



**LANE TRANSIT DISTRICT  
SPECIAL BOARD MEETING/WORK SESSION**

**Monday, March 13, 2017  
5:30 p.m.**

**LTD BOARD ROOM  
3500 E. 17<sup>th</sup> Avenue, Eugene  
(off Glenwood Boulevard in Glenwood)**

**A G E N D A**

Page No.

I. CALL TO ORDER

II. ROLL CALL

Gillespie \_\_\_\_\_ Pierce \_\_\_\_\_ Wildish \_\_\_\_\_ Yeh \_\_\_\_\_  
Reid \_\_\_\_\_ Necker \_\_\_\_\_ Nordin \_\_\_\_\_

III. PRELIMINARY REMARKS BY BOARD PRESIDENT

IV. ANNOUNCEMENTS

V. WORK SESSION

- |   |              |    |
|---|--------------|----|
| A. Ethics and Conflict of Interest Briefing and Policy Discussion<br>[Debera Massahos, Kristen Denmark] | (60 minutes) | 2  |
| B. Public Contracting Procedures Discussion<br>[Debera Massahos]  | (30 minutes) | 13 |
| C. Introduction of Contract Approval Agenda Item Summary<br>[Collina Washington]                        | (30 minutes) | 17 |

VI. ADJOURNMENT

**The facility used for this meeting is wheelchair accessible. If you require any special physical or language accommodations, including alternative formats of printed materials, please contact LTD's Administration office as far in advance of the meeting as possible and no later than 48 hours prior to the meeting. To request these arrangements, please call 682-5555 (voice) or 7-1-1 (TTY, through Oregon Relay, for persons with hearing impairments.**

## AGENDA ITEM SUMMARY

**DATE OF MEETING:** March 13, 2017

**ITEM TITLE:** ETHICS AND CONFLICT OF INTEREST BRIEFING AND POLICY DISCUSSION

**PREPARED BY:** Debera Massahos, Compliance Manager

**ACTION REQUESTED:** None. Information Only.

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**BACKGROUND:**

The U.S. Department of Transportation requires that state and local grant recipients have written standards of conduct for officers engaged in the award or administration of contracts. Additionally, Oregon law places certain restrictions on choices, decisions, and actions of public officials. At the March 15 regular Board of Directors meeting, staff will be requesting that the Board of Directors approve the Ethics and Conflicts of Interest Policy to incorporate new or revised requirements imposed by Federal and State law. This presentation will inform the Board of those requirements and provide time for discussion of the proposed policy.

**ATTACHMENTS:** Board of Directors Ethics and Conflicts of Interest Policy

**PROPOSED MOTION:** None.

**Board of Directors**  
**Ethics and Conflicts of Interest Policy**

As a member of the Lane Transit District Board of Directors (the “Board”), I recognize that I owe a fiduciary duty of loyalty to Lane Transit District (“LTD”). This duty requires me to avoid conflicts of interest and to act at all times in the best interest of LTD. The purpose of the Ethics and Conflicts of Interest Policy is to:

1. Assist the Board in understanding the enumerated powers of LTD;
2. Inform the Board about what constitutes a conflict of interest;
3. Assist the Board in identifying and disclosing actual and potential conflicts;
4. Inform the Board about the use of office prohibition; and
5. Assist the Board in understanding the rules regarding acceptance of gifts.

LTD Board members are public officials and, as such, are subject to Oregon’s Government Ethics Law, found in Oregon Revised Statutes Chapter 244 and Oregon Administrative Rules Chapter 199. For any projects that are federally funded through the Federal Transit Administration (“FTA”), LTD Board members are also subject to the conflict of interest provisions of FTA Circular 4220.1F. Pertinent laws and rules are summarized below.

**A. The Enumerated Powers of a Mass Transit District**

LTD is a mass transit district and a special district. Special districts are created by the Legislature, and thus do not have broad or inherent general powers (like counties and cities). As a mass transit special district, LTD only has those powers enumerated in statute, which generally are:

1. Have and use a seal; sue and be sued;
2. Acquire real or personal property within the District boundaries for the purpose of providing or operating a mass transit system;
3. Contract for the construction, acquisition, purchase, lease, preservation, improvement, operation or maintenance of any mass transit system;
4. Build, construct, purchase, lease, improve, operate and maintain all improvements, facilities or equipment necessary or desirable for the mass transit system of the District;
5. Enter into contracts and employ agents, engineers, attorneys and other persons;
6. Fix and collect charges for the use of the transit system and other district facilities;
7. Construct, acquire, maintain and operate and lease, rent and dispose of passenger terminal facilities, motor vehicle parking facilities and other facilities for the purpose of encouraging use of the mass transit system within the District;

8. Enter into contracts or intergovernmental agreements to act jointly or in cooperation to provide mass transit services to areas, provided the party contracting to receive the services shall pay to the mass transit district not less than the proportionate share of the cost of the services that the benefits to the contracting party bear to the total benefits of the service;
9. Conduct programs and events and other actions for the purpose of maintaining employee relations;
10. Improve, construct and maintain bridges over navigable streams; and
11. Do such other acts or things as may be necessary or convenient for the proper exercise of the powers granted to a District herein.

**B. Conflicts of Interest When Federal Funds May Be Involved**

Board members are prohibited from participating in the selection, award, or administration of a contract supported with assistance from the Federal Transit Administration if a conflict of interest, real or apparent, would be involved. Such a conflict arises when:

1. The Board member;
2. Any member of the Board member's immediate family;
3. The Board member's partner; or
4. The Board member's employer or prospective employer

has a financial or other interest in the entity awarded a contract with LTD. When a conflict of interest, real or apparent, arises, you are prohibited from participating in the selection, award, or administration of the contract.

“Immediate family member” is not defined in the FTA Circular, but should be given its common meaning, which likely includes a “spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law.”

**C. Conflicts of Interest Under Oregon Law (Applies All the Time)**

An *actual/potential* conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which *would/could* be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated.

“Relative” means the following:

- a) The spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the public official;
- b) The parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-

law of the *spouse* of the public official; or

- c) Any individual for whom the public official has a legal support obligation or provides benefits arising from the public official's public employment, or from whom the public official receives benefits arising from that individual's employment.

"Business with which the person is associated" means the following:

- a) Any private business or closely held corporation of which the person or the person's relative is a director, officer, owner or employee, or agent;
- b) Any private business or closely held corporation of which the person or the person's relative owns or has owned stock, or another form of equity interest, \$1,000 or more at any point in the preceding year; or
- c) Any publicly held corporation in which the person or the person's relative owns or has owned \$100,000 or more in stock or another form of equity interest at any point in the preceding calendar year.

#### **D. What If I Have a Conflict?**

1. Potential Conflict. If you are met with a **potential** conflict of interest, you must publicly announce the nature of the conflict before participating in any official action on the issue giving rise to the conflict of interest. Following the public announcement, you may participate in official action on that issue **unless** federal funds are or may be involved. If federal funds are or may be involved, you must refrain from further participation, even in the instance of a potential or apparent conflict. Even if the Board member's vote is necessary to meet the minimum number of votes required for official action, the Board member must refrain from participation if federal funds are involved.
2. Actual Conflict. If you are met with an **actual** conflict of interest, you must publicly announce the nature of the conflict. Following the public announcement, you must refrain from further participation in official action on the issue that gave rise to the conflict of interest.

In very limited circumstances, and only when federal funds are **not** involved, you may be able to vote despite an actual conflict of interest. This exception only applies when a Board member's vote is necessary to meet the minimum number of votes required for official action. In this circumstance, you must make the announcement and refrain from any discussion, but may participate in the vote required for official action by the Board. This provision does **not** apply in situations where there are insufficient votes because of a member's absence when the Board is convened. Rather, it applies in circumstances when all Board members are present and the number of members who must refrain due to actual

conflicts of interest make it impossible for the Board to take official action.

When there is a conflict between federal law and Oregon law, the stricter standard shall apply.

**E. Disclosure Requirements**

All actual and potential conflicts of interest shall be disclosed by Board members to the General Manager through the annual Disclosure Form and to the Board whenever a conflict of interest arises. On an annual basis, all Board members shall be provided with a copy of this policy and are required to complete and sign the Acknowledgment and Disclosure Form, below.

Under Oregon law, LTD Board members are required to file with the Oregon Government Ethics Commission a verified statement of economic interest (“SEI”) on or before April 15 of each year. If needed, additional information regarding the SEI can be obtained from the Clerk of the Board, or from the Oregon Government Ethics Commission.

**F. Use of Office Prohibition**

Generally, a Board member may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the Board member, a relative or member of the household of the Board member, or any business with which the Board member, relative or a member of the household is associated, if the financial gain or avoidance of financial debt would not otherwise be available but for the Board member’s holding of official position.

The following are exceptions to the use of office prohibition:

1. Any part of an official compensation package;
2. Receipt of an honorarium;
3. An unsolicited award for professional achievement; and
4. Permitted gifts / items expressly excluded from the definition of “gift.”

**G. Gifts**

Under Oregon law, a Board member, or a relative, or a member of your household, may not solicit or receive, directly or indirectly, any **gift** or gifts with an aggregate value in excess of **\$50** from any single source that could reasonably be known to have a **legislative or administrative interest**.

1. What is a “Gift”? A “gift” is something of economic value given to a Board member, a relative, or a member of the household that is: (1) free or discounted; and (2) not offered on the same terms to others who are not public officials, or relatives or members of a public official’s household.
2. What is NOT a “Gift”? Under Oregon law, and in pertinent part only, the following are excluded from the definition of gift:
  - a. Gifts from relatives or members of the Board member’s household;

- b. An unsolicited token or award of appreciation with a resale value less than \$25;
  - c. Admission provided to or the cost of food or beverage consumed by a Board member, relative, or member of the household accompanying the Board member at a reception, meal, or meeting held by an organization when the Board member is representing LTD;
  - d. Entertainment provided to a Board member, relative, or member of the household that is incidental to the main purpose of another event.
3. Legislative or Administrative Interest. Under Oregon law, the receipt of gifts must be analyzed when the source has a “legislative or administrative interest” in the Board member. A source has a “legislative or administrative” interest in a Board member when the source has:
- a. An economic interest, distinct from that of the general public; and
  - b. In any matter that is or would be subject to the decision or vote of a Board member.

Under federal law, a personal conflict of interest arises when a Board member solicits or accepts gifts, gratuities, favors or anything of monetary value from a contractor, potential contractor, or party to a sub-agreement. However, federal law allows the acceptance of gifts where the financial interest is “not substantial” or the gift is an “unsolicited item of intrinsic value.” Therefore, by following Oregon’s \$50 gift limit, Board members will comply with the requirements under federal law.

#### **H. Financial Interest in Public Contract**

Under Oregon law, a Board member who ceases to hold a position as a public official may not have a “direct beneficial financial interest” in a public contract for two years after the date the contract was “authorized.”

A contract is “authorized” by a Board member if the Board member performed a significant role in the selection process of a contractor or the execution of the contract. A “significant role” can include recommending approval or signing of the contract, including serving on a selection committee or team, or having the final authorizing authority for the contract.

This law is most relevant in the following scenario. A former Board member becomes employed by Company. Company has a public contract with LTD. Board member is prohibited from working on the contract with LTD for two years from the date the contract was authorized.

**I. Penalties**

The Oregon Government Ethics Commission has jurisdiction to investigate alleged violations of the Oregon Government Ethics Laws. After an investigation, if the Commission finds that a violation occurs, it may impose sanctions that include, but are not limited to, letters of reprimand or civil penalties (of up to \$10,000). Any financial gain that a public official realized from a violation of Oregon Government Ethics Laws is subject to a forfeiture of twice the gain.



**Conflicts of Interest Acknowledgment and Disclosure Form**

I have read the Conflicts of Interest Policy set forth above and agree to comply fully with its terms and conditions at all times during my service as an LTD Board member. If at any time following the submission of this form I become aware of any actual or potential conflicts of interest, or if the information provided below becomes inaccurate or incomplete, I will promptly notify the LTD Board of Directors and the General Manager in writing.

*Please answer the questions below by circling 'Yes' or 'No'. Some of these questions may seem repetitive. Please answer each question. If you circle 'Yes' an explanation is required.*

1. Do **you** have a financial, or any other, interest in an entity that could be, or has been, awarded a contract with LTD?

NO                      YES (Explain)                      \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Does any **member of your immediate family** have a financial, or any other, interest in an entity that could be, or has been, awarded a contract with LTD?  
a. A "member of your immediate family" means your spouse, parent, stepparent, child, sibling, son-in-law or daughter-in-law.

NO                      YES (Explain)                      \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Does **your partner** have a financial, or any other, interest in an entity that could be, or has been, awarded a contract with LTD?

NO                      YES (Explain)                      \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Does **your current or prospective employer** have a financial, or any other, interest in an entity that could be, or has been, awarded a contract with LTD?

NO                      YES (Explain)                      \_\_\_\_\_

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5. Are there any businesses with which **you** are associated?

NO            YES (Explain)            \_\_\_\_\_

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6. Do you know of any circumstance in which **you** could receive a financial benefit or detriment from an action **you** may undertake in your capacity as a Board member?

NO            YES (Explain)            \_\_\_\_\_

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7. Do you know of any circumstance in which a **business with which you are associated** could receive a financial benefit or detriment from an action **you** may undertake in your capacity as a Board member?

NO            YES (Explain)            \_\_\_\_\_

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8. Are there any businesses with which **your relative** is associated?  
a. Please refer to Section B, page 2 of the Policy for the definition of "relative."

NO            YES (Explain)            \_\_\_\_\_

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9. Do you know of any circumstance in which **your relative** could receive a financial benefit or detriment from an action **you** may undertake in your capacity as a Board member?

NO            YES (Explain)            \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. Do you know of any circumstance in which a **business with which your relative is associated** could receive a financial benefit or detriment from an action **you** may undertake in your capacity as a Board member?

NO            YES (Explain)            \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Are there any other actual or potential conflicts of interest to disclose?

NO            YES (Explain)            \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In my individual capacity:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

## AGENDA ITEM SUMMARY

**DATE OF MEETING:** March 13, 2017

**ITEM TITLE:** PUBLIC CONTRACTING PROCEDURES DISCUSSION

**PREPARED BY:** Debera Massahos, Compliance Manager

**ACTION REQUESTED:** None. Information Only.

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**BACKGROUND:**

At the March 15 regular Board of Directors meeting, staff will be requesting the Board of Directors to approve a Resolution establishing new Public Contracting Procedures. This presentation will inform the Board of those new procedures, provide information about contracting authority levels at comparable public agencies, and provide time for discussion of the proposed Resolution.

**ATTACHMENTS:** Draft LTD Resolution No. 2017-03-15-011

**PROPOSED MOTION:** None.



Lane Transit District  
P. O. Box 7070  
Springfield, Oregon 97401

(541) 682-6100  
Fax: (541) 682-6111

LTD RESOLUTION NO. 2017-03-15-011

A RESOLUTION ESTABLISHING PUBLIC CONTRACTING PROCEDURES

WHEREAS, the LTD Board of Directors acts as the LTD Contract Review Board;

WHEREAS, the LTD Board of Directors, acting as the LTD Contract Review Board, may adopt rules by Resolution; and

WHEREAS, the LTD Contract Review Board desires to establish: (1) levels of contracting authority for the General Manager; (2) public contracting procedures; (3) approval procedures for Real Property Agreements and Intergovernmental Agreements; and four (4) levels of review for non-standard procurements.

NOW, THEREFORE, BE IT RESOLVED that the LTD Board of Directors, acting as the LTD Contract Review Board, passes a Resolution as follows:

1. Levels of Contracting Authority. The LTD Contract Review Board hereby delegates to the General Manager the authority and responsibility to approve, negotiate and execute procurements and contracts which do not exceed \$149,999.
2. Routine Annual Procurements. The LTD Contract Review Board hereby delegates to the General Manager the authority and responsibility to approve, negotiate, and execute routine annual procurements and contracts, regardless of amount, for operational goods and services including but not limited to fuel, engine oil and lubricants, tires, bus batteries, bus and facilities parts, printing, and facilities maintenance.
3. Contract Amendments and Change Orders. For those contracts authorized by the LTD Board of Directors, the LTD Contract Review Board hereby delegates to the General Manager the authority and responsibility to approve and execute contract amendments and change orders as may be necessary. Individual or cumulative contract amendments and change orders cannot exceed the lesser of \$150,000 or ten-percent (10%) of the initial contract.
4. Contract Documents. The LTD Contract Review Board hereby delegates to the General Manager the authority and responsibility to approve and execute all contract documents including purchase orders, blanket purchase orders, contracts,

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contract amendments, and change orders after any necessary authorization by the Board of Directors.

5. Budget and Policies. All authority delegated herein shall be exercised consistent with the adopted LTD budget and established policies and approved projects of LTD.
6. Intergovernmental Agreements. Subject to the limits set forth in Paragraphs 1 and 2, Intergovernmental Agreements shall be presented to the Board of Directors prior to entering into. "Intergovernmental Agreements" shall include any contract between governmental entities that is not a Real Property Agreement.
7. Real Property Agreements. Real Property Agreements shall be presented to the Board of Directors prior to entering into. "Real Property Agreements" shall include:
  - a. Agreements for the sale or purchase of real property;
  - b. Agreements for the granting of an easement or other encumbrance on real property; and
  - c. Lease agreements that exceed those limits set forth in Paragraphs 1 and 2, or that have a lease term of ten years or more.
8. Levels of Review for Non-Standard Procurements. The Procurement Manager and General Manager must approve, in writing, any non-standard procurement before it is solicited and/or published. "Non-standard procurement" is intended to include procurements other than Invitations for Bid and Requests for Proposals solicited using full and open competition. Micro-purchases and small procurements shall be excluded from this definition of "non-standard procurements."
9. Contracting Actions Requiring Board Authorization. For those contracts authorized by the LTD Board of Directors, the Board shall do the following concurrent with contract award:
  - a. Identify the "Project Closeout Team" for the project, such team being responsible for ensuring project milestones (substantial completion, final completion, acceptance) are met in accordance with the contract terms;
  - b. Authorize the payment plan for the contract; and
  - c. Identify the reporting, if any, the Board expects to receive on the project.
10. Delegated Authority Report. A report regarding the General Manager's delegated authority, pursuant to Paragraphs 1 and 2 of this Resolution, shall be presented to the Board of Directors at its monthly meeting in the form of a report in a format satisfactory to the Board. The report shall include all routine annual procurements that exceed \$10,000 and all other contracting actions that exceed \$10,000 but are below \$150,000. The report will be approved by the Board in the consent agenda portion of its meeting.

11. Delegation. The General Manager may delegate in writing any of the authorities granted under this Resolution; provided, however, any such authority delegated to staff shall not exceed the authority delegated herein to the General Manager.

\_\_\_\_\_

Date

\_\_\_\_\_

President, LTD Board of Directors

## AGENDA ITEM SUMMARY

**DATE OF MEETING:** March 13, 2017

**ITEM TITLE:** INTRODUCTION OF CONTRACT APPROVAL AGENDA ITEM SUMMARY

**PREPARED BY:** Collina Washington, Procurement Manager

**ACTION REQUESTED:** Information and Direction

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**BACKGROUND:**

To assist the Board in approving contracts submitted for their review and adoption, staff have developed a template to provide the Board with pertinent information relating to each contract.

Attached is a sample Agenda Item Summary for consideration. Staff would like input from the Board regarding the template.

**ATTACHMENTS:** Sample AIS related to Contract Approvals

**PROPOSED MOTION:** None



## AGENDA ITEM SUMMARY

**DATE OF MEETING:** March 13, 2017

**ITEM TITLE:** CONTRACT APPROVAL – PROVISION OF COORDINATED HUMAN SERVICES TRANSPORTATION SERVICES (RIDE SOURCE)

**PREPARED BY:** Aurora Jackson, General Manager; Collina Washington, Procurement Manager

**ACTION REQUESTED:** Authorize the General Manager to execute Contract No. 2017-01 between Lane Transit District (“LTD”) and ABC Transportation Co. (“ABC”)

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**PURPOSE/OBJECTIVE:** This action will authorize the general manager to enter into contract with ABC for the provision of the coordinated human transportation services (RideSource).

**DESCRIPTION/JUSTIFICATION:** LTD’s Accessible Services provides coordinated human transportation services. These services include the following:

- Transportation services that are designed to meet the needs of older adults, people with disabilities, and people with low incomes
- Assurance of eligibility and compliance via mobility management as required by funding and human service agencies
- Origin-to-destination transportation that complies with the Americans with Disabilities Act (ADA) for eligible persons traveling in the Eugene-Springfield area
- Coordination of Medicaid non-emergency medical transportation (NEMT) for Lane County and adjacent portions
- Auxiliary services under LTD’s RideSource program
- A centralized call center that incorporates ADA, Medicaid NEMT, and smaller human services transportation into an established regional network of public and private transportation providers

**PROCUREMENT IMPACT:** LTD’s Request for Proposals 2017-01 was issued on January 9, 2017. The Pre-Proposal Meeting was held on February 1, in which seven (7) individual firms expressed interest in providing the services. There were two inquiry periods to provide potential proposers to ask questions regarding the scope of services and the resulting contract.

Proposals were received on March 29, 2017. Four firms responded, each of which was determined to be responsive. Following evaluations and interviews, staff determined that ABC Transportation was the most responsive and responsible proposer providing the best value to LTD.

**POLICY IMPACT:**

1. Oregon Public Contracting Code and LTD’s Purchasing Policy Rules require that such services be obtained utilizing a competitive solicitation process

2. LTD Resolution No. 2017-03-15-011 requires that contracts exceeding \$149,999 must be presented to the Board of Directors for review and approval.

**ECONOMIC IMPACT:** LTD has expended an average \$8.27 million annually for these services over the last four (4) years. The successful proposer has submitted a cost equaling to \$\_\_\_\_\_ annually. The term of this contract is for ten (10) years and 120 days. The 120 days is the time of transition between contractors at the expiration of the contract term.

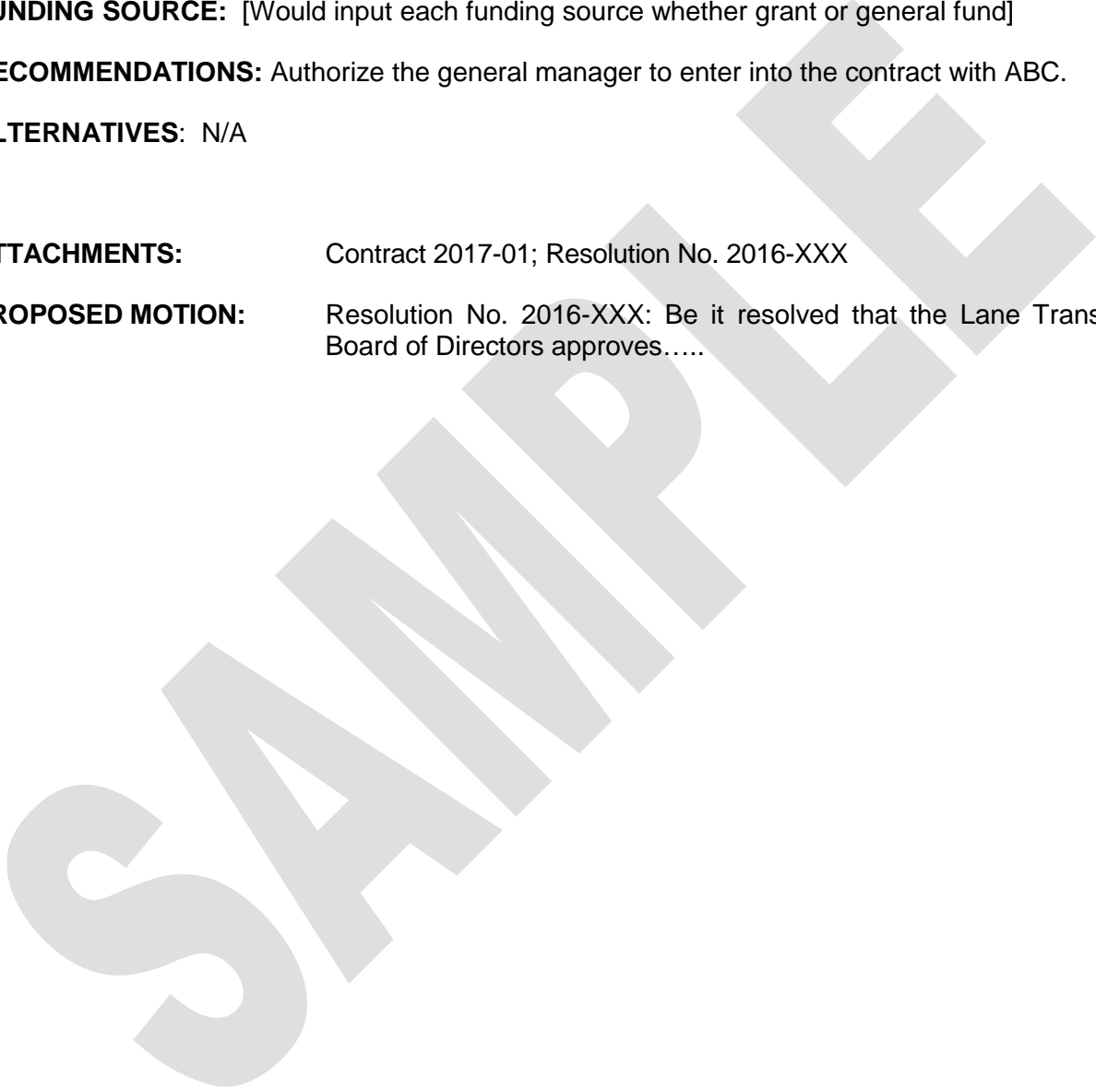
**FUNDING SOURCE:** [Would input each funding source whether grant or general fund]

**RECOMMENDATIONS:** Authorize the general manager to enter into the contract with ABC.

**ALTERNATIVES:** N/A

**ATTACHMENTS:** Contract 2017-01; Resolution No. 2016-XXX

**PROPOSED MOTION:** Resolution No. 2016-XXX: Be it resolved that the Lane Transit District Board of Directors approves.....



**Contracting Authority Comparison**

	<b>Budget</b>	<b>Board Action Required</b>	<b>GM/Superintendent</b>	<b>Staff</b>
<b>LTD</b> (Current)	\$63.1 mil	None.	Unlimited	<p>A conflict between our own policy and Authority Delegation matrix.</p> <p>¶ 2.1.1 of policy gives the following purchasing authority:                      Purchasing Manager: \$75,000                      Purchasing Specialist: \$10,000                      Inventory Supervisor: \$10,000                      Parts Clerk: \$2,500</p> <p>Matrix gives the following purchasing authority:                      Administrative Services: \$75,000                      Customer Services &amp; Planning: \$75,000                      Operations &amp; Customer Satisfaction: \$75,000                      Purchasing Manager: P.O.s, Misc. contracts, and contract modifications “as to form”</p> <p><u>Checks</u>                      No co-signing required; all checks have electronic signatures.</p>
Cherriots	\$52.3 mil	Over \$100,000 for any contract	<p>Contracts up to \$100,000.</p> <p>Reviews &amp; approves payments in excess of \$50,000.</p> <p>Reviews change order amendments in excess of \$20,000.</p>	<p>Division Head: Contract authority up to \$20,000</p> <p>Department Manager: Contract authority up to \$10,000</p> <p><u>Checks</u>                      Finance Manager co-signs for checks over \$50,000. Maintenance Manager co-signs on checks for fuel over \$30,000.</p>
TriMet	\$1.1 bil	<p>Goods/Services, Public Improvement, Real Property transactions, IGAs, Change Orders: Over \$500,000</p> <p>Personal Service Contracts: Over \$150,000</p>	<p>Goods/Services, Public Improvement, Real Property transactions, IGAs, Change Orders: Up to \$500,000</p> <p>Personal Service Contracts: Up to \$150,000</p>	<p>Other positions with authority equivalent to GM: Deputy GM, General Counsel, Executive Director, Director of Procurement, Manager of Contracts, Manager of Purchasing.</p> <p>*Purchasing authority was significantly increased in 2009 in light of the Portland to Milwaukie Light Rail Project, a \$1.4 billion project.</p>

TriMet				<u>Checks</u> Varies by type of distribution, but generally requires: - For physical checks \$100,000+: Two live signatures, one of which must be from the Director of Financial Services or the CFO.  - For electronic checks \$100,000+: Requires a register (report) in advance that has been reviewed and approved by an accounting manager before a hard copy of the register is physically signed off on by the Director of Financial Services or the CFO. Following this approval, the electronic check may be issued.
Willamalane	\$14.3 mil	Goods/Services: Over \$25,000  Public Improvement: Over \$100,000	Goods/Services: Up to \$25,000  Public Improvement: Up to \$100,000	Varies by level. Highest level staff has authority up to \$2,500.  <u>Checks</u> CFO has authority to issue checks up to her contracting authority amount of \$2,500. Anything in excess of that requires approval of the Superintendent. Approval is given in the electronic system, with the Superintendent authorizing it and then his electronic signature will be put on the check. If the check is in excess of \$25,000 or \$100,000 (depending on the type of project), a second signature from a Board member will be required. That is an electronic signature that requires advance authorization.
City of Springfield	\$316 mil (2015)	Over \$100,000 for any contract	\$50,000 to \$99,999.99	Department Director: \$0 to \$49,999.99  <u>Checks</u> Unable to obtain this information at this time.
Metropolitan Wastewater Management Commission (MWMC)	\$158 mil 2015-16	Professional Services: Over \$50,000  Any other: Over \$15,000* (this amount may be increased)	Professional Services: Up to \$50,000  Any other: Up to \$15,000	None, requires GM approval.  <u>Checks</u> Unable to obtain this information at this time

Springfield Public Schools (SPS)	\$226 mil (including \$72 mil bond fund)	Goods/Services: Over \$150,000  Public Improvements: Over \$100,000  *Has a central purchasing office.	Goods/Services: Up to \$150,000  Public Improvements: Up to \$100,000	Directors have authority up to approve purchase requests up to \$2,500 but must be converted to a purchasing contract by Purchasing Manager or Chief Operations Officer.  <u>Authority for small purchases:</u> - Maintenance Foreman: \$500/month - Bond Project Mngr: \$10K/month - Director: \$2,500/month - Purchasing Mng & Purchasing Clerk: \$10K/mo. - COO: \$20K/mo. - Superintendent: \$2,500/mo.  <u>Checks</u> Unable to obtain this information at this time.
Lane County	\$566 mil	Over \$100,000 for any contract	Contracts up to \$100,000 if the contract is less than three years in length	Each department director has authority to execute contracts that do not exceed \$25,000 nor three years in length.
City of Eugene	\$306 Mil	None, unless Council approval is required as a matter of law or is requested by the City Manager.	Unlimited, unless Council approval is required as a matter of law or is requested by the City Manager.	The city manager has delegated authority to execute contracts up to \$100,000 to the following personnel: Assistant City Manager; City Attorney; Central Services Executive Director; Fire & Emergency Medical Services Department Executive Director; Police Department Executive Director; Library, Recreation & Cultural Services Department Executive Director; Planning and Development Department Executive Director; and Public Works Department Executive Director.

**Public Contracting Rules to Note:**

<b><u>Type of Contract</u></b>	<b><u>No Competition</u></b> Direct/Micro	<b><u>Intermediate</u></b> Solicit Quotes/Proposals	<b><u>Formal</u></b> ITB/RFP w/ public notice
Goods/Services	Federal: Up to \$3,000 State: Up to \$10,000	Federal: Up to \$150,000 State: Up to \$150,000	Federal: > \$150,000 State: \$150,000
Professional Services	Federal: Up to \$3,000 State: Up to \$100,000	Federal: Up to \$150,000 State: Up to \$250,000	Federal: \$150,000 State: > \$250,000
Construction	Federal: Up to \$2,000 State: N/A	Federal: Up to \$150,000 State: Up to \$100,000	Federal: \$150,000 State: > \$100,000



# Ethics, Conflict of Interest & Public Contracting

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THORP, PURDY, JEWETT, URNESS & WILKINSON, P.C.

# Overview

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1. Powers of Lane Transit District (and its Board)
2. Conflicts of Interest \*
  - a. Federal and State laws/rules
  - b. Potential v. Actual Conflict of Interest
3. Ethics
  - a. Use of Office Prohibition
  - b. Gifts \*
  - c. Financial Interest in Public Contract
4. Contracting Authority





# *Part 1: Powers of Lane Transit District*



# *LTD as a Mass Transit District*

Special Districts are created by the Legislature for a single purpose

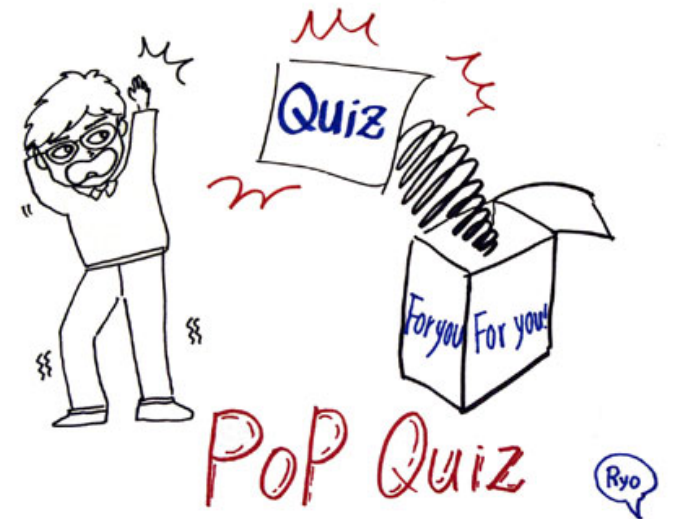
- LTD is a Mass Transit District which is a Special District.
- Special Districts are a creation of the Legislature which means they are statutory.
- Special Districts do NOT have broad general powers like cities and counties. NO inherent powers.
- Only those powers as are enumerated in statute.
- A Mass Transit District is one type of Special District.
- Other examples of Special Districts include:
  - Park and recreation district
  - Library district
  - Port district
  - 911 communications district
  - Domestic water supply district

## Powers of LTD as a Mass Transit District

ORS 267.200: General district powers. A **mass transit district** shall have full power to carry out the objects of its formation and to that end may:

1. Have and use a seal; Sue and be sued.
2. Acquire property inside the boundaries of the district for the purpose of providing or operating a mass transit system.
3. Contract with federal, state, or local government, or private entities or individuals for construction, acquisition, purchase, lease, preservation, improvement, operation or maintenance of a mass transit system.
4. Build, construct, purchase, lease, improve, operate, maintain all improvements, facilities, or equipment necessary or desirable for a mass transit system.
5. Enter into contracts and employ agents, engineers, attorneys and other persons and fix their compensation.
6. Fix and collect charges for use of the transit system and facilities.
7. Construct, acquire, maintain, operate, lease, rent and dispose of passenger terminal facilities, motor vehicle parking facilities, and other facilities for the purpose of encouraging the use of mass transit.
8. Enter into contracts or intergovernmental agreements to jointly act with respect to mass transit, provided that the party contracting to receive the services shall pay to the mass transit district not less than the proportionate share of the cost of the services that the benefits to the contracting party bear to the total benefits from the service.
9. Conduct programs and events and take other actions for the purpose of improving or maintaining employee relations.
10. Improve, construct and maintain bridges over navigable streams.
11. Do such other acts or things as may be necessary or convenient for the proper exercise of the powers granted to the district.

# Part 2: Conflict of Interest



# *Conflicts of Interest When Federal Funds May Be Involved*

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Board members are prohibited from participating in the selection, award, or administration of a contract supported with assistance from the Federal Transit Administration if a conflict of interest, real or apparent, would be involved. Such a conflict arises when:

1. The Board member;
2. Any member of the Board member's immediate family;
3. The Board member's partner; or
4. The Board member's employer or prospective employer

has a financial or other interest in the entity award a contract with LTD.

# Question 1

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## CONFLICT OF INTEREST WHEN FEDERAL FUNDS ARE OR MAY BE INVOLVED

Board Member Megan is married to Bob. Bob works as a finance manager at Speak Easy, a marketing consulting firm. LTD has solicited Requests for Proposals for an advertising campaign. Bob did not participate in preparing Speak Easy's proposal and would not provide services under the proposal. After a team evaluated the proposals received, it was determined that Speak Easy's proposal would be most advantageous to the District. LTD staff is recommending the Board authorize the General Manager to enter into a contract with Speak Easy.

***Can Board Member Megan vote on whether to authorize the General Manager to enter into a contract with Speak Easy?***

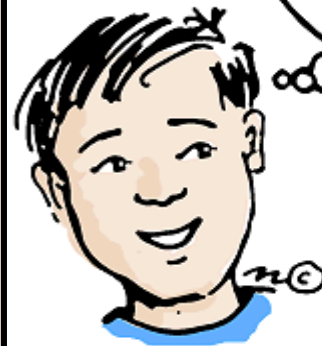
1. Bob is Board Member Megan's immediate family (her husband).
2. He has a "financial or other interest" in Speak Easy as an employee.
3. Megan has a Conflict of Interest. She is prohibited from participating in the award of a contract.

**No.** Megan should publicly announce the nature of her conflict; refrain from further participation and do NOT vote.

# Conflicts of Interest Under Oregon Law

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An **actual/potential** conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which **would/could** be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or relative of the person is associated.



What if I  
have a  
conflict?

Potential Conflict: Generally, announce nature of conflict, but may continue to participate in official action on the issue.

Actual Conflict: Generally, announce nature of conflict and refrain from further action on the issue.

# Question 2

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## CONFLICT OF INTEREST UNDER OREGON LAW

LTD intends to purchase undeveloped property to create a park-and-ride facility and bus stations. The property is owned by Scott Smith, a developer in town. Scott is Nancy Neet's step-brother. Nancy's husband, Mark Neet, is an LTD Board Member. LTD staff recommends that the Board authorize the General Manager to purchase the property from Scott Smith for \$350,000.

***Can Board Member Mark vote on whether to authorize the General Manager to purchase the property from Scott Smith?***

1. Scott is the stepsibling of Nancy, Mark's wife. He is included in the definition of "relative" under Oregon law
2. Mark's vote to purchase would be to the private pecuniary benefit of Scott, a "relative."
3. Mark has an Actual Conflict of Interest. He is prohibited from participating in the award of a contract.

**No.** Mark should publicly announce the nature of his conflict; refrain from further participation and do NOT vote.



# Question 3

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## CONFLICT OF INTEREST UNDER OREGON LAW

Board Member Charlie owns a small sheetrock contracting business with his brother, Dennis. Charlie is retired from the business, but still is an owner. LTD plans to update its administrative building. Staff presents options to the Board: (1) Do an Invitation to Bid for a General Contractor; or (2) Directly manage all the smaller contracts, which would include a contract for sheetrock work. Charlie is sure his brother Dennis would put in a bid on the sheetrock work.

***Can Board Member Charlie participate in the discussion regarding updates to the administrative building?***

1. Charlie has a financial interest in a business he is associated with (he is still an owner).
2. The discussion regarding what contracting option to pursue could result in a private pecuniary benefit to Charlie's business.
3. Charlie has a Potential Conflict of Interest.

**Yes.** Charlie should publicly announce the nature of his conflict, but he may participate in discussion and, if there is a vote, he may vote.

# Question 4

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## CONFLICT OF INTEREST WHEN FEDERAL FUNDS MAY BE INVOLVED

Board Member Charlie owns a small sheetrock contracting business with his brother, Dennis. Charlie is retired from the business, but still is an owner. LTD plans to update its administrative building. Staff presents options to the Board: (1) Do an Invitation to Bid for a General Contractor; or (2) Directly manage all the smaller contracts, which would include a contract for sheetrock work. Charlie is sure his brother Dennis would put it a bid on the sheetrock work.

***Can Board Member Charlie participate in the discussion regarding updates to the administrative building?***

1. Charlie has a financial interest in a business he is associated with (he is still an owner).
  2. The discussion regarding what contracting option to pursue could result in a private pecuniary benefit to Charlie, Dennis, and their business.
  3. Charlie has a Potential Conflict of Interest.
- No.** Charlie should publicly announce the nature of his conflict; refrain from further participation and do NOT vote.

# Disclosure Requirements

**Help Us, Help You. Disclosure Your Conflicts.**



- All actual and potential conflicts of interest shall be disclosed by Board members:
  - To the General Manager through the Annual Disclosure Form; and
  - To the Board whenever a conflict of interest arises.
- Oregon law requires Board members to file with the Oregon Government Ethics Commission a verified statement of economic interest (SEI) or on before April 15 every year.

A solid orange vertical bar is positioned on the left side of the slide, extending from the top to the bottom.

## *Part 3: Use of Office Prohibition*

# *Use of Office Prohibition*

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Unless an exception applies, a Board Member may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the Board member, a relative or member of the household of the Board member, or any business with which the Board member, relative, or member of the household is associated, if the financial gain or avoidance of financial debt would not otherwise be available but for the Board member's holding of official position.

## What Did That Mean?

1. No financial gain
2. No avoidance of financial detriment
3. For Board member, relative, member of household or any business any of these people are associated with
4. If the benefit is not otherwise available

## *Part 4: Gifts*



# *What is a Gift?*

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Under Oregon law, a “gift” is defined as:

1. Something of value
2. Given to a Board member, relative, or household member
3. For free or discounted
4. Which is not offered on the same term to “others”

# What if I am offered a gift?

## A 4-Step Analysis



1. Do you know who gave you the gift? (“The Source”)
2. Does the source have a legislative or administrative interest in you?
  - a. No? Stop analysis, accept gift!
  - b. Yes, Continue.

A source has a “legislative or administrative interest” in a Board member when the source has:

- An economic interest distinct from that of the general public; and
- In any matter that is or would be subject to the decision or vote of the Board member



# *What if I am offered a gift?*

## A 4-Step Analysis



3. Does the gift fall under an exception that allows you to accept?
  - a. Yes? Stop analysis, accept gift!
  - b. No? Continue.
4. What is the value of the gift?
  - a. \$50 of gifts per year per source with a legislative or administrative interest in you

# Question 5

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## GIFT ANALYSIS UNDER OREGON LAW

Board Member Sarah is acquaintances with Isabella, who owns Bella Boutique. At the next Board meeting, the Board will vote on whether to expand LTD services. The proposed expansion would require LTD to take 8 feet of property in front of Bella Boutique. The week before the vote, Isabella offers to pay for Sarah's fees for a round of golf. Board Member Sarah would not be playing in her official capacity; this is purely for fun. The fees are \$100.

***Can Board Member Sarah accept the gift of \$100 in paid fees? If No, can she pay \$50 and accept the other \$50 as a gift?***

1. The Source: Isabella of Bella Boutique
2. She has a legislative or administrative interest in Board Member Sarah.
3. The gift does fall under an exception.
4. The gift is more than \$50.

**No.** Sarah cannot accept the \$100 gift.

**No.** Sarah cannot "split the difference." She can either accept the gift, or not.

# Question 6

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## GIFT ANALYSIS UNDER OREGON LAW

LTD is soliciting proposals for an on-call engineer. Mike McCullough owns Nuts and Bolts, a well-respected engineering firm out of Springfield. His firm will be submitting a proposal. He offers to purchase a seat at the Chamber of Commerce dinner for Board Member Dave. The seat is \$60 and represents the cost of admission and food. Board Member Dave will be attending the Chamber dinner in his official capacity, representing LTD.

***Can Board Member Dave accept the gift of \$60 for admission and food at the Chamber of Commerce dinner?***

1. The Source: Mike of Nuts and Bolts
2. He has a legislative or administrative interest in Board Member Dave.
3. The gift falls under an exception: admission/food when Board member is representing LTD

**Yes.** Dave CAN accept the gift, even though it's more than \$50 and even though it's from a source with a legislative/administrative interest in him because it is excluded from the definition of gift.

# Question 7

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## BACK TO CONFLICT OF INTEREST WHEN FEDERAL FUNDS ARE INVOLVED

LTD is soliciting proposals for an on-call engineer. Mike McCullough owns Nuts and Bolts, a well-respected engineering firm out of Springfield. His firm will be submitting a proposal. He offers to purchase a seat at the Chamber of Commerce dinner for Board Member Dave. The seat is \$60 and represents the cost of admission and food. Board Member Dave will be attending the Chamber dinner in his official capacity, representing LTD. Assume the contract will be paid with federal funds.

***Can Board Member Dave accept the gift of \$60 for admission and food at the Chamber of Commerce dinner?***

1. A personal conflict of interest arises when a Board member accepts gifts, gratuities, favors, or anything of monetary value from a contractor or potential contractor.
2. Federal law allows acceptance of gifts where the interest is “not substantial” (i.e. under the \$50 gift limit).
3. Although excluded from the definition of “gift” under Oregon law, no such exclusion exists when federal funds are involved.
4. Over \$50 gift from a potential contractor.

**No.** Dave should NOT accept the gift. If he does, he will have a conflict of interest and will have to publicly announce the conflict and refrain from participation.

### Financial Interest in Public Contract

- A Board member who ceases to hold a position as a public official may not have a “direct beneficial financial interest” in a public contract for two years after the date the contract was “authorized.”
- A contract is “authorized” if a Board member votes to approve a contract.

### Penalties for Ethics Violations

- Oregon Government Ethics Commission has jurisdiction to investigate.
- Sanctions may include, but are not limited to, letters of reprimand or civil penalties (of up to \$10,000).
- Any financial gain realized in violation of the law is subject to forfeiture of twice the gain.

# *Part 5: Contracting Authority Resolution*



# *Contracting Authority*

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- The manner of “procuring” goods or services generally depends on the anticipated amount of the contract.
  - Lower \$ Contract = Less Formal Procurement
  - Higher \$\$\$ Contract = More Formal Procurement
- “Formal” means an Invitation to Bid (ITB) or Request for Proposals (RFP) is drafted by our staff and publicized; open to any interested contractors
- This is as opposed to more “informal” methods of contracting directly with a contractor, or contacting 5 contractors and requesting quotes.

## Formal Procurement Levels

For any contract supported with funds from the FTA, a **formal** procurement is required if the estimated contract value is \$150,000 or more.

# Change Orders

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- Often, but not always, there are change orders after a contract is authorized. Change orders may arise for a variety of reasons. Change orders generally result in an increase to the contract price.
- For contracts the Board authorizes (i.e. those \$150,000 and over), the Board will also delegate to the General Manager the authority and responsibility to approve and execute contract amendments and change orders not to exceed the lesser of \$150,000 or 10% of the initial contract.

## Examples

1. Board authorizes \$200,000 contract and change orders up to \$20,000 (10% of contract). For a possible total of \$220,000.
2. Board authorizes \$25 million contract and change orders up to \$150,000. For a possible total of \$25,150,000.



# Thank you!

# Questions?

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