

Conflict of Interest

A. General

To avoid conflicts of interest state agencies should require all potential contractors to disclose, in their responses to solicitations, any actual or potential conflicts of interest in their proposed provision of services or other performance under any contracts resulting from the solicitations. Respondents should also be required to update that information throughout the terms of any contracts resulting from the solicitations.

Additionally under Section 2252.901, Texas Government Code, agencies may not enter into employment contracts, professional services contracts under Chapter 2254, or consulting services contracts under Chapter 2254 with former or retired employees before the first anniversary of the last date on which the individual was employed by the agency if appropriated funds are used to make payments under the contract.

Agencies should also require respondents to:

- Represent and warrant that their provision constitute an actual or potential conflict of interest and represent and warrant that it will not reasonably create even the appearance of impropriety of services or other performance under the agreement will not.
- Disclose any current or former employees who are current or former employees of the state.
- Disclose any proposed personnel who are related to any current or former employees of the state.
- Represent and warrant that they have not given, nor intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant or employee or representative of the State of Texas in connection with the solicitation.

Contractors should not be allowed to assign any portion of the contract or their performance, to others, for example, subcontractors, without the prior written consent of the agency. Contractors remain responsible for the performance of the contract notwithstanding any such assignment or subcontract. This ensures that the evaluated and selected entity will actually be responsible for performance and that proposed transactions may be reviewed for compliance with the conflict of interest and related party provisions.

B. Financial Advisors

When soliciting and contracting for the services of financial advisors, agencies should comply with Texas Government Code, Chapter 2263, (enacted by 78th legislature), regarding conflict of interest and related party provisions applicable to those financial advisors.

Financial advisors or service providers must disclose in writing to the administrative head of the state governmental entity and the State Auditor's Office (SAO) the following. For this purpose, "financial advisor or service provider" includes a person or business entity who acts as a financial advisor, financial consultant, money or investment manager, or broker.

(1) any relationship the financial advisor or service provider has with any party to a transaction with the state governmental entity, other than a relationship necessary to the investment or funds management services that the financial advisor or service provider performs for the state government entity, if a reasonable person could expect the relationship to diminish the financial advisor's or service provider's independence of judgment in the performance of the person's responsibilities to the state governmental entity; and

(2) all direct or indirect pecuniary interests the financial advisor or service provider has in any party to a transaction with the state governmental entity, if the transaction is connected with any financial device or service the financial advisor or service provider provides to the entity or member, in connection with the management or investment of state funds.

The state statute further provides that:

- Financial Advisor or Service Provider shall disclose a relationship (described above), without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship;
- Financial Advisor or Service Provider must file an annual statement with the administrative head of the governmental entity and with State Auditor's Office ((SAO) disclosing the relationships outlined above;
- If no relationship existed during the disclosure period, annual statement must state this fact affirmatively;
- Annual statement must be filed no later than April 15th (for the previous calendar year period) on a form prescribed by the entity.

C. Special Provisions for Certain Agencies

In addition to the above, some state agencies have special conflict of interest provisions that apply to their employees. These laws, rules or policies should be reviewed and followed by agency staff. See the Procurement Manual for additional information on conflict of interest.

<http://www.window.state.tx.us/procurement/pub/manual/>

For example, under Texas Government Code, Section 2155.003, a CPA employee may not have an interest in, or in any manner be connected with a contract or bid for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Any individual who interacts with public purchasers in any capacity is required to adhere to the

guidelines established in Section 1.2 of the State of Texas Procurement Manual which outlines the ethical standards required of public purchasers, employees, and vendors who interact with public purchasers in the conduct of state business. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers of CPA or purchasers of other state agencies.