Ethics and Transparency for Public Transportation Professionals

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Ethics and Transparency

What’s it all about?
Citizens want elected officials who will promote the public interest
Not their own personal or financial interest
Deciding How to Act: Two Questions

Is it legal? + Is it ethical? = Your Decision
Conflicts of Interest
State Law – Mostly Financial Interests

• Key Provisions

  – Criminal laws
    • Self-benefit from contracts: GS 14-234
    • Gifts and Favors: GS 133-32
    • Misuse of Confidential Information: 14-234.1

  – Voting requirements
    • City governing boards: GS 160A-75
    • County governing boards: GS 153A-44
Conflicts of Interest

A member of the governing board has a brother who is a consultant who specializes in signage and way-finding. The unit has a need for this type of service and has concluded that he has the specific skills they need.

- May the unit contract with the brother of a board member?
- May the member vote on the contract?
- Must the unit solicit bids for this contract?
- Should the unit solicit bids even if not required to do so?
Self-Benefiting in Public Contracting
G.S. 14-234(a)(1)

Making or administering a contract + Direct benefit to you or your spouse = Class 1 misdemeanor* & void contract*

There’s a direct benefit if you or your spouse:

1. Own more than 10% of the company,
2. Receive income or commission from the contract, or
3. Acquire property under the contract

*Unless an exception applies: banks and utilities, friendly condemnation, spouse employment, public assistance programs, small jurisdictions

3. Acquire property under the contract
Self-Benefiting in Public Contracting
G.S. 14-234(b), (d1)

Exceptions:

1. Contracts with banks, savings and loans, public utilities
2. “Friendly” condemnation
3. Employment of the spouse of a public officer (local elected & appointed officials only)
4. Payment for public assistance programs
5. “Small” jurisdictions (local elected & appointed officials only)
Conflicts of Interest in Contracting

1. Is there a contract between you or your spouse and your unit of government?
   - Yes
   - No
     - Yes: No Conflict
     - No: Did you:

2. Do you or your spouse receive a prohibited benefit directly under that contract?
   - Yes
   - No
     - Yes: No Conflict
     - No: Did you:

3. Are you involved in making or administering that contract?
   - Yes
   - No
     - Yes: No Conflict
     - No:

4. Does an exception apply?
   - Yes
   - No
     - Yes: No Conflict
     - No: STOP!

Class 1 misd. Void contract

Did you:

- Attempt to influence the award of a contract under which you or your spouse directly benefit?
- OR
- Solicit or receive a gift, favor, reward, or service in exchange for influencing (or attempting to influence) the award of a contract even if you or your spouse don’t directly benefit under that contract?

G.S. 14-234
Gifts and Favors from Contractors
G.S. 133-32

Prohibited Giver: Contractor or vendor who is:
1. Past (within 1 year)
2. Current
3. Potential future

Prohibited Recipient: Public officer or employee who:
1. Prepares plans or specifications for public contracts, or
2. Awards or administers public contracts, or
3. Inspects or supervises construction

= Class 1 misdemeanor, unless an exception applies
Gifts and Favors from Contractors: Exceptions

G.S. 133-32

- Honoraria
- Souvenirs
- Banquets
- Professional Organizations
- Family/Friends
Gifts & Favors Decision Tree

1. Is the giver of the gift a:
   • Past (within the previous 12 months),
   • Current, or
   • Potential future vendor or contractor with your unit?

   YES

   2. Are you involved in preparing or administering a contract (or inspecting or supervising a construction project) with the prohibited giver on behalf of your unit?

   YES

   3. Is there an exception?

   YES

   ✓ CAN accept the gift

   NO

   ✓ CAN accept the gift

   NO

   ✓ CAN accept the gift

   NO

   STOP!
   Class 1 misd.

G.S. 133-32
Transparency

- Your unit has put out a bid for road maintenance. A construction company requests copies of the current contract and all communications over the past two years with the current contractor, including all invoices and all amounts paid.
The Basics: Public Records

Any record made or received in the transaction of public business is subject to public access unless an exception applies.
The Public Agency’s Obligation

• Provide records
  – to anyone who requests them
  – “as promptly as possible”
  – in the medium requested if possible
  – charge only direct costs
A Framework For Responding to Public Records Requests

1. Does a record exist that corresponds to the request?
   
   If not, no disclosure is required. If so, continue to question 2.

2. Is the record “made or received in the transaction of public business?”

   If not, no disclosure is required. If so, continue to question 3.

3. Is there an exception that applies?

   If not, the requested access must be provided. If so, continue to question 4.

4. Does the exception apply to the entire record, or only to certain information, and does it prohibit disclosure or does it deny the right of access?

   If a prohibition applies to the entire record, do not disclose; if it applies only to certain information, redact and disclose. If there is no right of access to some or all of the information, but release is not prohibited, determine whether or not to release the entire or a redacted record.
Applying the Framework

- Your unit has put out a bid for road maintenance. A construction company requests copies of the current contract and all communications over the past two years with the current contractor, including all invoices and all amounts paid.
Applying the Framework

• Another bidder requests information about how many of the unit’s projects have come in over budget and how many changes orders, on average, the unit has requested over the past five years.

• No obligation to create new records

• Probably required to query databases.
Applying the Framework

- As the contract manager, you have reviewed all of the bids and have recommended award to the lowest responsible bidder. You have drafted a recommendation to the board and have emailed it to your supervisor for review before sending it to the board. The document is very favorable about the quality of the contractor’s previous work. The contractor asks for a copy of the draft recommendation to use as marketing for the company.
No exception for drafts
Applying the Framework

- A bidder who was not chosen for a recent project has filed a protest. The newspaper requests copies of emails about the contractor, including emails made or received on private email accounts and devices.
Content of the record

Not device or account on which it is made

Determines whether it is a public record
Applying the Framework

2. Is the record “made or received in the transaction of public business?”

As it turns out, the disappointed bidder is the mayor’s brother. Must she provide copies of all of her communications with her brother?
Applying the Framework

3. Is there an exception that applies?

The mayor’s brother is also bidding on an project in the informal bidding range. Because he doesn’t trust the staff to give him a fair review, he requests copies of all of the bids received to date.
An exception may provide that a record

- Is “not a public record”: agency is not required to provide access, has discretion to do so
  - Examples: Criminal investigation and intelligence records, utility billing information, economic development information, informal bids
- Is “confidential”: agency is prohibited from providing except as specifically authorized by law
  - Examples: Social security numbers, trade secrets, client information, juvenile information, certain health information
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Procurement Methods

**Type of Contract**

- **Purchase**
  - No Method Required*  
  - Formal Bidding G.S. 143-129
  - Informal Bidding G.S. 143-131
- **Construction/Repair**
  - No Method Required*  
  - Formal Bidding G.S. 143-129
  - Informal Bidding G.S. 143-131
- **Design Services**
  - Qualifications-Based Selection (Mini-Brooks Act G.S. 1343-64-31)
- **Everything Else**
  - No Method Required*

*Local policies may require competitive bidding or requests for proposals.*
Questions?