevent a conflict of interest from taking place.

That policy is as follows:

General principles of Admin 98.30:

Date: December 29, 1998
To: Agency Heads
From: Elaine S. Hansen, Commissioner
Subject: Code of Ethics Policy – preventing conflicts of interest in the acquisition of goods, services, and utilities

Policy: The commissioner of the Department of Administration has developed policies regarding ethics and conflict of interest in accordance with Minn. Stat. § 16C.04. These policies apply to employees directly and indirectly involved in the following acquisition-related activities:

- Acquiring goods, services and utilities
- Developing requests for proposals
- Evaluating bids or proposals
- Awarding a contract
- Selecting the final vendor
- Drafting and entering into contracts
- Evaluating performance under these contracts
- Authorizing payments under a contract

Purpose/Objective: Several conflict of interest guidelines exist in Minnesota statutes, and most state agencies have additional rules and policies. This document focuses on four major statutory standards and the obligations and responsibilities that flow from them. If, after reviewing this document, you have questions about specific conflict of interest situations, contact your agency's ethics officer.

Description: General Principles.

As individuals, all state employees must ensure that neither they nor their agency are put in a situation where a potential conflict of interest exists or gives the appearance of existing.

This policy and the relevant statutes affect all action, input and influence related to the acquisition process. It runs the gamut from the creation of an idea to approving payment, and includes everything in between.

When anyone in a state agency becomes aware of a potential conflict of interest, s/he must act immediately to remove the conflict and, if necessary, separate the employee from the acquisition.

Definitions:

Commissioner: All references to "commissioner" in Chapter 16C and this manual refer to the commissioner of the Department of Administration. The Office of State Procurement administers the code of ethics policy and all policies and procedures related to professional/technical services contracts for the commissioner.

Acquisition of goods, services and utilities: "Acquisition" is purchasing, procuring, contracting, buying, selling or trading anything with value. "Goods" and "services" include utilities used by state agencies, nonprofessional/technical or professional/technical services that either come into the possession of the state or leave the possession of the state. Acquisition includes all kinds of contracts, agreements and orders to which the state or a state agency may be a party. Further, if funds involved in the acquisition are, were, or should have been in accounts belonging to the State of Minnesota, the process is covered by this policy. Only in cases where federal or state law adopts more specific, stringent or demanding requirements do those requirements supersede this policy.

State employee: For the purposes of this policy, a "state employee" is an employee of the executive branch of state government. The requirements of Minn. Stat. § 15.43 regarding acceptance of advantage by state employees, apply to all employees of the state, the University of Minnesota, and the Minnesota State Colleges and Universities. All employees of the state, including those of the Minnesota State Colleges and Universities, are covered by the code of ethics for employees in the executive branch (*see* Minn. Stat. § 43A.38). It is the responsibility of the judicial and legislative branches of state government and other government jurisdictions that are not subject to Minn. Stat. § 16C (e.g., municipalities, the University of Minnesota and the Minnesota State Colleges and Universities) to establish code of ethics requirements and policies to prevent conflicts of interest.

State agency: A “state agency” is any authority, agency, entity, board, department, organization or task force of the executive branch of state government subject to Minn. Stat. § 16C. The requirements of Minn. Stat. § 15.43 regarding acceptance of advantage by state employees, apply to all agencies of the state and the University of Minnesota. All state agencies, including the Minnesota State Colleges and Universities, are covered by the code of ethics for executive branch employees (*see* Minn. Stat. § 43A.38).

Actual conflict of interest: An “actual conflict of interest” occurs when a decision or action would be compromised without taking appropriate action to eliminate the conflict. If an employee has an outside interest that conflicts with her/his public responsibilities to the extent that her/his public responsibilities or decisions are influenced to the detriment of the public or the benefit of the employee or her/his personal interest, that is an actual conflict of interest. Such action may include an employee receiving a direct or indirect financial benefit as a result of using the public position and/or influence; or the outside influence could be so prevalent that the public decision is influenced or dictated by an employee’s outside interest.

Potential conflict of interest: A “potential conflict of interest” is a situation in which an employee has outside, private influence and/or interests that could influence public decisions, actions or responsibilities. This differs from an actual conflict of interest in that actions have yet to occur where the outside influence and/or interests of the employee affect or dictate public decisions, actions or responsibilities.

Appearance of a conflict of interest: An “appearance of a conflict of interest” is any situation in which a reasonable person would conclude that an employee has an outside influence and/or interest that conflicts with his/her public duties or responsibilities.

General Information

The commissioner of administration has established the following policies designed to prevent conflicts of interest regarding the acquisition of goods, services and utilities, pursuant to [Minn. Stat. § 16C.04](#).

Affirm Knowledge of Ethical Code

Based on a policy requirement of the commissioner of the Department of Employee Relations, each state employee must sign a statement that s/he has read and understands the code of ethics for employees in the executive branch (*see* [Minn. Stat. § 43A.38](#)). Employees must have this document in their personnel file in the agency’s human resources office.

Affirm Knowledge of Policy and Laws

On an annual basis, each state agency must require employees directly and indirectly involved in the acquisition process to read and understand this policy and the relevant statutes and sign a statement

to that effect (*see* Minn. Stat. §§ [16C.04](#) and [43A.38](#)). Statements affirming review should be maintained in a file designated by the agency.

If an employee is only occasionally involved in an acquisition (e.g., developing specifications for or evaluation of a single RFP), it is acceptable for him/her to read and understand the policy and laws at the beginning of the process. Statements affirming review must be maintained in the actual contract file.

Ethics Officer Designation

Each state agency must designate an ethics officer who is responsible for providing advice, assistance and training to agency staff on ethical practices and conflicts of interest. This employee may be an internal auditor or a member of the agency's human resources division. Notice of this designation should be disseminated throughout the agency and identification of the ethics officer included in the employee's required knowledge of this policy, the code of ethics for executive branch employees and the laws previously described.

Identifying Conflicts of Interest

Each state agency should establish a policy creating an internal mechanism for employees' use in identifying an actual conflict of interest or a potential conflict of interest. Notice of this policy should be disseminated throughout the state agency and included in the employee's required knowledge of this policy, the code of ethics for executive branch employees and the laws previously described.

Immediate Action Required

A state agency or employee must immediately act upon any suggestion, inquiry or intimation that an actual conflict of interest exists. Upon identification, such matters are referred to the agency ethics officer and to a supervisor, manager, director, assistant commissioner or agency head. It is appropriate for small agencies having no internal auditors or human resources staff to refer suspected conflicts to the Department of Administration's Office of State Procurement.

Transfer Responsibility If Conflict Exists

If a state employee, supervisor, manager, appointing authority or agency head determines that a potential conflict of interest exists, as defined by this policy or relevant law, responsibilities for the acquisition must be assigned to an employee having no conflict of interest. If the agency head determines that assigning those duties to another employee within the agency is not possible, s/he must contact the commissioner of Administration, who will assist in finding personnel to perform the acquisition.

Policy Application to Non-State Employees

State agencies should consider establishing a policy for non-state employee participation in the acquisition process. Agencies routinely use non-state employees to assist in creating and evaluating requests for proposals and in making contract award recommendations. (In some cases, legislation may dictate the participation of representatives from certain groups.)

Ideally, this policy should require that non-state employees read, understand and agree to be bound by the mandates of the statutes and this policy relevant to their participation in the state acquisition process. A record of this agreement should be kept with the official agency copy of activity related to the acquisition or the resulting contract. To protect the state, its agencies and employees, everyone involved in the acquisition process must be held to the same standards.

Example Situations

A conflict of interest is any situation in which your judgment, action, or nonaction benefits you. A conflict of interest situation can exist directly (when you gain personally) or indirectly (when a friend, relative, or acquaintance does). Some clear-cut examples of conflicts of interest and violations of law include buying from your brother, sister, or spouse with state funds; buying from a firm and then accepting a job from that firm; buying from a firm that has taken you to dinner, flown you to Boston for a vacation, or bought you a new car. Other conflict of interest situations are not as clear-cut.

Example 1

You have known Jane, owner of Jane's Garage, a long time—she has worked on your family cars for years. You know she performs good work at a reasonable price, so why not just take state vehicles to her to work on? If Jane says, "I'd really like the state's business and if I get it, you'll get a discount on work on your car," the situation is obvious: this is clearly a potential conflict of interest. But what if Jane has not said a thing and you get a reduced charge on personal work or what if your daughter or your nephew works for Jane? What if Jane rents her garage property from your mother-in-law? These situations are not as clear. How do you benefit, if at all? In the first instance, if it is your daughter who works at Jane's garage, an indirect benefit exists—your family makes money directly from Jane's business. On the other hand, the situation of your nephew working for Jane may appear to be different, but only by degree. You might not directly get money from Jane's business, but you could be considered indirectly involved. These are all examples of situations that have the appearance of a conflict of interest. What to do?

- Because there is potential for a conflict of interest, remove yourself from the acquisition and report it immediately. Be sure that your supervisor, manager, director, etc., knows exactly why you are extracting yourself from the process.
- Make sure that the new agency representative carefully defines the agency's needs and puts the requirements "on the street" by preparing a request for proposal (RFP).
- Have the responses evaluated by individuals who do not know of your involvement and who have no similar personal conflicts of interest.
- Have your supervisor or a neutral entity make the final award.
- Avoid any involvement with the contract or its future evaluation.

Assuming these procedures are followed and Jane's Garage ultimately gets the business, it is likely that the process was correct, above board and beyond reproach. However, the appearance of a conflict of interest may remain, even with these recommended actions. By carefully documenting what you and the agency did and when you did it, you will have the information necessary to dispel the appearance of a conflict of interest. In some cases, the appearance of a conflict may be unavoidable. The documentation recording the actions you and your agency take will be the only evidence that such an appearance did not evolve into a potential or actual conflict of interest. The process does not have to be time consuming and complex if everyone associated with the acquisition understands the rules and abides by them.

Example 2

An employee suggests that your division purchase a piece of equipment so that s/he can do a better job. Division management agrees that the equipment would be useful. The employee happens to have just such a piece of used equipment and is willing to sell it to the state for a very reasonable price.

Buying used equipment may be a good purchasing decision and should be considered when an agency needs equipment. The issue is not whether to purchase used equipment or not, but rather where the equipment comes from and how to determine its reasonable value. Assuming that you think the employee's idea is a good one, and if the piece of equipment is available, in good condition, with a warranty and at a good price, then the purchase may be wise. The answer to the conflict question is that a potential conflict does exist, due to the proximity in the relationship of the purchaser to the seller.

What to do?

- Procedurally remove yourself and the employee from the acquisition.
- Identify someone else to proceed: another office, district, region, the central office or even the Office of State Procurement. The most appropriate person is someone who has no awareness of the employee and his/her relationship to the purchase.
- Request that this individual develop an RFP for a used piece of equipment, being very thorough about specifications, conditions and warranties. Publish the RFP in the *State Register* as a formal solicitation (regardless of its dollar value).
- Ensure that someone else opens the responses and makes the award decision.

Assuming that these steps are taken and the employee happens to "win" the award, it would be difficult to argue that the employee's situation affected the outcome because the entire process was conducted "in the open." Some caution is appropriate, however. High point-value items in an evaluation, such as a warranty, are unlikely to be something an employee could reasonably provide. An actual used equipment dealer might provide a warranty, which has real economic value. As an individual, the employee would have a hard time providing the same level of protection for the state as a dealer would. For example, how likely would you be to take the employee to court to enforce a warranty?

The appearance of a conflict of interest in this example could probably never be dispelled by any amount of documentation or action by the agency. The agency must make the decision to proceed very carefully, with full awareness of the issues involved.

Example 3

You are offering employment to an individual whose husband is employed by Widgets-R-Us. Your agency has made purchases from Widgets-R-Us in the past and may do so in the future.

This is not a conflict of interest. The potential employee and her relationship to the company have obviously not affected state acquisitions in the past. Once hired, the relationship has no impact as long as the employee does not directly or indirectly participate in any decisions to make purchases from Widgets-R-Us. However, the question is how to define “indirect” participation.

(A) Widgets-R-Us makes widgets. Your agency uses widgets and routinely orders them from OSP’s Central Stores. There is no conflict of interest regardless of the relationship. Central Stores chose to carry the product independent of the individual’s employment with your agency. The product is a common item and was used before the new employee arrived. It is reasonable to continue to use widgets.

(B) Widgets-R-Us creates a new product and offers it to its employees to test and informally market outside the company. If the new state employee brings the product to your agency and decides that it should be purchased, there is an appearance of a conflict. Since the product is not publicly available and the purchase decision is made by the spouse of the benefitted company’s employee, the appearance of a conflict of interest exists and the acquisition should not proceed. Even if the product is available publicly, the appearance of a conflict of interest exists. What to do?

- Once the new Widgets-R-Us product becomes available publicly, only an employee having no actual financial relationship with the company should ask Central Stores to acquire it. If the product will not be carried by Central Stores, an individual not connected to the new employee must place the order after the product is available publicly.

(C) The new employee is the program manager responsible for all agency systems development and purchasing activity. The program manager also has authority to sign contracts for the agency head. The employee’s spouse is a systems integration and services executive for Widgets-R-Us, which provides consulting and development as part of its services. The agency has published an RFP to develop a new system; responses have been received and the evaluation completed. The evaluation team recommended that Widgets-R-Us get the award and completed contract negotiations, but the contract has not yet been signed. The new program manager did not serve on the evaluation team and must not sign the contract. Doing either would create the appearance of a conflict of interest. The program manager has a potential conflict of interest if she is involved with administration of the contract, evaluation of the contractor’s performance, approval of invoices or recommendations to accept the final product.

(D) Two further variations:

- *The RFP has been sent out, responses received and evaluation completed, but no recommendation has been made to the agency head. The program manager is involved in the recommendation.*
- *The RFP has been sent out and responses received, but the evaluation has not been completed and no recommendation has been made. The new program manager is involved in both.*

All of the scenarios described in “C” and “D” have the potential for an appearance of a conflict of interest because of the likely financial interest of the program manager in her spouse’s employment. The acquisition process should not continue without reporting the appearance of the conflict.

Example 4

An employee serves as a compensated board member of a local nonprofit organization that provides social services and counseling. Your department needs a local source of social services case management.

It would be impossible for the employee to avoid the appearance of a conflict of interest if the agency wants to enter into a single source agreement with a nonprofit organization from which the employee benefits financially. If the nonprofit is determined to be the only source of the needed service, someone other than the conflicted employee must conduct the process.

What if the employee is an uncompensated member of the board? The issue of compensation does not remove the appearance of a conflict. Participation on the board brings some benefit, although it is more implied than actual. Mere association with this nonprofit’s decision-making raises the appearance of a conflict which must be managed.

References

Minnesota Statutes

[Minn. Stat. § 10A.07](#) – CONFLICTS OF INTEREST

Subdivision 1. **Disclosure of potential conflicts.** A public official or a local official elected to or appointed by a metropolitan governmental unit who in the discharge of official duties would be required to take an action or make a decision that would substantially affect the official's financial interests or those of an associated business, unless the effect on the official is no greater than on other members of the official's business classification, profession, or occupation, shall take the following actions:

- (1) prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict of interest;
- (2) deliver copies of the statement to the official's immediate superior, if any; and
- (3) if a member of the legislature or of the governing body of a metropolitan governmental unit, deliver a copy of the statement to the presiding officer of the body of service.

If a potential conflict of interest presents itself and there is insufficient time to comply with clauses (1) to (3), the public or local official shall orally inform the superior or the official body of service or committee of the body of the potential conflict.

Subd. 2. If the official is not a member of the legislature or of the governing body of a metropolitan governmental unit, the superior shall assign the matter, if possible, to another employee who does not have a potential conflict of interest. If there is no immediate superior, the official shall abstain, if possible, in a manner prescribed by the board from influence over the action or decision in question. If the official is a member of the legislature, the house of service may, at the member's request, excuse the member from taking part in the action or decision in question. If the official is not permitted or is otherwise unable to abstain from action in connection with the matter, the official shall file a statement describing the potential conflict and the action taken. A public official shall file the statement with the board and a local official shall file the statement with the governing body of the official's political subdivision. The statement must be filed within a week of the action taken.

Subd. 3. **Interest in contract; local officials.** This section does not apply to a local official with respect to a matter governed by sections 471.87 and 471.88.

For purposes of [10A.07](#) and this policy, the term “public official” refers to commissioners, deputy commissioners or assistant commissioners of any state department as designated pursuant to section 15.01. It also includes any executive branch employee authorized to adopt, amend or repeal rules or adjudicate contested cases. (See [Minn. Stat. § 10A.01, subd. 18.](#))

[Minn. Stat. § 15.054](#) – PUBLIC EMPLOYEES NOT TO PURCHASE MERCHANDISE FROM GOVERNMENTAL AGENCIES; EXCEPTIONS; PENALTY

No officer or employee of the state or any of its political subdivisions shall sell or procure for sale or possess or control for sale to any other officer or employee of the state or the subdivision, as appropriate, any property or materials owned by the state or subdivision except pursuant to conditions provided in this section. Property or materials owned by the state or a subdivision, except real property, and not needed for public purposes, may be sold to an employee of the state or the subdivision after reasonable public notice at public auction or by sealed bid if the employee is the highest responsible bidder and is not directly involved in the auction or sealed bid process. Requirements for reasonable public notice may be prescribed by other law or ordinance so long as at least one week's published or posted notice is specified. A state employee may purchase no more than one motor vehicle from the state in any 12-month period. A person violating the provisions of this section is guilty of a misdemeanor. This section shall not apply to the sale of property or

materials acquired or produced by the state or subdivision for sale to the general public in the ordinary course of business. Nothing in this section shall prohibit an employee of the state or a political subdivision from selling or possessing for sale public property if the sale or possession for sale is in the normal course of the employee's duties.

Minn. State. § 16C.04 – ETHICAL PRACTICES AND CONFLICT OF INTEREST

Subdivision 1. **DUTY.** An employee of the executive branch involved directly or indirectly in the acquisition process, at any level, is subject to the code of ethics in [section 43A.38](#).

Subd. 2. **CONFLICT OF INTEREST POLICY DEVELOPMENT.** (a) The commissioner must develop policies regarding code of ethics and conflict of interest designed to prevent conflicts of interest for employees involved in the acquisition of goods, services, and utilities. The policies must apply to employees who are directly or indirectly involved in the acquisition of goods, services, and utilities, developing requests for proposals, evaluating bids or proposals, awarding the contract, selecting the final vendor, drafting and entering into contracts, evaluating performance under these contracts, and authorizing payments under the contract.

(b) The policies must contain a process for making employees aware of policy and laws relating to conflict of interest, and for training employees on how to avoid and deal with potential conflicts.

(c) The policies must contain a process under which an employee who has a conflict of interest or a potential conflict of interest must disclose the matter, and a process under which work on the contract may be assigned to another employee if possible.

Minn. Stat. § 43A.38 – CODE OF ETHICS FOR EMPLOYEES IN THE EXECUTIVE BRANCH.

Subdivision 1. **Definitions.** For the purpose of this section the following definitions shall apply:

(a)"Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual or any other legal entity which engages either in nonprofit or profit making activities.

(b)"Confidential information" means any information obtained under government authority which has not become part of the body of public information and which, if released prematurely or in nonsummary form, may provide unfair economic advantage or adversely affect the competitive position of an individual or a business.

(c)"Private interest" means any interest, including but not limited to a financial interest, which pertains to a person or business whereby the person or business would gain a benefit, privilege, exemption or advantage from the action of a state agency or employee that is not available to the general public.

Subd. 2. **Acceptance of gifts; favors.** Employees in the executive branch in the course of or in relation to their official duties shall not directly or indirectly receive or agree to receive any payment of expense, compensation, gift, reward, gratuity, favor, service or promise of future employment or

other future benefit from any source, except the state for any activity related to the duties of the employee unless otherwise provided by law. However, the acceptance of any of the following shall not be a violation of this subdivision:

- (a) Gifts of nominal value or gifts or textbooks which may be accepted pursuant to section 15.43.
- (b) Plaques or similar mementos recognizing individual services in a field of specialty or to a charitable cause.
- (c) Payment of reimbursement expenses for travel or meals, not to exceed actual expenses incurred, which are not reimbursed by the state and which have been approved in advance by the appointing authority as part of the work assignment.
- (d) Honoraria or expenses paid for papers, talks, demonstrations, or appearances made by employees on their own time for which they are not compensated by the state.
- (e) Tips received by employees engaged in food service and room cleaning at restaurant and lodging facilities in Itasca State Park.

Subd. 3. Use of confidential information. An employee in the executive branch shall not use confidential information to further the employee's private interest, and shall not accept outside employment or involvement in a business or activity that will require the employee to disclose or use confidential information.

Subd. 4. Use of state property. (a) An employee shall not use or allow the use of state time, supplies or state-owned or leased property and equipment for the employee's private interests or any other use not in the interest of the state, except as provided by law.

(b) An employee may use state time, property, or equipment to communicate electronically with other persons including, but not limited to, elected officials, the employer, or an exclusive bargaining representative under chapter 179A, provided this use, including the value of the time spent, results in no incremental cost to the state or results in an incremental cost that is so small as to make accounting for it unreasonable or administratively impracticable.

(c) The commissioners of administration and employee relations shall issue a statewide policy on the use of electronic mail and other forms of electronic communications by executive branch state employees. The policy is not subject to the provisions of chapter 14 or 179A. Appointing authorities in the legislative and judicial branches shall issue policies on these issues for their employees. The policies shall permit state employees to make reasonable use of state time, property, and equipment for personal communications and shall address issues of privacy, content of communications, and the definition of reasonable use as well as other issues the commissioners and appointing authorities identify as necessary and relevant.

Subd. 5. Conflicts of interest. The following actions by an employee in the executive branch shall be deemed a conflict of interest and subject to procedures regarding resolution of the conflicts, [section 43A.39](#) or disciplinary action as appropriate:

- (a) use or attempted use of the employee's official position to secure benefits, privileges, exemptions or advantages for the employee or the employee's immediate family or an organization with which the employee is associated which are different from those available to the general public;

- (b) acceptance of other employment or contractual relationship that will affect the employee's independence of judgment in the exercise of official duties;
- (c) actions as an agent or attorney in any action or matter pending before the employing agency except in the proper discharge of official duties or on the employee's behalf; or
- (d) the solicitation of a financial agreement for the employee or entity other than the state when the state is currently engaged in the provision of the services which are the subject of the agreement or where the state has expressed an intention to engage in competition for the provision of the services; unless the affected state agency waives this clause.

Subd. 6. Determination of conflicts of interest. When an employee believes the potential for a conflict of interest exists, it is the employee's duty to avoid the situation. A conflict of interest shall be deemed to exist when a review of the situation by the employee, the appointing authority or the commissioner determines any one of the following conditions to be present:

- (a) the use for private gain or advantage of state time, facilities, equipment or supplies or badge, uniform, prestige or influence of state office or employment;
- (b) receipt or acceptance by the employee of any money or other thing of value from anyone other than the state for the performance of an act which the employee would be required or expected to perform in the regular course or hours of state employment or as part of the duties as an employee;
- (c) employment by a business which is subject to the direct or indirect control, inspection, review, audit or enforcement by the employee;
- (d) the performance of an act in other than the employee's official capacity which may later be subject directly or indirectly to the control, inspection, review, audit or enforcement by the employee.

Subd. 7. Resolution of conflict of interest. If the employee, appointing authority or commissioner determine that a conflict of interest exists, the matter shall be assigned to another employee who does not have a conflict of interest. If it is not possible to assign the matter to an employee who does not have a conflict of interest, interested persons shall be notified of the conflict and the employee may proceed with the assignment.

This process is sometimes called recusal, which in legal terminology is the action of a judge to excuse himself/herself from participation in a case because of a pre-existing situation. The purpose is the same, to minimize the potential for conflict of interest in state acquisitions. No matter how difficult, it is always necessary to assign the matter to a state employee who does not have a conflict of interest. For a complex acquisition, an agency head could arrange with the commissioner of administration to make a purchase or assist in evaluating a proposal and making a recommendation. Other employees in the agency or a committee with leadership can review and approve work products and invoices.

Subd. 8. Precedence of chapter 10A. Where specific provisions of chapter 10A apply to employees and would conflict with this section, the provisions of chapter 10A shall apply.

Subd. 9. **Limits.** This section shall not be interpreted to apply to any activity which is protected by sections 179A.01 to 179A.25 and collective bargaining agreements and practices thereunder nor to prevent a current or former employee from accepting employment with a labor or employee organization representing employees.

[Minn. Stat. § 471.87](#) – PUBLIC OFFICERS, INTEREST IN CONTRACT; PENALTY

Except as authorized in [section 471.88](#) [list of exceptions], a public officer who is authorized to take part in any manner in making any sale, lease, or contract in official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom. Every public officer who violates this provision is guilty of a gross misdemeanor.

[Minn. Stat. § 609.43](#) – MISCONDUCT OF PUBLIC OFFICER OR EMPLOYEE

A public officer or employee who does any of the following, for which no other sentence is specifically provided by law, may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both:

- (1) Intentionally fails or refuses to perform a known mandatory, nondiscretionary, ministerial duty of the office or employment within the time or in the manner required by law; or
- (2) In the capacity of such officer or employee, does an act knowing it is in excess of lawful authority or knowing it is forbidden by law to be done in that capacity; or
- (3) Under pretense or color of official authority intentionally and unlawfully injures another in the other's person, property, or rights; or
- (4) In the capacity of such officer or employee, makes a return, certificate, official report, or other like document having knowledge it is false in any material respect.

Organizational Conflict of Interest

[Minn. Stat. § 16C.02](#), subd. 10a - "Organizational conflict of interest" means that because of existing or planned activities or because of relationships with other persons: (1) the vendor is unable or potentially unable to render impartial assistance or advice to the state; (2) the vendor's objectivity in performing the contract work is or might be otherwise impaired; or (3) the vendor has an unfair advantage.

[Minn. Stat. § 16C.04](#), subd. 3. Organizational Conflicts of Interest. (a) The commissioner shall make reasonable efforts to avoid, mitigate, or neutralize organizational conflicts of interest. To avoid an organizational conflict of interest, the commissioner may utilize methods including disqualifying a vendor from eligibility for a contract award or canceling the contract if the conflict is discovered after a contract has been issued. To mitigate or neutralize a conflict, the commissioner may use methods such as revising the scope of work to be conducted, allowing vendors to propose the exclusion of task areas that create a conflict, or providing information to all vendors to assure that all facts are known to all vendors. (b) In instances where a conflict or potential conflict has been identified and the commissioner determines that vital operations of the state will be jeopardized if a

contract with the vendor is not established, the commissioner may waive the requirements in paragraph (a).

Sample Conflict of Interest Policy. Below is a sample policy agencies may use to build their conflict of interest policies. It is drafted using the fictitious agency, the Department of Regulatory Services.

Minnesota Department of Regulatory Services

Departmental Policy

Policy 00-01

Effective Date: January 1, 2000



ETHICAL PRACTICES AND CONFLICT OF INTEREST

PURPOSE: This departmental policy requires and encourages compliance with various statutory and policy requirements related to the individuals within the Department of Regulatory Services who acquire goods, services and utilities and the ethical standards they have to meet. This policy also defines certain requirements for acknowledging the understanding of these statutory and policy requirements and who these requirements apply to.

STATUTORY BASIS: Minnesota Statutes §§ 15.43, 16C.04 and 43A.38 establish the statutory basis for this policy.

STATEWIDE POLICY BASIS: The Commissioner of Administration acting under the authority in Minn. Stat. § 16C.04 has established a statewide policy on conflict of interest (Admin Policy & Procedure: 98.30) related to the acquisition of goods, services and utilities which requires the Department of Regulatory Services to establish a policy on Conflict of Interest. The Commissioner of Employee Relations acting under the authority in Minn. Stat. § 43A.38 has established a statewide policy on employee acknowledgment of having read and understood Minn. Stat. § 43A.08.

DEPARTMENT POLICY STATEMENT: It is the policy of the Department of Regulatory Services that the department, its management and supervisory staff and employees have an absolute duty and responsibility to take all actions necessary to prevent an employee involved in any way in the acquisition of goods, services and utilities from being put in a position where that individual employee might have a conflict of interest.

First, any suggestion, inquiry and/or intimation that an “actual conflict of interest” exists must be immediately acted upon by the agency or department employee receiving this information. The agency ethical practices officer and the Office of the Legislative Auditor should be contacted immediately. Remember, an “actual conflict of interest” means that a state decision or action has already been compromised. Action must be immediate.

It is the goal of the Department of Regulatory Services to insure that “actual conflicts of interest” do NOT take place within the department. This policy is directed at defining what conflict of interest is and how the department will ensure that it does not take place.

In the information that follows there are distinctions made between three different groups of

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individuals:

1) those department employees who as a routine or regular part of their jobs are involved in the acquisition of goods, services and utilities, 2) those department employees who might occasionally be involved in the acquisition of goods, services and utilities, and 3) non-departmental employees who might occasionally be involved in the acquisition of goods, services and utilities. For purposes of the Department of Regulatory Services we will treat these groups as including:

Group 1 - Department employees routinely involved in the acquisition process:

- The Commissioner, deputy commissioner, assistant commissioner and all assistants to these individuals
- All managers, supervisors and professional staff who receive delegations from the commissioner, or anyone authorized by the commissioner to delegate authority, to expend department or state funds or to sign contracts or purchasing documents for the department
- All staff of the Office of Administrative Services and of the Financial/Accounting Office

Group 2 - Department employees occasionally involved in the acquisition process:

- Any department staff member who serves on any team, task force, committee, group or similar body that develops specifications or requirements, evaluates responses or in any way becomes involved in the acquisition of goods, services and utilities

Group 3 - Other individuals occasionally involved in the acquisition process:

- Members of the various department advisory task forces, including both state employees and non-state employees
- Individuals, including employees of other public bodies, who serve on the departments focus groups or task forces

Definitions:

Commissioner means the Commissioner of Regulatory Services.

Acquisition of goods, services and utilities means purchasing, procuring, contracting, getting, buying, selling or trading anything with any value (goods [which includes utilities used by state agencies], non-professional/technical services, professional/technical services) that comes into the possession of the state or leaves the possession of the state. This includes all kinds of contracts, agreements, orders, etc. to which the state or a state agency may be a party. If the funds involved in the acquisition are, were or should have been in accounts belonging to the State of Minnesota, the process is covered by this policy. **ONLY** in cases where federal or state law places more specific, stringent or demanding requirements, do those requirements apply. If there is any doubt, the

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situation should be described in writing to the agency contract coordinator.

Department Employee means an employee of the Department of Regulatory Services.

Actual Conflict of Interest means a situation where a department employee (as defined in this policy) has outside interests which conflict with his/her public responsibilities to the extent that public responsibilities or decisions are influenced to either the detriment of the public or the benefit of the department employee or their outside interests. Such actions may include receiving a direct or indirect financial benefit as a result of using their public position and/or influence, or the outside influence could be so prevalent as to have public decisions influenced or dictated by the department employee's outside interests.

Potential Conflict of Interest means a situation where a department employee (as defined in this policy) has outside influences and/or interests which could influence future decisions or responsibilities. The difference from an "actual conflict of interest" is that NO actions have yet occurred whereby the department employee's outside influences and/or interests have influenced or dictated public decisions or actions.

Appearance of a Conflict of Interest means a situation whereby a reasonable person would conclude that a department employee (as defined in this policy) has outside influences and/or interests which conflict with his/her public responsibilities and duties.

ACTIONS REQUIRED:

- 1) Each department employee, based on a policy requirement by the Commissioner of Employee Relations, is required to sign and have on file in their official personnel file with that department's human resources office a statement that he/she has read and understands Minn. Stat. § 43A.38.
- 2) Each department employee in Group 1 (defined above) must review, read, and understand Minn. Stat. §§ 15.43 and 43A.38 and this policy **ANNUALLY** during the month of their anniversary of state employment. Attachment A is the form used by the department to document this action and will be filed in the office of the commissioner, along with delegations of authority issued by the commissioner.
- 3) Each department employee in Group 2 (defined above) must review, read, and understand Minn. Stat. §§ 15.43 and 43A.38 and this policy statement at the beginning of their involvement with a specific acquisition process. Attachment B is the form used by the department to document this action and will be filed with the department's contract file for the specific contract involved.

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4) Individuals who are not department employees (Group 3 defined above) participate in the acquisition process for the department, as defined by Minn. Stat. § 16C.04, subd 2. These individuals are required to sign Attachment C in order to be able to participate in the acquisition process. This form will be filed with the department's contract file. Individuals who cannot or will not agree to this requirement SHOULD NOT participate in the acquisition process. In instances where legislation may dictate the "participation of representatives" from certain groups the same requirement exists. Unless empowering legislation actually names specific individuals by name or title (such as, "Chairman" of this group or organization), ANYONE involved in the acquisition process is to be held to the same standards. Even in cases where specific individuals have been identified in legislation, the individual will be asked to sign Attachment C and the document will be filed with the department's contract file.

5) If a department employee, supervisor, or manager determines that a potential conflict of interest, as defined by Minn. Stat. §§ 15.43, 43A.38, and 16C.04, Admin Policy & Procedure 98-99 and/or this policy, exists, the acquisition action in question must be assigned to another department employee who does not have a conflict of interest. If the supervisor or manager determines that assigning those duties to another department employee within the department is not possible, the agency contract coordinator should be notified immediately. After discussion with the commissioner, the agency contract coordinator will contact the commissioner of administration, who will assist in finding someone else to take the assignment.

6) The training specialist in the human resources office is designated as the Department of Regulatory Services "agency ethical practices officer." And is responsible for providing advice, assistance and training to department staff on ethics and conflict of interest. The Human Resources Office will provide notice of this designation to all employees.

7) Department employees are directed and authorized to discuss any and all questions about ethics and/or conflict of interest with the agency ethical practices officer. If any department employee is concerned for any reason about being connected with reporting any information related to conflict of interest to their supervisor or manager, the agency ethical practices officer or the commissioner (personally), they should contact the Office of the Legislative Auditor directly.

8) The department, commissioner of administration and the department of employee relations all offer training on ethical practices and conflict of interest. Department employees should work through their supervisors and managers to register for this training. The agency ethical practices officer and the agency contract coordinator will act as internal training resources.

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Effective Date: January 1, 2000

Attachment A to Department Policy 00-01 ANNUAL ACKNOWLEDGMENT OF REVIEW OF ETHICAL PRACTICES AND CONFLICT OF INTEREST STATUTES AND POLICIES

DATE: January 1, 2000

TO: Commissioner of Regulatory Services

FROM: (Individual Department Employee)

SUBJECT: Review of Statutory and Policy Guidance

I have reviewed Minnesota Statutes §§ 15.43, 16C.04, and 43A.38, Department of Administration Policy and Procedure 98.30, and Department of Regulatory Services Policy 98-01 and understand my personal responsibility under these statutes and policies as they relate to my duties and activities related to the acquisition of goods, services and utilities.

I certify that I am aware of my personal responsibility to prevent myself, the Department of Regulatory Services, and the State of Minnesota from being placed in a situation where a conflict of interest might exist or could give the appearance of existing.

I certify that, if I am a manager or a supervisor, it is my personal responsibility to assist staff who work for or with me from placing themselves, the Department of Regulatory Services and the State of Minnesota from being placed in a situation where a conflict of interest might exist or could give the appearance of existing.

I certify that I have read and understand the requirements of the Minnesota Data Practices Act (Minnesota Statutes Chapter 13) as they relate to my duties and activities related to the acquisition of goods, services and utilities and will act accordingly.

Signed: _____

Dated: _____

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Attachment B to Department Policy 00-01

ACKNOWLEDGMENT OF REVIEW

OF ETHICAL PRACTICES AND CONFLICT OF INTEREST STATUTES AND POLICIES

DATE:

TO: Commissioner of Regulatory Services

FROM: (Individual Department Employee)

SUBJECT: Review of Statutory and Policy Guidance

I have been assigned/requested to participate in the following project/task/duty related to the acquisition of goods, services and utilities by the Department of Regulatory Services:

[insert paragraph describing project/task/duty and potential responders
contractors or vendors if possible]

I certify that I do not have any conflicts of interest with this project/task/duty in accordance with Minnesota Statutes §§ 15.43, 16C.04, and 43A.38, Department of Administration Policy and Procedure 98.30, and Department of Regulatory Services Policy 98-01. I am aware of my personal responsibility to prevent myself, the Department of Regulatory Services and the State of Minnesota from being placed in a situation where a conflict of interest might exist or could give the appearance of existing.

I further certify that, if I am a manager or a supervisor, it is my personal responsibility to assist staff who work for or with me from placing themselves, the Department of Regulatory Services and the State of Minnesota from being placed in a situation where a conflict of interest might exist or could give the appearance of existing.

I certify that I have read and understand the requirements of the Minnesota Data Practices Act (Minnesota Statutes Chapter 13) as they relate to my duties and activities related to the acquisition of goods, services and utilities and will act accordingly.

I have a potential conflict of interest or a situation in which there might be the appearance of a conflict of interest and will be unable to perform the project/task/duties as described. I have informed by manager or supervisor of this situation.

Signed: _____

Dated: _____

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Attachment C to Department Policy 00-01

ACKNOWLEDGMENT OF REVIEW OF ETHICAL PRACTICES AND CONFLICT OF INTEREST STATUTES AND POLICIES BY AN INDIVIDUAL NOT AN EMPLOYEE OF THE DEPARTMENT OF REGULATORY SERVICES

DATE:

TO: Commissioner of Regulatory Services

FROM: (Individual)

SUBJECT: Review of Statutory and Policy Guidance

I have been requested to participate in the following project/task/duty related to the acquisition of goods, services and utilities by the Department of Regulatory Services:

[insert paragraph describing project/task/duty and potential responders contractors or vendors if possible]

I certify that I do not have any conflicts of interest with this project/task/duty in accordance with Minnesota Statutes §§ 15.43, 16C.04, and 43A.38, Department of Administration Policy and Procedure 98.30, and Department of Regulatory Services Policy 98-01. I am aware of my personal responsibility to prevent myself, the Department of Regulatory Services and the State of Minnesota from being placed in a situation where a conflict of interest might exist or could give the appearance of existing.

I certify that I have read and understand the requirements of the Minnesota Data Practices Act (Minnesota Statutes Chapter 13) as they relate to my duties and activities related to the acquisition of goods, services and utilities and will act accordingly.

I agree to be responsible for my own acts and behavior including the results from my personal and individual failure to comply with Minnesota Statutes Chapter 13.

I have a potential conflict of interest or a situation in which there might be the appearance of a conflict of interest and will be unable to perform the project/task/duties as described. I have informed the project manager of the Department of Regulatory Services of this situation.

I am not an employee of the Department of Regulatory Services or of any other state or public entity and will not comply with the statutory and policy guidelines cited. I have informed the project manager of the Department of Regulatory Services of this fact.

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Signed: _____

Dated: _____

Organizational Conflicts of Interest

In 2001, the Commissioner of Administration created a policy addressing organizational conflicts of interest. As opposed to traditional conflicts of interest where the focus rests with the ability of the state employee to act in an impartial manner, these types of conflicts focus on the state vendor. For example, an organizational conflict may exist when because of certain financial or other interests, a hired consultant is unable to provide impartial or objective advice to the state.

An organizational conflict of interest is defined in Minnesota law at [Minn. Stat. 16C.02](#), subd. 10a as follows:

Organizational conflict of interest.

"Organizational conflict of interest" means that because of existing or planned activities or because of relationships with other persons:

- (1) the vendor is unable or potentially unable to render impartial assistance or advice to the state;
- (2) the vendor's objectivity in performing the contract work is or might be otherwise impaired; or
- (3) the vendor has an unfair advantage.

Minnesota law further provides at [Minn. Stat. 16C.04](#), subd. 3, the following requirements:

Organizational conflicts of interest.

(a) The commissioner shall make reasonable efforts to avoid, mitigate, or neutralize organizational conflicts of interest. To avoid an organizational conflict of interest, the commissioner may utilize methods including disqualifying a vendor from eligibility for a contract award or canceling the contract if the conflict is discovered after a contract has been issued. To mitigate or neutralize a conflict, the commissioner may use methods such as revising the scope of work to be conducted, allowing vendors to propose the exclusion of task areas that create a conflict, or providing information to all vendors to assure that all facts are known to all vendors.

(b) In instances where a conflict or potential conflict has been identified and the commissioner determines that vital operations of the state will be jeopardized if a contract with the vendor is not established, the commissioner may waive the requirements in paragraph (a).

Additional provisions, including vendor disclosure requirements and remedies available to be pursued in the event such a conflict cannot reasonably be avoided, mitigated, or neutralized, are addressed in [Minnesota Rules, Chapter 1230.0750](#).

A complete discussion regarding organizational conflicts of interest can be viewed by clicking on the following link:



<http://www.mmd.admin.state.mn.us/pdf/alpn9.pdf>