NIGP
THE INSTITUTE
for PUBLIC PROCUREMENT

The Public Procurement Guide
for Elected and Senior Government Officials

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The purpose of this guide is to help elected and senior government officials understand how public procurement can help achieve their goals or get their entity into trouble, and which aspects of procurement deserve management attention. It is written from the perspective of a seasoned public executive mentoring other executives new to the public sector on what is worth knowing about public procurement.

If you'd like to provide NIGP feedback about this guide, recommend revisions or have questions about the principles and practices discussed herein, contact us at **NIGPGuide@nigp.org**.

Quick Reference:

Top 10 Things to Know About Procurement

1 What is your role in the procurement process?

Be involved in determining the business need, defining the context and background for others, defining the desired performance outcomes, and securing the budget necessary to achieve those outcomes. Then decide on your needed level of personal oversight and engagement while your procurement professionals design and implement the procurement methods for achieving best value and navigate the legal and ethical landscape. Rely on their professional skills and advice. Depending on your governing arrangements, you may or may not be tasked with making a final procurement approval decision.

Tip: *Review your entity's procurement policy to confirm the extent of your procurement authority and role in the contracting process.*

2 Ethics – Staying on the Right Side.

Some of your day-to-day activities may touch on ethical issues in procurement. Require your procurement professionals to orient you to the conduct, situations, relationships or conflicts of interest that could negatively affect the procurement process, or be perceived by the public as unethical. Declare any conflicts of interest at the beginning of any procurement/contracting-related activity you may be involved with; be conservative and recuse yourself when appropriate. Lead and foster a culture of high ethical standards for public procurement in your entity.

Tip: *Ethical behavior in public procurement is grounded in fairness and consistency in all procurement-related relationships, processes and actions. Avoid even the appearance of impropriety or favoritism.*

3 Procurement Authority – Why is it important to me?

Best practice is to put all procurement processes under the authority of a Chief Procurement Officer(s) who possesses enough independence to ensure good checks and balances. Who gets to make final procurement processes strongly affects how business decisions are made and the quality of the results you get from procurements, so it is important to use people that have professional training in procurement. Large entities may benefit by employing separate CPOs for specialty areas such as Construction or Information Technology. Most entities should establish centralized units for procurement expertise to develop policy and strategy, coordinate purchasing expenditures to gain greater value, and handle complex purchases directly. In turn, procurement professionals strategically train, monitor and delegate the ability to handle most ordinary transactions to others throughout the entity.

Tip: *Organizational structure should place Procurement as an independent function on the same plane as Finance and Legal, with all expected to contribute at a similarly high level.*

4 What is the strategic value of procurement to a public entity?

As a maturing profession, procurement has become a broader and more sophisticated discipline that can help your entity thrive if allowed and tasked to do so. In most public entities, spend under procurement authority is second only to expenditures related to salaries and benefits. Procurement has a visibility into the breadth of organizational operations, resource requirements and contractual relationships that lends a unique perspective and strong information base from which a Chief Procurement Officer can contribute to development and achievement of the organization's strategic plan. Wise executives recognize that when procurement is empowered and required to play a strategic role, those professionals can help erase siloed organizational behavior and revise processes to make more fully informed business decisions, achieve coordinated savings and reduce unnecessary purchases across the entity, reduce risks, bring market intelligence to bear on strategies, achieve best value for dollars expended, and maintain integrity. The world of commerce has become much more complex and sophisticated and government cannot afford any antiquated procurement thinking or outmoded processes.

Tip: *Expect your chief procurement officer to contribute to strategic and operational planning conversations, serving as one of your internal business advisors.*

5 Procurement Values and Principles.

Effective public procurement is grounded in the key values of Transparency, Accountability, Ethics, Impartiality, Service, and Professionalism, but your procurements will be effective only if your entity knows how to implement those values. These values and the principles that flow from them determine how your suppliers and contractors treat your entity, and they affect how the press and public and other government partners treat your entity. Be in the newspaper for achieving good results through effective procurement, not procurement mistakes.

Tip: *Require your procurement professionals to ensure your entity makes progress along a spectrum of procurement professionalism.*

6 How is public procurement different from private sector procurement?

Two key differences: transparency and complexity. First, public procurement is founded on the near universal codified principle of fully advertised, open and fair competition, with only limited exceptions. The private sector is generally free to follow whatever methods it chooses; competitive or not, transparent or not. Second, private sector purchasing is simple in the sense that it all boils down to contributions to the organization's profit, notwithstanding any secondary social responsibility goals. In contrast, public procurement is not based on one primary measure and almost always has to balance multiple goals that are often in conflict: speed, low price, quality outcomes, level playing field, social and environmental goals, public transparency and accountability. This is a much more complex work environment.

Tip: *The operating environments for private sector organizations and public sector entities may seem similar, but the underlying law and the accountability standards for procurement are not the same. Do not make the mistake of applying private sector standards to public sector procurement obligations.*

7 Procurement Methods.

If you are involved in procurement decisions, you will want to understand the basic methods for getting what the entity needs; procurement process is not simple or "one-size-fits-all." Most procurement methods rely on public competition, and are tied to dollar thresholds. The higher the value, the more formal and fully open the procurement, and the more likely that multiple factors will contribute to the award decision, not just lowest cost. Emergencies and true sole-source situations are typical exceptions from competition. The legislative trend is toward creating laws that grant procurement professionals more flexibility to create and implement innovative and intelligent contractor selection methods and contract arrangements, rather than prescribing overly specific "recipes" within statute or code. Within all the procurement methods, seemingly minor details and decisions can have a profound impact on the outcomes of the procurement, highlighting the need for your entity to possess strong procurement expertise.

Tip: *Seek out procurement professionals with nationally recognized procurement-related certifications. Examples: CPPO, CPPB, CPSM, C.P.M.*

8 Emergency Management and Continuity of Operations.

These topics are among your basic management responsibilities. Remember that procurement offices can help you – they have an important role in disaster preparedness, and in supporting the logistics of disaster recovery efforts for emergency events such as severe storms, floods, fires, epidemics, and crime events.

Tip: *Involve procurement professionals in your continuity of operations plans.*

9 The issue of Privatization.

Is outsourcing (using the private sector to deliver government services) or privatization (turning over public functions completely to the private sector) a good idea? Public-Private Partnerships, Outsourcing, and Privatization can be controversial, but can be smart choices under the right circumstances. Any decision to follow one of these avenues should assess all tradeoffs and demonstrate net value to the public, and all drawbacks and challenges should be well-addressed during early planning.

Tip: *Procurement professionals must be included in outsourcing decisions because they have key skills and tools for analyzing the positive and negative issues.*

10 The issue of Social Policy and Contracting Preferences.

Procurement officials should make doing business with the government easily accessible to all interest groups. A live issue is whether public procurement should go further, to advance several possible categories of social policies. For instance, public procurement can be an effective catalyst for spurring specific complimentary economic development, and for advancing environmental/sustainability goals, and procurement professionals can advise on the best means for implementing chosen policy goals. Trying to provide an economic boost to local businesses through "buy local" requirements (such as mandating they receive a scoring preference) deserves caution – there is no good research to confirm whether such favoritism works or whether the benefits outweigh the costs. Local preferences can be politically and technically hard to implement and administer, and retaliatory "reciprocal preferences" from other jurisdictions may hurt your businesses more than they are helped.

Tip: *Procurement professionals must be included in decisions on social policies and contracting preferences because they have key information on the positive and negative issues.*

If you are interested by the issues above and wish to drill deeper for pragmatic advice, an expanded version of each issue is presented in the following sections. Use these issues as conversation starters with your procurement professionals about actions your entity should take.

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1. Role of elected officials in the procurement process

The Highly Abridged Version:

Hire the best procurement professionals and, wherever feasible, use them to handle all procurement functions possible.

Your current procurement rules and procedures may call for you to make certain decisions during the procurement process. In a smaller community you may have the responsibility for making award decisions, making final decisions on protests, and signing contracts. In larger entities your involvement may be confined to approving large dollar value awards.

When you think about the basic expectations of good government and its handling of money, they call for systemic checks and balances in the request-approval-release of payments to prevent embezzlement. Realize the expectations for procurement decisions also call for similar types of separation. A public official should maintain an "arm's length" distance from any elements of the procurement transaction not formally required of the official. Wherever feasible, consult with or delegate decisions to professionals who know how to navigate the legal and ethical landscape associated with obligating your agency in contractual relationships and who can design and implement the methods for achieving best value. For officials who wish to be as involved as possible, procurement professionals can guide you about appropriate and problematic actions for each separate procurement.

You are likely to be involved during budget planning and adoption for expenditures that will be handled as A) public procurements or B) handled through other (non-procurement) types of public contracts such as grants or intergovernmental agreements. If you are so involved, it will be valuable for you to use your leadership to make sure all expenditures are subjected to a good "business case" and a good risk analysis. All executives and your procurement staff should have a good grasp of the methodology for preparing a business case – a business case is a structured basis for comparing alternatives and making a wise choice from among them (see resources for more explanation). And someone needs to be proficient at risk analysis and risk management, whether they are in your procurement staff, legal staff or are specialized risk managers. Both business cases and risk analysis can be very simple for simple situations, and very complex for complex situations – you want people who know how to conduct these analyses efficiently to match the situation, and you really want everyone to make the wisest decisions to get the desired results and avoid problems. Your role includes finding experts on business cases and risk analysis and using them.

2. Ethics

The Highly Abridged Version:

Do nothing to compromise the appearance or reality of fair treatment and opportunity for all who would do business with your entity.

There are established principles to guide your actions, and those of all employees, but procurement is complex and the details can be very tricky. Rely on your procurement staff to be your professional guides.

There are several areas to learn more about: Bribery and Kickbacks; Gifts and special deals; Conflicts of Interest; Disregarding law or policy; Lobbying; Supplier personal relationships; Confidential information.

The importance of public trust and the mandate to lead given by the public cannot be overstated. Leadership credibility is fundamental to the public's willingness to support government agencies and their leaders. Elected officials and employees involved in the procurement process know that acting in a manner consistent with the values and principles of the public procurement profession is essential to preserving the public's trust and mandate (see the later section on values and principles).

"Public confidence in the integrity of the government is indispensable to faith in democracy, and when people lose faith in the system, we lose faith in everything we fight and spend for."

Adlai Stevenson, Governor – Illinois, 1952

Your leadership is shown through your own personal actions, and by how you lead others to act:

- Act and conduct business with honesty and integrity, avoiding even the appearance of impropriety. The public expects that public officials will serve only the public interest, refraining from anything that enhances or appears to enhance self-interest.
- Maintain consistency in all processes and actions. The public and firms doing business with your entity need to know they can count on you to be steady and even-handed.

- In all actions, reflect the values of the public procurement profession:

  - Accountability
  - Ethics
  - Impartiality
  - Professionalism
  - Service
  - Transparency

But while these action standards sound simple, the details behind them can be surprisingly tricky. Procurement has become a very complex function in both the private and public sectors, and specialized training and expertise are essential to avoid problems. That's why, as an elected official, it is vital to put the most qualified procurement professionals you can find in charge of all the procurement processes.

While some entities are large enough to enjoy a dedicated ethics officer and an ombudsman for the public, all entities can rely on procurement professionals to highlight situations and behaviors throughout the entity that compromise ethical procurement practice, and to create work structures, procedures and personal action standards to eliminate such compromises. But those improvement efforts will work only if they receive organizational support - your leadership is essential.

A few categories of ethical situations to reflect on include:

Bribery or Kickbacks

Bribes or kickbacks, whether in the form of cash, gifts or other *quid pro quo* from a supplier/contractor to explicitly influence a contract award are blatant forms of corruption. The ultimate responsibility for such actions falls on elected and senior officials.

Conflicts of Interest

Though less obvious than bribes and kickbacks, conflicts of interest behaviors are equally corrupt. Conflicts of interests occur when there is an attempt to influence the awarding of contracts to individuals or businesses when such an award would result in financial or other benefits for the public official or family member. You and your employees must avoid activities that present conflicts of interest, whether perceived or actual, or you will face the political and practical fallout. That statement is obvious, but because the activities can be subtle, people can easily get into conflicts without realizing it, or because they think no one will notice. You need people you can rely on to identify and constructively rectify these situations. Procurement professionals can give you the details needed to help create a culture of integrity.

Gifts and special deals

Prospective or current suppliers/contractors may offer gifts or favors or discounts or special deals to you or to employees of your entity, with the implicit expectation of getting government business in return. Government ethics laws are likely to address these situations and you are well-advised to check into the details of those laws; however, from an ethical standpoint, no elected official or government employee should receive any benefit from a supplier because of their government position. The undeniable implication is that favoritism is expected in return. Procurement professionals are almost certain to have substantial training in this area, and are one of your very best resources to advise how to avoid or resolve unethical situations.

Failure to comply with Law and Policy

Our human tendency is to work around anything we perceive as cumbersome or unnecessary (whether the perception is true or false), including procurement regulations and policies, rather than work hard to make the rules practical and valuable. However, making an "end run" around procurement laws is not only unethical, but it backfires way more often than it helps. Sometimes the failure to follow policy and regulations only causes small problems and losses; sometimes the failure leads to extreme problems. Why would you put up with any problems or losses, regardless of extent? Your constructive option is to set the expectations that all procurement policies must be crafted to be streamlined and effective, must be written down and read by all, and that all employees will follow those measures because it is both smart and ethical to do so.

Lobbying

You already know how much elected and senior officials are lobbied by individuals or firms that seek to influence budget and procurement decisions, e.g., trying to get you to pursue one alternative over another, in an attempt to benefit their clients. Lobbying can be a valuable source of information for the elected official if conducted within a transparent framework. One problem is getting balanced information from other points of view so that you can make the best substantive decision. Another potential problem is the perception that your decision process is unfair or unwise.

When interests come to lobby on procurement matters, is wise practice to either meet with lobby interests only with your procurement officer present, or refer the lobby interest to the procurement department to handle. The procurement department will be a neutral resource for information gathering and analysis from all special interests. This is the best way for your entity to capitalize on the information while protecting you and your entity from accusations of conflict of interest.

Supplier relationships

Supplier relationships are important; suppliers may offer suggestions or to assist in achieving procurement efficiencies, cutting costs, identifying new technologies or solutions, and in producing more effective solicitations. Just like other lobbying interests, suppliers are motivated to offer these benefits because they reasonably hope or expect that the relationship will benefit them. And just as with other lobbying interests, your challenge is to ensure your entity gets balanced information from other points of view so that you can make the best substantive decision, and also demonstrate to anyone that your communications and decision processes are fair and wise.

Direct all supplier contact through your procurement professionals - they are trained to treat suppliers equitably and consistently, and meet the supplier's needs. Procurement offices also must maximize communication during the process - effective communications with suppliers is crucial to achieve best value and desired outcomes. It's not okay for a procurement office to be ignorant of emerging trends or market dynamics because they think they have to keep suppliers at arm's length. And when you have ongoing supplier relationships that you view as partnerships, keeping open lines of communication is essential.

Confidentiality

As a public administration official, you may have access to procurement and other nonpublic information that could affect a contract bid or the award process (e.g., upcoming procurements, bid prices; evaluations and/or recommendations). You should consult with your procurement staff before releasing any such information from your office, or you could have your procurement department handle information releases directly.

One last piece of advice about ethics is to actively create, model, and share the ethical culture you want for your entity. Train and prepare your employees for the procurement ethics situations described above. Make your ethics laws and policy known on your website, in your procurement documents, and through outreach to your suppliers.

3. What is procurement authority and why is this important for an organization?

The Highly Abridged Version:

Centralizing authority for procurement decisions in a Chief Procurement Officer is an essential ingredient for coordinating a system of smart procurement decisions.

Power structures are one of the most important factors affecting an organization's operations - deciding who wields authority to control public procurement is one of the key issues underlying how well your entity can conduct its procurement activities. If you want your entity to handle procurement at an adequate level, and especially if you want your entity to improve its procurement activities beyond adequate, authority to procure must be arranged so that your entity can become more coordinated, strategic, and professional.

Procurement authority includes the power to control the choice of sourcing methods, the management of sourcing activities, and the conduct of contract negotiations. It governs who is responsible for making decisions on suitability and quality issues while developing, administering and modifying procurement documents and actions. Final contract award and signature authority can be held by governing bodies or elected officials, or sometimes delegated to a Chief Procurement Officer.

From the lessons learned in public administration, and what NIGP recommends, is that procurement authority should be centralized in a Chief Procurement Officer (or multiple specialized CPOs, such as for Construction, or Information Technology) and her/his professional staff. Procurement professionals should hold and retain strong primary responsibility for **procurement control/planning/QA/compliance/coordination.** At the same time, a good portion of routine **purchasing activity** like purchase-card purchases and fill-in-the-blank contract release orders and catalog orders should be delegated to different types/levels of staff throughout the entity, along with training and establishment of streamlined compliance checks.

In government, procurement almost always has to balance multiple goals that are often in conflict: speed, low price, quality outcomes, level playing field, social and environmental goals, public transparency and accountability, risk management, and effective contract management to achieve the needed results on time and budget. The adept synthesis and balancing of entity business needs with market conditions, available solutions, legal requirements and other procurement interests demands a higher level of cross-functional awareness and practice than is generally found in an organization's operational departments – they have a different immediate focus and generally are not in a position to make the completely informed decisions necessary for strategic procurement value without coordination by people who possess specialized procurement expertise. Procurement professionals are trained to see and deal with these cross-functional connections and implications, but must possess central procurement authority for the entity to achieve procurement coordination. Similar to other specialized business support functions, a mature organization will want a professional procurement department that has specialized knowledge of public procurement principles and can lead the organization to implement effective processes and best practices.

4. The strategic value of procurement

The Highly Abridged Version:

Why is this subject important? In most government entities, procurement expenditures are second only to salaries and benefits, so effectiveness and savings through good procurement can be critical to the success of your mission.

How can your entity become more strategic? Make sure that all your activities clearly lead to mission-aligned outcomes – many decision processes contain steps that are unnecessary or interfere with effectiveness. Also, fully informed procurement decisions rely on a large array of information - get the right people to share the right information at a time when it can make a positive difference.

Who will be involved? Everybody who affects procurement or is affected by it. Find people who can design and implement change and give them the support they need.

What are the improvement areas? Two main improvement goals: make each individual procurement more successful and coordinate across all procurements. Focus on:

- More effective use of technology
- Entity needs analysis, focusing on procuring the most mission-critical things
- Improved "market research"
- Better "business cases" and cost-benefit analyses of alternatives
- Implement more sophisticated contractor selection methods
- Negotiating – getting better at when and how to do it
- Contract writing tailored to the situation
- Improved risk management and contract administration.

WHY is this subject important? Procurement today happens in a world that is getting more complex and sophisticated, and everything around government expenditures needs to keep up. The challenge of complexity is compounded when government revenues and resources are always less than what your mission demands. The result is that most government entities need to do a better job with the effort and money they spend on procurement and outsourced program delivery. Strategic procurement is an integrated campaign over time involving the whole organization – it is the opposite of a series of disjointed individual purchases. Strategic value begins to grow when an entity shifts its focus from reactive, transactional, lowest-price purchases to proactive, best value procurement actions. The main improvement goals are to make each individual procurement more successful and to achieve the benefits of coordinating as much as possible across all the procurements.

A. Individual procurements fail usually because of poor planning decisions, or in poor performance by the contractor/supplier and poor contract administration by entity staff failing to catch (and sometimes contributing to) performance problems. It is relatively rare for "front page" problems to arise from the selection and purchasing/contracting steps.

B. The collective procurement activity of your entity can be uncoordinated, and therefore more wasteful and problem-ridden than it should be. Human nature being what it is, people in the entity can be shortsighted and not want to invest effort in getting coordinated, and may even cover up problems, or fail to recognize them.

Your leadership opportunity is to work with your procurement professionals to assess where your entity falls on the spectrum of "procurement maturity," and to devise actions to move your entity towards more professionalism (and therefore benefit). The private sector, in general, recognized the contribution to the success of the entity that good procurement produces, sooner than the government sector, and has devoted more resources than government to improving procurement because it is such a ripe area for achieving benefits – but government needs those benefits just as much.

HOW can your entity become more strategic around procurement? First, work on making sure that all your activities are clearly tied to the outcomes you want from procurement. The processes and actions people create for making and implementing procurement decisions should lead to the desired outcomes, and if your entity is falling short of its desired outcomes, the design of the processes and actions need to change. It's primarily the processes (not people's individual performance) that drives the outcomes.

The processes we are talking about are those that lead to fully informed decisions about choices and actions that will lead to the desired outcomes. Procurement decisions rely on a large array of information, some of which comes from program managers and program staff (including information from outside stakeholders), some from procurement staff, some from finance, legal and fiscal staff, and some from potential contractors/suppliers. Effective decisions can only be made after getting all these people to share the right information so it can be considered before the main decisions have been made. Success comes from figuring things out before making a decision, not making a decision and then hoping others will figure out how to make it work.

Second, in addition to making sure the processes achieve the outcomes, processes generally also could use a good trimming, as they tend to grow and become convoluted over time. Ask your staff to map out the steps and functions they follow, looking to eliminate or transform every step that does not add solid value.

WHO will be involved in a shift towards more strategic procurement? First, public entities need procurement people with critical thinking skills and expertise to design the organizational changes and improved strategies needed to keep up with today's procurement environment. Expect your procurement professionals to possess the knowledge and skills necessary to identify the important goals, turn them into actionable objectives, and effectively communicate them to everyone affected.

Second, acknowledge that everyone connected to procurement must participate in changes and making the changes part of the standard operating culture. That means people in most areas of your entity. The move toward strategic procurement involves partnerships that likely will include legal, financial, IT, HR and program staff. One of your challenges is to provide the authority and support they need so the entity can make and sustain the desired changes.

While talking about the people who need to work together and get things done in your entity, this is a good place to mention that changing demographics are showing that newer employees may be less likely to stay in one job or organization for a long time, compared to earlier times. That means that entities should devote more effort to creating institutional knowledge - structures or practices to transfer procurement knowledge that formerly were attained only through long experience.

WHAT improvement areas can the entity work on? Obviously, procurement strategies must align with the vision, mission, values and goals of the organization and also meet the needs of the community and key stakeholders, but if they are not currently aligned, it will take some initial hard work to get them in alignment. Improved procurement strategies must be designed proactively with the involvement of all levels and units of the public entity. A few aspects where empowered procurement professionals can work with others to help their entity make better decisions and get more value from their own procurements and contracts are through conducting:

- More sophisticated entity needs analysis and planning, which focuses effort on the procured goods and services that are mission critical to the entity. Data management and spend analysis techniques can help avoid duplication, rogue spending and maximize volume discounts.

- Improved "market research" to identify a complete range of delivery alternatives and their basic feasibility, which avoids narrow minded or short-sighted decisions. Procurement staff must work hard to stay current on marketplace conditions and all staff must not miss innovative solutions appearing in the marketplace.

- Better cost-benefit analyses of those alternatives, to make the highest value choice that aligns with the entity's goals.

- Better documentation of the business case for top alternatives, to fulfill the need for transparency and accountability, and also help others learn how to make solid decisions.

- More sophisticated contractor selection methods aimed at achieving:

  - a match to market conditions specific to the purchased service or product,
  - greater competition/better prices or value,
  - continuity of supply and easier administration,
  - best fit, better service and outcomes, and fewer problems.

- Negotiating – getting better at when and how to do it.

- More sophisticated contract drafting; a good contract helps keeps things on track and provides answers if problems arise.

- Making sure staff have both the time and expertise necessary for risk management and contract administration, which, along with selection of the best supplier/contractor, are the strongest factors for keepings things on track and getting good results.

- More effective use of technology. Electronic processing can reduce the wait time to purchase goods and services, and reduce overhead costs of those transactions. Integrated systems can track spend data, affording wider and more immediate data reporting capability than manual or siloed systems. Data that is easily accessed and understood is essential for understanding and managing the entity's expenditures, and supports transparency and accountability.

5. Important Procurement Values and Principles

The Highly Abridged Version:

Bedrock values and principles to guide public procurement have been established by NIGP, but their usefulness comes only through detailed understanding and an organization-wide commitment to working in partnership with each other.

To achieve an ethical procurement culture and realize the strategic value of procurement, an entity will be guided by discrete values and principles. NIGP: The Institute for Public Procurement adopted the "Values and Guiding Principles of Public Procurement" in 2010. They are: Accountability; Ethics; Impartiality; Professionalism; Service; Transparency. What do terms like these mean in public procurement and what importance are they to you as an elected or senior official?

Transparency and Accountability

NIGP's value on "Transparency" states that transparency means "Easily accessible and understandable policies and processes…essential to demonstrate responsible use of public funds."

"The liberties of a people never were, nor ever will be, secure when the transactions of their rulers may be concealed from them."

Patrick Henry

The principle of transparency in public procurement is based on the premise that, without transparency, there cannot be a corruption-free procurement system. Procurements in the public sector are reported publicly and can be scrutinized by the public, while private sector procurement information is generally closely held to maintain a competitive advantage. Not recognizing this fundamental difference may help explain why some public officials fall into ethics violations or other problems.

Another aspect of transparency is ensuring that any potential supplier can easily find out how to seek business with your entity, and have the same access to information that all others have.

> "One of the chief virtues of a democracy... is that its defects are always visible and under democratic processes can be pointed out and corrected."
>
> **Harry S. Truman**

In addition to those purposes, transparency is also linked to the value and principle of Accountability. Transparency in procurement means easy access to understandable documentation of our procurement actions, so that everyone can hold the entity accountable for making good program decisions about alternatives for achieving outcomes, and about the effectiveness of specific purchasing decisions. Accountability for procurement decisions primarily revolves around sound business judgments, smart assessment of market conditions, arranging for good competition and making the best selections, and compliance with laws and regulations; which all lead to the desired outcomes. Recognize that effective management philosophy is focused on whether the entity is making good decisions about those things; it is not a "gotcha" focus on individuals, since most decisions are a result of either effective or ineffective processes for collecting information and comparing perspectives. Organizational learning and progress depend upon having helpful procurement documentation that is easily accessible and examined often. In other words, that sentence means you can't get better if you have no awareness about what is going well or poorly.

Some best practices related to Transparency:

- Create and maintain complete and modern policies, procedures, and records.
- Provide easy access to those policies and records.
- Constantly improve easier and wider access to government contracting opportunities.

Ethics and Impartiality

Because of its importance and complexity, Ethics is introduced in its own section above. Impartiality is closely related, and defined as "unbiased decision-making and action...essential to ensure fairness for the public good." While this involves eliminating conflicts of interest for you and your employees, impartiality is primarily exhibited by the way your entity treats prospective and existing suppliers/contractors. For instance, during each procurement, the entity must take action to create a level playing field:

- Advertise widely rather than targeting to exclude undesired competition.
- Describe your entity's needs and requirements in terms of outcomes, and not focus on prescriptive specifications that reduce competition and innovation.
- Eliminate personal and institutional bias from all decisions.
- Balance competing interests among stakeholders and document the chosen rationale.

Professionalism and Service

Professionalism is linked to the previous sections on Strategic Value and the arrangement of Procurement Authority. You should ask your procurement professionals exactly how they implement the principles of professionalism that they are expected to pursue in your entity.

Those principles are:

- Be led by those with education, experience, and professional certification in public procurement.
- Continually contribute value to the organization.
- Continually develop as a profession through education, mentorship, innovation, and partnerships.
- Develop, support, and promote the highest professional standards in order to serve the public good.
- Seek continuous improvement through ongoing training, education, and skill enhancement.

Service includes the following principles:

- Be a crucial resource and strategic partner within the organization and community.
- Develop and maintain relationships with stakeholders.
- Develop collaborative partnerships to meet public needs.
- Maintain a customer-service focus while meeting the needs, and protecting the interests, of the organization and the public.

There are two aspects, or levels, to all the principles bulleted above. On one level, those principles are the responsibility of your procurement professionals and apply to their activities. At the same time, it's not just up to them - the entire entity is responsible to implement those principles to their procurement related activities. Procurement professionals can come up with plans for achieving them, but implementation is a partnership with all units within the entity.

6. Private v. Public Procurement: Differences and Similarities

The Highly Abridged Version:

Many aspects of public procurement are controlled by legislative statutes; private sector entities are free to follow their own policies and methods.

Where choice is allowed, public procurement exists in an environment of multiple competing goals – goals for the entity and goals for the public – which can be a difficult balancing act. Significant differences exist for procurement in the public sector as compared to the private sector. If you are not familiar with procurement, and especially if you are new to the public sector, it is important to become aware of these differences as a basic part of government operations.

What is the big deal about Competition? Public procurement is founded on the near universal statutory requirement for fully advertised, open and fair competition, with only limited exceptions. The private sector is free to follow whatever methods it chooses; competitive or not, transparent or not.

Why is open competition one of the key principles for government procurement? Historically, when government and private purchasers were allowed to select suppliers of good and services based on subjective discretion, that led to bribes and other corruption. Even when corruption was not a factor, there are many stories about picking goods or services that were either a bad price or turned out to be spectacular quality failures. Fair and open competition came to be seen as a good way to combat corruption and also get good prices, and the concept of including specifications for quality was added to make sure the desired quality outcomes were achieved. These principles were so successful that they became widespread law throughout the public sector.

Selection based strictly on the lowest bid has its own set of limitations and drawbacks, and in modern times, procurement methods have evolved to look at all the factors (beyond just price) that add up to good value, but they are still based on the same principle of using market competition to illuminate the best choices.

The beauty of relying on competition for government business is twofold: it provides the incentive for bidders to propose the greatest possible value they can deliver, and it provides objective, comparative market information that helps the government entity determine whether it is getting the most value possible. That is, the best alternative will appear through competition; or another way of looking at it is that competition is a good way of testing whether an alternative is really the best or not. Because of that, whenever someone says "oh, competition isn't necessary; I assure you this solution is the best available," the best response is that if that solution really is the best, competition will prove it. For this reason, recommended practice is to go beyond the minimum requirements for public competition and make it a policy to conduct procurements through competition whenever practicable.

At the same time, it is true that there are some common sense exceptions to conducting competition, explained in the later section on procurement methods. It is also worth remembering that when it comes to public sector procurement methods, they are prescribed by legislative bodies, not procurement managers. As a result, allowable methods tend to be standardized, constrained and rather slow to react to changing conditions in the world. Private sector procurement methods are decided by each company or delegated manager, can vary widely, and can adapt to changing conditions quickly.

Multiple goals. The second most apparent difference between public and private sector procurement is that private purchasing is simple in the sense that it all eventually boils down to contributions to that entity's profit. In contrast, public procurement almost always has to balance multiple goals that cannot be tied to a single measure like profit, and are often in conflict: speed, low price, quality outcomes, level playing field, social and environmental goals, public transparency and accountability, and being averse to risk. This is a much more complex work environment, involving more difficult and subjective analyses of what is important, more negotiation and communication effort to balance tradeoffs, more complicated solicitation and selection methods to meet multiple goals, and more complicated contracts. Expectations and regulations around ethics, fairness and transparency are generally much greater. Procurement cycles are longer. There are many more stakeholders.

In addition to the differences between the public and private sectors, there are some similarities worth recognizing:

Sustainability – the triple bottom line orientation. Increased integration of sustainability values and goals into strategic plans has expanded the traditional definition of "bottom line" from a singular focus on profit and loss to embrace social, economic and environmental costs. This is an area where government has led in the establishment of the desired values, but as social and environmental issues have become part of good business for everyone, the private sector has in many cases gone beyond the government in developing the most effective means for implementing those values. Both sectors are expected to do more, and to cooperate more.

Growing sophistication. As mentioned in the section on the strategic value of procurement, both the general marketplace and the practices of procurement are changing at faster rates and becoming even more complex. Sourcing strategies rapidly evolve, and must be tailored for specific products or services and their marketplace. Planning decisions are being guided by strategic sourcing models, and total cost of ownership and cost-benefit analyses. There is a greater focus on balancing many factors to achieve "best value" and more emphasis on negotiations and longer-term "partnerships".

7. Typical Procurement Methods and Key Exceptions to Competition

The Highly Abridged Version:

What are the three common levels of public competition? Below a certain dollar threshold, you can select a provider without needing to conduct any competition. In a middle range, typically you have to seek at least 3 quotes. At a higher dollar level, advertised and fully open, formal competition is required.

What are suppliers competing over? The two main types are *price* and *qualifications to perform*. Other values can also be included. "Best Value" methods include all your important values.

Are there exceptions to competition? Two customary exceptions included in most procurement laws are Sole-Source and Emergencies.

Does "cooperative purchasing" make sense for us? Being able to utilize a contract already established by another public entity (*aka* "piggy-back"), or to subscribe to a joint cooperative procurement established for multiple entities, may save administrative time and leverage the greater purchasing power of a "cooperative contract" to achieve lower prices.

Typical Procurement methods, and the need for competition.
The basic types of procurement methods are fairly similar across our country, particularly around the need for full and open competition. While they are the same in substantive characteristics, the labels or names for these methods can vary a lot.

- **Small direct purchases/no competition:** Most government entities adopt a low dollar threshold that allows for direct purchases without a required effort to conduct any competition (competition is encouraged but optional). Dollar levels for that threshold vary considerably, and usually are a balance between efficiency and the public's expectations around opportunities to bid and getting low prices through competition. The upper dollar thresholds for this "small purchase" method typically fall within a range from $2,500 to $25,000.

- **Informal, or "3-quotes" competition:** There is often a middle ground where competition is required, but follows relatively streamlined and informal procedures around how many potential providers are contacted (typically 3 quotes minimum), how long to advertise/allow for bids or proposals, and whether to use other administrative procedures like providing a right for a potential provider to protest the government entity decisions. Upper dollar thresholds for this intermediate or informal range typically vary from $75,000 to $250,000.

- **Full formal competition:** At some established higher dollar level, the full, formal competition method gives full published notice to the public about a contracting opportunity, gives adequate time to prepare bids or proposals (typically 14 - 30 days minimum), may give potential suppliers a chance to challenge the relevance and fairness of the advertised requirements, and always gives them a chance to protest the government's selection of provider if something is improper.

Since more care should be taken when there is more money or complexity at stake, often these dollar thresholds are tied to requirements for involvement or review by people in risk management, finance, information technology, or legal.

Governing bodies are trending toward raising dollar thresholds regarding the need for competition because of the benefits from streamlining, and perhaps because of trust in their procurement professionals. Procurement officials ensure contracts are distributed and awarded fairly over time within the expanded small and informal ranges.

What is Competition based on? Price and Qualifications.

There is another basic aspect to procurement methods besides the level of competition tied to dollar thresholds, and that is the rationale for selecting a potential supplier. The two most simple categories for deciding who gets a contract are A) the lowest-priced supplier gets it, or B) the most suitably qualified supplier gets it.

For much of U.S. history, government relied heavily on the simple low-bid selection method (Invitation to Bid or ITB). That method can result in mild to severe drawbacks when quality, timeliness, continuity of supply, environmental impact, and a host of other important goals get excluded from the selection decision.

Officials experiencing these drawbacks developed methods like the Request for Proposals (RFP) that consider performance qualifications of the potential supplier and their proposed approach for meeting the government need. Price may be a small or large part of the selection considerations. There is another method for architects and engineers that restricts the government to only considering qualifications and project approach, and price doesn't get discussed until negotiations with the selected supplier. Other methods have developed in the construction industry, such as Design-Build, Construction Manager/General Contractor, and others, and are gaining in use. Many of these require specialized expertise on the part of your procurement officials.

A more current trend in procurement laws and methods is to seek Best Value, by allowing the public entity to include all the factors that it finds to be relevant and important to achieving "value" in its broad meaning. Governing bodies authorize procurement officials to determine the most suitable method to achieve the entity's values and goals. This is the approach supported by NIGP and recommended by the American Bar Association Model Procurement Code, now adopted in whole or in part in most states and thousands of local governments.

Exceptions from competition.
Since public procurement competitions require time and effort, officials are often interested in the few exceptions to competition. In addition to the small procurement or direct contracting method, there are two other customary exceptions included in most procurement laws: Sole-Source and Emergencies. Emergencies, with their need to respond more quickly than competition allows, are intuitively easy to understand. Sole-source means that competition would be fruitless when the need can only be met by one provider. The concept itself is intuitive, but its application can be controversial because it may rely on competing subjective interpretations about whether there truly is only one provider. Procurement officials are the best trained people to determine whether there is only one or more than one provider, and within an entity they should be the one authorized to make this judgment call. It is a common temptation for people to abuse this method to simply get what they have assumed is the best product or service, but that runs directly counter to the principle of relying on competition for proof instead of making personal judgment calls.

There is another area of procurement that is an exception to competition – jurisdictions may adopt social policies that set up direct contracts to certain nonprofit corporations that typically assist those with a disability, the blind, etc. Others have social policies regarding the mandatory use of inmate labor for certain contracts. Some jurisdictions may adopt policies that prescribe limited competition; these are usually described as "set-aside" programs where only a certain class of bidder/proposer is allowed to compete for a certain class of contracts. Each of these policy options has effects on the competitive market for government business; for instance, opponents to such policies may frame them as hurting "regular" business. Potential effects should be explicitly considered during the policy process, and procurement professionals can help analyze the impacts – also see the later section on "The Issue of Social Policy and Contracting Preferences."

A brief mention of cooperative purchasing.
Cooperative Purchasing in general refers to the practice and ability for one government entity to "tap into" a competitively solicited contract established by another entity, or joint cooperative procurements established on behalf of multiple entities, and directly purchase from one of those contracts without having to start from scratch by conducting their own separate competition, selecting a provider, and creating their own contract. This saves administrative time and money, and cooperative contracts often can leverage collective purchasing power into lower prices. They are usually viewed as options or alternatives to conducting one's own procurement. Many, but not all procurement laws allow this practice. Some laws count the other entity's competition as sufficient, some only allow this if your own entity was a co-partner in the original competition, and others do not allow this at all. These policy choices about the required participation in competition are legislative judgments and there is no definitive best policy practice on this detailed issue. More generally, procurement professionals should have the knowledge and skills to assess the benefits, as well as the costs and limitations, of using any given cooperative contract.

8. Emergency Management and Continuity of Operations

The Highly Abridged Version:

A basic responsibility for elected officials is emergency preparation and response. Procurement is a key component of both phases.

An important best practice for public entities is to include the procurement department on the continuity of operations and emergency and disaster management teams. Procurement offices have an important role in preparing for and supporting the logistics of disaster recovery efforts for emergency-related events such as severe storms, floods/fires/earthquakes, epidemics, and crime events. Emergency purchases may be needed due to an unexpected and urgent request where health and safety or the conservation of public resources is at risk. Usually formal competitive bidding procedures can be waived. Your procurement department will likely know of federal emergency funding parameters, compliance issues, and contract options that can be employed during response and recovery periods. Procurement staff have access to resources to describe their role in emergency operations centers, to set up "pre-positioned" contracts, and how to utilize and support local vendor relationships.

9. The Political Policy Issue of Privatization

The Highly Abridged Version:

Outsourcing, privatization, and use of public-private partnerships are always complicated and can be contentious. Procurement professionals are essential consultants on these issues.

Outsourcing (turning to the private sector to provide things previously provided directly by the government), and **Privatization** (divesting a government function nearly completely or completely) are attention-getting policy choices that typically are driven by political considerations.

Public-Private Partnerships (which fall along a spectrum where the partners allocate their obligations, resources, and risks/rewards in order to help the public entity achieve things it cannot on its own), are ostensibly less about politics and more about innovative selection and contracting methods, but they also can have political aspects, especially when private money is borrowed to finance public assets, or when they are misused to sidestep competition and transparency.

Are any of these policy choices a good idea from a financial stewardship perspective? They should be selected only after assessing all relevant trade-offs, and any of these choices must

demonstrate net value to the public. Procurement officials' training includes knowledge and skills for analyzing these types of issues, and you should include them when considering any of these choices.

Procurement officials are also usually charged with implementing these choices effectively, and if they do not possess the appropriate expertise in-house, will be able to find the outside resources necessary for the public entity to handle the often-complex business, legal and contractual aspects.

10. Social Policy and Contracting Preferences

The Highly Abridged Version:

Procurement policies are a possible tool for affecting social policy – sometimes effective, but too often misapplied.

Elected officials often are concerned with issues having social, economic, and environmental fairness and sustainability implications. Some seek to use the power of public procurement as a means to advance social policy. Even within procurement there can be several potential approaches to advance a given social policy. Whether the approach provides direct or indirect support, some are more effective and some are more problematic - all can be controversial.

Public procurement *can* be an effective catalyst to spur specific economic development, promote the availability and use of environmentally preferable products and services and advance other sustainability-related goals (such as elimination of human trafficking and slavery from supply chains, for example). Further, some entities have implemented procurement policies to correct structural imbalances affecting minority-, woman- or veteran-owned businesses, qualified rehabilitation services for disabled/challenged persons, or to stimulate the local economy through a "buy local" initiative.

For many entities the results of these policies have established a new status quo for their jurisdictions and would likely be considered appropriate and, for the most part, successful applications of procurement policy to positively affect social change. Too often, though, manipulating procurement practice to address a social issue negatively impacts competition or inadvertently creates new system imbalances that prompt claims of "preferential treatment" or favoritism. This creates a contracting environment at greater risk for supplier protest or legal challenges that impede agency efficiency and effectiveness. As mentioned in section seven on procurement methods, some jurisdictions adopt exceptions to competition by directing contracts to targeted, favored types of businesses; or they adopt a partial exception to competition by designating certain types of contracts or certain sets of money that are "set aside," and only the favored class of businesses are allowed to compete for that business. These approaches can be characterized as *direct support*.

In contrast to direct support through mandated exceptions or set-asides, *indirect support* seeks social goal achievement through means more subtle than mandates. They can be perceived as a less honest approach, one that has "rigged the game." An example of this is a scoring preference for a favored class of business that gets mechanically applied during the competitive process – typically for all bids and proposals issued by the entity. This gets applied as an "extra points" advantage toward selection.

Mechanistic preferences tilt the playing field, which some people object to as a matter of principle, claiming that contract selections should be based solely on "merit" (price and qualifications).

To the extent that there has been research conducted into the efficacy of indirect support methods, the results have not provided a clear indication that they really help the favored businesses or ultimately derive positive benefit to the agency.

Looking at the implications of employing a 'local preference' as an example, scoring preferences encounter certain issues:

1. It can be difficult to define the favored class of business, in this case a *local* business. Should a local business be defined as one that is owned by a local person; or one that uses local workers; or one that pays more than X amount of local taxes; or has a location within jurisdiction limits, or within a certain distance radius; or must have its headquarters there and not just a local office; etc.?

2. "Buy local" preference laws may be successfully challenged. In a few court cases they have been ruled unconstitutional.

3. Many jurisdictions have enacted retaliatory preferences to counteract neighboring jurisdictions' preference laws. If you adopt a preference policy for your "local" businesses, the retaliatory policies will penalize them when they seek work in that other jurisdiction. Depending on where they do most of their business, this can result in your local businesses losing more than they gain from your preference.

We can see just from the one example above that achieving social goals through procurement policy can prove challenging and have unintended consequences. As with so many issues that government leaders wrestle, social goals require clear problem definition and due diligence when considering potential solution approaches. Keep in mind that how your agency conducts its (procurement) business will directly influence how the business community and the public-at-large perceives the integrity, professionalism and trustworthiness of its leaders.

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Resources

1. NIGP Values and Guiding Principles of Public Procurement. Procurement Resources page at www.nigp.org. (http://www.nigp.org/home/find-procurement-resources/guidance/values-and-guiding-principles)

2. NIGP Position Papers. Procurement Resources page at www.nigp.org. (http://www.nigp.org/home/find-procurement-resources/guidance/position-papers)

3. NIGP-CIPS Global Best Practices. Procurement Resources page at www.nigp.org. (http://www.nigp.org/home/find-procurement-resources/guidance/global-best-practices)

4. The National Association of State Procurement Officials. NASPO Publications page at www.naspo.org; particularly, *State & Local Government Procurement – A Practical Guide* (2nd Edition 2015), ISBN-13: 978-1-60427-107-2

5. Schmidt, Marty J. (2015). *The business case guide* (3rd Edition 2015). ISBN 978-1-929500-14-7.

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Feedback or Comments

If you'd like to provide NIGP feedback about this guide, recommend revisions or have questions about the principles and practices discussed herein, contact us at **NIGPGuide@nigp.org**.