

# Chapter 33. Ethics Policy<sup>1</sup>

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<sup>1</sup> Chapter 33 was adopted by Travis County Commissioners Court on February 2, 2016, Item 35 Revised Chapter 33 was amended on 12/17/2019 item 15A. The effective date of the 12/17/2019 amendment is March 1, 2020.

## ***Subchapter A. General Provisions to Ethics Policy***

### **33.001 Purpose<sup>2</sup>**

The purpose of this policy is:

- (1) To increase public confidence that the resources of their government are not used for unwarranted direct or indirect enrichment of governmental decision-makers or their close advisors;
- (2) To obtain disclosure of a political contribution to elected officials on the applicable Key Contracting Persons list and lobbying activities by a Vendor.
- (3) To eliminate, or at least diminish, any incentive for a private interest to conduct private financial transactions with governmental decision-makers or their close advisors to secure a special advantage in competition for governmental contracts for services and goods; and
- (4) To establish an enforcement mechanism for this policy through the County's contracting procedures and rules for behavior which should be prescribed in addition to that prohibited by other law.

### **33.002 Definitions<sup>3</sup>**

For the purposes of this chapter, the following words have these meanings:

- (1) "Declarant" means the person who is swearing to the truth of the information stated in a Sworn Declaration.
- (2) "Bidder" is any person who seeks to enter into a contract with Travis County for which Travis County must comply with the IFB procedures before award by Travis County Commissioners Court.
- (3) "Contractor" is any person who seeks to enter into a contract with Travis County for which Travis County is not required to comply with the IFB procedures or the RFP procedures before award by Travis County Commissioners Court or the Purchasing Agent.
- (3.2) "Contribution" means anything of value that is:
  - (A) given on one or more occasions,
  - (B) \$500.00 or more in the aggregate during the 12 months, or
  - (C) given without expectation of consideration in return.
- (4) "County Executive" means a county or city employee who is appointed by the Travis County Commissioners Court to administer a functional

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<sup>2</sup> Section 33.001 was amended 12/17/2019, Item 15A, effective 3/1/2020.

<sup>3</sup> Section 33.002 was amended 12/17/2019, Item 15A, to add definitions (3.2), (4.2), (5.2) and (15), effective 3/1/2020.

area composed of several program areas, and is supervised directly by the Commissioners Court.

- (4.2) "County Representative" means any Elected Official, employee, consultant, or other person who is involved in the decision making process for a contract award in which the decision making process includes at least:
  - (A) Preparing solicitation documents or requests for information,
  - (B) Evaluating responses,
  - (C) Selecting the recipient of the contract award,
  - (D) Administering performance of the contract.
- (5) "Discretionary contract" means a contract for more than \$50,000 with Travis County and includes contracts that the Commissioners Court orders exempt from the Competitive Purchasing Procedures in the Purchasing Act under section 262.024(a)(4) as a professional service whether it is solicited in compliance with the Professional Procurement Act or through a Request for Services. It does not include contracts solicited through:
  - (A) An Invitation for Bids (IFB) or a Request for Proposals (RFP),
  - (B) A legally authorized program that satisfies the state laws requiring the County to seek competitive bids or proposals, including:
    - (i) The state cooperative programs,
    - (ii) A cooperative purchasing program,
    - (iii) The Texas Industries for the Blind and Handicapped or,
    - (iv) An interlocal cooperation agreement.
- (5.2) "Elected Official" means at least
  - (A) County Judge
  - (B) County Treasurer
  - (C) County Attorney
  - (D) Commissioner, Precinct 1
  - (E) Commissioner, Precinct 2
  - (F) Commissioner, Precinct 3
  - (G) Commissioner, Precinct 4
- (6) "IFB" means Invitation for Bids.
- (7) "IFB procedures" means the competitive bidding procedures in the County Purchasing Act.
- (8) "Is doing business" and "has done business" means:
  - (A) paying or receiving in any calendar year any money or other valuable thing with a value of more than \$250 in the aggregate in exchange for personal services or for purchase or use of any

property or property interest, either real or personal, either legal or equitable; or

- (B) loaning or receiving a loan of money, services, or goods or otherwise creating or having in existence any legal obligation or debt with a value of more than \$250 in the aggregate in any calendar year but does not include
  - (i) Any retail transaction for goods or services sold to a Key Contracting Person at a posted, published, or marked price available to the public,
  - (ii) Any financial services product sold to a Key Contracting Person for personal, family, or household purposes in accordance with pricing guidelines applicable to similarly situated individuals with similar risks as determined by Contractor in the ordinary course of its business, or
  - (iii) If Contractor is a national or multinational corporation, any transaction for a financial service or insurance coverage made on behalf of Contractor by its agent, employee, or other representative who does not know and is not in a position that they should have known about the contract.
  
- (9) "Key contracting person" means:
  - (A) Any person currently holding a position as:
    - (i) The Travis County Judge,
    - (ii) A Travis County Commissioner,
    - (iii) A Chief of Staff or Executive Assistant to the Travis County Judge or a Travis County Commissioner,
    - (iv) A County Executive,
    - (v) The Travis County Treasurer,
    - (vi) The Travis County Auditor,
    - (vii) The Travis County Attorney,
    - (viii) An Assistant County Attorney whose primary function is to prepare and review contracts or directly or indirectly supervise these attorneys,
    - (ix) The Purchasing Agent, and
    - (x) All of the Purchasing Agent's assistants who are responsible for procurements or responsible for directly or indirectly supervising these assistants;
  - (B) Any person who has held a position listed in section 33.002(9)(A) within 365 days before the dates on which a competitive bid or proposal is due or a discretionary contract is executed by a contractor;
  - (C) The spouse of the county judge or a county commissioner;

- (D) A person 10 percent or more of which is owned by a key contracting person described in section 33.002(9)(A) or (B);
  - (E) A person \$5,000 or more of the fair market value of which is owned by a key contracting person described in section 33.002(9)(A) or (B);
  - (F) The employer of a key contracting person described in 33.002(9)(A) or (B); or
  - (G) Any person designated by the Purchasing Agent to be a key contracting person for a particular bid, proposal, or contract due to that person's authority, influence, or involvement in the development, negotiation, or analysis of a particular bid, proposal, or contract.
- (10) "Proposer" is any person who seeks to enter into a contract with Travis County for which Travis County has chosen to comply with the RFP procedures instead of the IFB procedures before award by Travis County Commissioners Court.
  - (11) "Person" means any natural person, sole proprietorship, partnership, limited partnership, corporation, trust, estate, or other legal entity, except a governmental entity or subdivision thereof.
  - (12) "Purchasing Agent" means the Travis County Purchasing Agent or their designated agent or representatives.
  - (13) "RFP" means Request for Proposals.
  - (14) "RFP procedures" means the competitive proposal procedures in the County Purchasing Act.
  - (15) "Vendor" means:
    - (A) the entity doing this task, and;
    - (B) any broker, adviser, attorney, employee, representative or agent of that entity, and;
    - (C) any political committee directly established, administered, or controlled by the entity doing this task or any broker, adviser, attorney, employee, representative or agent of that entity.

**[33.003 to 33.009 Reserved for Expansion]**

***Subchapter B. Key Contracting Persons***

**33.010 Creating and Maintaining the Key Contracting Persons List**

- (a) The Purchasing Agent shall maintain a current dated list of all key contracting persons described in section 33.002 (8)(A) through (G) in a form similar to that in section 33.057. Upon request, the Purchasing Agent shall furnish a copy of this list to any person.

- (b) Each key contracting person described in section 33.002 (9) (A) through (G) shall notify the Purchasing Agent of any changes in their business and personal relationships that require a change in the key contracting persons list pursuant to section 33.002 (9)(C) through (F) within ten (10) days after that change.
- (c) The Director of the Human Resources Department shall notify the Purchasing Agent of the termination or commencement of employment of any persons in the positions described in section 33.002(9)(A) within ten (10) days after the event.
- (d) Any person requesting that the Purchasing Agent make any procurement for which Travis County must comply with the IFB procedures or the RFP procedures or any person requesting that the Travis County Commissioners Court approve a discretionary contract shall notify the Purchasing Agent of the names of all persons who:
  - (1) Have made a substantial contribution to the development of the solicitation document,
  - (2) Are expected to have a substantial role in the evaluation of the responses received in response to the solicitation,
  - (3) Are expected to have a substantial role in the negotiations related to the contract, or
  - (4) Will have a significant influence on the recommendation presented to Commissioners Court for award of the contract.
- (e) The Purchasing Agent shall review the list of names provided pursuant to section 33.010(d) and determine whether there is any other person known to the Purchasing Agent who should be added to the names provided pursuant to 33.010(d) because of that person's authority, influence, or involvement in the development, negotiation, or analysis of that particular bid, proposal, or contract.
- (f) The Purchasing Agent shall add the names provided pursuant to section 33.010(d) and any other names that the Purchasing Agent determines to be appropriate pursuant to section 33.010(d) to the list maintained pursuant to section 33.010(a) and (b). A copy of this list shall be furnished to each known bidder, proposer, or contractor for that solicitation. An updated copy of this list in compliance with Section 33.010 shall be an exhibit to the sworn declaration attached to the contract.

**[33.011 to 33.015 Reserved for Expansion]**

## ***Subchapter C. Contracting with the County***

### **33.016 Bidders**

In procuring contracts with Travis County for which Travis County must comply with the IFB procedures before award by Travis County Commissioners Court, bids must include the following to be considered responsive and qualified to receive the contract award:

- (1) A statement disclosing the name of every key contracting person with whom the bidder is doing business or has done business during the 365 day period immediately before the date on which the IFB is due;
- (2) A sworn declaration in the form prescribed in section 33.057 stating that the natural person executing the IFB has no knowledge of any key contracting persons with whom the bidder is doing business or has done business during the 365 day period immediately before the date on which the IFB is due whose names are not disclosed in the IFB; and
- (3) A provision forfeiting the contract, allowing Travis County to retain all performance by the bidder pursuant to the contract and to recover all consideration or the value of all consideration paid to the bidder pursuant to the contract, if
  - (A) The bidder was doing business with an undisclosed key contracting person at the time of submitting the bid or had done business during the 365 day period immediately before the date on which the competitive bid was due, or
  - (B) The bidder does business with a key contracting person after the date on which the IFB is due and before full performance of the contract and fails to disclose the name of that key contracting person in writing to each member of the Commissioners Court, the Purchasing Agent, and the County Clerk within ten (10) days after commencing business with that key contracting person.

### **33.017 Competitive Proposal Procedure Contracts**

(a) In procuring contracts with Travis County for which Travis County has chosen to comply with the RFP procedures instead of the IFB procedures before award by Travis County Commissioners Court, all proposals must include the following to be considered responsive and qualified to receive the contract award:

- (1) A statement disclosing the name of every key contracting person with whom the proposer is doing business or has done business during the 365 day period immediately before the date on which the proposal is due; and
- (2) An sworn declaration in the form prescribed in section 33.057 stating that the natural person executing the proposal has no knowledge of

any key contracting persons with whom the proposer is doing business or has done business during the 365 day period immediately before the date on which the proposal is due whose names are not disclosed in the proposal.

- (b) All contracts with Travis County for which Travis County has chosen to comply with the RFP procedures instead of the IFB procedures before award by Travis County Commissioners Court shall contain a provision forfeiting the contract allowing Travis County to retain all performance by the proposer pursuant to the contract and to recover all consideration or the value of all consideration paid to the proposer pursuant to the contract, if
  - (1) The proposer was doing business at the time of submitting the proposal or had done business during the 365 day period immediately before the date on which the proposal was due with an undisclosed key contracting person, or
  - (2) The proposer does business with a key contracting person after the date on which the proposal is due and before full performance of the contract and fails to disclose the name of that key contracting person in writing to each member of the Commissioners Court, the Purchasing Agent, and the County Clerk within ten (10) days after commencing business with that key contracting person.
- (c) Two important evaluation factors in awarding contracts pursuant to the RFP procedures are:
  - (1) Whether a proposer is a key contracting person and
  - (2) The extent to which a proposer is doing or has done business with key contracting persons and the nature of that business.

### **33.018 Disclosures in Minutes of Court**

If a bidder or proposer discloses the name of a key contracting person with whom they have commenced business after the date on which the competitive bid or proposal is due pursuant to Subchapter C, that disclosure shall be noted in the minutes of the next legally appropriate Commissioners Court voting session.

### **33.019 Discretionary Contracts**

- (a) In procuring discretionary contracts, a contract shall not be awarded to any person who is a key contracting person or who is doing business or has done business with a key contracting person during the 365 day period immediately before the date of execution of the contract.
- (b) All discretionary contracts shall include the following:
  - (1) A sworn declaration in the form prescribed by section 33.057 stating that the natural person executing the contract on behalf of the contractor has no knowledge of any key contracting persons with

whom the contractor is doing business or has done business during the 365 day period immediately before the date of execution of the contract; and

- (2) A provision forfeiting the contract, allowing Travis County to retain all performance by the contractor pursuant to the contract and to recover all consideration or the value of all consideration paid to the contractor pursuant to the contract if
  - (A) The contractor was doing business with a key contracting person at the time the contract was executed, had done business with a key contracting person during the 365 day period immediately before the date of execution of the contract, or
  - (B) Does business with any key contracting person at any time after the date of execution of the contract but before full performance of the contract.

**33.020 Appearance and Communication**

- (a) Appearances before the Commissioners Court or communications with members of the Commissioners Court with the intent to influence a decision by the Commissioners Court by key contracting persons is prohibited if the key contracting person has or will receive any compensation for that appearance or communication from any source other than Travis County.
- (b) This prohibition may not be waived by the Commissioners Court unless a person affected by this prohibition alleges and can show that the prohibition will interfere with that person's legal rights.
- (c) The Commissioners Court shall use the procedures in Subchapter D to consider such a waiver.

**[33.021 to 33.025 Reserved for Expansion]**

***Subchapter D. Procedures for Waiver of Requirements of Subchapter C***

**33.026 Notice and Hearings before Waiver**

- (a) Before approval of an order waiving any of the provisions of Subchapter C, the order must be disclosed verbally and in writing during a regularly scheduled open meeting of the Commissioners Court which is at least seven days before there is a vote on the order.
- (b) The Commissioners Court may vote on an order waiving any of the provisions of Subchapter C during a separate regularly scheduled open meeting of the Commissioners Court which is at least seven days after the meeting in which it was first publicly disclosed.

### **33.027 Contents of Waiver Order**

Any or all provisions of Subchapter C may be waived by the Commissioners Court if the Commissioners Court, by an order that include at least the following

- (1) The names of the key contracting persons involved,
- (2) The nature and purpose of the contract,
- (3) The amount of public funds required,
- (4) The reasons for the waiver, and
- (5) Either a declaration that:
  - (A) The bidder, proposer, or contractor is uniquely qualified to provide expertise so needed that to fail to award or to forfeit the contract would result in significant damage to the public interest, or
  - (B) The extent to which a bidder, proposer, or contractor is doing or has done business with one or more key contracting persons is so inconsequential as to produce a ridiculous result from the enforcement of Subchapter C.

**[33.028 to 33.030 Reserved for Expansion]**

### ***Subchapter E. Exemptions and Exclusions from Application of Chapter***

#### **33.031 Exemptions**

If Travis County has a legal duty to seek to enter into a contract with a specific person, that person and that contractor is exempt from Subchapter C for the purpose of that contract only.

#### **33.032 Co-operative Purchasing, Interlocal Co-operation Act and State Contracts**

Because there is little likelihood that procurement of these contracts could be influenced by any key contracting person, the following types of contracts are not subject to the requirements of this chapter:

- (1) Purchases made through contracts with a co-operative purchasing association pursuant to Texas Local Government Code, chapter 271, subchapter F,
- (2) Purchases from another governmental entity made through an interlocal co-operation contract pursuant to Texas Government Code, chapter 791,
- (3) Purchases made from contracts solicited by any of the following:
  - (A) agencies of the State of Texas, such as TxMAS and TCCG;
  - (B) agencies of any other state, or

(C) agencies of the federal government.

**33.033 Non-contract Purchase Orders for less than \$50,000**

Because the administrative costs associated with obtaining sworn declarations from vendors when a purchase order is used are relatively high compared to the relatively small price of the purchase, purchases made on a purchase order for which no other contract is prepared or executed are not subject to the requirements of this chapter.

**[33.034 to 33.035 Reserved for Expansion]**

***Subchapter F. Disclosure of Contributions***<sup>4</sup>

**33.036 Other Persons as Elected Officials**<sup>5</sup>

If the purchase affects the operations of another office, the person responsible for that office, is also included in the list of positions in the definition of Elected Official.

**33.037 Requirement to Disclose Contributions**<sup>6</sup>

- (a) All vendors must disclose the name of each Elected Official named in the Key Contracting Person list in Exhibit 1 to the Ethics Sworn Declaration applicable to the purchase to whom Vendor has made any contributions during the 12 months immediately before the deadline for submission of a response.
- (b) This information must be disclosed online in the Ethics Disclosure Portal for this purchase.
- (c) The Vendor must also disclose political contributions in the past 12 months made by it, a broker, adviser, attorney, employee, representative or agent on its behalf if the aggregate amount of the contributions is equal to or more than \$500.00.
- (d) If Vendor has a political committee directly established, administered, and controlled by it or a broker, adviser, attorney, employee, representative or agent on its behalf Vendor must disclose political contributions made by them in the past 12 months if the aggregate amount of the contributions is equal to or more than \$500.00.

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<sup>4</sup> New Subchapters F and G were added 12/17/2019, Item 15A, effective 3/1/2020. Former subchapter F became Subchapter H.

<sup>5</sup> Section 33.036 was added 12/17/2019, Item 15A, effective 3/1/2020. Former section 33.036 is now 33.056.

<sup>6</sup> Section 33.037 was added 12/17/2019, Item 15A, effective 3/1/2020. Former section 33.037 is now 33.057.

- (e) These disclosure requirements apply to political contributions made to both the Elected Official and any specific-purpose committee that supports the Elected Official.
- (f) For each contribution, Vendor must disclose the name of each elected County Official or special purpose committee to whom a political contribution was made and the amount and date of each contribution.

**[33.038 to 33.045 Reserved for Expansion]<sup>7</sup>**

***Subchapter G. Disclosure of Lobbying<sup>8</sup>***

**33.046 County Acknowledgment of Need for Communication<sup>9</sup>**

The County recognizes that any purchase requires Vendors to influence the County decision making process and requires County Representatives involved in the decision making process to favor a vendor when evaluating and selecting a Vendor for contract award. When the Vendor is merely providing information about its demonstrated competence to provide what the County needs and when the County Representatives involved in the decision making process favor a vendor solely based on demonstrated competence, lobbying is not involved.

**33.047 Interpretation of Lobbying<sup>10</sup>**

- (a) Lobbying is involved when factors other than demonstrated competence are employed to influence the decision making process for this contract award. Lobbying is also involved when County Representatives involved in the decision making process favor a vendor because of factors other than demonstrated competence.
- (b) In considering whether the presence of lobbying exists,
  - (1) Purchasing Matter means any activity in the decision making process for a contract award that requires Commissioners Court approval.
  - (2) Lobbyist includes any person who distributes any funds or makes expenditures to communicate with County Representatives to influence their actions or decisions on a Purchasing Matter and:
    - (A) who is or may be compensated in any way, including salary, fees, commission, or contingency fees, or

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<sup>7</sup> Inserted 12/17/2019, Item 15A, effective 3/1/2020.

<sup>8</sup> New Subchapters F & G were added 12/17/2019, Item 15A, and former subchapter F became Subchapter H. Effective 3/1/2020

<sup>9</sup> Section 33.046 added 12/17/2019, Item 15A, effective 3/1/2020.

<sup>10</sup> Section 33.047 added 12/17/2019, Item 15A, effective 3/1/2020.

- (B) who as part of their regular employment communicates directly with a County Representative to influence a Purchasing Matter, whether or not the persons receive any compensation for the communication in addition to their salary for that regular employment.
- (c) Vendor must disclose all of the names associated with each person lobbying on its behalf if:
  - (1) the person distributes any funds or makes expenditures to influence the actions or decisions on a Purchasing Matter when communicating with County Representatives, and
  - (2) the person communicates directly with a County Representative as part of their regular employment to influence a Purchasing Matter without regard to whether the person receives any compensation in addition to their salary for that communication.
- (d) Lobbying is involved when factors other than demonstrated competence are employed to influence the decision making process for this contract award. Lobbying is also involved when County Representatives involved in the decision making process favor a vendor because of factors other than demonstrated competence.
- (e) This information must be disclosed online in the Ethics Disclosure Portal for this purchase. In addition to all of the names associated with each person lobbying, Vendor must disclose their full postal address.

**[33.048 to 33.055 Reserved for Expansion]<sup>11</sup>**

***Subchapter H. Ethic Sworn Declarations<sup>12</sup>***

**33.056 Requirement for Sworn Declaration<sup>13</sup>**

- (a) Each contract resulting from an IFB or RFP and each discretionary contract shall include a sworn declaration in the form in section 33.057.
- (b) If the contract resulted from an IFB, each reference to XXX in the sworn declaration and Exhibit B in section 33.057 shall be replaced with the word "Bidder."
- (c) If the contract resulted from an RFP, each reference to XXX in the sworn declaration and Exhibit B in section 33.057 shall be replaced with the word "Proposer."

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<sup>11</sup> Inserted 12/17/2019, Item 15A, effective 3/1/2020.

<sup>12</sup> Subchapter F was renumbered to be subchapter H when new Subchapters F & G were added 12/17/2019, Item 15A, effective 3/1/2020.

<sup>13</sup> Section 33.057 renumbered from 33.036 on 12/17/2019, Item 15A, effective 3/1/2020.

- (d) If the contract is a discretionary contract, each reference to XXX in the sworn declaration and Exhibit B in section 33.057 shall be replaced with the word "Contractor."

**33.057 Form of Sworn Declaration<sup>14</sup>**

The form of sworn declaration for bidders includes the sworn statement, the List of Key Contracting Persons applicable to that contract and the Disclosure Form and shall be in the form as found online on the Travis County Purchasing Office Ethics Policy web site.

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<sup>14</sup> Section 33.057 renumbered from 33.037 on 12/17/2019, Item 15A, effective 3/1/2020.