

TITLE: Conflict of Interest and Procurement Ethics

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PURPOSE: To provide guidelines to determine when a conflict of interest may exist, along with where to get additional information, and the consequences of violating state ethics laws, and to ensure compliance with the federal Anti-Kickback Act of 1986.

REVIEWER: Chief Financial Officer

REVIEW DATE: Fall 2029 and every 5 years thereafter

OPERATING DETAILS:

Mississippi law requires all Mississippi University for Women employees to abide by certain conflict of interest and ethical standards as public employees. All University employees have both a legal and ethical obligation to comply with all applicable ethics in government laws (“ethics laws”).

The federal Anti-Kickback Act of 1986 was passed to deter subcontractors from making payments and contractors from accepting payments for the purpose of improperly obtaining or rewarding favorable treatment in connection with either a contract or subcontract relating to a prime contract. The provision is designed to ensure fair and equal competition among both prime and subcontractors. It is applicable to all prime contractors and their subcontractors.

See, e.g. Miss. Code Ann. §§ 25-4-101 et seq. (1972); § 109, Miss. Const. of 1890, Anti-Kickback Act of 1986 [FAR52.203-07, 53FR 34224, of 8/2/88 and 41 USC 51-58]
And the Mississippi Procurement Manual (03/12/12) [Sections 9.101 – 9.110].

Guidelines are given to determine when a conflict of interest may exist, along with where to get additional information, and the consequences of violating state ethics laws.

GUIDELINES

Conflict of Interest

Mississippi University for Women employees have a legal and ethical responsibility to maintain University and personal compliance with State ethics and other laws regarding employee conflicts of interest.

Under State ethics law it is a breach of ethical standards (wrong) for an employee to use his position at the University to obtain any sort of financial gain for himself or a family member other than the employee's compensation. A conflict of interest would include but is not limited to an employee's participation directly or indirectly in procurement when:

1. An employee that has direct or indirect involvement in the procurement of goods or services on behalf of the University and the employee or his/her relative has a financial interest in the procurement.
2. An employee has direct or indirect involvement in the procurement of goods or services on behalf of the University from a business in which the employee or the employee's relative has a material financial interest.
3. An employee has direct or indirect involvement in the procurement of goods or services on behalf of the University from a business or person with whom the employee or a relative is negotiating or has arranged prospective employment.
4. An employee procuring goods or services from the University at an auction or at a sale when the goods or services are not offered to the general public at a uniform price.

Under some circumstances, an employee's relative may benefit from a contract with the University if the employee does not have direct or indirect control over the contract.

In addition, no employee may intentionally use or disclose information gained through his/her employment at the University that could result in financial benefit to the employee, a relative of the employee, or any other person, if the information has not been communicated to the public or is not public information.

Additional information for determining whether a conflict of interest might exist

For further information, please consult the Mississippi Code of 1972, Annotated, Sections 25-4-101 et seq., and Section 1200 of the Policies and Bylaws of the Board of Trustees for Institutions of Higher Learning. If you are involved in authorizing a request for, or setting up a vendor; processing a purchase requisition or purchase order or direct pay forms; or hiring employees, consider whether a conflict of interest might exist.

Supervisors who receive inquiries from employees or who have concerns regarding whether an employee's activity complies with applicable ethics laws should forward any such inquiries/concerns through the proper administrative channels to the appropriate cabinet member, who in turn should contact the University Counsel.

Do not hesitate to ask for additional information or a ruling if there is any doubt regarding the relationship of an employee or an employee's family member to the payee or payment recipient.

Consequences of violating State ethics laws

At times it may seem logical or even make good business sense to allow for a compromise to this policy; but even a procurement that seems to serve the University's interest may nevertheless be illegal. If a transaction violates state ethics laws, full restitution of all funds involved may be required, and an employee who violates state ethics laws may also be subject to disciplinary action, up to and including TERMINATION, as well as CRIMINAL PROSECUTION by the State of Mississippi.

Anti-Kickback Act

Definitions

Gratuity means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

Official Responsibility means direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise University action.

Employee means a person employed by a prospective contractor and subject to the prospective contractor's supervision and control as to the time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Mississippi contracts. In determining whether a bona fide employment relationship exists, the following factors should be considered:

1. Whether the employment is continuous.
2. Whether the person is subject to the supervision and control of the prospective contractor.
3. Whether the size of any contingent fee is reasonable in relation to the service performed.
4. Whether the method of payment of the contingent fee is customary in the trade.
5. Whether the person is employed solely by the prospective contractor.

Established Commercial Selling Agency means a business that neither exerts nor proposes to exert improper influence to solicit or obtain public contracts. In determining whether a business is a bona fide established commercial selling business, the following factors should be considered:

1. Whether the business is one which has either been active for a considerable period of time or is presently a going concern and is likely to continue as such.
2. Whether the business uses its own name and is characterized by the customary indicia of the conduct of a regular business.
3. The degree to which the business' activities are directed toward the solicitation of contracts of the State.
4. Whether the size of any contingent fee is reasonable in relation to the services performed.
5. Whether the method of payment of the contingent fee is customary in the trade.

Prohibitions

No employee of Mississippi University for Women, when considering competitive contracts, may:

1. Promise future employment or business opportunities;
2. Give or offer money or other gratuity to any individual in connection with procurement of any contract or subcontract;
3. Solicit or obtain source selection information from a procurement officer;
4. Accept an offer of future employment, business opportunity, or other gratuity from any prime or subcontractor;

5. Retain others or be retained to solicit a federal or state contract upon an agreement for commission, percentage, brokerage, or contingent fee, except for the retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

Penalty for Non-Compliance of Anti-Kickback

Any employee who willingly and knowingly violates the anti-kickback and procurement ethics policy of Mississippi University for Women is subject to dismissal and to penalties under the laws of the United States and the State of Mississippi. When contracts are with the federal government, the government may withhold payment in the amount of the kickback or direct the contractor to withhold similar subcontractor payments, or suspension, and/or debarment. Maximum penalty can amount to two times the amount of the kickback, plus, \$30,000 for each kickback and up to ten years imprisonment.

Requirements

1. The Conflict of Interest/Anti-Kickback and Procurement Ethics Policy must be circulated annually to employees in a position to directly influence or actually award a subcontract or other procurement activities.
2. Employees in a position to directly influence or actually award a subcontract or other procurement activities must make annual declarations that no anti-kickback or other procurement ethics rules have been violated.
3. Employees in a position to directly influence or actually award a subcontract or other procurement activity must declare annually all gifts and gratuities received from subcontractors.
4. Employees in a position to directly influence or actually award a subcontract or other procurement activities must, upon employment receive a copy of the Conflict of Interest/Anti-Kickback and Procurement Ethics Policy and sign a statement that they understand, agree to, and abide by, the Policy.
5. The University must provide, in a clearly visible location in Resources Management, a copy of the National Institute of Governmental Purchasing Code of Ethics.

Reporting of Violations

Reports of any and all violations or potential violations of these policies and procedures should be reported to the Internal Auditor.