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| CITY OF SPOKANE<br>ADMINISTRATIVE POLICY AND PROCEDURE   | ADMIN 0450-12-01<br>LGL 2012-0062 |
| TITLE: <b>CONFLICT OF INTEREST POLICY FOR U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PROGRAMS</b><br>EFFECTIVE DATE: December 27, 2012<br>REVISION EFFECTIVE DATE: N/A |                                   |

## 1.0 GENERAL

- 1.1 The purpose of this policy is to formalize the process by which the City handles City officers, employees and board / commission members requests to use U.S. Department of Housing and Urban Development funds and to prevent any real or perceived conflict of interest with regard to the use of these funds.
- 1.2 All third-party agreements funded under the United States Department of Housing and Urban Development are governed by the conflict of interest provisions of the U. S. Department of Housing and Urban Development, the U. S. Office of Management and Budget, the State of Washington, and the City of Spokane.

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## 2.0 DEPARTMENTS/DIVISIONS AFFECTED

This policy shall apply to all City officers and employees in City divisions and departments, including members of all City boards and commissions.

## 3.0 REFERENCES

24 CFR 570.611  
OMB Circular A-102

4.0 DEFINITIONS

4.1 “HUD” means the U.S. Department of Housing and Urban Development.

4.2 “OMB” means the U.S. Office of Management and Budget

5.0 POLICY

5.1 No person who:

- a. is an employee, agent, consultant, officer, or elected or appointed official of the City, or any designated public agencies, or any subrecipient which is receiving HUD funds; and
- b. exercises or has exercised any functions or responsibilities with respect to assisted HUD activities or who is in a position to participate in a decision-making process or gain inside information with regard to such activities,

may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure and for one (1) year thereafter.

5.2 The federal conflict of interest provision shall be included in all agreements HUD grant programs between the City of Spokane and other organizations / firms.

5.3 Persons who are employed by the City of Spokane or who are officers or public officials of the City and who exercise functions or responsibilities with respect to the HUD-funded program are precluded from deriving any financial benefit from contracts or subcontracts funded through the HUD-funded program during their office or employment and for one (1) year thereafter.

5.4 Subgrantee recipients shall sign the following conflict of interest certification at the time of their application for funding.

## 6.0 PROCEDURE

### 6.1 Employees of Departments Which Receive and / or Administer Funds From HUD.

6.1.1 Employees who work in departments that receive and/or administer HUD funds have an obligation to disclose any potential conflict of interest with regard to use of these federal funds.

6.1.2 If the employee or his/her family member requests to use HUD funds for an eligible activity, he or she must obtain a review by the City Attorney's Office, public disclosure and an exception requested from HUD.

6.1.3 The department head shall request a legal review of the application. Legal review consists of an opinion from the City Attorney's Office that the interest for which the exception is sought would not violate state or local law. If legal review concludes that access to use of HUD funds would violate state or local law, the employee is notified that the request is denied.

6.1.4 The employee must make a public disclosure of the nature of the request for funds and potential conflict of interest, including information about the legal opinion. The application and legal opinion are submitted to the Community, Housing and Human Services Board for public disclosure. If any reasonable public objection is received during the public disclosure, final decision as to employee participation will be made by the City Administrator.

6.1.5 The City submits a formal request to HUD to review and grant an exception to the employee's conflict of interest. The HUD determination is communicated to the employee. If the request is approved, the individual may proceed with the use of HUD funds. If the request is denied, the individual is so notified.

### 6.2 Employees of Other Departments.

6.2.1 If the employee or his/her family member requests to use HUD funds for an eligible activity, he or she must obtain a review by the City Attorney's Office, public disclosure and an exception requested from HUD.

6.2.2 The department head shall request a legal review of the application. Legal review consists of an opinion from the City

Attorney's Office that the interest for which the exception is sought would not violate state or local law. If legal review concludes that access to use of HUD funds would violate state or local law, the employee is notified that the request is denied.

6.2.3 The employee must make a public disclosure of the nature of the request for funds, including information about the legal opinion. The application and legal opinion are submitted to the Community, Housing and Human Services Board for public disclosure. If any reasonable public objection is received during the public disclosure, final decision as to employee participation will be made by the City Administrator.

6.3 Members of the Community, Housing And Human Services Board.

6.3.1 Members of the Community, Housing and Human Services Board shall not be an employee, agent, consultant, officer, or elected or appointed official of any agency applying for HUD federally funded assistance.

6.3.2 Agencies who have an employee, agent, consultant, officer, or elected or appointed official, who is a Board member are prohibited from receiving HUD federally funded assistance.

6.3.3 Potential applicants for the Board may ask the City for a legal opinion, make public disclosure and to apply to HUD for a conflict of interest waiver and if approved, may then be considered for Board membership.

6.4 HUD Consideration of Waivers.

6.4.1 The provisions set forth in 24 CFR 570.611 provide for HUD consideration of waivers to its conflict of interest provisions on a case-by-case basis.

6.4.2 Full public disclosure of the conflict is required together with an opinion by the City Attorney that the financial interest for which the exception is sought would not violate state or local law.

6.4.3 HUD would then make a determination on whether to grant the requested waiver taking the following factors into consideration:

- a. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

- b. Whether an opportunity was provided for open competitive bidding or negotiation;
- c. Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
- d. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in questions;
- e. Whether the interest or benefit was present before the affected person was an employee, agent, consultant, officer or official covered by the conflict of interest provisions;
- f. Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- g. Any other relevant considerations.


7.0 RESPONSIBILITIES

The Director of Community and Neighborhood Services shall administer this policy and procedure.

8.0 APPENDICES

Legal Requirements

APPROVED BY:

  
 \_\_\_\_\_  
 City Attorney (PAST)

12-3-12  
 \_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 Director  
 Community and Neighborhood Services

12-10-12  
 \_\_\_\_\_  
 Date

  
City Administrator

12/12/12  
Date

# LEGAL REQUIRMENTS

## 24 CFR 570.611

No person (1) who is an employee, agent, consultant, officer, or elected or appointed official of the recipient, or any designated public agencies, or any subrecipient which is receiving CDBG funds and (2) who exercises or has exercised any functions or responsibilities with respect to CDBG activities assisted under this Part or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure and for one year thereafter.

## OMB CIRCULAR A-102

The OMB conflict of interest provision set forth in Circular A-102, "Uniform Requirements for Assistance to State and Local Governments," Attachment 0, "Procurement Standards", is applicable to, "... *the procurement of supplies, equipment, construction and services for Federal assistance programs.*"

Paragraph 7, Code of Conduct, prohibits the City's employees, officers and agents from participating in the selection or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would-be involved.

A conflict arises when:

- a. The employee, officer or agent,
  - b. Any member of his immediate family;
  - c. His or her partner, or
  - d. An organization which employs, or is about to employ, any of the above,
- has a financial or other interest in the firm selected for award.

This provision is less stringent than the HUD conflict of interest provision, and would simply require that the affected individual disclose his or her financial interest and abstain from participating in discussions or actions regarding the selection, award or administration of a contract.

## **RCW 42.23.030**

### **Interest in contracts prohibited — exceptions.**

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein. This section shall not apply in the following cases:

(1) The furnishing of electrical, water or other utility services by a municipality engaged in the business of furnishing such services, at the same rates and on the same terms as are available to the public generally;

(2) The designation of public depositaries for municipal funds;

(3) The publication of legal notices required by law to be published by any municipality, upon competitive bidding or at rates not higher than prescribed by law for members of the general public;

(4) The designation of a school director as clerk or as both clerk and purchasing agent of a school district;

(5) The employment of any person by a municipality for unskilled day labor at wages not exceeding two hundred dollars in any calendar month. The exception provided in this subsection does not apply to a county with a population of one hundred twenty-five thousand or more, a city with a population of more than one thousand five hundred, an irrigation district encompassing more than fifty thousand acres, or a first-class school district;

(6)

(a) The letting of any other contract in which the total amount received under the contract or contracts by the municipal officer or the municipal officer's business does not exceed one thousand five hundred dollars in any calendar month.

(b) However, in the case of a particular officer of a second-class city or town, or a noncharter optional code city, or a member of any county fair board in a county which has not established a county purchasing department pursuant to RCW 36.32.240, the total amount of such contract or contracts authorized in this subsection (6) may exceed one thousand five hundred dollars in any calendar month but shall not exceed eighteen thousand dollars in any calendar year.

(c)



(i) In the case of a particular officer of a rural public hospital district, as defined in RCW 70.44.460, the total amount of such contract or contracts authorized in this subsection (6) may exceed one thousand five hundred dollars in any calendar month, but shall not exceed twenty-four thousand dollars in any calendar year.

(ii) At the beginning of each calendar year, beginning with the 2006 calendar year, the legislative authority of the rural public hospital district shall increase the calendar year limitation described in this subsection (6)(c) by an amount equal to the dollar amount for the previous calendar year multiplied by the change in the consumer price index as of the close of the twelve-month period ending December 31st of that previous calendar year. If the new dollar amount established under this subsection is not a multiple of ten dollars, the increase shall be rounded to the next lowest multiple of ten dollars. As used in this subsection, "consumer price index" means the consumer price index compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used.

(d) The exceptions provided in this subsection (6) do not apply to:

(i) A sale or lease by the municipality as the seller or lessor;

(ii) The letting of any contract by a county with a population of one hundred twenty-five thousand or more, a city with a population of ten thousand or more, or an irrigation district encompassing more than fifty thousand acres; or

(iii) Contracts for legal services, except for reimbursement of expenditures.

(e) The municipality shall maintain a list of all contracts that are awarded under this subsection (6). The list must be made available for public inspection and copying;

(7) The leasing by a port district as lessor of port district property to a municipal officer or to a contracting party in which a municipal officer may be beneficially interested, if in addition to all other legal requirements, a board of three disinterested appraisers and the superior court in the county where the property is situated finds that all terms and conditions of such lease are fair to the port district and are in the public interest. The appraisers must be appointed from members of the American Institute of Real Estate Appraisers by the presiding judge of the superior court;

(8) The letting of any employment contract for the driving of a school bus in a second-class school district if the terms of such contract are commensurate with the pay plan or collective bargaining agreement operating in the district;

(9) The letting of an employment contract as a substitute teacher or substitute educational aide to an officer of a second-class school district that has two hundred or fewer full-time equivalent students, if the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district and the board of directors has found, consistent with the written policy under RCW 28A.330.240, that there is a shortage of substitute teachers in the school district;

(10) The letting of any employment contract to the spouse of an officer of a school district, when such contract is solely for employment as a substitute teacher for the school district. This exception applies only if the terms of the contract are commensurate with the pay plan or collective bargaining agreement applicable to all district employees and the board of directors has found, consistent with the written policy under RCW 28A.330.240, that there is a shortage of substitute teachers in the school district;

(11) The letting of any employment contract to the spouse of an officer of a school district if the spouse was under contract as a certificated or classified employee with the school district before the date in which the officer assumes office and the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district. However, in a second-class school district that has less than two hundred full-time equivalent students enrolled at the start of the school year as defined in \*RCW 28A.150.040, the spouse is not required to be under contract as a certificated or classified employee before the date on which the officer assumes office;

(12) The authorization, approval, or ratification of any employment contract with the spouse of a public hospital district commissioner if: (a) The spouse was employed by the public hospital district before the date the commissioner was initially elected; (b) the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district for similar employees; (c) the interest of the commissioner is disclosed to the board of commissioners and noted in the official minutes or similar records of the public hospital district prior to the letting or continuation of the contract; and (d) and the commissioner does not vote on the authorization, approval, or ratification of the contract or any conditions in the contract.

A municipal officer may not vote in the authorization, approval, or ratification of a contract in which he or she is beneficially interested even though one of the exemptions allowing the awarding of such a contract applies. The interest of the municipal officer must be disclosed to the governing body of the municipality and noted in the official minutes or similar records of the municipality before the formation of the contract.

## CITY OF SPOKANE CHARTER – SECTION 36

### Officers or Employees Not to be Interested in Contracts

- a. Any member of the city council having a personal interest in any matter brought before the council shall declare the same to the council president and shall not vote or otherwise participate on said matter.
- b. No officer or employee of the City of Spokane having the power to perform an official act related to a contract or transaction which is or may be the subject of an official action of the City shall:
  1. have or acquire any interest in such contract or transaction; or
  2. have solicited, accepted, or granted a present or future gift, favor, service, or other thing of value from or to any person involved in a contract or transaction with the City of Spokane.
- c. All contracts of the City shall be free from all influence of or benefit to, directly or indirectly, any officer or employee of the City. This shall apply to the solicitation or receiving of any pay, commission, money, or other thing of value, or any benefit, profit, or advantage, directly or indirectly, from or by reason of any improvement, alteration, or repair required by authority of the City, or any contract to which the City shall be a party, except for the lawful compensation or salary as such officer or employee, and except as hereinafter provided.