

Georgia Department of Community Health

DCH Ethics In Procurement Policy	Policy No. 402
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I. THE COMMITMENT

The Department is committed to a procurement process that fosters fair and open competition, is conducted under the highest ethical standards, is fully compliant with all legal authority, and has the complete confidence and trust of the public it serves. To achieve these important public purposes, it is critical that current vendors and those making proposals to provide goods or services to the Department, as well as employees of the Department, members of the Board of Community Health, and independent contractors, consultants and temporary staffing agency employees currently on an assignment with DCH, have a clear understanding and an appreciation of, the DCH Ethics in Procurement Policy (the “Policy”).

II. SCOPE

This Policy is applicable to all Vendors and DCH Workers, as those terms are defined below.

III. ETHICAL PROCUREMENT STANDARDS

In order to maintain an ethical procurement process, DCH Workers and Vendors must act in accordance with the following standards:

A. Fulfilling Legitimate Business Needs

The procurement of goods and services will be limited to those necessary to accomplish the mission, goals, and objectives of the Department.

B. Identifying and Resolving Conflicts of Interest

Conflicts of interest shall be promptly identified and resolved early in the Procurement process. A “conflict of interest” exists when an individual possesses personal, financial or professional interests that compete, conflict or otherwise interfere with the individual’s actual or perceived ability to act in the best interests of the Department or carry out that individual’s duties in an impartial manner. A conflict of interest situation can arise when an individual takes actions or has interests that may make it difficult to perform his or her work objectively and effectively. Conflicts of interest also arise when an individual, or a

family member of that individual, receives personal benefits as a result of the individual's action, decision, or disclosure of Confidential Information in a Procurement.

C. Avoiding the Appearance of Impropriety

DCH Workers must take care to avoid any appearance of impropriety and must promptly disclose to their supervisors any material transaction or relationship that reasonably could be expected to give rise to a conflict of interest. Similarly, anyone engaged in a business relationship with the Department should avoid any appearances of impropriety.

D. Maintaining Impartiality

DCH Workers must maintain an impartial, arms' length relationship with anyone seeking to influence the outcome of a Procurement.

E. Declining Gifts

DCH Workers are prohibited at all times from soliciting, demanding, accepting, or agreeing to accept Gifts from Vendors, including Gifts from consultants, independent contractors or temporary staffing agency employees currently on assignment with DCH.

F. Avoiding Misrepresentations

DCH Workers and Vendors may not knowingly falsify, conceal or misrepresent material facts concerning a Procurement.

G. Obtaining Sufficient Authorization

DCH Workers may not obligate the Department without having received prior authorization from an approved official. Engaging in such activity is a misrepresentation of authority. DCH Workers who are consultants, independent contractors or temporary staffing agency employees shall not represent themselves as having the authority of a DCH employee.

H. Reporting Possible Conflicts of Interests

DCH Workers and Vendors involved in Procurements must promptly report possible conflicts of interests to DCH in accordance with Section V "General Requirements" of the Policy.

A DCH Worker's failure to act in accordance with these standards, or failure to follow the guidelines set forth herein shall be grounds for disciplinary action, up to and including, termination of the working relationship with DCH. Similarly, a Vendor's failure to comply with this Policy will result in appropriate action as determined by governing state and/or federal law, rules and regulations, and other applicable Department policies and procedures.

IV. DEFINITIONS

For purposes of this policy:

“Affiliate Vendor Team” shall include, but not be limited to, owners, employees, directors, officers, contractors, and consultants of a Vendor that directly or indirectly assist the Vendor in the preparation of response to a Procurement. For individual consultants, independent contractors and temporary staffing agency workers, the “Affiliate Vendor Team” includes the owners, employees, directors, officers, contractors and consultants of the company for whom the individual consultant, independent contractor or temporary staffing agency worker works.

“Confidential Information” shall mean all information not subject to disclosure pursuant to the Open Records Act, O.C.G.A. §50-18-70 et seq. For all Procurements governed by the State Purchasing Act, O.C.G.A. §50-5-50 et seq., “Confidential Information” shall also include records related to the competitive bidding and proposal process which, if disclosed prior to the issuance of the public notice of intent to award would undermine the public purpose of obtaining the best value for the Department. Such records include, but are not limited to, cost estimates, bids, proposals, evaluation criteria, evaluations of Vendors’ bids/proposals, negotiation documents, offers and counter-offers, and records revealing preparation for the Procurement.

“DCH” and “Department” shall mean the Georgia Department of Community Health.

“DCH Worker” shall mean any person who works for the Department as an employee or as an independent contractor, consultant or temporary staffing agency employee on assignment with the Department, as well as members of the Board of Community Health.

“DOAS” shall mean the Georgia Department of Administrative Services.

“Evaluation Team” shall mean a designated group of DCH Workers who review, assess, and score documents submitted to the Department in response to a Procurement Solicitation. An Evaluation Team for a Staffing Recruitment includes the individuals responsible for reviewing resumes submitted in response to the Staffing Recruitment Solicitation, interviewing prospective staffing agency workers, and approving the selection of the individuals.

“Family Member” shall mean a spouse, adult living in the household of the DCH worker, and relatives of the DCH Worker, his or her spouse, or an adult living in the household of the DCH Worker. Relatives include the following: parent/stepparent, grandparent, child, grandchild, brother (full, half, step), sister (full, half, step), uncle, aunt, nephew, niece, and first cousin.

“Financial Interest” shall mean an ownership interest in assets or stocks of the Vendor, current employment with the Vendor, or prospective employment with the Vendor.

“Financial Interest” does not include an ownership interest in a Vendor that is part of a widely held investment fund (such as a mutual fund, regulated investment company, common trust fund maintained by a bank or similar financial institution, pension or deferred compensation plan, or any other investment fund), if the individual has no ability to control the financial interests held by the fund AND (A) The fund is publicly traded or available; or (B) The assets of the fund are widely diversified, meaning it holds no more than 5% of the value of its portfolio in the securities of any one issuer, other than the U.S. Government, and no more than 20% in any particular economic or geographic sector.

“Gifts” shall mean anything of value, including but not limited to the following: goods, money, advances, personal services, entertainment, lodging, parking, real property or the use thereof, commissions, promises of future employment, stocks, bonds, notes or other investment interests in an entity, rights of action, intellectual property, gratuities, loans, extensions of credit, forgiveness of debts, memberships, subscriptions, travel or means of personal transportation, meals, tickets to events, charitable donations, refreshments, hospitality, and promises, discounts or forbearance that are not generally available to members of the public. A Gift need not be intended to influence or reward a DCH Worker.

“Issuing Officer” shall mean the Procurement Professional designated in the Procurement Solicitation to be the Vendor’s only point of contact with the Department following the public advertisement of the Procurement Solicitation until such time as the results of the Procurement Solicitation are publicly announced or the Procurement Solicitation is cancelled. The Issuing Officer is responsible for managing all communication during this time period, including, but not limited to, answering Vendors’ questions, contacting Vendors for clarification requests, negotiations, and contract discussions.

“Kickback” shall mean compensation of any kind directly or indirectly accepted by a DCH Worker from or on behalf of a Vendor seeking/competing for or doing business with the Department, for the purpose of influencing the award of a contract or the manner in which the Department conducts its business. Kickbacks include, but are not limited to, money, fees, gifts, employment opportunities for a DCH Worker or Family Member, commissions or credits. DCH Workers who are employed by a Vendor, such as consultants, independent contractors and temporary staffing agency workers, may receive payment from the Vendor associated with the work performed on a DCH assignment. However, any payment received by the consultant, independent contractor or staffing agency worker as a result of another DCH Worker’s services for the Department may be a prohibited kickback. For example, a consultant who owns a consulting company may receive compensation for his or her work on an assignment with DCH. However, if he or she employs an individual who then becomes a consultant for DCH, any mark-up or payment received as a result of the employee’s services for DCH shall be disclosed for evaluation by DCH and may be considered a kickback.

“Procurement” shall mean buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. The term also includes all activities that pertain to

obtaining any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, as well as the disposition of any Protest. A Procurement is not limited to, but specifically includes, procurements which are either exempt or non-exempt either by statute or under DOAS rules, a procurement of professional services, a Staffing Recruitment and procurements under any other approved procurement vehicle.

“Procurement Manual” shall mean the most current version of the Georgia Procurement Manual released by DOAS.

“Procurement Professional” shall mean the Department’s Office of Procurement Services (OPS) staff member assigned to and responsible for managing the Procurement process, including, but not limited to, needs identification and fact-finding, market research, requests for information, development of requirements and specifications, determination of the Procurement strategy and management of the Procurement solicitation, evaluations and awards. The Procurement Professional is charged with adhering to the highest ethical standards and ensuring that Procurements are executed in a fair and impartial manner, consistent with applicable laws, rules and regulations, which may include the Georgia Procurement Manual (GPM), the Georgia State Purchasing Act and Department procurement policies.

“Procurement Solicitation” shall mean the Department’s solicitation of offers from Vendors for the needed supplies, services or construction. Procurement Solicitation shall include, but not be limited to, requests for quotes, requests for qualified contractors, requests for proposals, requests for approvals, requests for pre-qualifications, reverse auctions and any other approved solicitation method.

“Prohibited Contact” applies only to a Procurement subject to DOAS rules and refers to a Vendor’s contact with DCH Workers other than through the Issuing Officer after the public advertisement of a Procurement Solicitation and until such time as the results of the Procurement Solicitation are publicly announced or the Procurement Solicitation is cancelled. During that time period, “Prohibited Contact” shall mean contact with any DCH Worker, other than the Issuing Officer, whereby it could be reasonably inferred that such contact was intended to influence, or could reasonably be expected to influence, the outcome of a Procurement Solicitation. This prohibition includes, without limitation, personal meetings, meals, entertainment functions, telephonic communications, letters, faxes and e-mails, as well as any other activity that exposes the DCH Worker to direct contact with a Vendor. This prohibition does not include contacts with DCH Workers for the purpose of discussing existing on-going Department work which is unrelated to the subject of the Procurement Solicitation or existing consulting assignments. Inquiries regarding the status of a Procurement should always be directed to the Issuing Officer.

“Protest” shall mean a written objection by an interested party to Procurement Solicitation, or to a proposed award or award of a contract, with the intention of receiving a remedial result.

“Protestor” shall mean an actual bidder/offeror who is aggrieved in connection with a Procurement Solicitation or intended or actual contract award and who files a Protest.

“Requirements Team” shall mean a designated group of DCH Workers who develop a Procurement Solicitation. A Requirements Team for the selection of professional services, consultant or temporary staffing agency employee includes the individuals responsible for drafting the request for such professional, consultant or staffer and approving the posting of the request. A DCH Worker is not a member of a Requirements Team simply because he or she identifies potential Vendors or meets with potential Vendors or current Vendors to discuss Departmental needs and review relevant information. A Requirements Team is formed once it is determined that a Procurement Solicitation or request for services is necessary to meet a Departmental need.

“Staffing Recruitment” shall mean a Procurement for the specific purpose of selecting temporary staffing agency employees in accordance with DOAS statewide contracts.

“Staffing Recruitment Professional” shall mean the Department’s Office of Human Resources staff member assigned to and responsible for managing the Staffing Recruitment process. The Staffing Recruitment Professional is charged with adhering to the highest ethical standards and ensuring that Staffing Recruitments are executed in a fair and impartial manner, consistent with applicable laws, rules and regulations.

“Staffing Recruitment Solicitation” shall mean a Procurement Solicitation for the specific purpose soliciting offers as part of a Staffing Recruitment.

“Vendor” shall mean any individual or entity seeking to do business or doing business with the Department, including, without limitation, contractors, professionals, consultants, suppliers, manufacturers seeking to act as the primary contracting party, officers and employees of the foregoing, any subcontractors, sub consultants and sub suppliers at all lower tiers, as well as any person or entity engaged by the Department to provide a good or service. A professional, consultant or temporary staffing agency and its employee who desires to be placed on an assignment with DCH is a Vendor. Once selected, the professional, consultant or temporary staffing agency employee remains a Vendor, but is also a DCH Worker.

V. General Requirements

A. *Responsibilities of Procurement Professionals, Staffing Recruitment Professionals and DCH Workers who are on a Requirements Team or Evaluation Team*

1. Procurement Professionals and Staffing Recruitment Professionals must ensure that DCH Workers participating in any Procurement activities have sufficient understanding of the Procurement and evaluation process and the applicable DCH and DOAS rules and regulations and policies associated with the processes.

2. Requirements Team members are tasked with developing standards of work, Procurement Solicitations and related documents in an objective and impartial manner. Typically, a Procurement Professional or Staffing Recruitment Professional facilitates the activities of a Requirements Team and a designated DCH Worker who is a Requirements Team member serves as the Head of the Requirements Team. Often, Requirements Team members are uniquely qualified to develop this material because of their experience with the industry. This experience may have been gained through employment or performance of services with Vendors. These Requirements Team members also maintain professional relationships that enable them to gather valuable information about current products and services. While participating on the Requirements Team, it is essential that Requirements Team members use their experiences and contacts solely to benefit the Department. They must place aside any personal and/or professional biases or prejudices that may exist when developing standards of work, Procurement Solicitations and related documents. A DCH Worker serving on a Requirements Team must not allow the DCH Worker's or Family Member's personal or professional relationships (e.g., friendships, dating, prior or current employment) with employees, principals, directors, officers, etc. of a Vendor or individuals on the Affiliate Vendor Team to interfere with the ability to prepare these Procurement Solicitations fairly and objectively in the interests of the Department. Such relationships may give rise to the appearance of, and/or create an actual conflict of interest and must be promptly disclosed in writing to the designated Procurement Professional or Staffing Recruitment Professional and the Head of the Requirements Team prior to the DCH Worker's participation on the Requirements Team using the Attestation Form attached as Exhibit A to this Policy (or Exhibit C to this Policy for a Staffing Recruitment), or a similar form provided by the Ethics Officer.
3. The designated Procurement Professional or Staffing Recruitment Professional shall consult with the Ethics Officer before making a determination as to whether a DCH Worker who has made any written disclosures on the Attestation Form or for whom there is a potential conflict of interest is permitted to participate on the Requirements Team. The Ethics Officer will make a determination as to whether an actual conflict or appearance of a conflict exists, and will notify the designated Procurement Professional or Staffing Recruitment Professional and the Head of the Requirements Team. The Ethics Officer may recommend actions that are necessary to assure the objectivity and fairness of the Procurement Solicitation and to prevent the appearance of a conflict of interest. If an actual conflict or appearance of conflict exists, it is the responsibility of the designated Procurement Professional or Staffing Recruitment Professional to exclude the individual from the Requirements Team or prepare a written description of the actions that will be taken to "cure" the conflict and assure the objectivity and fairness of the Procurement Solicitation. The designated Procurement Professional or Staffing Recruitment Professional shall maintain this written description of actions and ensure compliance with its terms. In some cases, disclosure of the conflict may be sufficient to "cure" the conflict.

4. Evaluation Team members are tasked with conducting objective, impartial evaluations, and, therefore, must place aside any personal and/or professional biases or prejudices that may exist. A DCH Worker serving on an Evaluation Team must not allow the DCH Worker's or DCH Worker's Family Member's personal or professional relationships (i.e. friendships, dating, prior or current employment) with employees, principals, directors, officers, etc. of a Vendor or individuals on the Affiliate Vendor Team to interfere with the rendering of fair and objective determinations. Such relationships may give rise to the appearance of, and/or create an actual conflict of interest and must be promptly disclosed in writing to the designated Procurement Professional or Staffing Recruitment Professional and the Head of the Evaluation Team prior to the Worker's participation on the Evaluation Team using the Attestation Form attached as Exhibit B to this Policy (or Exhibit C to this Policy for a Staffing Recruitment), or a similar form provided by the Ethics Officer.
5. The designated Procurement Professional or Staffing Recruitment Professional shall consult with the Ethics Officer before making a determination as to whether a DCH Worker who has made any written disclosures on the Attestation Form or for whom there is a potential conflict of interest is permitted to participate on the Evaluation Team. The Ethics Officer will make a determination as to whether an actual conflict or appearance of a conflict exists, and will notify the designated Procurement Professional or Staffing Recruitment Professional and the Head of the Evaluation Team. The Ethics Officer may recommend actions that are necessary to assure the objectivity and fairness of the Evaluation and to prevent the appearance of a conflict of interest. If an actual conflict or appearance of conflict exists, it is the responsibility of the designated Procurement Professional or Staffing Recruitment Professional to exclude the individual from the Evaluation Team or prepare a written description of the actions that will be taken to "cure" the conflict and assure the objectivity and fairness of the Evaluation. The designated Procurement Professional or Staffing Recruitment Professional shall maintain this written description of actions and ensure compliance with its terms. In some cases, disclosure of the conflict may be sufficient to "cure" the conflict.
6. In the event that the Department determines that a conflict of interest does exist and a DCH Worker on a Requirements Team or Evaluation Team failed to make the appropriate disclosure, the Department will evaluate whether the conflict is of sufficient magnitude to disqualify the DCH Worker from further participation on the Requirements Team and/or the Evaluation Team. Furthermore, in the event that the Department determines that the conflict of interest did negatively impact the final Procurement Solicitation or the outcome of a Procurement, such DCH Worker may be subject to disciplinary action, up to and including termination of employment.
7. In the event the Department becomes aware that a DCH Worker maintains a relationship of any sort that may be a conflict of interest or may have the appearance of a conflict of interest with respect to a Procurement, the designated Procurement Professional or Staffing Recruitment Professional shall consult with

the Ethics Officer, after which the Ethics Officer will make a determination as to whether an actual conflict or appearance of a conflict exists. Based on that determination and the impact of the conflict or the appearance of a conflict, the Ethics Officer may recommend actions that are necessary to cure the conflict or the appearance of a conflict. If an actual or appearance of a conflict exists, it is the responsibility of the designated Procurement Professional or Staffing Recruitment Professional to take appropriate action, up to and including the disallowance of the DCH Worker's participation in any Procurement activities.

8. Prior to participating on a Requirements Team or an Evaluation Team, each DCH Worker (including the Head of the Requirements Team and Head of the Evaluation Team) and the designated Procurement Professional or Staffing Recruitment Professional must execute the appropriate Attestation Form in Exhibit A or B to this Policy (or Exhibit C to this Policy for a Staffing Recruitment).

B. Responsibilities of DCH Workers who are not on a Requirements Team or Evaluation Team

All DCH Workers should be mindful of the importance of confidentiality during any Procurement. Even if a DCH Worker is not serving in the capacity of a member on the Evaluation Team or Requirements Team, all DCH Workers must refrain from engaging in conduct with a Vendor that could result in a conflict of interest or be considered a Prohibited Contact.

C. Responsibilities of DCH Workers who are also Vendors

A DCH Worker who is a consultant or temporary staffing agency employee on an assignment with DCH is also a Vendor. Consultants or temporary staffing agency employees shall provide professional, objective and impartial advice and services, and at all times hold the Department's interests paramount, without any consideration for future work for themselves or members of the Vendor Affiliate Team. In addition to the general obligations of a DCH Worker and Vendor, such individuals shall do the following in order for the Department to identify potential or perceived conflicts of interest that may impact procurements:

1. Disclose to the supervising DCH employee and Director of Human Resources every current and former employer
2. Disclose to the supervising DCH employee and Director of Human Resources the name of every current DCH Worker with whom the individual or the individual's Family Member has a current or pre-existing personal or professional relationship
3. Disclose to the supervising DCH employee and Director of Human Resources any project for another client that may give rise to an actual or perceived conflict of interest

4. Appropriately identify him or herself as an employee of the entity that actually pays his or her compensation and state that he or she is on a contract assignment with DCH
5. Ensure that he or she only performs work that is within the scope of the current assignment
6. Coordinate with the supervising DCH employee to ensure that his or her level of access to Confidential Information is limited to the scope of the current assignment

D. *DOAS rules applicable*

DOAS rules and regulations may apply to a Procurement, which DOAS rules and regulations may also be applicable to conflicts of interest and may be more restrictive than the provisions of this Policy. It is the responsibility of all DCH Workers to comply with DOAS rules and regulations, when applicable.

VI. VENDOR RESPONSIBILITIES

A. *Gifts and Kick-Backs*

Vendors may neither offer nor give any Gift or Kick-backs, directly or indirectly, to a DCH Worker. Similarly, no Vendor may offer or give any Gift or Kick-backs, directly or indirectly, to any member of a DCH Worker's Family. Such prohibited activity may result in the termination of the contract, in those cases where the Vendor has executed a contract with the Department. In the event that a potential Vendor who has submitted a response to a Procurement Solicitation engages in such activity, the Department shall act in accordance with DOAS protocol.

B. *Family Relationships with DCH Workers*

If a Vendor has a family or personal relationship with a DCH Worker, a Gift that is unconnected with the DCH Worker's duties at the DCH is not necessarily prohibited. In determining whether the giving of an item was motivated by personal rather than business concerns, the history of the relationship between the Vendor and DCH Worker shall be considered. However, regardless of the family or personal relationship between a Vendor and a DCH Worker, a Gift is strictly forbidden where it is being given under circumstances where it can reasonably be inferred that it was intended to influence the DCH Worker in the performance of his or her official duties.

C. *Vendor Submittals*

The Department expects all Vendors to be forthcoming, always submitting true and accurate information in response to a Procurement Solicitation or with regard to an existing business relationship. If the Department determines that the Vendor has intentionally omitted or failed to provide pertinent information and/or falsified or misrepresented material information submitted to the Department, the Department shall

act in accordance with applicable state law and DOAS procurement policies and procedures.

Vendors must calculate the price(s) contained in any bid in accordance with the Georgia Procurement Manual.

D. *Business Relations*

A Vendor may not be allowed to conduct business with the Department for the following reasons:

1. Falsifying or misrepresenting any material information to the Department as set forth hereinabove;
2. Conferring or offering to confer upon a DCH Worker participating in a Procurement (which the entity has bid or intends to submit a bid) any Gift, gratuity, favor, or advantage, present or future; and
3. Any other reasons not explicitly set forth herein that are contained in the Georgia Procurement Manual or applicable Department policy.

E. *Prohibited Contact*

The Vendor is precluded from engaging in Prohibited Contact upon the release of a Procurement Solicitation or posting of a request for consulting or temporary staffing services, during the evaluation process, and any time prior to the Department's public announcement of the results of the Procurement Solicitation, filling of the temporary position, or the Department's cancellation of the Procurement Solicitation.

VII. USE OF CONFIDENTIAL INFORMATION

DCH Workers will not use Confidential Information for their own advantage or profit, nor will they disclose Confidential Information to any potential Vendor or to any unauthorized recipient. DCH Workers will comply with all confidentiality requirements set forth in DCH policies and applicable law.

VIII. ADDRESSING VIOLATIONS

A. *The Process*

All DCH Workers are responsible for bringing violations to the attention of the Issuing Officer under Procurement protocols, the Procurement Professional or the Staffing Recruitment Professional or to a supervisor/manager if the affected DCH Worker is not a part of the Procurement. The supervisor/manager and/or the designated Procurement Professional or Staffing Recruitment Professional shall promptly report such violation to

the Ethics Officer. If for any reason it is not appropriate to report a violation to the DCH Worker's immediate supervisor or the designated Procurement Professional or Staffing Recruitment Professional, DCH Workers will report such violations or concerns to the Ethics Officer or the Office of Inspector General. Procurement Professionals, Staffing Recruitment Professionals and managers are required to report suspected ethics violations to the Ethics Officer and the Office of Inspector General, who have specific responsibility for investigating all reported violations.

Confirmed violations will result in appropriate disciplinary action, up to and including termination from employment. In some circumstances, criminal and civil penalties may be applicable.

The Ethics Officer or Inspector General will notify the DCH Worker making the report of the suspected violation of receipt of such report. All reports will be promptly investigated and appropriate corrective action will be taken if warranted by the investigation.

B. *Good Faith Filings*

Anyone filing a complaint concerning a violation of this Policy must be acting in good faith and have reasonable grounds for believing the information disclosed indicates a violation. Good faith reporting of suspected policy violations by others shall not jeopardize a DCH Worker's employment with the Department. However, any allegations that prove not to be substantiated and which prove to have been made maliciously or knowingly to be false will be viewed as a serious disciplinary offense.

C. *Confidentiality*

Violations or suspected violations may be submitted on a confidential basis by the complainant or may be submitted anonymously. Reports of violations or suspected violations will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation. Additionally, all DCH Workers are expected to cooperate in the investigation of such violations. Failure to cooperate in an investigation may result in disciplinary action, up to and including termination from employment.