



# Office of the Inspector General

## Commonwealth of Massachusetts

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### Inspector General

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## CODE OF CONDUCT FOR CONSULTANTS ON PUBLIC BUILDING PROJECTS

### INTRODUCTION

The Office of the Inspector General recommends that public agencies require consultants and key subconsultants assigned to public building projects to comply with this Code of Conduct by incorporating this Code of Conduct by reference into their contracts.

The Massachusetts Office of the Inspector General, in collaboration with the Massachusetts School Building Authority (MSBA), has developed this Code of Conduct for Consultants on Public Building Projects for project designers, interior designers, owner’s project managers (OPMs), and other consultants under contract to public agencies to work on public building projects, as well as for key subconsultants assigned to the projects. The services and assistance that these consultants provide to public owners typically includes advice on procurement-related matters. For example, designers and their subconsultants often develop specifications for construction materials and furniture, fixtures, and equipment (FFE); evaluate bidder responsibility; and review change order requests. OPMs are required by M.G.L. c. 149, § 44A½, to assist the owner with selection and oversight of designers and the contractors on public building projects, and the MSBA’s regulations require OPMs to assist public owners with procurements of other contracts. Thus, consultants and subconsultants on public building projects may influence procurement and contracting decisions affecting the quality and cost of public building projects.

The State Ethics Commission has determined that an employee, officer, or partner of a business that performs services for a government agency may, under some circumstances, be a public employee under the Massachusetts conflict of interest law, M.G.L. c. 268A. The Commission has developed a multi-factor analysis for determining whether an individual, such as a designer or OPM, performing services for a government agency is a public employee.<sup>1</sup>

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<sup>1</sup> See “[Advisory 06-01: Consultants and Attorneys Who Provide Services to Government Agencies May Be Public Employees Subject to the Conflict of Interest Law.](#)”

This Code of Conduct is more restrictive than M.G.L. c. 268A with respect to acceptance of gifts, gratuities, and other items of monetary value from interested parties. This Code of Conduct is not intended to be all-inclusive and does not address all activities regulated under M.G.L. c. 268A, such as bribery, nepotism, and divided loyalties.<sup>2</sup>

This Code of Conduct is intended for all consultants on public building projects, as well as their key subconsultants, whether or not they are considered public employees under M.G.L. c. 268A. The intent of this Code of Conduct is to ensure that every consultant and key subconsultant on a public building project avoids acceptance of gifts, gratuities, and other items of monetary value from interested parties, as defined in this Code of Conduct, when acceptance of the gift, gratuity, or other item could compromise the capacity of the private individual or firm to act in the public interest, could create the appearance of impropriety, or could otherwise undermine public confidence in the integrity of those responsible for public building projects.<sup>3</sup>

### **RESTRICTIONS ON SOLICITATION OR ACCEPTANCE OF GIFTS, GRATUITIES, AND OTHER ITEMS OF MONETARY VALUE**

You may not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or other item of monetary value from a private person or organization that is an interested party. For purposes of this Code of Conduct, an interested party is a private person or organization that you know or have reason to know:

- Has had, has, or is seeking to obtain contractual or other business related to the public building project.
- Conducts or is seeking to conduct business or other activities in connection with the public building project.
- Has interests that may be or may give the reasonable impression of being substantially influenced by the performance of your duties related to the public building project.

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<sup>2</sup> For additional information and guidance on the conflict of interest law and its applicability to consultants, you may call the State Ethics Commission at 617-371-9500 or 888-485-4766, or consult the State Ethics Commission website at [www.mass.gov/orgs/state-ethics-commission](http://www.mass.gov/orgs/state-ethics-commission).

<sup>3</sup> This Code of Conduct is consistent with Rule 2.103 of the American Institute of Architects 2017 Code of Ethics and Professional Conduct, which states: "Members serving in a public capacity shall not accept payments or gifts which are intended to influence their judgment."

### **Examples of Restrictions**

A project designer may not accept a holiday gift from the project construction contractor.

An FFE subconsultant to a school project designer may not accept tickets to a sporting event from a vendor of school furniture.

A project OPM may not accept a restaurant meal from the project's construction management at-risk firm.

### **EXCEPTIONS**

1. You may accept gifts in cases involving a family or personal relationship when the circumstances make clear that the relationship, and not your role on the public building project, is the motivation for the gift.
2. You may accept nonalcoholic beverages, such as coffee or tea, and breakfast food items of nominal value, such as muffins, pastry, and fruit, from an interested party.
3. You may accept unsolicited or promotional materials of nominal value, such as inexpensive promotional pens and calendars, from an interested party.

### **EXCEPTIONS THAT REQUIRE DISCLOSURE TO THE PUBLIC AGENCY**

1. You may accept a modest meal paid for by an interested party in connection with attendance at a presentation, such as a "lunch and learn" presentation approved by the American Institute of Architects Continuing Education System, or in connection with attendance at a project meeting held in an office, provided that the purpose of the event serves a legitimate public purpose and that you provide a written disclosure of the meal and the donor's identity to the public agency contracting for your organization's services.
2. You may accept reimbursement of travel expenses from an interested party when the purpose of the travel serves a legitimate public purpose provided that, prior to the travel, you provide a written disclosure of the planned travel and reimbursement arrangements, including the identity of the interested party, to the public agency contracting for your organization's services and provided that the public agency determines that the planned travel serves a legitimate public purpose.

The written disclosures required by the above two exceptions may be made on disclosure forms provided by the State Ethics Commission on its website, at <https://www.mass.gov/disclosure-forms>.

1. Disclosure form to report the receipt of modest meals paid for by interested parties at events that serve a legitimate public purpose:  
<https://www.mass.gov/files/documents/2016/08/ql/disc-5-083-event-expense-apptd-new.doc>.
2. Disclosure form to report travel expenses reimbursed by interested parties for events that serve a legitimate public purpose:  
<https://www.mass.gov/files/documents/2016/08/uj/disc-5-082-travel-appointed-feb-2012.docx>