

06-03. Procurement Ethics

Internal Policies and Procedures of the Utah State Board of Education
Policy # 06-03
Subject: Procurement Ethics
Effective Date: 1/19/2018
Revision Dates:
Purpose: To set forth standards of conduct for procurement officers, purchasing agents, and all USBE employees who participate in the purchasing process, including contract management.
Policy: This ethics policy is in addition to the referenced cited statutes and is established as a guideline to deal with various aspects of ethical behavior. It is the policy of USBE that the state governmental purchasing agents and those within the USBE that have procurement authority, involvement in procurement or contract management, or interaction with vendors in the course of procurement activities, maintain the highest ethical standard consistent with professional public procurement, best practices, and zero tolerance for unethical behavior.
References: Utah Code Annotated, Title 63G Chapter 6a Part 24, Utah Procurement Code; Utah Code 67-16

Procurement Conduct and Values

The following procedures serve as a tool for best practice procurement. Any person employed by USBE who purchases goods and services, or is involved in the purchasing process for the state, shall:

- **Be Independent:** A government official engaged in procurement should be independent from vendors, bidders, prospective bidders, interested parties, and (in a perfect world) politicians and political appointees – including their own bosses. Procurement professionals, as humans, can fall prey to emotional obligation bonds with a vendor they like, who helps them, who flatters them, and who gives them things – even items of nominal value. While procurement personnel need to be friendly and helpful, they must resist the temptation to accept benefits, emotional or economic, from any world-be vendor to reduce the desire to reciprocate.
- **Act Only in The Public Interest:** A procurement officer must represent the public's interest exclusively. Similarly, it is the responsibility of the vendor representative to maximize his or her employer's profit. This is not to say that it is bad to have a profit motive. The profit motive drives markets toward developing better products, and certainly corporations can be very good public citizens. But a procurement officer must assume, always, that private profit is the driving motive of the vendor.

- **Remain A Trustee Of The Public's Money:** A public employee is a fiduciary for the public's money, or in other words, a trustee. An effective government procurement program emphasizes that the current program emphasizes that the money being spent was hard-earned by the taxpayers. A good rule of thumb is for public employees to spend the public's money with the care they would demand that a bank exercise in handling their own funds.
- **Follow The Law:** Most jurisdictions have many statutes and rules that protect competition and consumers in public procurement. New procurement officers should take procurement integrity training and all procurement officers should have some passing knowledge of the ethics laws that apply in their own particular jurisdictions. They should develop close working relationships with attorneys assigned to procurement and anti-competitive matters so that legal questions can be asked and answered. A close working relationship with these types of attorneys empowers procurement officer, since that jurisdiction's lawyers may be able to run interference with higher-ups when what those higher-ups want to do is unlawful, unethical, or against public policy.
- **Do Not Play Favorites:** Truly professional procurement personnel do not help friends, family members, or business associates get a leg up in the procurement process. Each vendor must stand on level ground.
- **Do Not Socialize with Vendors:** Prosecutors prove antitrust and procurement offenses through testimony that establishes that government officials socialized with government vendors. If a procurement officer has social friends who may seek or have sought business with the officer's employer, he or she should remove himself or herself completely from every aspect of a procurement process involving them. This guideline applies equally to business associates. If a procurement professional wants to fraternize with a trade association, he or she should get out of the procurement process relating to that area of trade entirely before any such association occurs.
- **Strive for Market Efficiency:** It is not easy to have perfect efficiency in a system of cumbersome procurement laws and rules, but efficiencies can take hold in ways the procurement officers can control. Competition creates market efficiencies. Procurement officers must do their own market homework, independent of any one vendor. They should study historic outcomes that reflect poor procurement choices and avoid them in the future. Identifying what efficient vendors can serve as a guide for the next set of specifications or scopes of work. Sometimes, it is argued that it is efficient to permit existing or prospective vendors to write specifications or statement of work. This is never true because the practice leads either to self-dealing by the vendor or the appearance of it. A market competitor should only be allowed to write specifications when it cannot compete for, or subcontract under, the procurement for which they are drafting solicitation language.

- **Take Nothing, ever:** A truly independent procurement officer should not accept even cookies from the vendor dropping by. Why not? It is often said, “Surely no one is bought for a couple of cookies!” But if procurement officers make it their policy to take nothing from any vendor – not even cookies – no person can ever point to the appearance of a relationship. The procurement official who refuses to take the cookies also avoids creating witnesses who can testify against the government entity in the event of a dispute. Even where government ethical rules permit a public employee to accept lunch or anything valued under a set dollar amount, the procurement officer should take nothing. This policy guarantees that there will be neither the appearance nor the fact of conflicts of interest.
- **Maintain Confidentiality:** The business of the government in purchasing commodities, construction and services is the taxpayer’s business, not the personal business of procurement officer, their business associates, their families, their friends, or their golf buddies. Ethical procurement practice demands that the procurement officer reveal only as much information as is necessary to ensure a clean and fair competitive process. The possession by a competitor of insider information not available to its competitors is all too common in procurement or ethics law enforcement actions. If the information is public, the best policy is to ensure that every one who can propose gets it. If the information is not public, it must remain confidential.
- **Conclusion:** Ethical procurement generates clear payoff. On a personal level, it goes a long way toward avoiding a situation in which a procurement officer or the agency involved is named in the next culture of corruption headline. On a practical level, the agency, the taxpayer, and the economy will be able to choose the best from among every vender who has developed high quality, well-priced commodities, construction, and services. Ethical procurement isn’t always easy, but it is always worth the effort.

Excerpt: National Association of State Procurement Officials

State and Local Government Procurement: A Practical Guide, 2nd Edition pp. 236-238