

Ethical Procurement in Action: From Risk to Responsibility

April 2026

INTRODUCTION

Operating at the intersection of public trust, financial stewardship, and complex regulatory environments, public procurement is one of the government functions most vulnerable to corruption.^{1,2,3} Rarely beginning as intentional misconduct, ethical failures in procurement often develop over time because of pressure to expedite, reluctance to challenge stakeholders, or discomfort with reporting.⁴ By identifying and adopting ethical procurement practices, public procurement officials play a critical role in preventing legal violations or protests, negative audit findings, and reputational damage to the state.

MODERN RISK LANDSCAPE

Risks associated with public procurement are no longer limited to isolated compliance violations. **Procurement professionals should routinely exercise discretion when designing a solicitation, selecting evaluation methods, negotiating, and handling contract amendments and renewals.**⁵ Digital procurement systems, public records laws, and social media mean procurement decisions are scrutinized by auditors, legislators, the media, and the public in real-time, fundamentally altering how procurement practices are viewed.⁶

AGENCY RELATIONSHIPS & ETHICS

Public procurement professionals operate in a broad system of state government that includes:

- State agencies
- Legal counsel
- Executive leadership
- Governing bodies
- General public

¹ Organisation for Economic Co-operation and Development, "Preventing Corruption in Public Procurement," Basel Institute on Governance, (2016): <https://baselgovernance.org/publications/preventing-corruption-public-procurement-0>.

² Cheol Liu and John L. Mikesell, "The Impact of Public Officials' Corruption on the Size and Allocation of US Spending," Public Administration Review 74, no. 3 (2014): 346-359, <https://doi.org/10.1111/puar.12212>. A 10-year study found that 5.2% of the mean per capita expenditure at the state level was corrupt.

³ Marcos Lyra, Bruno Damásio, Flávio L. Pinheiro, and Fernando Bacao, "Fraud, Corruption, and Collusion in Public Procurement Activities, A Systematic Literature Review on Data-Driven Methods," Applied Network Science 7, no. 1 (2022): 83, <https://doi.org/10.1007/s41109-022-00523-6>. Additionally, Transparency International Organization estimates that losses in public contracts due to corruption accounts for 20% to 25% of the value of the contract and up to 50% in some cases.

⁴ Christopher L. Atkinson, "Full and Open Competition in Public Procurement: Values and Ethics in Contracting Opportunity," International Journal of Public Administration 43, no. 13, (2020): 1169-1182, <https://doi.org/10.1080/01900692.2019.1666408>.

⁵ Kelly Hunsaker, "Ethics in Public Procurement: Buying Public Trust," Journal of Public Procurement 9 no. 3-4 (2009): 411-418, <https://doi.org/10.1108/JOPP-09-03-04-2009-B004>.

⁶ Organisation for Economic Co-operation and Development, "Managing Risks in the Public Procurement of Goods, Services and Infrastructure," OECD Public Governance Policy Papers, no. 33, (2023): <https://doi.org/10.1787/45667d2f-en>.



Each group functions as agents of the state within defined scopes of authority that often overlap, creating a shared sense of responsibility—but also potential ethical tension—particularly when roles or expectations are unclear or misaligned. Understanding the legal and practical aspects of these relationships is essential to managing risk and exercising accountability.

Procurement offices often work closely with other state agencies that provide critical subject matter expertise. These close relationships can prove to be mutually beneficial, but ethical risks include:

- Narrowly defined specifications that limit the supplier pool
- Informal and/or undocumented market research
- Outside pressures that influence procurement decisions
- Requests to bypass or alter the defined procurement process

These tensions, while common, can be addressed through early collaboration and proper planning, transparent documentation, and clearly defined processes, ensuring agency needs are met without compromising the integrity of the procurement process. Examples of these ethical practices can be seen in several state procurement policies, including Colorado, Texas, and Virginia.^{7,8,9}

ETHICS IN PRACTICE: SCENARIO-BASED APPLICATIONS

While policies and codes of conduct define expectations, ethical principles guide judgement and decision making under real-world constraints. These examples show how to recognize ethical risks in everyday scenarios and make defensible decisions—even when there is pressure to take shortcuts or make exceptions.

Scenario 1: Pre-Solicitation

An agency insists on specifications that closely align with a single supplier’s proprietary product, arguing the specifications best meet their operational needs. Additionally, the agency says that entering into competitive bidding would unnecessarily delay operations.

Ethical Issues

1. Restriction of competition
2. Appearance of favoritism
3. Failure to challenge internal pressure
4. Lack of proper planning and market research



⁷C.R.S. 24-103-201.5 (2024).

⁸Texas Govt Code § 2155.083 (2024).

⁹“Agency Procurement and Surplus Property Manual (APSM),” Commonwealth of Virginia Department of General Services, last modified July 7, 2025, https://dgs.virginia.gov/globalassets/business-units/dps/documents/apspm/apspm_2025_pim45_final.pdf. Virginia’s Procurement Manual defines processes related to written evaluation procedures, conflict of interest certifications, and documentation of scoring and award decisions.

Ethical Response

The procurement office should conduct and document market research, focus specifications on functional and/or performance-based requirements, and question whether or not the restrictive elements are truly justified. If concerns from either party exist, it may be necessary to escalate the procurement to leadership or legal counsel.

Legal Implications If Mishandled

Overly restrictive specifications can result in bid protest, negative audit findings, or violations of competitive bidding requirements. It is critical to document the due diligence and good faith efforts of the procurement office to promote fair competition.

Scenario 2: Supplier Communication During Solicitation

During a pre-bid meeting, a supplier asks questions leading to detailed clarification from the procurement office, providing insight that was not explicitly stated in the solicitation.

Ethical Issues

1. Unequal access to information
2. Compromised integrity of the procurement

Ethical Response

Material information should be shared with all potential bidders through formal amendments or written responses. Procurement professionals should be mindful when discussions with potential bidders drift beyond procedural clarification.

Legal Implications If Mishandled

Failure to provide equal access to pertinent information can result in bid protests and canceled solicitations. These risks increase when communications with potential bidders are handled informally or are undocumented.

Scenario 3: Evaluation and Conflicts of Interest

A procurement office issued an RFP, and after evaluations are completed, one of the evaluators mentioned a prior professional relationship with one of the bidders that was not previously disclosed.

Ethical Issues

1. Actual or perceived conflict of interest
2. Compromised evaluation process



Ethical Response

Any potential conflicts of interest should be addressed immediately. Evaluators may need to recuse themselves, scores may need to be disregarded, or the responses may need to be reevaluated. The situation and actions taken should be documented and addressed in a transparent manner.

Transparency is characterized by accessibility—easily detected, recognized, and understood.

Missouri places great emphasis on transparency within public procurement. For more information, read their article on [Why Transparency Matters in Public Purchasing and How Missouri Leads the Way](#).



Legal Implications If Mishandled

Undisclosed conflicts of interest can invalidate awards, expose the procurement office to protests or litigation, and potentially create personal liability if misconduct is found to be intentional.

Scenario 4: Contract Award

Over the last few years, an agency has awarded multiple contracts to the same small group of suppliers. In one recent procurement, the apparent low bidder was awarded the contract despite failing to meet several mandatory qualifications, including relevant past performance and required certifications. Program staff justified the award citing the supplier's familiarity with agency operations and the urgency of the need.

Ethical Issues

1. Failure to enforce qualification requirements
2. Unequal treatment of suppliers
3. Appearance of favoritism or bias
4. Lack of fair and open competition

Ethical Response

Prior to issuing an award, procurement staff should always confirm the winning bid complies with the solicitation requirements and should document any discrepancies between the stated requirements and the supplier's qualifications. In cases where mandatory requirements are repeatedly waived or ignored, procurement officers should report their concerns to leadership and/or legal counsel.



If contracts are repeatedly awarded to the same suppliers, procurement professionals determine if requirements are inadvertently being tailored to incumbent contractors, conduct market research and outreach to encourage broader competition, and continue to monitor award patterns for structural or systemic bias.

Legal Implications If Mishandled

Failure to enforce required qualifications can expose agencies to bid protests and appeals, negative audit findings, cancelled contracts, and potential violations of procurement statutes and regulations. Repeated awards to the same suppliers may also raise red flags for oversight bodies, particularly when competition is limited without documented justification.

Scenario 5: Contract Administration

A contractor consistently fails to meet performance standards, but staff struggle with enforcement due to a long-standing relationship and concerns about disruptions in service.

Ethical Issues

1. Failure to enforce contract terms
2. Unequal treatment of contractors
3. Misuse of public funds

Ethical Response

Procurement and contract management staff have an ethical obligation to enforce contract terms and conditions consistently.

Legal Implications If Mishandled

Ignoring performance issues can result in the appearance of misuse of public funds and resources and weakened legal standing if termination or corrective action is later required.



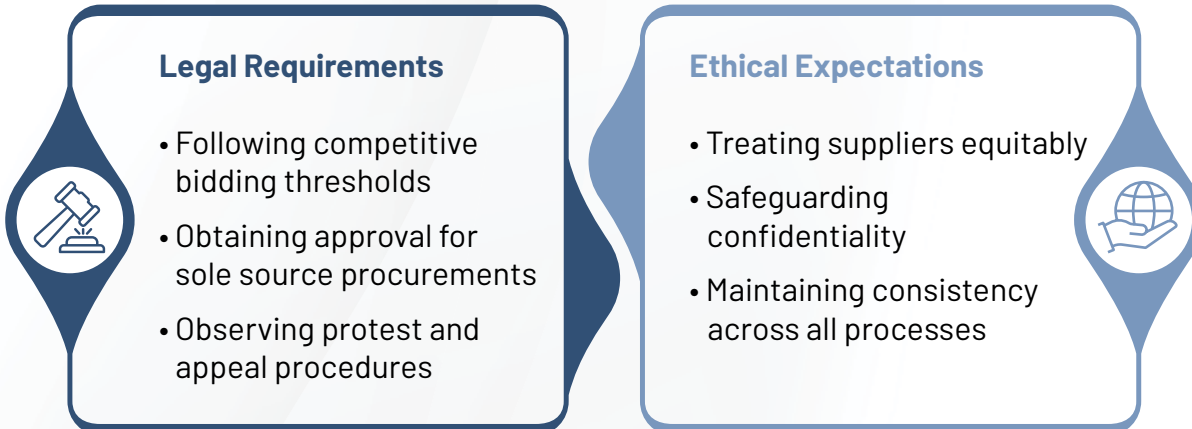
PRACTICAL TIPS

There are many ways to incorporate ethical practices into the procurement process. Below are some examples of how procurement professionals can translate ethical expectations into consistent action.

1. Ethical vs. Legal

When thinking about ethical procurement, it is easy to get lost in the emotions and virtuousness of *ethics*. While values and morals are important, they can also feel subjective and difficult to translate into operational policies. A more practical approach is to focus on compliance—behaving in accordance with applicable rules and laws.

This ensures that ethical procurement practices are not dependent upon individual interpretations of “what feels right,” but are embedded into consistent processes, allowing procurement officials to safeguard competition and public confidence.



2. Discretion vs. Structure

Ethical risks can increase when individual discretion is not balanced with defined processes and procedures. Having standardized procedures promotes efficiency but also protects the integrity of procurement. Procurement officials should try and avoid the informal “this is how it’s always been done” mindset. *For example, procurement officials should be able to explain why a procurement method was chosen.* While there are instances where staff may need to deviate from standard policies, it is important that a written explanation is included in the procurement record.

3. Bid Specification Integrity and Market Research

Conducting thorough market research can help support specification development, which can, in turn, help promote ethical procurement. Be on the lookout for specifications that include unnecessary proprietary language or mirror a specific product’s language—specifications should be functional or performance-based when possible. Procurement offices can consider establishing an internal review procedure to help assess how specifications may impact competition. Additionally, if restrictive requirements are required, written justification should be included in the procurement file along with documentation on all the market research that was conducted, including information that was obtained from economic outlook platforms, supplier conversations, or other solicitation documents.

4. Standardize Evaluation and Award Processes

Procurements are most vulnerable during the evaluation and award process for many reasons, including vague or subjective scoring criteria, undocumented evaluation discussions, and a lack of written rationale when consensus scoring is used. When possible, consider creating standardized evaluation templates and scoring guides and prohibiting changes to evaluation criteria once submissions have been received. Procurement offices should also require conflict-of-interest disclosures from all evaluators and should encourage evaluators to disclose any potential or perceived conflicts.



5. Noncompetitive Procurement Risks

Sole source procurements present the greatest ethical exposure due to the lack of competition and reduced market pressure. Procurement offices should look out for repetitive sole source requests, claims of only one supplier without any supporting documentation, and the use of emergency procurements caused by internal delays or lack of proper planning. Lack of competition should be the exception—and visibly justified.

6. Use the “Public Trust Test”

A simple question can help with many procurement decisions: *Would this decision withstand public review if fully disclosed?* If the answer is uncertain, then most likely there is an ethical risk that needs to be identified and addressed.

Legal Reporting Obligations:

Procurement professionals are generally not expected to investigate or substantiate cases of misconduct or impropriety—only to report credible concerns through the appropriate channels.

Common areas for concern include:

- Conflicts of interest (actual and perceived)
- Abuse of power
- Favoritism
- Misuse of confidential information
- Improper [gifts](#), [bribes](#), and [kickbacks](#)
- Past-employment disclosures
- Collusion or price fixing
- Fraudulent activity or misrepresentations



CONCLUSION

The modern procurement environment can no longer rely on individual integrity—though that is still an important trait. It also cannot be achieved through intent alone. Treating ethics as an operational discipline with defined processes intentionally embedded throughout the procurement lifecycle will help procurement offices reduce misconduct while strengthening public confidence and operational success.

ADDITIONAL RESOURCES

NASPO Procurement U course: [Introduction to Ethical Procurement](#)

NASPO Procurement U course: [Ethical Procurement Strategies](#)

U.S. Department of Justice: [Procurement Integrity](#)

Defense Acquisition University: [Procurement Integrity](#)

2024 NASPO Law Institute: [Ethics](#)

2025 NASPO Law Institute: [Ethics and Procurement](#)

NASPO’s State & Local Government Procurement: A Practical Guide Chapter 3

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