

ETHICS IN PUBLIC PROCUREMENT: BUYING PUBLIC TRUST

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ABSTRACT. No procurement professional wants their name featured in the negative headlines. Ethics is a significant issue when it comes to public procurement. Public procurement professionals must keep abreast of not only the laws that govern their practice, but be keenly aware of the need for transparency in the way they conduct their transactions. The modern public procurement department is faced with agency growth, ambiguity in performance measurement, and keeping pace with modern procurement trends. This article will present what an agency can do to thwart potential ethics violations before they occur in the hopes of creating a more positive public image.

INTRODUCTION

If you once forfeit the confidence of your fellow citizens, you can never regain their respect and esteem (Abraham Lincoln).

Ethics is a significant issue when it comes to public procurement. As procurement professionals, it is our responsibility to ensure that the core values of honesty, integrity and transparency are not only followed, but disseminated throughout the agencies for which we work. The intent of this paper is to create a higher awareness about ethics as it relates to public procurement in the interest of promoting positive future business practices. After a brief background on public procurement processes and trends in general, ethics will be discussed in terms of related laws. Concluding remarks will include scenarios discussing what individuals can do to enhance the integrity of their own agency.

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ABOUT PUBLIC PROCUREMENT

Public procurement was once viewed as a clerical function, yet today it has been pushed to the forefront of business operations. Contracting for goods and services can result in substantial cost savings, and requires knowledgeable professionals to review and implement such legal documents as bid invitations, requests for proposals, and service contracts. Procurement professionals are faced with reading the fine print, understanding the bounds of their purchasing authority, and keeping abreast of the rules and policies that govern purchasing practices.

Public procurement involves spending public money, and it is important for buyers to always act in the best interest of their agency. Dealing with public money opens the door to scrutiny of business practices. In light of this, it is important that the public buyer be keenly aware of the need for transparency in their dealings. Buyers must not only be versed in the laws that guide their procurement decisions, but also be aware of the appearance of their daily dealings with outside vendors, as the appearance of favoritism or unethical bidding practices can damage one's professional reputation.

Nearly all public procurement departments are undergoing some level of change and many are shifting from a structured, centralized mindset to a more efficient, less rule driven decentralized way of doing business. It is paramount that information on internal and external rules and policies be circulated throughout the agencies we work for. As agencies grow, decentralization or a move toward less oversight occurs. Florida Atlantic University conducted a survey of purchasing organizations in early 2000 to find that many purchasing departments (51%) reported a mix of both centralized and decentralized processes (McCue & Pitzer, 2000). This is the best way to perform business is with some level of central purchasing supervision, while outlying offices can make smaller purchases with faster response time. With oversight, there is less room for mistakes by new employees that are untrained in professional purchasing practices, which could be construed as unethical behavior.

Many studies have been conducted to evaluate the outputs of public sector purchasing. These studies have focused on a wide variety of purchasing procedures, such as the examination of how and what the public sector spends money on, to the overall

productivity of procurement departments. The analysis of public procurement departments often results in inconclusive data largely because many departments cannot reach an agreement on the terms and methods used to define how they procure goods and services. The measurement of purchasing data, however, is required to justify the need for additional staffing requirements, as state and federal dollars are often allocated according to need. If this need cannot be justified, neither can the additional staff (McC Campbell & Slaich, 1995).

Further limitations in studies stem from the wide variety of purchasing laws governing the ways that various agencies do business, coupled with their level of decentralization versus centralization. With such a wide representation, it is difficult, if not impossible, to track data in general terms. This stated, the future study of purchasing outputs should focus on procurement departments with similar performance standards in order to clearly draw an unambiguous analysis of the purchasing functions (McC Campbell & Slaich, 1995).

One modern trend in public procurement is the push toward showing consideration for environmental programs. The public buyer must keep these developments in mind when requesting quotes from vendors as these current issues not only ensure the health of future generations, but also the stabilization of our global market. The ethical implications of buying a product that is less expensive, but more damaging to the environment must be weighed. This impacts the products that purchasing departments with the US buy, from paper to automobiles. As Brian K. Yeoman (2005, p. 17), the Director of Education and Development for the National Association of Educational Procurement (NAEP) states, "Our country comprises only 4% of the world's population, and yet, with respect to the most impactful greenhouse gasses, we are responsible for 27% of the global emissions." This statement alone justifies the need for procurement professionals to follow programs that benefit future generations, as an ethical person acts on what is right not only for today, but also for tomorrow.

LAW VERSUS ETHICS

We have in place a system of laws that are written to guide us through our procurement decisions. For example, we have laws that

help us gain fair and competitive competition to save taxpayer money; we also have laws that prohibit us from taking bribes and showing favoritism. However, simply following what the law states does not always constitute ethical behavior. In order to address this we must look at why these laws were made and what constitutes ethical behavior.

Laws are often enacted because they are, on the aggregate, beneficial for society. However, according to NIGP, “making a practice a legal issue does not mean that laws will be vigorously enforced, but it shows that it has been identified as a problem that deserves the coercive force of the governing political body” (Buffington & Flynn, 2004, p. 112). Indeed, while there are laws and policies that blanket our public role, there cannot be a rule for every ethical challenge a public procurement official faces in the course of his or her career. The answer lies somewhere in between the laws and the ethical actions of procurement professionals.

Each public purchasing agency is governed by the laws set forth by their particular state legislature. Efforts towards the standardization of procurement rules have been drafted in an attempt to maintain a level ground in the realm of purchasing. One such plan, The Model Procurement Code for State and Local Governments, was developed by the American Bar Association. It serves as a guide for state and local governments to maintain balanced procurement practices. Article 12 of the code speaks directly to ethics in public procurement. The article outlines the importance of confidentiality before bid award, views towards accepting gifts and gratuities, as well as allowing states to form their own “Ethics Commissions” to serve as a resource for procurement officials.

The Uniform Commercial Code (UCC), which was created in 1951 and governs the sale of goods predominantly when there exists no formal contract to govern those sales, was created in order to fill the gaps that existed in the procurement process. The UCC, however, can be changed to suit the needs of procurement departments if alternate terms and conditions are applied to a particular contract. Determining what is in the best interest for a public agency within lawful parameters may not always bar unethical behavior from occurring, thus placing a responsibility on procurement professionals

to gauge between written laws and the ethical determination of right versus wrong.

ENCOURAGING ETHICAL PROCUREMENT

Ethics begins with the individual. As a public servant it is important to disconnect one's leanings toward favoritism. It is human nature to develop attachments towards individuals we like and people who satisfy our needs. As a representative of public interest, however, it is important to never let these emotional bonds sway our judgment. It is also essential that gifts of gratitude (or otherwise) are not accepted, as these gifts may cloud our judgment in future dealings with a particular vendor.

When describing the manner in which a public purchaser should deal with the public's funds, Suzanne Dallimore (2006, p. 2) offers this reminder: "It's not your money." This could very well be a mantra for the public procurement professional. We should treat public money with the same responsibility we would expect if we were to entrust our own funds to another individual or entity. It isn't our money, and for that reason we must respect the way in which we spend it.

Also important in gaining public trust is the notion of professionalism. A procurement professional will always strive to better themselves through education. This education base should be all inclusive, as broad spectrum training will serve as a tool kit, which an experienced procurement officer can draw upon in the hopes of making sound ethical decisions.

Becoming affiliated with professional organizations while participating in professional activities, such as purchasing seminars, is also important in the field of public procurement. This will help to spread relevant information about the field to peers as well as bolster the image of the profession from a clerical task to one that requires not only education, but also a strong networking base that encourages growth in like-minded professionals. There are a number of these professional organizations, including the National Institute for Governmental Purchasing (NIGP) and the National Association of State Procurement Officials (NASPO).

Do your best to follow the applicable laws that govern your particular jurisdiction and do your utmost to become a valuable asset

to your agency. Learn as much as possible about your profession and valid laws as. Also, be aware of ethical violations that have occurred in the past, so that you know how to avoid them. Act on the pertinent laws that apply to your profession, and conduct business in the most morally sound manner possible.

Public procurement officials should do whatever possible to learn about ethics. Ethics training can open debate on potential ethical dilemmas that may arise in the public procurement profession. Exploring real life scenarios with a group of like-minded individuals will often prove that there is not only one means to an end, and may spark interesting debate that will assist in dealing with real life ethical dilemmas when they occur. Pierre Gosselin, the chairman of the Canadian International Trade Tribunal assisted in creating one such program that dealt with ethics training. The training program he developed was offered to officials both in Canada and the United States. Mr. Gosselin holds the opinion “that decision makers need to understand how to analyze ethical issues, just as they were trained to analyze issues related to their mandate, whether that was to determine what government should purchase or how to decide a case under consideration by an adjudicative agency” (Stobo, 2006, p. 16).

The National Institute of Governmental Purchasing has established a code of ethics that all members must strictly adhere to. This code states that all members should be “governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served” (National Institute of Governmental Purchasing, undated). This brings to light one of the most commonly ignored sides of the profession: the importance of maintaining integrity off the job. When an individual is in the public eye their professional and personal life is one and the same. If a public official is dishonest in their private life, how can they be trusted in their professional life?

Purchasing departments on a whole can tackle potential ethics violations by devising a clear business plan. Business plans not only set goals for the future of the organization, but with formal planning can map workload and create structure for individual departments. The ultimate goal of a business plan should be to establish a more manageable workload, a clear departmental vision, goal

determination, and performance measurements. With these key elements purchasing professionals and their managers should be able to better forecast how to manage their everyday tasks while working toward a more unified shared vision. With organization and clear objectives, the tasks associated with purchasing will shift from simply getting the job done, to getting the job done in the most correct, professional manner possible. The goals should not be doing more with less, but to stimulate growth and to understand of the profession (Hinson & McCue, 2004).

Complementary to a strategic plan is a plan for personal growth. One can accomplish this by developing what Fredrick Marks refers to a "personal vision statement"; this vision should serve as a personal guide towards professional growth. Growth and goal attainment helps to ensure that the individual does not stagnate in their career and also sets precedence for excellence in all facets of public procurement (Marks, 2006).

CONCLUSION

As a public servant, it is the procurement professional's obligation to ensure openness, impartiality, and well-informed decision making. These characteristics are strengthened by not only the laws that guide us, but by our own internal moral compass that directs us through the all-too-familiar "gray areas" that plague our profession. With a strong sense of right and wrong and a solid understanding of applicable laws, purchasing professionals can better gauge their procurement decisions.

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