



## ETHICS GUIDE

All public purchasers are required to adhere to the ethical standards of public servants in accordance with R.S. 42:1101-1170. All vendors doing business with the Department are expected to adhere to the same Code of Ethics as government employees in conducting business with the DOTD. Care must be exercised by both public purchasers and vendors to avoid any impropriety.

DOTD Procurement Section also adopts The Institute for Public Procurement (NIGP) standards and code of ethics in the performance of its fiduciary responsibilities to the Agency.

### POLICY

DOTD Procurement believes, and it is a condition of employment, that the following ethical principles should govern the conduct of every Procurement staff member:

- Believes in the dignity and worth of the service rendered by the organization, and the societal responsibilities assumed as a trusted public servant.
- Is governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served.
- Believes that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable.
- Identifies and eliminates participation of any individual in operational situations where a conflict of interest may be involved.
- Believes all employees of the Agency especially the Procurement staff should at no time, or under any circumstances, accept directly or indirectly, gifts, gratuities, or other things of value from suppliers, which might influence or appear to influence purchasing decisions.
- Keeps the governmental organization informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts.
- Resists encroachment on control of personnel in order to preserve integrity as a professional manager.
- Handles all personnel matters on a merit basis, and in compliance with applicable laws prohibiting discrimination in employment on the basis of politics, religion, color, national origin, disability, gender, age, pregnancy and other protected characteristics.
- Seeks or dispenses no personal favors. Handles each administrative problem objectively and empathetically, without discrimination.
- Subscribes to and supports the professional aims and objectives of the DOTD.

ALL DOTD Employees may not:

- Engage in or give the appearance of engaging in, dishonest or unethical actions.
- Show favoritism. Actions and decisions must be based on merit in accordance with established laws, rules, regulations, policies, and procedures.
- Accept a gift of any kind, regardless of the value, under circumstances in which it could be reasonably inferred that the gift was intended (or could be reasonably expected) to influence the performance of official duties or serve as a reward for any official action. Examples include cash, goods, meals, travel, sporting event tickets, entertainment, loans, services, or anything else of value.
- Directly or indirectly purchase, rent, or lease any realty, goods, or services for the Department from any business entity of which they or their spouse or child is an officer or has a material interest. Employees have an obligation to report known or suspected wrongdoing. If a supplier knows or suspects that another supplier or an Employee is involved in questionable activity, the supplier should inform the Procurement Agent or the Director of Procurement.

DOTD Procurement believes that the following ethical principles should govern and conduct every supplier, contractor, or their agents:

As described above, the Department relies upon open, arms-length, competitive procurements to assure that it spends funds wisely and in the best interest of the Department and the public. To do business with the Department, suppliers must respect and not undermine that process. The Department expects suppliers to perform fully, timely, and honestly in accordance with the terms of their contracts and to demonstrate responsibility through a history of successful and honest performance.

Before engaging in the Department procurement process, a supplier should take a hard look at its firm's business integrity as well as whether the supplier has the capability of fully meeting the demands of the requested work. To do business with the Department a supplier must be:

- Capable of meeting all minimum qualifications specified in the solicitation document.
- Prepared to demonstrate that it has the resources and experience to successfully fulfill the contract requirements.
- Prepared to publicly and truthfully disclose management and ownership, officers and owners, and current financial condition with an expectation that any of their legal, financial or performance problems will need to be explained.
- Current on obligations, including licenses and insurance.

#### SUBMITTING A BID OR PROPOSAL RESPONSE

Except for certain situations listed in the Department Policy, for purchases exceeding \$10,000, the Department is required to conduct competitive solicitations and to award contracts solely on the basis of price, merit and/or qualifications. Efforts by a supplier or by a lobbyist acting on behalf of a supplier to gain an "inside track" by inhibiting competition or exploiting business or political relationships are prohibited.

##### a. Undercutting the Competitive Process

- Suppliers are expected to independently and honestly prepare and submit bid and proposal responses based upon their own costs and operations. By this mechanism, the Department obtains the most advantageous price or best value available among firms doing business in that market.
- Do not "cooperate" or share pricing information with competitors when preparing bid or proposal responses. Activity where competitors agree on the prices to be submitted, is known as collusive bidding, price fixing or bid-rigging and is illegal.
- Do not submit artificially high or low pricing to make a competitor's price look more reasonable. This is known as "complementary bidding" and is also illegal.

- Do not submit bid or proposal responses that are deceptively attractive with an expectation that after winning the contract the supplier will receive additional costs or inflate profits through change orders or that the supplier will have a competitive advantage in the award of related contracts.
- Do not manipulate unit cost awards by selectively underpricing particular line item costs or engage in unbalanced pricing with the expectation that quantities will change after award.

b. **Gifts** Do not offer a gift of any kind to an Employee to directly or indirectly influence the drafting of solicitation requirements, evaluations, awards, or payment. Such an offer is not a “gift”, but a bribe. The Employee must report bribery attempts. In addition to being a crime, bribery is the fastest way to ensure that the supplier will never do business with the Department as a supplier. Offering a gift to an Employee is a bad idea, regardless of whether or not the intent is to influence the Employee. As previously discussed, the definition of a gift is very broad and includes anything that has value. If an Employee suggests or demands a gift from a supplier for providing any service, consideration, or advantage, immediately report this to the Department Director of Procurement.

c. **Job Offers** Should a supplier determine that an Employee or an immediate member of their family would make a perfect addition to its firm, make sure that the Employee is not involved in any capacity with any solicitation that benefits the supplier before discussing a job offer, or even the prospect of a job. Wait until the solicitation is completed before discussing employment prospects. Otherwise, an attempt to discuss employment may be considered an attempt to improperly influence the solicitation process.

d. **Sensitive and Protected Information** Unlike private industry, firms competing for Department business are not permitted to obtain a competitive advantage by learning more about a solicitation or contract than what is available to all other potential respondents once the solicitation is advertised. All interested suppliers may ask questions at a pre-solicitation conference or direct inquiries to the Procurement Agent in writing. Responses are then shared with all other potential suppliers. Do not circumvent this process by asking Employees to provide information to which your firm is not entitled. Information relating to the identity of proposal response contents such as, cost/pricing data, proprietary information and trade secrets are not available, until the recommendation of award or 30 days after the bid or proposal responses were received.

## WORK UNDER CONTRACT

A supplier’s ethical obligations do not end upon award of a contract. Gifts and job offers may not be offered to improperly influence Employees to approve work, materials, or payments under the terms of a contract. Suppliers are required to perform fully in accordance with the terms of the contract. Where progress payments are sought, or payments are made on a budgetary or cost reimbursement basis, a supplier’s business records must truthfully support its claims for payment.

a. **Product Substitution** The unauthorized delivery of goods or services that do not meet the contractual requirements, and for which the supplier charges as if contractual specifications had been met, is known as “product substitution.” Product substitution is a violation of the contract and can be considered fraud. The following acts are considered product substitution:

- Providing inferior quality or substandard raw materials and finished products.
- Substituting generic or foreign-made products when particular brand names or domestically produced products (Buy American) are required in the contract specifications.
- Submitting for compliance testing, samples or items that are not representative of actual production materials or products.
- Substituting used or refurbished products without authorization.

b. **Premature Progress Payments.** Certain long-term contracts permit payments to be made as construction or other performance progresses. These “progress payments” are generally payable upon proof that costs have been incurred or milestones in the contract have been reached. A supplier’s falsification of labor or material costs, or a misrepresentation of progress reached, to obtain faster payments, is illegal.

c. **Improper Claims for Cost Reimbursement.** When a supplier enters into a contract for an amount based upon its actual costs, the supplier must maintain an accounting system that accurately categorizes its costs so that only costs that are reasonable, allowable, and allocable to the work are claimed for reimbursement. Some examples of costs that

should not be claimed for reimbursement include fines, gifts, entertainment costs, and certain legal costs. Cost mischarging occurs when unrelated costs are improperly charged to a contract.

d. Proper Control and Accounting (non-fixed fee contracts). The supplier is required to have appropriate internal controls to monitor its costs, schedule, assets and general operations. The supplier needs to maintain reliable records to insure that actions pertaining to the contract, inventory, expenses, and other reportable items are accurately, completely, and fairly recorded and reported.

#### SANCTIONS FOR MISCONDUCT

A wide range of criminal, civil, administrative, and contractual sanctions are available to address procurement fraud or misconduct. These include, but are not limited to, filing of State and Federal criminal charges, civil contract remedies including damages, assessment of liquidated damages, voiding or rescinding a contract, finding a supplier non-responsible, suspension, and debarment. Remember, it is not only the supplier that will gain notoriety from dishonest, unethical, and poor performance, but also the supplier's key personnel. Stay honest. Protect yourself and your firm. Do not involve Employees in dishonesty. The Department has the ability to terminate a contract between the Department and a supplier if determined there was a violation of the code of ethics. The supplier and Employees alike can find themselves facing misdemeanor or felony charges for procurement fraud. Maintaining a good relationship with the Department involves an understanding of the Department business needs and ethical environment.

Adopted on August 20, 2020 by:

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