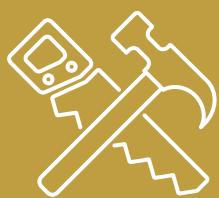




PROCUREMENT TOOLBOX

IMPORTANCE OF ETHICAL PROCUREMENT



TOOLS TO LEARN MORE

Take the [Procurement U, Procurement 101: Foundations of Public Procurement Course](#) to build up your building block knowledge of public procurement!

Maintaining a high standard of ethics in state procurement is critical to obtaining the best possible outcome for the public. Employing a high standard of ethics benefits the consuming public in a variety of ways:

- Provides good stewardship of public funds to act in the public's best interest
- Increases competition and innovation
- Enhances transparency of transactions

Ethics and ethical behavior can be defined as:

1. A principle of right or good conduct or a body of such principles.
2. A system of moral principles or values.
3. A code of conduct.
4. Prohibits breach of the public trust by any attempt to realize personal gain by a public employee through conduct inconsistent with the proper discharge of the employee's duties. Strong ethical principles are required for public procurement personnel and many professional bodies adhere to published codes of ethics.¹

¹NASPO, *State & Local Government Procurement: A Practical Guide, 4th ed.* (Plantation: JRoss Publishing, 2024).

ETHICS AND THE LAW

The American Bar Association's Model Procurement Code for State and Local Governments (hereinafter referred to as the Model Code) contains a comprehensive set of model statutes addressing ethical and unethical behavior. **Article 12 of the Model Code**, entitled *Ethics in Public Contracting*, contains provisions that address unethical behavior.

Even where the Model Code has not been adopted or its ethics articles are not included, the government's statutes or ordinances often have analogous provisions in other titles.

Given the critical role that public procurement plays in the economy of the United States, a procurement officer striving to maintain ethical standards and remain a good steward of public funds should be familiar with federal and state anti-trust laws. These laws address anti-competitive economic behavior, as well as the civil remedies and criminal penalties in place to enforce them.² **The anti-trust laws** include:

- i. The Sherman Act
- ii. The Clayton Act
- iii. The Federal Trade Commission Act
- iv. State variations or additions to these laws



TOOLS TO LEARN MORE

Read the research paper, [NASPO Best Practices: Ethics and Accountability](#) to learn more about ethics and accountability and find interesting case studies.



² NASPO, *State & Local Government Procurement: A Practical Guide*, 4th ed. (Plantation: JRoss Publishing, 2023).



BEHAVIOR



**SOCIAL
RESPONSIBILITY**



TRANSPARENCY



ETHICS



INTEGRITY



QUALITY

RECOGNIZING UNETHICAL BEHAVIOR

There are a variety of types of unethical behavior that can occur within the office of state procurement. Knowing each type can help you to identify when these behaviors occur.

1. Conflicts of interest

- a. A scenario where a public official has an interest, personal or otherwise, which either influences or seems to influence their duty.³

2. Kickbacks and bribes

- a. Kickbacks involve the return of any amount of the money received through a secret agreement.
- b. Bribes include giving money or favors to gain influence over the conduct and judgement of another.⁴

3. Contingent fees

- a. A commission or fee that is dependent on the success the entity has in securing the contract.⁴

4. Revolving door restrictions

- a. Restrictions on the ability of a former government employee helping an entity with a governmental matter; particularly, those matters in which the former employee had decision-making authority.³

Penalties are violations of procurement ethics laws that can result in felony charges, fines, and recovery of items of value.

³ NASPO, *State & Local Government Procurement: A Practical Guide*, 4th ed. (Plantation: JRoss Publishing, 2023).

⁴ "Dictionary of Procurement Terms," NIGP, accessed June 10, 2024, <https://www.nigp.org/dictionary-of-terms>.

PRINCIPLES AND STRATEGIES FOR ETHICAL PROCUREMENT

Establish ethical standards. A simple and concise list of ethical standards should be in place to serve as self-policing guidelines for all of those who are part of a jurisdiction's procurement process. This list should include:

- Being independent;
- Acting only in the public interest;
- Remaining a trustee of the public's money;
- Following the law;
- Striving for market efficiency;
- Taking nothing, ever;
- Not socializing with vendors;
- Maintaining confidentiality;
- Not playing favorites.

While these standards may not be legally enforceable because they are simply guidelines, they make an important statement about the ethical principles under which all procurement officers, by agreement, will operate.

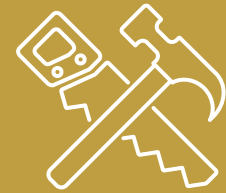
A code of ethics is a guide to acceptable and ethical behavior as defined by an organization or public body, standard of behavior adopted by an organization, and written policies or guidelines which apply to the ethical behavior of members of an organization, business, or public entity.

There are important differences between a code of ethics and the rules and regulations established in law. Often, a code of ethics and code of conduct may hold a procurement officer to a higher standard than that of the law. Laws and regulations are the governing rules by which any procurement officer or government employee must abide and carry civil or criminal penalties if they are broken. A code of ethics, on the other hand, does not have the force of law.⁵

Every procurement official should take ownership and be responsible for knowing and abiding by all applicable laws and regulations, as well as any code of ethics governing their agency or department.

Other strategies for dealing with unethical situations include:

- Reporting suspicious behavior
- Managing integrity through contracts
- Promoting transparency within the procurement process



TOOLS TO LEARN MORE

Take the Procurement U, Procurement 109: Introduction to Ethical Procurement course to learn more about ethical behavior, laws and policies, and to recognize different types of unethical practices in procurement.

⁵ NASPO, *State & Local Government Procurement: A Practical Guide*, 4th ed. (Plantation: JRoss Publishing, 2023).