



**OP 65.03: ANTI-KICKBACK AND PROCUREMENT ETHICS
IN PUBLIC CONTRACTING**

POLICY

The (federal) Anti-Kickback Act of 1986 was passed to deter subcontractors from making payments and contractors from accepting payments for the purpose of improperly obtaining or rewarding favorable treatment in connection with either a contract or subcontract relating to a prime contract. The provision is designed to ensure fair and equal competition among both prime and subcontractors. It is applicable to all prime contractors and their subcontractors.

The Mississippi Procurement Policy prescribes essential standards of ethical conduct. Public employees must discharge their duties so as to assure fair competitive access to governmental procurement by responsible contractors.

Pursuant to federal and state laws and regulations and the Mississippi Procurement Manual, Mississippi State University institutes the following policy and procedures.

DEFINITIONS

Gratuity means a 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 received.

Official Responsibility means direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct Mississippi State University action.

Employee means a person employed by a prospective contractor and subject to the prospective contractor's supervision and control as to the time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Mississippi contracts. In determining whether a bona fide employment relationship exists, the following factors should be considered:

1. Whether the employment is continuous.
2. Whether the person is subject to the supervision and control of the prospective contractor.
3. Whether the size of any contingent fee is reasonable in relation to the service performed.
4. Whether the method of payment of the contingent fee is customary in the trade.
5. Whether the person is employed solely by the prospective contractor.

Established Commercial Selling Agency means a business that neither exerts nor proposes to exert improper influence to solicit or obtain public contracts. In determining whether a business

is a bona fide Established Commercial Selling Agency, the following factors should be considered:

1. Whether the business is one which has either been active for a considerable period of time or is presently a going concern and is likely to continue as such.
2. Whether the business uses its own name and is characterized by the customary indicia of the conduct of a regular business.
3. The degree to which the business' activities are directed toward the solicitation of contracts of the State.
4. Whether the size of any contingent fee is reasonable in relation to the services performed.
5. Whether the method of payment of the contingent fee is customary in the trade.

PROHIBITIONS

No employee of Mississippi State University, when considering competitive contracts, may:

1. Promise future employment or business opportunities.
2. Give or offer money or other gratuity to any individual in connection with procurement of any contract or subcontract.
3. Accept an offer of future employment, business opportunity, or other gratuity from any prime or subcontractor.
4. Retain others or be retained to solicit a federal or state contract upon an agreement for commission, percentage, brokerage, or contingent fee, except for the retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

PENALTY FOR NON-COMPLIANCE OF ANTI-KICKBACK

Any employee who willingly and knowingly violates the anti-kickback and procurement ethics policy of Mississippi State University is subject to dismissal from Mississippi State University and to penalties under federal and state laws and regulations.

REPORTING OF VIOLATIONS

Reports of any and all violations or potential violations of these policies and procedures should be reported to the Mississippi State University Office of Internal Audit.

REVIEW

The Vice President for Finance and Administration is responsible for the review of this operating policy every four years or as needed.

REVIEWED BY:

/s/ Les Potts
Interim Vice President for Finance & Administration

02/08/2024
Date

/s/ Tracey N. Baham
Associate Vice President, Institutional Strategy & Effectiveness

02/08/2024
Date

/s/ Joan Lucas
General Counsel

02/29/2024
Date

APPROVED BY:

/s/ Mark E. Keenum
President

03/25/2024
Date