

Policy 4-8 Rev. 1  
Date: January 22, 1981

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Subject: **PROCUREMENT FROM VENDOR IN WHICH UNIVERSITY EMPLOYEE HAS AN INTEREST**

I. PURPOSE

To outline university policy and procedures relating to procurement of supplies, services, and construction from a business firm in which a university officer or employee has an interest.

II. REFERENCES

[Policy and Procedures 2-30](#), Conflicts of Interest

Utah Public Officers' and Employees' Ethics Act, 1953 Utah Code Annotated,  $\square\square$ 67-16-1 et seq.

III. DEFINITIONS

"Business entity" means a sole proprietorship, partnership, association, joint venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on commercial business activities for profit-making purposes.

"Compensation" means anything of economic value, however designated, which is paid, loaned, granted, given, donated, or transferred to any person or business entity for or in consideration of personal services, materials, property, or any other thing whatsoever.

"Substantial interest" means (1) the ownership, either legally or equitably, by an individual, his/her spouse, or his/her minor children, of at least ten percent of the outstanding capital stock of a corporation or a ten percent interest in any other business entity; or (2) the holding of a position in a business entity as an officer, director, or employee.

"Transaction" means a formal or informal contract or agreement, express or implied, to which the university is a party, that involves any transfer of consideration or payment of compensation.

"University officer or employee" means a person permanently employed by the university on a full or part-time basis, but does not include members of the Board of Trustees or of any other advisory commission, board, or committee serving on a part-time basis.

IV. POLICY

A. It is the policy of the university to comply fully with all applicable provisions of the Utah Public Officers' and Employees' Ethics Act. See Policy and Procedures 2-30. The statements of detailed policies and procedures set forth herein are intended to provide notice to the university community of the requirements of that Act as applied to the procurement of supplies, services, and construction pursuant to the Utah Procurement Code, as amended, and related university regulations. See Policy and Procedures 4-1 to 4-7 inclusive.

B. Scope

1. The policies and procedures set forth herein apply to all transactions (including small purchases and expedited procurement transactions, see [Policy and Procedures 4-3](#)) to which the university, or any department or operating unit of the university, is or may be a party, without regard for the amount of consideration to be paid thereunder, or the source of funding.
2. For the purpose of applying the policies and procedures herein set forth, any reference to "purchasing agent" shall be constructed to mean university purchasing agent or, when appropriate, the responsible officer of any university department or operating unit that is authorized to engage in contracting or procurement activities without going through the Purchasing Department. See [PPM 4-1](#), Section IV B.

### C. Prohibitions

1. A university officer or employee is forbidden to participate in his/her official capacity with respect to any transaction between the university and a business entity in which the officer or employee has a substantial interest.
2. A university officer or employee is forbidden to receive compensation (in addition to regularly budgeted salary or wages for services to the university) as a result of, or in connection with, any transaction between the university and a business entity in which the officer or employee has a substantial interest.

## V. PROCEDURES

### A. Duty of Disclosure

It is the duty of every university officer or employee to disclose to his/her immediate superior, and to the university purchasing agent, the existence of a substantial interest which he/she has in any business entity which the officer or employee knows, or has reason to believe, may submit a bid or sealed proposal for, or otherwise seek to enter into, a transaction with the university.

### B. Procurement Procedures

1. The Purchasing Department shall process requisitions in accordance with established university procurement procedures, and shall attempt to secure bids or proposals from, and to negotiate with, qualified vendors, including vendors in which the existence of a substantial interest on the part of a university officer or employee has been disclosed or otherwise called to the attention of the purchasing agent.
2. All bids and proposals, and the proposed terms and conditions of all negotiated agreements, shall be subjected to technical and price evaluation in accordance with established university procurement criteria and procedures; provided, however, that the purchasing agent and all other personnel involved in the evaluation and award process must take appropriate steps to assure that there is no participation therein, direct or indirect, by any university officer or employee who is known to have a substantial interest in any business entity whose bid or proposal is under consideration.
3. If the purchasing agent determines that in the best interest of the university, and in accordance with established criteria, the proposed procurement contract should be awarded or entered into with a business entity in which a university officer or employee is known to have a substantial interest, the following steps must be taken before the contract is executed:

- a. If the proposed contract price will be paid in whole or in part with funds derived from a federal contract or grant, the proposed contract must be submitted to the office of research administration, together with a statement of the circumstances, and a request that any required waivers be obtained from the cognizant federal officers or agencies permitting the contract to be entered into as proposed. In such cases, the contract may not be executed on behalf of the university until the purchasing agent has received a written memorandum indicating that the requested waivers have been granted.
- b. In all such cases, the purchasing agent must request and receive from the university officer or employee who has a substantial interest in the business entity designated as a party to the proposed contract, a duly executed affidavit in substantially the following form:

I, (name) , hereby declare that, in my official capacity, I have not participated in, and that I have not and will not receive compensation (other than my regularly budgeted salary or wages from the university) as a result of, or in connection with, proposed contract (or purchase order) number \_\_\_\_\_.

(date) (signature)

(see forms at <http://www.purchasing.utah.edu/forms/index.html>)

#### C. Remedies

If any transaction is entered into in violation of the policies and procedures set forth herein:

1. The officer or employee who violated the prohibitions specified in Section IV B, or who knowingly executed and submitted a false affidavit when requested under Section V B 3, shall be subject to appropriate disciplinary action, including possible dismissal from university employment, as provided in the Utah Public Officers' and Employees' Ethics Act.
2. The university shall have the right to rescind or nullify any contract or subcontract entered into in respect to such transaction without returning any part of the consideration that may have been received by the university pursuant thereto.

Approved: Institutional Council 11/10/80