

Contracting and Conflicts

for Human Services Directors and Administrators

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SCHOOL OF
GOVERNMENT



Our Roadmap



Public Procurement Processes



Ethical Standards for Public Officials



Conflict of Interest Regulations

**Why do we have
competitive bidding
laws?**



A background image of pink cherry blossoms on thin, dark branches. The blossoms are in various stages of bloom, with some fully open and others as buds. The background is a soft, out-of-focus light brown or tan color.

Procurement & Contracting

The Role of Procurement Officials

“Getting the right work done at the right time at the right price.”

- Strategic partner in local government, with both internal and external “customers”
- Steward of public funds with the goal of maximizing the value of public spend
- Responsible for sourcing suppliers and materials for activities that benefit the public’s health and safety
- Follow NC laws and federal regulations for procurement

Centralized



**Decentralized
Or Delegated**

Rowan County

- The **Department of Social Services (DSS)** Director has been delegated authority from the Board to purchase goods, property and services related to serving children and families under \$90,000. However, such purchases shall follow all aspects of the purchasing policy.
 - The **Public Health Director** has been delegated authority from the Board to purchase goods, property and services related to providing public health services under \$90,000. However, such purchases shall follow all aspects of the purchasing policy.
 - Does not include services for architect, engineer or surveyor; construction projects; or legal fees.
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Onslow County

- *Other Departmental and Agency's Authority to Contract:* Certain directors and agencies that are under the Onslow County Board of Commissioners' budgetary authority have the legal ability to contract in the name of that agency, department or director; however, these agencies must still follow local policy as described above.
 - *Department of Social Services:* contracts as Name of the Current Director, Director on behalf of the Onslow County Department of Social Services.
 - *Public Health:* contracts as Name of the Current Director, in the official capacity as the Health Director, on behalf of the Onslow County Health Department.
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Energy Programs Contracting and Vendor Agreements

- *Vendor Agreement*: a vendor agreement may be used as the contracting instrument only with private agencies (for-profit or non-profit) or an individual
- *Purchase Contract*: a Purchase Contract may be used when the contract provider is a public agency, private agency, or individual.

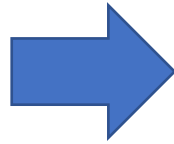
Required Contract Provisions

- [Breach of Contract](#)
 - [Termination of Contract](#)
 - [Non-Discrimination](#)
 - [Audits and Reviews](#)
 - [Contract Approval](#)
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The Procurement Puzzle: Essential Questions to Ask

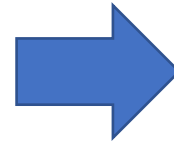
WHAT...

- Is the authority for expenditure?
- Is the source of funding?
- Is being procured?
- Is the cost?



WHAT...

*Is the
procurement
method?*



HOW...

Do we procure,
step-by-step?



Four Types of Contracts Under North Carolina Law

WHAT... Is being procured?

- Purchases of Goods
- Construction or Repair
- Professional Services + Alternative Construction Delivery Methods
- Everything Else...



Thresholds for Contracts Under North Carolina Competitive Bidding Law

WHAT...Is the cost?



The "How": Summary of North Carolina Procurement Requirements

	Informal	Formal	QBS	RFP
Solicitation / Advertisement	Not required	Newspaper/ electronic at least 7 days before bid opening	Must "announce" requirements	Not required (IT—must advertise like formal bid)
Form / Minimum #	Any form; keep record; no minimum #	Sealed bids; 3-bid minimum for construction contracts	No specific form required; no minimum #	No form required (IT – sealed proposals)
Public bid opening	Not required	Required	Not required	Not required
Standard of Award	Lowest responsive, responsible bidder	Lowest responsive, responsible bidder	Best qualified, regardless of cost	Best meets criteria set in the RFP
Board Approval	Not required	Required (may delegate for purchases only)	Not required	Not required
Public Record	Record of bids not public until contract award	Bids public when opened	Proposals public when opened	Public when opened (IT – not public until contract award)

Applicable Federal Grant Regulations: Uniform Guidance , 2 CFR 200.317 to 327

▼ Procurement Standards

200.317 – 200.327

- § 200.317 Procurements by states.
- § 200.318 General procurement standards.
- § 200.319 Competition.
- § 200.320 Methods of procurement to be followed.
- § 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.
- § 200.322 Domestic preferences for procurements.
- § 200.323 Procurement of recovered materials.
- § 200.324 Contract cost and price.
- § 200.325 Federal awarding agency or pass-through entity review.
- § 200.326 Bonding requirements.
- § 200.327 Contract provisions.



Uniform Guidance Procurement Methods, 2 C.F.R. 200.320



1. Informal Procurement Methods

- Micro-Purchase
- Small Purchases

2. Formal Procurement Methods

- Sealed Bids
- Competitive Proposals

3. Non-Competitive Proposals

- Micro-purchase
- Single source (AKA sole source)
- Emergency
- Approval by federal agency
- Inadequate competition after solicitation

“Micro-purchase”

- A purchase of supplies or services, the aggregate amount of which does not exceed the micro-purchase threshold.

“Micro-purchase threshold”

- The dollar amount at or below which a non-Federal entity may purchase property or services using micro-purchase procedures under 2 C.F.R. 200.320.
- \$10,000, BUT option to increase per 2 CFR 200.320(a)(1)(iv)(C)

“Simplified Acquisition Threshold”



- The dollar amount below which a non-Federal entity may purchase property or services using small purchase methods.
- \$250,000 for construction and repair, services
- \$90,000 for goods

Subpart D Terminology:

Procurement Thresholds

Top 10 Competitive Bidding Exceptions Under N.C. Law

1. Special Circumstances

- A. Sole Source  Governing board approval
- B. Emergencies
- C. Fuel
- D. Force Account Work  Governing board approval

2. Existing Contracts

- A. State and Federal Contracts
- B. Piggybacking  Governing board approval
- C. Change Order

3. Direct Purchases

- A. Purchases from Other Units of Government
- B. Group Purchasing Programs
- C. Used Items

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Ethical Standards

When **personal** interests are in conflict with the interests of the **public** you serve



Basic Principles

Act in the public interest and for the public good, not for your own private benefit.

Avoid using position to promote partisan political platforms, parties, or candidates.



Legal Requirements vs. Ethical Standards

What is an ethical standard?

What is a legal requirement?

*If you can do it,
does that mean you should do it?*





Legal Prohibitions on
Confidential Information

Confidentiality of Social Services Information, G.S. 108A-80

Unlawful to use or disclose any information regarding persons who have applied for or are receiving public assistance or social services



Confidentiality of Personnel Information, G.S. 153A-98

Unlawful to disclose:

- Info regarding applicants for the director's position.
- Info gathered through the application process, the interview process, or the background check process.
- Info related to the board's evaluation, discipline, or dismissal of the director



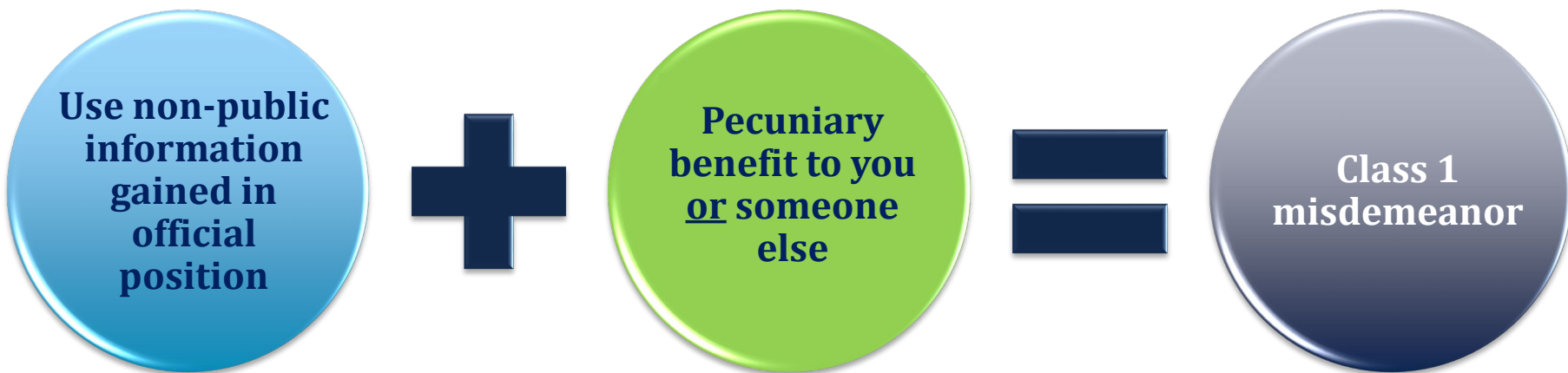
Use of Confidential Information for Monetary Benefit

**“Insider
Trading”**

G.S. 14-234.1



Use of Confidential Information for Monetary Benefit





Legal Prohibitions on
Gifts, Benefits, and Contracts

Self-Benefiting in Public Contracting When Direct Contracting G.S. 14-234(a)(1)

“No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law.”



Making or Administering a Contract, G.S. 14-234

A public officer or employee is involved in **making or administering** a contract if:

1. He or she oversees the performance of the contract; *or*
2. He or she has the authority to make decisions regarding the contract or interpret the contract; *or*
3. He or she participates in the development of terms or in the preparation or award of the contract.



What's a "direct benefit"?

A board member or public employee derives a **direct benefit** from a contract if the **individual or their spouse**:

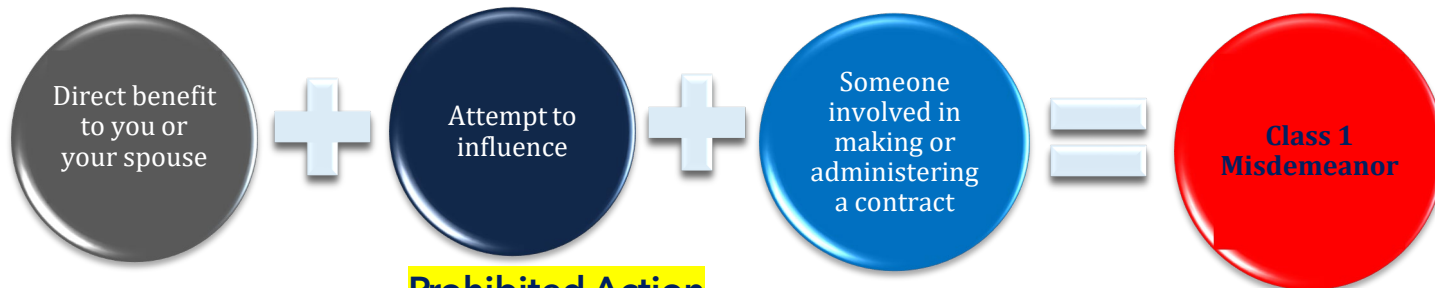
- Has more than a ten percent (10%) ownership or other interest in an entity that is a party to the contract;
- Derives any income or commission directly from the contract; **or**
- Acquires property under the contract.



Prohibited Self-Benefitting in Public Contracting, G.S. 14-234

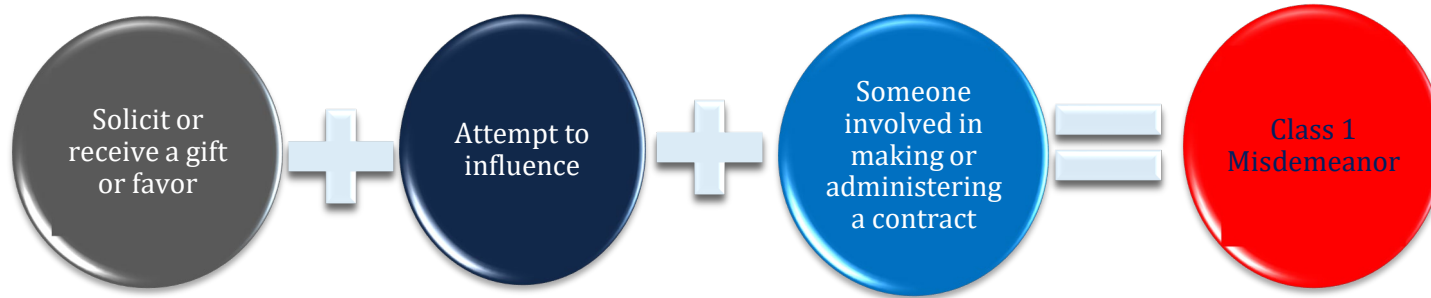


Prohibited Action



Prohibited Action

Gifts in Exchange for Influence Prohibited, G.S. 14-234(a)(3)



Doesn't have to be a contract benefitting you or your spouse!

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,
2. Awards or administers public contracts, or
3. Inspects or supervises construction

= Class 1 misdemeanor, unless an exception applies

Potential Criminal Liability For You? For Board Members?

- Unlawfully disclosing confidential social services information
- Disrupting an official meeting of the board
- Threatening or assaulting other board members, the DSS director, or DSS employees
- Embezzling county funds
- Willfully failing to discharge duties as a board member
- Unlawfully receiving a direct benefit from a contract that involves DSS

A Glance at Federal Conflict of Interest Regs

- The Uniform Guidance, 2 C.F.R. 200.318(c)
- The Hatch Act, 5 U.S.C. 7323
- The Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352





Conflicts of Interest under Uniform Guidance 2 C.F.R. 200.318(c)(1)

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a **real or apparent conflict of interest**.

Such a conflict of interest would arise when **the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization** which employs or is about to employ any of the parties indicated herein, has a **financial or other interest in or a tangible personal benefit** from a firm considered for a contract.



Gifts under Uniform Guidance 2 C.F.R. 200.318(c)(1)

The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

Exceptions for unsolicited gifts of nominal value.

Questions?

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NC Human Services Hub:

<https://humanservices.sog.unc.edu/>

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