

Public Procurement Practice

ETHICAL PROCUREMENT



PRINCIPLES AND
PRACTICES OF
PUBLIC PROCUREMENT

STANDARD

It is essential that public procurement professionals and stakeholders¹ adhere to a well-defined and established code of ethics. The public procurement organization should have an adopted code of ethics and require its employees to uphold the code and seek commitment to it by all those with whom they engage.

Definition

Ethical procurement prohibits breach of the public's trust by discouraging a public employee from attempting to realize personal gain² through conduct inconsistent with the proper discharge of the employee's duties.³

Element 1.1: Conflict of Interest

Public Procurement professionals shall:

- Avoid any private or professional activity that would create a conflict of interest or the appearance of impropriety
- Avoid engaging in personal business with any supplier representative or similar person
- Avoid lending money to or borrowing money from any supplier⁴
- Avoid any and all potential for nepotism⁵
- Avoid any overlap of duties in the procurement process⁶
- Safeguard the procurement process from political or outside influence

Element 1.2: Conduct with Suppliers

Business dealings with suppliers must be fair and transparent. Procurement shall:

- Refrain from showing favoritism or being influenced by suppliers through the acceptance of gifts, gratuities, loans or favors⁷
- Safeguard supplier confidentiality
- Refrain from requiring suppliers to pay to be included on an approved or preferred supplier list
- Refrain from requesting donations of goods or services to the public entity
- Select suppliers on the basis of meeting appropriate and fair criteria
- Discourage the arbitrary or unfair use of purchasing leverage or influence when dealing with suppliers
- Avoid the exertion of undue influence or abuses of power⁸
- Treat all suppliers fair and equal

Element 1.3: Corruption⁹

Public procurement professionals who become aware of any corrupt activity have a duty to the profession and to their employing organizations to alert their senior management and/or elected officials. Public procurement shall not tolerate bribery or corruption in any form.

Forms include, but are not limited to:

- **Bribery** is the offering, promising, giving, authorizing or accepting of any undue financial or other advantage to, by or for any persons associated with the procurement process, or for anyone else in order to obtain or retain a business or other improper advantage. Bribery often includes (i) kicking back a portion of a contract payment to government or party officials or to employees of the other contracting party, their close relatives, friends or business partners or (ii) using intermediaries such as agents, subcontractors, consultants or other third parties, to channel payments to government or party officials, or to employees of the contracting parties, their relatives, friends or business partners.
- **Extortion or Solicitation** is the demanding of a bribe, whether or not coupled with a threat, if the demand is refused. Procurement professionals will oppose any attempt of extortion or solicitation and are encouraged to report such attempts through available formal or informal reporting mechanisms.
- **Trading in Influence** is the offering or solicitation of an undue advantage in order to exert an improper, real, or supposed influence.
- **Laundering the proceeds of the corrupt practices mentioned above** is the concealing or disguising the illegitimate origin, source, location, disposition, movement or ownership of property and/or money, knowing that such is the proceeds of crime.
- **Nepotism** is the use of authority or influence to show favoritism to relatives or friends without merit.

Element 1.4: Business gifts and hospitality

The offer and receipt of business gifts and entertainment are sensitive areas for public procurement professionals, despite being recognized as standard private sector business practice. Public procurement organizations should develop a clear policy on accepting business gifts and procurement professionals and suppliers must comply with any such policy as well as prevailing laws. Minimal guidelines include:

- Not soliciting or accepting money, loans, and credits or prejudicial discounts, gifts, entertainment, favors or services from present or potential suppliers which might influence or appear to influence a procurement decision/ process
- Avoiding meals or other hospitality¹⁰ with suppliers¹¹

Element 1.5 Other Policies and Considerations

Ethical practices should be defined and embedded in other policies, procedures and practices which overlap public procurement. Other policies in the procurement space which will need to be considered may include the subjects of:

- Competition and anti-competitive practices
- Supplier diversity
- Supplier equality
- Corporate Social Responsibility (CSR)
- Sustainability¹²
- Anti-discrimination policy
- Transparency¹³



Element 1.6: Ensuring compliance

Ensuring compliance, focusing on high risk areas, understanding suppliers' operations and offering guidance and support when improvement is necessary or appropriate should ensure that the strategic and operational risks associated with unethical practices are minimized.

Public procurement professionals need to focus on ensuring compliance with their ethical code and the policies that it touches upon. To ensure this compliance, the focus:

- Should take place in parallel with the development of monitoring procedures
- May take time, or need to be introduced in phases
- May require prioritization of areas associated with ethical issues which might be of greater risk to the organization.

Background

Ethics are the principles which define behavior as right, good and appropriate. Employees in public service are bound to uphold certain values (See: Values and Guiding Principles). Any attempt to realize personal gain by conduct inconsistent with the proper discharge of the employee's duties is a breach of the public trust.

The value of the transactions in the procurement process along with pressures to lower costs could result in bribery, corruption and other practices which could be deemed unethical. In the public sector where goods and services are funded by public expenditure, it is imperative that procurement operates ethically, with impartiality, transparency, and professionalism.

Ethical procurement best practice starts with the employees in procurement following an ethical code which dictates their behavior and actions while conducting business. Ethical procurement practices should be extended to all stakeholders in the procurement cycle. Ethical procurement should also include an understanding of suppliers' operations and the procurement professional should offer guidance and support when improvement is necessary or appropriate.

- 1 Any organization, group, or individual that can place a claim on the organization's resources or services or is affected by what the organization does or the services it provides (NIGP. (2011). *Public procurement dictionary of terms*. Herndon, VA:NIGP.)
- 2 Gain may be monetary, and/or non-monetary in nature.
- 3 National Institute of Governmental Purchasing, Inc. (2011). *Public procurement dictionary of terms*. Herndon, VA: NIGP.
- 4 Adapted from NIGP. (2011). NIGP Code of ethics. Retrieved from <http://www.nigp.org/eweb/StartPage.aspx?Site=NIGP&webcode=abt-code-ofethics>
- 5 Form of favoritism based on acquaintances and familiar relationships whereby someone in an official position exploits his or her power and authority to provide a job or favor to a family member or friend, even though he or she may not be qualified or deserving " (Transparency International. (2009). *The anti-corruption plain language guide*. Retrieved from www.transparency.org).
- 6 For example: appropriate checks and balances should be in place so that the requisitioning, ordering and receiving functions do not report to the same supervisor.
- 7 Ibid.
- 8 It is important to ensure compliance with all applicable legislation, such as restraint of trade and anti-trust legislation, which address anticompetitive practices and abuse of dominant position.
- 9 Adapted from ICC. (2011). ICC rules on combating corruption. Retrieved from http://www.iccwbo.org/uploadedFiles/ICC/policy/business_in_society/Statements/ICC_Rules_on_Combating_Corruption_2011edition.pdf
- 10 If engaging in meals or hospitality the procurement professional should pay for meals as frequently as the supplier and be mindful of any policy/law which limit dollar value of such meals and/ or hospitality.
- 11 Adapted from NIGP. (2011). NIGP Code of ethics. Retrieved from <http://www.nigp.org/eweb/StartPage.aspx?Site=NIGP&webcode=abt-codeofethics>
- 12 Inclusive of economic, social, and environmental considerations as they relate to the procurement process.
- 13 Including conflict of interest disclosures for procurement staff and stakeholders involved directly in the procurement process.