
Coates' Canons Blog: Federal Grants and Codes of Conduct

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Article: <https://canons.sog.unc.edu/federal-grants-and-codes-of-conduct/>

This entry was posted on November 04, 2009 and is filed under Ethics & Conflicts, Federal Grant Requirements, Federal Granting Requirements, Purchasing, Construction, Property Transactions

As I mentioned in my **post last week**, the Grants Management Common Rule (which applies to all federal grants) requires entities that receive federal grants to establish a “code of conduct.” This post will address what the Rule says about what the code of conduct must include.

A reminder: What is the Grants Management Common Rule again?

Instead of explaining the Rule again this week, I’ll refer to you to my post from **last week**, which explains what the Rule is and where you can find it.

What does the Rule say about codes of conduct?

Essentially, the Rule states that if your local government receives federal grants:

- your local government must maintain a *written* code of conduct;
- the code of conduct must address the performance of employees engaged in the award and administration of contracts;
- specifically, the code of conduct must provide that no employee, officer, or agent of your local government shall participate in the award or administration of a contract supported by Federal funds if a *real or apparent* conflict of interest would be involved; and
- more specifically, the code of conduct should provide that a real or apparent conflict of interest would arise when any of the following has a financial or other interest in the firm selected for an award: (1) an employee, officer, or agent involved in selection, award, or administration of a contract supported by federal funds, (2) members of that person’s immediate family, (3) that person’s partner (“partner” is not defined, but presumably includes the person’s spouse or domestic partner), or (4) that person’s current (or soon-to-be) employer, or the current (or soon-to-be) employer of members of that person’s immediate family, or the current (or soon-to-be) employer of that person’s partner.
- the code of conduct should also prohibit officers, employees, or agents of your local government from asking for or receiving gifts or favors from contractors, potential contractors, or parties to subagreements, although your local government may set exceptions for unsolicited gifts of “nominal” value.
- the code of conduct must, to the extent permitted by State or local law, establish disciplinary actions for violations of the standards set out in the code.

(You can read what the Rule says about codes of conduct **here**. This page is taken from HUD’s adoption of the Rule—the red box indicates the section that addresses codes of conduct.)

As to the last requirement, note that there are two North Carolina General Statutes, **G.S. 14-234** (the conflicts of interest statute) and **G.S. 133-32** (the gifts and favors statute), that overlap with *some* of the requirements in the Rule set out above. Violating these statutes is a Class 1 misdemeanor. However, there are some key differences between the Rule’s standards of conduct and these two statutes:

- The Rule’s standards of conduct apply to *agents* of the local government (presumably this would include attorneys, and, possibly, designers) in addition to government officers and employees, while G.S. 14-234 applies only to public officers and employees—not the government’s agents.
- The Rule’s standards of conduct apply to immediate family members and partners of the public official or employee; while G.S. 14-234 applies only to the public official or employee and his or her spouse. (I think it’s



questionable whether a domestic partner would be covered under G.S. 14-234, but there's no question that G.S. 14-234 does *not* apply to parents or children of local government employees or officials.)

- The Rule's standards of conduct prohibit contracts with current or soon-to-be employers of public officials, employees, and agents (and their immediate families and partners). G.S. 14-234 only prohibits contracts with an employer of the public official or employee (or his or her spouse) if the official/employee/spouse has a more than 10% ownership interest in the company or if the official/employee/spouse receives income or commission directly from the contract.
- G.S. 14-234 has several exceptions that are not included in the Rule's standards of conduct.
- The Rule's standards of conduct prohibit gifts and favors received from current and potential future contractors; G.S. 133-32 applies to contractors you've used within the past year as well as current and potential future contractors.
- The Rule's standards of conduct apply to *all* public officials, employees, and agents of your local government; G.S. 133-32 applies only to public officials or employees involved in (1) preparing plans, specifications, or estimates for public contracts; (2) awarding or administering public contracts; and (3) inspecting or supervising construction.

Conduct prohibited by the Rule's standards of conduct but not prohibited by G.S. 14-234 or G.S. 133-32 would not be subject to criminal penalties. However, local government employees who violate those standards could be subject to other disciplinary action (as determined by your local government). The options for disciplining *elected* officials who violate these standards are less clear. See Frayda Bluestein's **recent post**, "I Second that Amotion," for a discussion of these options.

Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_14/GS_14-234.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_133/GS_133-32.html