



Code of Conduct: Conflicts of Interest & Revolving Door



IMPORTANT TO NOTE

OPO isn't the authoritative decision maker on conflicts of interest or revolving door issues. If we discover issues we will bring it to the attention of the employee and possibly their manager.

It is the employee's responsibility to inform their manager or supervisor of any situation as outlined in the Code of Conduct policy.

The manager or supervisor may mitigate the situation and shall seek the assistance of the Appointing Authority, in consultation with Human Resources, the ODOT Chief Procurement Officer, or an Ask ODOT for Employees representative as appropriate.



Quiz Time!

Where Does The Revolving Door Policy Come From?



Where Does The Revolving Door Policy Come From?

- ODOT Code of Conduct Policy
 - PER 01-02-02
- ORS 244
 - Government Ethics Provisions



Who Is A Public Official?



Who Is A Public Official?

- Any person who serves as a Department employee, as an elected official, appointed officer, agent, or in any other capacity, irrespective of whether the person is compensated or not. [See 244.040(15)]

Private sector companies, contractors, and individuals seeking permits from the Department are not public officials.



Legal Framework

Oregon Law Structure

Oregon law is structured to follow the Federal Constitution, national laws and regulations. The Oregon Constitution follows the US Constitution. In Oregon, the Oregon Revised Statutes (ORS) are the laws we must follow. Oregon Administrative Rules (OAR) are rules that support and clarify the statutes.



Federal Constitution
National Laws and Federal Regulations

Oregon Constitution

Oregon Revised Statutes
(Public Contract Code 279A, B, C)

Oregon Administrative Rules
(DAS Rules & Model Rules)

Policy
(Statewide & Agency)

Procedures
(Agency-specific)

Contract
(T&C)



Code of Conduct Policy

ODOT Code of Conduct Policy

Overview

- Policy provides guidance on proper business and ethical conduct.
- Policy cannot prescribe what shall be done on every occasion. Circumstances vary.
- Policy includes an additional focus on a type of conflict of interest known as "revolving door".



ODOT Code of Conduct Policy

General Employee Responsibilities

An employee shall not:

- Engage in an act as a public official outside of his/her official capacity.
- ***Use the prestige or influence*** of the State or their position as a public official ***for private gain or advantage or for the private gain or advantage of another.***
- Disclose confidential Department information to anyone to whom issuance of this information has not been authorized.



ODOT Code of Conduct Policy

General Employee Responsibilities

An employee shall not:

- When committing state resources, except with prior written permission of his/her manager or supervisor, ***contract with or purchase from another Department employee or that employee's relatives or a member of household.***
- ***Have***, except with prior written permission of his/her manager or supervisor, ***oversight authority or input in the hiring of, or purchasing from, contractors who are relatives or members of their household.***

For a complete list of employee responsibilities see the policy.



Conflict of Interest

Conflict of Interest

Overview

- Oregon Revised Statutes (ORS) Chapter 244 defines actual and potential conflicts of interest for all public officials. Those statutes are administered by the Oregon Ethics Commission and additional guidance is provided in "A Guide for Public Officials".
- Under ORS 244, the Oregon Government Ethics Commission has been given the authority to create, prescribe forms and establish criteria regarding actual and potential conflicts of interest.
- ORS 244 is written to the individual, not the Agency, nor a firm. However the Agency or the firm or both may be directly affected from the individuals failure to comply with ORS 244, the ODOT Code of Conduct policy, and the ODOT COI Guidelines.



Conflict of Interest

Definitions - ORS 244.020

- (1) “Actual conflict of interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person’s relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (13) of this section.

There isn't any mitigation available for actual conflicts of interest. Actual conflicts need to be avoided entirely.



Conflict of Interest

Definitions - ORS 244.020

- (13) “Potential conflict of interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person’s relative, or a business with which the person or the person’s relative is associated...

Potential conflict of interest is from the perspective of a reasonable person who has knowledge of the relevant facts.



Revolving Door

Revolving Door

Overview

- Revolving door is the term used for ODOT employees going to work for contractors who perform under ODOT contracts (outsourced work) and conversely, contractor employees coming to work for ODOT.
- Questions may arise about where information is obtained, what actions are taken, what decisions are made, and whether any unfair competitive benefit or advantage is gained by the employer or employee in both the prior and new employment environment.



Revolving Door

Department Objective

- The Department's objective is to limit and, when possible, eliminate any perception that there is an advantage gained by a contractor or employee because of job transitions.
- This policy is adopted and applied based on two categories of employees: **outgoing** and **incoming** employees.



Outgoing (Former) Employees
Revolving Door

Revolving Door

Outgoing (Former) Employees

- Contractors **shall declare if a former Department employee works for the contractor** and provide an explanation of the role the employee now serves for the contractor **following one year to the date** the former employee leaves employment with the Department.
- Each contractor declaration shall include a signed statement by the former Department employee of their proposed role for the contractor in the particular procurement and any resulting contract.

[See any ODOT contract Contractor Certification language, Code of Conduct policy, the ODOT COI Guidelines, and the COI Disclosure Form]



Revolving Door

Outgoing (Former) Employees

- Use of a former Agency employee by a Firm on the same, or substantially similar Procurement, for which the employee performed a role or function for the Agency, unless mitigated to the satisfaction of the Agency, **is prohibited for a period of one year** following separation of employment with the Agency.
- The Agency may determine that the role or Procurement is not substantially similar because of differences in location of the Project or work, because of the type and method of Procurement, or because the role performed was minor in nature such as a technical sufficiency review.



Revolving Door

Outgoing (Former) Employees

- A person **may also not have a direct beneficial financial interest in a public contract that they authorized** by acting in the capacity of a public official or as a member of a board, commission, or other governing body of a public body of which they were a member when the contract was authorized, **for two years after the authorizing action.**

[See ORS 244.040(1)&(5), ORS 244.047(2)]

- ODOT policy takes this further and states it is two years after the person ceases to hold a position as a public official.
- This prohibition does not apply if the person did not take part as a member of the authorizing governing body in the authorization of the contract.



Revolving Door

Outgoing (Former) Employees

Oregon Ethics Commission - "A Guide for Public Officials":

- "Authorized by" is defined in OAR 199-0050-0035(6) as meaning that the former public official had a significant role in the contracting process to include participating on a selection committee, recommending approval, voting, giving final authorization or signing a contract.
- As used in ORS 244.047, a public contract is "authorized by" a public official if the public official performed a significant role in the selection of a contractor or the execution of the contract. A significant role can include recommending approval or signing of the contract, including serving on a selection committee or team, or having the final authority for the contract.



Revolving Door

Outgoing (Former) Employees

Potential Consequences:

- Failure of a contractor to disclose such relationship or to remedy a violation **will result in the rejection of the contractor's bid or cancellation of the contract** with the Department as well as being grounds for cancellation of contractor prequalification or designation of a contractor as ineligible for future procurements as not being a responsible bidder.



Outgoing Employees – Additional Considerations

Revolving Door

Revolving Door

Outgoing Employees – Additional Considerations

ORS 244.040 Prohibited use of official position or office

- ORS 244.040(1) prohibits officials from using their official positions or offices to create a new employment opportunity; otherwise most former public officials may enter the private work force with few restrictions;
- ORS 244.040(3) prohibits a public official from soliciting or receiving, either directly or indirectly, and a person may not offer or give to any public official any pledge or promise of future employment, based on any understanding that the vote, official action or judgment of the public official would be influenced by the pledge or promise.



Revolving Door

Outgoing Employees – Additional Considerations

244.040 Prohibited use of official position or office

- ORS 244.040(5) prohibits a former public official from attempting to use confidential information for personal gain if the confidential information was obtained while holding the position as a public official.



Revolving Door

Outgoing Employees – Additional Considerations

Oregon Ethics Commission - "A Guide for Public Officials":

What are the provisions of law that prohibit a public official from using the position or office held for financial gain?

“As defined earlier, public officials become public officials through employment, appointment, election or volunteering. ORS 244.040(1) ***prohibits every public official from using or attempting to use the position held as a public official to obtain a financial benefit, if the opportunity for the financial benefit would not otherwise be available but for the position held by the public official.*** The financial benefit prohibited can be either an opportunity for gain or to avoid an expense.”



Revolving Door

Outgoing Employees – Additional Considerations

Oregon Ethics Commission - "A Guide for Public Officials":

What are the provisions of law that prohibit a public official from using the position or office held for financial gain?

"...the public official is prohibited from using or attempting to use the position as a public official to obtain financial benefits for a relative or a member of the public official's household. ...[and] for a business with which the public official, a relative, or a member of the public official's household is associated."



Incoming Employees
Revolving Door

Revolving Door

Incoming Employees - Requirements

Employees entering employment with the Department **may not, for one year following employment with a Department contractor**, prepare plans or specifications, review or score a bid or proposal, or award a contract for a Department procurement where their former employer may submit, or has submitted, a bid or proposal, without declaring the potential conflict and receiving a statement of approval or mitigation by the Appointing Authority.



Revolving Door

Incoming Employees - Responsibilities

Should a Department employee learn of a contractor/former employer bid or proposal submission on which the employee has worked or may be asked to perform work, he/she **shall inform the Appointing Authority at once and take no further action** on the procurement or other decision making related to the procurement **without approval or mitigation by the Appointing Authority.**



Questions

References & Links

References & Links

ODOT COI Guidelines:

<http://www.oregon.gov/ODOT/Business/Procurement/DocsPSK/coiguidelines.pdf>

COI Disclosure Form:

<http://www.oregon.gov/ODOT/Business/Procurement/DocsPSK/COIForm.docx>

Oregon Public Ethics Commission's "Oregon Government Ethics Law, A Guide For Public Officials":

https://www.oregon.gov/OGEC/docs/Public_Official_Guide/2010-10_PO_Guide_October_Final_Adopted.pdf



Thank you