

Conflict of Interest

Authority

2 C.F.R. Part 200, §200.318(c)(1) *“The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.”*

2 C.F.R. Part 200, §200.318(c)(2) *“If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.”*

2 C.F.R. Part 200, §200.112 *“The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.”*

Procurement Standards

When procuring property and services under a Federal award, the LEA must follow §200.318 General procurement standards through 200.326 Contract provisions. The LEA must use its own documented procurement procedures which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Grant Guidance. The documented procurement procedures of the LEA must include written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, or administration of contracts. If an employee has a real or apparent conflict of interest that employee may not participate in the selection, award, or administration of a contract supported by a Federal award.

Written Procedures

Written procedures such as required per 2 C.F.R. Part 200, §200.318 should not be a reiteration of the federal requirements or the policies or goals. Rather, procedures are the step by step process that is used to obtain the goal or the steps that are necessary to be in compliance with the federal requirement. Written procedures should answer questions like: what is considered a conflict of interest; how is it determined that an employee has a conflict of interest, how it is determined the procedures are followed; when the steps are performed; what is being verified.

The following is a list of questions to consider when documenting procedures. This is not an all inclusive list but rather to be used in guidance when writing the step by step procedures. These questions represent the types of information DPI would look for in the subrecipient's written procedures if selected for monitoring.

Sample questions to ask when writing procedures regarding conflict of interest:

Defining Conflict of Interest

- Does the subrecipient's policy and/or procedures include a definition of the relationships that are viewed as a conflict of interest?
- How are employees involved in the procurement process made aware of and provided with a copy of the subrecipient's conflict of interest policy and procedures?
- Do all employees involved in the procurement process fill out information regarding relationships that could be viewed as a conflict of interest?
- What is the process for an individual to report a conflict of interest?

Determining a Conflict of Interest

- What is the continuing process to determine that an employee does not have a conflict of interest?
- Are there regular updates of information provided by employees?
- Who reviews the information provided by employees?

Disqualified from Participation

- Who verifies that an employee is removed from participation when a conflict is identified?

Gratuities

- Are gratuities never allowed or are there situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value?
- If nominal value allowed, what is the amount?
- Is unsolicited defined?

Disciplinary Actions

- What is the disciplinary action when an employee does not remove themselves from the selection, award and administration of contracts when a conflict of interest occurs?

Reporting Conflict of Interest

- Who is responsible to report a conflict of interest to DPI?
- When should a conflict of interest be reported?