

MISSISSIPPI STATE UNIVERSITY™

Policy and Procedure

Internal Audit Web

**NOTE - POLICY HAS BEEN SUPERSEDED SEE NEW POLICY AT:
Anti-Kickback & Procurement Ethics in Public Contracting 65.03 (PDF)**

RESEARCH POLICY SERIES ANTI-KICKBACK AND PROCUREMENT ETHICS IN PUBLIC CONTRACTING POLICY AND PROCEDURES

Pursuant to the Anti-Kickback Act of 1986 [FAR 52.203-07, 53FR 34224, of 8/2/88 and 41 USC 51-58] and the Mississippi Code [25-4-101 through 25-4-119] and the Mississippi Procurement Manual (07/01/93) [Sections 9.101 - 9.206], 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 business, 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.

Purpose:

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.

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. Solicit or obtain source selection information from a procurement officer;
4. Accept an offer of future employment, business opportunity, or other gratuity from any prime or subcontractor;
5. 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 the laws of the United States and the State of Mississippi. When contracts are with the federal government, the government may withhold payment in the amount of the kickback or direct the contractor to withhold similar subcontractor payments, or suspension, and/or debarment. Maximum penalty can amount to two times the amount of the kickback, plus, \$30,000 for each kickback and up to ten years imprisonment.

Requirements:

1. An Anti-Kickback Statement will be included as a condition on all Mississippi State University Purchase Orders. Official Responsibility: Vice President for Finance and Administration.
2. The Anti-Kickback and Procurement Ethics in Public Contracting Policy and Procedure must be circulated annually to employees in a position to directly influence or actually award a subcontract or other procurement activities.* Official Responsibility: Vice President for Research and Vice President for Finance and Administration.

3. Employees in a position to directly influence or actually award a subcontract or other procurement activities, must make annual declarations that no anti-kickback or other procurement ethics rules have been violated.* Official Responsibility: Vice President for Research.
4. Employees in a position to directly influence or actually award a subcontract or other procurement activity must declare annually all gifts and gratuities received from subcontractors.* Official Responsibility: Vice President for Research.
5. Employees in a position to directly influence or actually award a subcontract or other procurement activities must, upon employment receive a copy of the Mississippi State University Anti-Kickback and Procurement Ethics in Public Contracting Policy and Procedure and sign a statement that they understand, agree to, and abide by, the Policy and Procedure.* Official Responsibility: Vice President for Finance and Administration.
6. The University must provide in a clearly visible location, in the University Procurement Office, a copy of the NAEB CODE OF ETHICS. Official Responsibility: Vice President for Finance and Administration.

*Procurement and Sponsored Programs, Vice Presidents of these Units and the Vice President for Agriculture, Forestry and Veterinary Medicine.

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 Internal Auditor.

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OP 70.08
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For information about this policy, contact the responsible/reviewing department hyperlinked above.
For comments about the MSU Policy website, contact: webmaster@audit.msstate.edu.