DEPARTMENT OF ADMINISTRATION
STATE PROCUREMENT

OSP Policy 21-02: Procurement Conflict of Interest

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Policy Statement and Rationale

This policy and the relevant statutes affect all action, input, and influence related to the acquisition process. It includes every step of the process from the creation of an idea to approving payment to contract closeout. State employees must avoid any action which might result in a conflict of interest. Several conflict of interest guidelines exist in Minnesota statutes, and most state agencies have additional rules and policies. This policy focuses on identifying procurement-related conflicts of interest and the obligations and responsibilities that flow from them.

As individuals, all state employees must ensure that neither they nor their agency are put in a situation where a conflict of interest, actual or potential, exists, or gives the appearance of existing. When anyone in a state agency becomes aware of a potential conflict of interest, they must act immediately to remove the conflict, and if necessary, separate the employee from the acquisition. For examples, refer to this document's Appendix.

The Office of State Procurement (OSP) requires compliance with the following requirements designed to prevent conflicts of interest regarding the acquisition of goods, services, construction, and utilities, pursuant to Minnesota Statutes, section 16C.04.

Knowledge of Ethical Code

Based on HR/LR policy #1445 Code of Ethical Conduct, each state agency is responsible for ensuring that employees are informed of the provisions of the Code of Ethics found in Minnesota Statutes, section 43A.38, for employees in the executive branch.

Reporting Conflicts of Interest to Office of State Procurement

If any conflicts of interest is identified, or overpayment, overcharge, miscalculation, or other compliance issue is discovered related to a contract held or authorized by OSP, including those using delegated authority, the contract end user should first notify the OSP contract manager. Any agency employee with knowledge of contract noncompliance should immediately report it to the contract manageror member of the appropriate OSP contracting team. See OSP Policy 27-03: Contract Compliance and Reporting.

Affirm Knowledge of Policy and Laws

Each state agency is responsible to ensure that all employees directly and indirectly involved in the acquisition process read and understand this policy and relevant statutes including Minnesota Statutes, sections 16C.04 and 43A.38. If an employee is only occasionally involved in an acquisition (e.g., developing specifications for or evaluation of a single solicitation), it is acceptable for them to read and understand the policy and laws at the beginning of the process.

Identifying Conflicts of Interest

Per HR/LR policy #1445 Code of Ethical Conduct, all state agency employees have a responsibility to recognize and avoid actual, potential, or apparent conflict of interest situations and disclose the conflict to their supervisor or agency's ethics officer. All agency staff should be made aware of their agency's internal reporting process for conflicts of interest, this policy, the code of ethics for executive branch employees, and the laws previously described. See the Appendix at the end of this document for examples of conflicts of interest related to procurement.

Applicability

This policy applies to state employees of any authority, agency, committee, council, entity, board, department, organization or task force of the executive branch of state government subject to Minnesota Statutes, section 16C, 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.
- Administering a contract.
- Evaluating performance under these contracts.
- Authorizing and issuing payments under a contract.

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.

Policy Application to Nonstate Employees

To protect the state, its agencies, and employees, everyone involved in the acquisition process must be held to the same standards. State agencies should consider establishing a policy for nonstate employee participation in the acquisition process. Agencies routinely enlist nonstate employees to assist in creating requests for proposals, evaluating responses, and, based on evaluations, recommending contract awards. In some cases, legislation may dictate that the participation process includes representative from specific groups. Ideally, the staff member directing the procurement requires that nonstate 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. An official record of this agreement should be kept with the agency files.

Definitions

Commissioner: All references to “commissioner” in Chapter 16C refer to the commissioner of the Department of Administration. The Office of State Procurement administers this conflict of interest policy, and all policies and procedures related to professional and technical services contracts for the commissioner.

Acquisition of goods, services, construction, and utilities: “Acquisition” is purchasing, procuring, contracting, buying, selling, or trading anything with value. “Goods” and “services” include utilities used by state agencies, nonprofessional and technical or professional and 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.

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

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 their public responsibilities to the extent that their public responsibilities or decisions are influenced to the detriment of the public for the benefit of the employee or their immediate family or partners, that is an actual conflict of interest. Such action may include an employee or their immediate family or partners receiving a direct or indirect financial benefit or a tangible personal 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.

An actual conflict of interest also occurs when an employee participates in the selection, award, or administration of a contract when the employee, any member of their immediate family, their partner, or an organization which employs or is about to employ them, their immediate family or their partner, has a financial or other interest in or a tangible personal benefit from an entity considered for a contract.

Immediate family and partner: “Immediate family” are the employee’s spouse, children, children-in-law, parents, parents-in-law, siblings, and siblings-in-law. “Partner” includes romantic partners and outside business partners.

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.

Resources and Related Information

- Minnesota Statutes, section 10A.07 – Conflicts of Interest.
- Minnesota Statutes, section 15.054 – Sale or Purchase of State Property; Penalty.
- Minnesota Statutes, section 16C.04 – Ethical Practices and Conflict of Interest.
- Minnesota Statutes, section 43A.38 – Code of Ethics for Employees in the Executive Branch.
- Minnesota Statutes, section 471.87 – Public Officers, Interest in Contract; Penalty.

- Minnesota Statutes, section 609.43 – Misconduct of Public Officer or Employee.
- HR/LR policy #1445 Code of Ethical Conduct
- OSP training schedule

History and Updates

Version	Description	Date
1.0	Initial Publication	December 29, 1998
2.0	Revised	June 14, 2021
3.0	Revised	August 3, 2026

Policy Owner/Contact

OSP chief procurement officer. For questions concerning this policy, contact the OSP Helpline at 651-296-2600.

Appendix

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

Scenario: 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 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?

Conclusion:

- Because there is potential for conflict of interest, remove yourself from the acquisition and report it immediately. Be sure that your supervisor, manager, director, and other appropriate employees know the exact reason you are removing yourself from the process.
- Ensure the new agency representative carefully defines the agency's needs and puts the requirements "on the street" by preparing a solicitation.
- 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 your and the agency's actions and when you took them, 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 need to be time consuming and complex if everyone associated with the acquisition understands the rules and abides by them.

Example 2

Scenario: An employee suggests that your division purchase a piece of equipment so that they 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.

Conclusion: 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, but rather the source of the equipment and how to assess its fair 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 their relationship to the purchase.
- Request that this individual develop a solicitation for a used piece of equipment, being very thorough about specifications, conditions, and warranties. Publish the solicitation 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 wins 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. Al used equipment dealer might provide a warranty, which has tangible economic value. In contrast, the individual employee is unlikely to offer the same level of protection to the state. Enforcing a warranty against the employee in courtwould also be significantly more challenging.

In this example, no amount of documentation or agency action is likely to resolve the appearance of a conflict of interest. The agency must proceed with caution and remain fully aware of the issues involved.

Example 3

Scenario: 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.

Conclusion: 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 provided the employee does not directly or indirectly participate in any decisions to make purchases from Widgets-R-Us. However, the key question is how to define "indirect" participation.

Example 4

Scenario: You are offering employment to an individual whose husband is employed by Widgets-R-Us. Widgets-R-Us makes widgets. Your agency uses widgets and routinely orders them from OSP's widget contract.

Conclusion: There is no conflict of interest regardless of the relationship. OSP chose to carry the product on contract 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.

Example 5

Scenario: 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 benefited company's employee, the appearance of 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?

Conclusion: Once the new Widgets-R-Us product becomes available publicly, only an employee having no actual financial relationship with the company could take steps to procure the product.

Example 6

Scenario: 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 a solicitation 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 they are involved with the administration of the contract, evaluation of the contractor's performance, approval of invoices, or recommendations to accept the final product.

Conclusion: This scenario presents a potential appearance of conflict of interest due to the program manager's likely financial interest in her spouse's employment. The acquisition process should not proceed until the appearance of conflict of interest is reported.

Example 7, Parts A and B

(A) The solicitation 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.

(B) The solicitation 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.

Conclusion: Each scenario described presents a potential appearance of conflict of interest due to the program manager's likely financial interest in her spouse's employment. The acquisition process should not proceed until the appearance of conflict of interest is reported.

Example 8

Scenario: 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.

Conclusion: It would be impossible for the employee to avoid the appearance of 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 organization is determined to be the only source of the needed service, someone other than the conflicted employee must conduct the acquisition 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. In addition, as a board member, the employee has a fiduciary duty to the nonprofit organization that calls into question the employee's independence of judgment in the employee's decision-making on behalf of your agency. Mere association with this nonprofit organization's decision-making raises the appearance of a conflict which must be managed.