

# Chapter 2: Ethics

## 2.1 Definitions

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*Accountability:* taking responsibility for one's beliefs, decisions and actions.

*Appearance of Impropriety:* an action or a failure to act, which complies with legal requirements but creates the impression that something unethical has occurred.

*Character:* the disposition of an employee that informs his or her ethical Conduct.

*Conduct:* the observable behavior of employees. It is not dependent on the presence of an actual observer, only on the potential that such actions could be observed by another party.

*Contractor:* any individual or business having a Contract with the City to furnish goods, services or construction in accordance with the Contract requirements, accepted business practices and the law.

*Freedom of Information Act (FOIA):* the state law (§ 2.2-3700 et seq. of the Code of Virginia), which provides the public access to government records and meetings in which public business is conducted.

*Immediate Family Members:* defined by the Virginia Public Procurement Act as spouse, children, parents, siblings and any other person living in the same household as the employee.

*Impropriety:* a failure to observe standards or show due honesty; improper language, behavior or character.

*Nominal Value:* an item or gift of negligible monetary worth, specifically \$20 or less.

*Perspective-taking:* a skill set that includes various methods of understanding the feelings, thoughts and behaviors of another person, group or organization.

*Self-monitoring:* the act of assessing one's performance with a focus on any gaps that may exist between one's professional Conduct and the reasonable expectations of others that such Conduct is ethical.

*Substantial Value:* an item or gift that exceeds \$20 in value.

*Virginia Public Procurement Act (VPPA):* the state law (§2.2-4300 et seq. of the Code of Virginia) that governs public procurement activities across the Commonwealth, including those of local governmental entities.

## 2.2 Roles and Responsibilities

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### 2.2.1 The Office of the Purchasing Agent

- Oversight – Purchasing manages interactions between the City and vendors during competitive solicitations and assists the Departments throughout the duration of the resulting Contracts. The goal is to help Departments adhere to ethical standards.
- Consulting – Purchasing staff are always available to provide consultation and guidance on ethical Conduct. City employees should feel comfortable voicing their concerns to Purchasing.
- Training – Purchasing regularly conducts training for City employees on City policies and requirements, to include ethics, procurement methods, contract administration, etc. Attendance is not required but is highly recommended.
- Reporting – Situations may arise when Purchasing discovers, or is made aware of, potential or actual unethical behavior. Purchasing may be obligated to report the potential violation to the employee’s supervisor, Department Head, the Director of Finance, the City Manager, the City Auditor and/or to the Department of Human Resources, and/or to consult the City Attorney’s Office regarding a potential legal action.

### 2.2.2 Departments

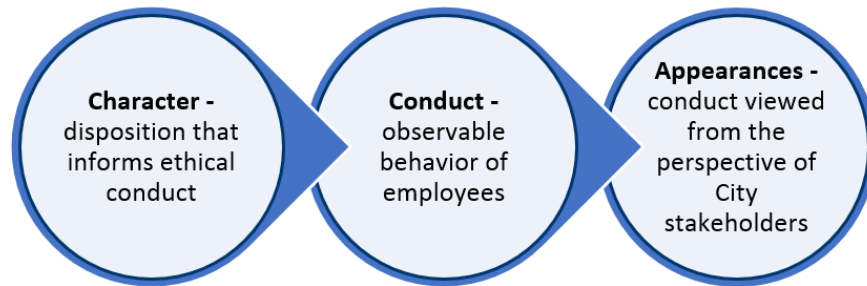
- Monitoring – All Department management personnel should monitor the Conduct of their employees and model appropriate behavior. This aims to proactively discourage employees from engaging in unethical behavior.
- Communication – Departments should communicate to Purchasing their questions about ethical Conduct. Purchasing may be able to intervene when Department staff are uncomfortable or otherwise unable to address these questions internally.
- Internal Procedures – Departments should have internal procedures for handling potential ethics violations and should train their employees accordingly. Purchasing is always available to assist; however, Departments should not rely solely upon Purchasing to address ethics issues.
- Training Participation – Department staff should seek out training and educational opportunities offered by Purchasing, incorporate lessons learned into their daily routines, and amend their internal procedures, as necessary.

## 2.3 Ethics in Public Procurement

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“Ethics” refers to a range of expectations about standards of Conduct. When employees act on behalf of a public entity, the expectations extend beyond adherence to the law and avoiding the Appearance of Impropriety; they include a focus on Character and Conduct. The three-pronged approach to ethics sets a high bar for employees involved in the City’s procurement-related activities.

### *A Three-Pronged Approach to Ethics in Public Procurement*



## **2.4 Standards of Conduct**

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When engaged in procurement-related activities, employees are held to standards of Conduct that go above and beyond the letter of the law. They are expected to demonstrate the principles of stewardship, Accountability, transparency, Perspective-taking, Self-monitoring and Compliance:

### **2.4.1 Stewardship**

Employees are responsible for taking care of the City's resources, which do not belong to them and would not be entrusted to them were it not for their role as City employees. Resources may be material (e.g. taxpayer dollars) or psychological (e.g. public trust). Employees must ensure that public funds are spent judiciously in ways that are advantageous to the City. They must, at a minimum, avoid using their positions for private gain, knowing that such misconduct erodes the trust that Norfolk citizens place in them to faithfully execute their duties. Such misconduct may result in a range of disciplinary actions.

### **2.4.2 Accountability**

Employees are expected to be vigilant and to take ownership of the purchasing decisions they make. In the execution of our stewardship of public funds, at any point during an employee's career, their personal and professional Conduct may become front-page news, and their years of public service may be reduced overnight to an array of social media posts highlighting every Appearance of Impropriety. As such, public servants must remain proactive and diligent, preventing improper or unethical behaviors and any resulting public scandal with ethical Character, Conduct and appearances; and always be prepared to assume responsibility for what they have or have not done. Some mistakes may be construed as misconduct – employees should not hide or attempt to hide their mistakes from the City, but instead should be forthcoming about their activities and their mistakes. Employees also have an affirmative duty to report any misconduct or fraudulent activity they witness – failure to make such a report or to fully cooperate in an investigation of wrongdoing may constitute violations of applicable City policy or law.

### **2.4.3 Transparency**

Employees must be transparent about the policies, processes and procedures that guide the City's purchasing decisions, while also protecting the proprietary information of Bidders and Offerors in accordance with the Virginia Freedom of Information Act. In their Conduct,

employees must demonstrate openness and truthfulness to ensure that procurement processes remain free of bias and are accessible to interested Bidders, Offerors and the public-at-large. This supports an understanding that in addition to meeting legal requirements and being the right thing to do, open competition and transparency of process benefit the local economy, lower City costs and foster stewardship of taxpayer funds.

#### **2.4.4 Perspective-taking**

Placing oneself in another person's position, understanding differing perspectives and endeavoring to feel or think as another person are integral to any modern business environment and particularly helpful in business negotiations and collaborative partnerships. To the greatest possible extent, employees must be respectful of others, maintaining a collegial approach with one another even when conflict arises. The focus must remain on conducting the City's business as efficiently, effectively and ethically as possible.

#### **2.4.5 Self-monitoring**

Employees are expected to engage in Self-monitoring and to correct any misconduct as soon as they become aware that their Conduct is in violation of any laws, regulations or procedures. Self-monitoring involves an ongoing performance evaluation of one's Character, Conduct and appearance against the reasonable expectations that employees are executing their duties properly and are worthy of public trust. When left unmonitored, such gaps between Conduct and expectations can easily become a liability for individual employees and for the City as a whole. Self-monitoring, therefore, is a learned skill set that requires one to build upon the principle of Perspective-taking to demonstrate maturity, self-awareness, and an acute understanding of the perspectives of various stakeholders who have a vested interest in the City's procurement-related activities.

#### **2.4.6 Compliance**

Employees must be familiar and comply with all applicable local, state and federal laws and administrative regulations, as well as internal policies and procedures that govern their work. They are responsible for asking thoughtful questions about the applicability of laws and rules in a variety of contexts, implementing them and following them to the letter.

As we all know everyone, including and especially City employees must refrain from engaging in any activities expressly prohibited by law as well as activities that, while not expressly prohibited, may appear to stakeholders as if they are violating rules and abusing their power for personal gain. In this way, City employees should model good ethical Character, in both appearances and Conduct; for one another, for those with whom the City conducts its business and for the broader public. When in doubt, Employees should seek advice from appropriate City resources, including their chain of command, Department Head, the Office of the Purchasing Agent, the Director of Finance, the City Manager, the City Auditor's Office and/or the City Attorney's Office.

## **2.5 Prohibited Behaviors**

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This Manual provides and describes procurement processes and is not a legal document. These processes are governed by a number of laws, including, but not limited to, Chapter 33.1 of the City of Norfolk Code of Ordinances and the Virginia Public Procurement Act (§2.2-4367 through §2.2-4377) address specific prohibited behaviors for employees engaged in procurement-related activities. This

Manual does not give legal advice or interpretations. These laws are cited here for reference only and reading this section of the Manual does not relieve employees of their professional obligation to consult and abide by the law. Broadly, conflicts of interest, gifts, kickbacks, and misrepresentation are prohibited. Any violation constitutes a Class 1 misdemeanor under Virginia law and convicted persons will be required to forfeit their employment with the City. Any questions concerning the application of these laws should be directed to the City Attorney's Office.

### **2.5.1 Conflict of Interest**

- Employees may not engage in procurement-related activities involving an entity when their objectivity has or may become compromised due to financial or other arrangements in their private life:
  - When they or their Immediate Family Members are at the same time employed by a Bidder, Offeror or Contractor; or when they own or control more than 5% interest in that entity; or otherwise have a financial interest in the entity (such as a retirement plan).
  - When they or their Immediate Family Members are in negotiations for, or have any arrangement concerning, prospective employment with a Bidder, Offeror or Contractor who is involved in that procurement transaction.
- Employees may not accept employment with a Bidder, Offeror or Contractor with whom the employee dealt in an official purchasing-related capacity until one (1) year after the employee ceased employment with the City, unless the employee notifies the City in writing prior to commencing employment.
- No one who is compensated by the City for preparing an Invitation for Bids (IFB) or a Request for Proposals (RFP) may submit a Bid or Proposal in response to that solicitation; nor share information with Bidders or Offerors that has not been made available to the public. In certain cases, however, the City may elect to allow such entity to respond to the solicitation if it determines that excluding this entity would place the City at a competitive disadvantage.
- Employees may not purchase building materials, supplies or equipment for City buildings and structures from architects and engineers under current City Contracts or from any partnership, association, organization or corporation in which the City's architects and engineers have a financial interest, except in the event of an emergency.
- While solicitations are ongoing, Departments are prohibited from any contact with Bidders/Offerors. This prohibition does not include the standard course of business under an existing Contract with that Contractor.

### **2.5.2 Gifts**

Employees may not accept anything from any entity that may potentially compromise their objectivity in procurement-related activities, nor may they receive or ask for gifts from any vendor. Such gifts include payments, loans, subscriptions, advances, money deposits, services or other items of Substantial rather than Nominal Value, unless something of equal or greater value is exchanged. In order to avoid the Appearance of Impropriety our recommendation is not to accept any gifts, regardless of their value, but remember: in all cases acceptance of gifts exceeding \$20 in value is specifically prohibited.

### **2.5.3 Kickbacks**

In order to prevent vendors from compromising the open and fair solicitation processes for City business, vendors are prohibited from demanding or receiving gifts from other vendors

in exchange for the award of a Contract or an agreement not to compete for a public Contract. Such gifts include payments, loans, subscriptions, advances, money deposits, services or anything else of Substantial Value. A kickback discovered before the Contract is awarded is grounds for disqualification of all Bidders or Offerors involved. If a kickback is discovered after Contract award, the City will treat that amount as if it were included in the amount of the Contract and may act to recover that amount from either or both the giver and the recipient of the kickback, in addition to terminating the Contract.

#### **2.5.4 Misrepresentation**

All employees involved in activities on behalf of the City are expected to conduct themselves with integrity and truthfulness and may not misrepresent the facts upon which procurement-related decisions are based. Misrepresentation includes, but is not limited to, falsifying or concealing facts, making false, fictitious or fraudulent statements or representations, or otherwise intending or acting to defraud any party or stakeholder (including the City itself) involved in procurement transactions.

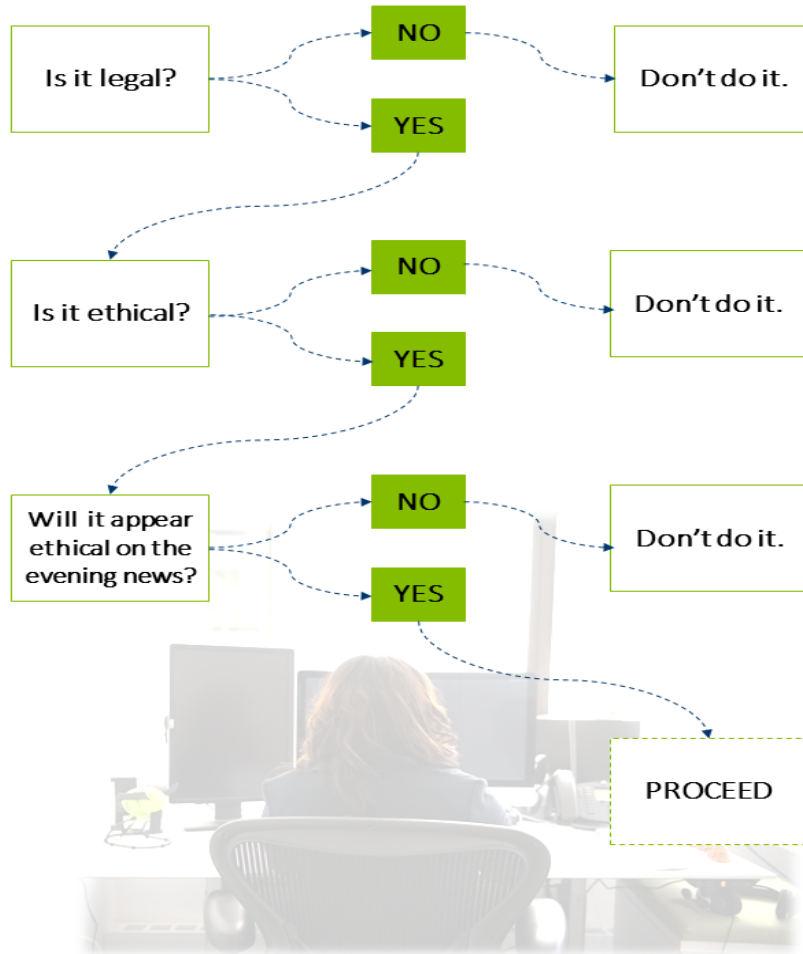
## **2.6 When in Doubt...**

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When in doubt, employees engaged in procurement-related activities should: (1) not engage in questionable behavior, (2) consult with their supervisor or with the Office of the Purchasing Agent (hesitation to do this may be a warning sign that the actions in question are unethical), and (3) place themselves in the shoes of their significant others, parents, children or anyone else special to them, and imagine if these persons were to observe them in action: would they approve or disapprove?

The following decision tree may assist City employees in the ethical decision-making process. The decision to proceed should not only pass the appearance test for City stakeholders (i.e. how will this Conduct appear to them?); it should also pass the loved-ones test should they happen to catch one's Conduct on the evening news or on social media: will your actions foster pride in your work and your stewardship?

## JUST ASK



## 2.7 Frequently Asked Questions

**Q:** We have been asked to donate money to a charitable cause. Is this acceptable?

**A:** *If the employees choose to donate their own money, it is acceptable. However, City funds should not be reallocated to external organizations without individual or programmatic City Council approval.*

**Q:** Can you connect the ethics chapter of the Procurement Manual with the City-wide ethics policy or can you reference it in some way?

**A:** *The Citywide ethics policy applies to all employees in the performance of all duties and creates baseline expectations. When participating in procurement activities employees must also abide by the specific guidelines of the purchasing ethics policy.*