

Oregon Department of Transportation  POLICY	NUMBER PER 01-02-02	SUPERSEDES 02/26/09
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	REFERENCE ORS Chapters 240, 244, 823.007, OAR 740-020-0010 to 740-020-0020; DAS Policy HRSD 10.000.01	
SUBJECT CODE OF CONDUCT	APPROVED SIGNATURE Signature on file	

PURPOSE

Public service requires public trust built on the transparency of state government programs and the integrity of employees. This policy has been developed to provide guidance on proper business and ethical conduct for Oregon Department of Transportation (Department) employees. The Department expects employees to meet these expectations when making daily business decisions on behalf of the public interest.

In some cases, the Department's work is accomplished by being outsourced to private sector companies or contractors. Therefore, this policy includes an additional focus on a type of conflict of interest known as "revolving door". This term refers to employees leaving the Department to join private sector employers that provide goods or services to the Department or employees joining the Department from private sector employers who provide goods or services to the Department.

BACKGROUND

Department employees are public officials who have the privilege and honor of serving the citizens of Oregon. As public officials, they are expected to uphold the public trust. It is the Department's expectation that employees exercise their official powers and use the Department's resources only to advance the public interest and carry out their duties fairly, without bias or favoritism.

Obviously, no policy can prescribe what shall be done on every occasion because circumstances vary. If employees need advice about a particular situation or circumstance, they are encouraged to contact their manager, supervisor, or the Director's Office "Ask ODOT for Employees" representative, before making a decision or taking action.

The Decision PLUS model was developed to assist employees making defensible business decisions. When making work-related decisions, Decision PLUS asks employees to consider the following questions:

P = Policies & Procedures

Is the decision consistent with the Department's policies, procedures, and guidelines?

L = Laws and Regulations	<i>Is the decision acceptable under applicable laws, rules, and regulations?</i>
U = Universal Values	<i>Does the decision conform to the Department's mission, values, and concern for public perception?</i>
S = Self Standards	<i>Does the decision satisfy my personal definition of right, good, and fair?</i>

No aspect of this policy is intended to conflict with the provisions of collective bargaining agreements. For those employees represented by a union, it may be necessary to also consult the current collective bargaining agreement for more information. If a conflict between this policy and applicable contract provisions exist, the contract shall prevail.

Violation of this policy by an employee may result in corrective or disciplinary action, up to and including termination of employment.

POLICY

General Employee Responsibilities

An employee shall not:

- Engage in an act as a public official outside of his/her official capacity.
- Use the prestige or influence of the State or their position as a public official for private gain or advantage or for the private gain or advantage of another.
- Disclose confidential Department information to anyone to whom issuance of this information has not been authorized.
- Use state time, information, materials, services, facilities, equipment, vehicles, or supplies for his/her private gain or advantage or the private gain or advantage of another, unless allowed by other policies or a department-approved program.
- When committing state resources, except with prior written permission of his/her manager or supervisor, contract with or purchase from another Department employee or that employee's relatives or a member of household.
- Have, except with prior written permission of his/her manager or supervisor, oversight authority or input in the hiring of, or purchasing from, contractors who are relatives or members of their household.
- Engage in any outside activity or employment knowing that this activity or employment may later be directly or indirectly subject to a control, inspection, review, audit or enforcement by the employee in their official capacity.

- Be in a position of direct hierarchical decision-making authority related to the selection, promotion, transfer, grievance resolution, work assignment, work evaluation, or other activities that relate to the terms and conditions of employment of a relative or a member of the household.
- Exert influence in any employment related action concerning a relative or a member of the household and should avoid even the perception of influence regarding a relative or member of the household.
- Directly or indirectly solicit or receive any gift(s) with a combined total value from a single source in excess of \$50 in any calendar year from anyone who has interest in state business or that the employee should reasonably have known has such interest, or from anyone with whom the Department does business. Nor shall a relative or member of the household of the employee, directly or indirectly solicit or receive any gift(s) with a combined total value from a single source in excess of \$50 from anyone who has interest in state business or that the employee should reasonably have known has such interest, or from anyone with whom the Department does business.

Managers shall:

- Insure competitive recruitment processes for employment opportunities wherever possible and appropriate based on DAS and ODOT policies and collective bargaining agreements.

All employees may:

- Accept an honorarium as a result of participating in an event in his/her official capacity; he/she shall then turn it over to the Department's Financial Services Branch for deposit into the Department's account.

Conflict of Interest

Oregon Revised Statutes (ORS) Chapter 244 defines actual and potential conflicts of interest for all public officials. Those statutes are administered by the Oregon Ethics Commission and additional guidance is provided in "A Guide for Public Officials"

In addition, other statutes and administrative rules, for example ORS 823.007 and Oregon Administrative Rules (OAR) 740-020-0010 to 740-020-0020, relate to the Department's enforcement of economic regulation of motor carriers, apply to conduct or activities which may constitute actual and potential conflicts of interest for Department employees. It is not the intent of this policy to supplant those statutory provisions.

The Revolving Door

When employees of firms which compete for, or have, contracts with the Department come to work for the Department and when Department employees go to work for firms which compete for, or have, contracts with the Department, questions may arise about where information is obtained, what actions are taken, what decisions are made, and whether any unfair competitive benefit or advantage is gained by the employer or employee in both the prior and new employment environment.

The Department's objective is to limit and, when possible, eliminate any perception that there is an advantage gained by a contractor or employee because of job transitions. So, the following policy is adopted and applied based on two categories of employees: outgoing and incoming employees.

Outgoing (Former) Department Employees

The Department's procurement office shall develop and include language in all procurements and contracts requiring contractors to declare if a former Department employee works for the contractor and an explanation of the role the employee now serves for the contractor. The specification shall specify when and how such declaration shall be made for each procurement, and shall only require such identification within one year of the date such former employee leaves employment with the Department. Each contractor declaration shall include a signed statement by the former Department employee of their proposed role for the contractor in the particular procurement and any resulting contract.

The specification shall also state that use of a former Department employee by the contractor on the same, or substantially similar procurement, for which the employee performed a role or function for the Department, unless mitigated to the satisfaction of the Department, is prohibited for one year following separation of employment with the Department. Roles and functions of particular concern include drafting specifications, reviewing or scoring a bid or proposal, authorizing service or assigning work, or awarding a contract. The Department may decide that the role or procurement is not substantially similar because of differences in location of the project or work, or because of the type and method of procurement, or because the role performed was minor in nature, such as a technical sufficiency review. Examples of mitigation that may, in appropriate situations, be acceptable to the Department include separation of certain decision-making functions on the project, not using the employee in preparation of proposals but allowing them to perform work on a project, and not having the employee have direct contact with Department staff formerly under his/her supervision.

Failure of a contractor to disclose such relationship or to remedy a violation of the specification will result in the rejection of the contractor's bid or cancellation of the contract with the Department as well as being grounds for cancellation of contractor prequalification or designation of a contractor as ineligible for future procurements as not being a responsible bidder.

Also, a person may not have a direct beneficial financial interest in a public contract that was authorized by such person acting in the capacity of a public official or as a member of a board, commission, or other governing body of a public body of which the person was a member when the contract was authorized, for two years after the person ceases to hold a position as a public official. This prohibition does not apply if the person did not take part as a member of the authorizing governing body in the authorization of the contract.

Incoming Department Employees

Employees entering employment with the Department may not, for one year following employment with a Department contractor, prepare plans or specifications, review or score a bid or proposal, or award a contract for a Department procurement where their former employer may submit, or has submitted, a bid or proposal, without declaring the potential conflict and receiving a statement of approval or mitigation by the Appointing Authority.

Should a Department employee learn of a contractor/former employer bid or proposal submission on which the employee has worked or may be asked to perform work, he/she shall inform the Appointing Authority at once and take no further action on the procurement or other decision making related to the procurement without approval or mitigation by the Appointing Authority.

Supplemental Employment

A Department employee whose current role relates to a regulatory function, a procurement function, or a departmental service for which the employee authorizes or assigns work may not make decisions or take actions on behalf of the Department on a business or activity under which the employee holds a supplemental job or has ownership or part ownership of a business, through or under which the employee derives payment, wages, benefits, or interests.

DEFINITIONS

Appointing Authority: An officer or agency having power to make appointments to position in the state service or to take other personnel actions.

Conflict of Interest: An *actual conflict of interest* is any action, decision, or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private monetary or financial benefit or detriment of the person, the person's relative, or any business with which the person or a relative is associated.

A *potential conflict of interest* is any action, decision, or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private monetary or financial benefit or detriment of the person, the person's relative, or any business with which the person or a relative of the person is associated. Potential conflict of interest is from the perspective of a reasonable person who has knowledge of the relevant facts.

Gift: Something of economic value given to a public official or relative or member of the household, including the full or partial forgiveness of indebtedness, which is not extended to

others who are not public officials or the relatives or member of the household of the public official on the same terms and conditions. It is also something of economic value given to a public official or relative of member of the household of the public official, for less than that required from others who are not public officials. It also means something received that the public cannot obtain for the same price or conditions. Gift does not include certain items, including: an employee's salary; presents from relatives or members of the household of the public official; and under certain circumstances, food or beverage consumed by a public official acting in an official capacity.

Honorarium: A payment or something of economic value given to a public official in exchange for assistance rendered which custom or propriety prevents the setting of a price. Assistance rendered includes, but is not limited to, speeches or aid given in connection with an event.

Member of the Household: Any person who resides with the public official.

Public Official: Any person who serves as a Department employee, as an elected official, appointed officer, agent, or in any other capacity, irrespective of whether the person is compensated or not. Private sector companies, contractors, and individuals seeking permits from the Department are not public officials.

Relative: The spouse or domestic partner of the public official; any children of the public official or of the public official's spouse or domestic partner; and brothers, sisters, half brothers, half sisters, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, mothers-in-law, fathers-in-law, aunts, uncles, nieces, nephews, stepparents, stepchildren, or parents of the public official or of the public official's spouse or domestic partner.

GUIDELINES

An employee shall inform his/her manager or supervisor, in writing, of any situations discussed in the above General Employee Responsibilities, Revolving Door, or Supplemental Employment sections. The manager shall respond to employee's inquiry in writing. The manager or supervisor may mitigate the situation by assigning another employee to be responsible for the work or by giving instructions on how to resolve the issue. The manager shall seek the assistance of the Appointing Authority, in consultation with Human Resources, the ODOT Chief Procurement Officer, or an *Ask ODOT for Employees* representative as appropriate.

If an employee believes this policy has been violated or does not agree with an Appointing Authority determination, the employee may provide a summary of the situation and information as to why the employee does not agree to the Deputy Director of Central Services Division (Deputy) to review the determination. The Deputy shall review the situation and respond in a timely manner to the employee.

RESPONSIBILITY **ACTION**

Managers and Supervisors Make sure each employee understands the expectations contained in this policy and acts accordingly. Periodically review the Department's mission and values with each unit, crew, or employee team, and discuss and clarify guidelines and instructions contained in this policy. Seek written approval from the Appointing Authority and proper staff on behalf of an employee when mitigation of a situation is requested.

All Employees Understand and follow this policy. Seek advice from their manager, supervisor, Human Resources Branch, Chief Procurement Officer, or an Ask ODOT for Employees representative if questions occur about proper actions.

OTHER RESOURCES:

- 1) ***Ask ODOT for Employees:***
<http://transnet.odot.state.or.us/odot/askforemployees/default.aspx>

- 2) **Decision PLUS Model** located in the Human Resources Handbook Chapter 1, Section 03.
<http://transnet.odot.state.or.us/cs/ODOTHR/HR%20Handbook/Forms/Chapter.aspx>

- 3) ***“Guide for Public Officials”*** :

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- 4) **SUP 10-02** Rental of Fleet Equipment from/to Commercial and Government Sources:
<http://transnet.odot.state.or.us/cs/BSS/Policies%20and%20Procedures/SUP%2010-02.pdf>