

Three Shades of Grey



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Overview

- Definitions
- Laws and Regulations Affecting Ethics
- Case Studies
- Summary
- Questions and Comments (Anytime)



Definitions

- Ethics – the rules of conduct recognized in respect to a particular class of human actions or a particular group; moral principles
- VPPA – Virginia Public Procurement Act (Code)
- APSPM – Agency Procurement and Surplus Property Manual (Regulations)



Laws Affecting Ethics



Laws

- **Virginia Governmental Frauds Act.**
§ § 18.2-498.1. through 18.2-498.3.
- **State and Local Government Conflict of Interests Act** § § 2.2-3100 & 2.2-3103
- **VPPA** § § 2.2.-4367 through 2.2-4377



Virginia Governmental Frauds Act

§ 18.2-498.2

- Any person, in any commercial dealing in any matter within the jurisdiction of:
- Any department or agency of the Commonwealth of Virginia, or
- Any local government



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§ 18.2-498.3

- Who knowingly falsifies, conceals, misleads, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or
- Makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry
- Shall be guilty of a Class 6 felony



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State and Local Government Conflict of Interests Act § 2.2-3100

- Applicable to all state and local government officers and employees
- So that the standards of conduct for officers and employees may be uniform throughout the Commonwealth



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§ 2.2-3103

- No officer or employee of a state or local governmental or advisory agency shall:
- Solicit or accept money or other thing of value for services performed within the scope of his official duties, except the compensation, expenses or other remuneration paid by the agency of which he is an officer or employee



- Offer or accept any money or other thing of value for or in consideration of the use of his public position to obtain a contract for any person or business with any governmental or advisory agency
- Use for his own economic benefit or that of another party confidential information that he has acquired by reason of his public position and which is not available to the public



- Accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence him in the performance of his official duties
- Accept any business or professional opportunity when he knows that there is a reasonable likelihood that the opportunity is being afforded him to influence him in the performance of his official duties



- Accept a gift from a person who has interests that may be substantially affected by the performance of the officer's or employee's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the officer's or employee's impartiality in the matter affecting the donor



Virginia Public Procurement Act

§ 2.2-4367. Purpose

- Article 6, shall supplement, but shall not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act, and the Virginia Governmental Frauds Act
- Article 6, applies notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act



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§ 2.2-4368. Definitions

- "Immediate family" means a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee
- "Official responsibility" means administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting there from



- "Pecuniary interest arising from the procurement" means a personal interest in a contract as defined in the State and Local Government Conflict of Interests Act
- "Procurement transaction" means all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration



- "Public employee" means any person employed by a public body, including elected officials or appointed members of governing bodies



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§ 2.2-4369. Participation

- Except as may be specifically allowed by law, no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:
- The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction



- The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or
- Employed in a capacity involving personal and substantial participation in the procurement transaction, or
- Owns or controls an interest of more than five percent



- The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
- The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor



§ 2.2-4371. Gifts

- No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged
- The public body may recover the value of anything conveyed in violation of this subsection



- No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged



§ 2.2-4376. Misrepresentations

- No public employee having official responsibility for a procurement transaction
- Shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or
- Make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry



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§ 2.2-4377. Penalty

- Any person convicted of a willful violation of any provision of Article 6, § § 2.2-4367 through 2.2-4376, Ethics in Public Contracting, shall be guilty of a Class 1 misdemeanor
- Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment



Regulations Affecting Ethics



Regulations

- APSPM 3.22 c
- APSPM 3.22 d
- APSPM 3.22 g



APSPM 3.22.c

- In some situations it may be necessary for personnel to make site visits in conjunction with a solicitation to evaluate vendor capability and equipment
- If site visits are required for evaluation purposes, the state, and not the vendors being evaluated, should pay for such visits



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- Exceptions to this policy may be made by the agency head or his/her designee
- Any exception must be made on a case by case basis
- If an exception is made a written determination signed by the agency head or his or her designee shall be included in the contract file



- A statement that this is a mandatory provision of the procurement will be included in the solicitation along with the maximum number of employees who will participate in the site visit
- State employees making such site visits will incur and recover travel costs from the agency for which the procurement is being conducted in accordance with state travel regulations



- No direct reimbursement of individuals by a vendor is permitted
- The procuring agency will determine all costs incurred by state employees in connection with the site visit and bill the appropriate vendor for reimbursement of costs by means of a check payable to the agency



APSPM 3.22.d

- State employees having official responsibility for procurement transactions may attend vendor sponsored seminars or trade shows where they will benefit from receiving product information and learning of new techniques and product or service trends
- Food, drinks and give away items offered to all participants at such functions may be accepted by state employees attending



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APSPM 3.22.g

- Vendors and employees of the Commonwealth are prohibited from exchanging anything exceeding nominal value at expo events, which
- Includes distributions by vendors at exhibit booths where the vendors are educating buyers about their products



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Case Studies



Summary

- Definitions
- Laws and Regulations Affecting Ethics
- Case Studies
- Are Your Actions Legal, Ethical and Wise???
- Consult Legal Counsel if Unsure



