



## NASPO Fact Sheet: Procurement Ethical Practices and Principles

### Issue Overview

Competition has been and will continue to be the public procurement professionals' "true north." Competition keeps a level playing field for vendors and is pertinent in the process of ensuring ethical practices and principles. The use of openness and transparency in this process assures the accountability of public officials to the taxpayers. Public officials ought to be good stewards of taxpayers' money, avoid any appearances of unethical behavior and biases, and have zero tolerance for conflicts of interest, gifts, gratuities, kickbacks, or unfair and anticompetitive practices.

- Appropriate competition provides a broad audience and viable options for a service/commodity, while limiting the use of non-competitive/sole-source procurement.
- Good management of the procurement process that ensures equitable treatment of all vendors increases public confidence in the fairness of the procurement function.
- Public procurement officials should be cautious to not give the appearance of favoritism or impropriety when communicating with vendors. For example, if an official contacts one vendor, that official should contact all of the vendors involved in the process. All vendors should be treated fairly and equally. Integrity can be improved by having vendors sign non-collusion affidavits.
- It is important for officials to research the market and its scope, estimate prices/costs, draft specifications independent of prospective vendors that do not restrict competition, avoid bundling unrelated products, and provide adequate public notice of an intended procurement and contracting opportunity.
- The American Bar Association's Model Procurement Code for State and Local Governments encourages transparency, public opening bids/proposals, and open documentation of approvals to assure propriety in proceedings. Most states have included principles laid out in the Model Procurement Code in their procurement codes in some capacity.
- According to *NASPO State and Local Government Procurement: A Practical Guide*, procurement systems that are truly open are not afraid to be challenged on the contract award and management decision. Most states have some type of administrative process in place for bid protests and appeals.

### Statistical Information

Data from the *2015 NASPO State Procurement Practices Survey* highlight statutory and policy provisions supporting ethical practices and principles employed by state procurement offices.

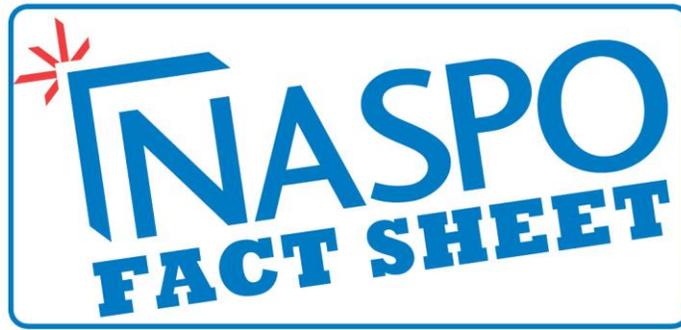
- Most jurisdictions notify vendors of formal procurement opportunities via email notification and public notices on their websites.



- 87% of 46 responding jurisdictions have statutory or policy provisions for handling mistakes in bids. The best practice is to make sure that any changes or corrections to the bid do not offer an unfair advantage to the bidder who is claiming a mistake.
- Contingent fees are prohibited in 29 responding states and offering anything of value to a state officer or employee is prohibited in 39 states.
- 40 jurisdictions have laws that authorize the non-disclosure of trade secrets or proprietary data in bids or proposals.
- 41 jurisdictions have a law that authorizes vendors to protest procurement decisions and 35 states allow vendors to appeal a decision on a protest.
- All responding jurisdictions have a statute, rule, or regulation regarding the public viewing of state records.
- Kickbacks and bribes are prohibited by statute in 36 responding jurisdictions; provisions prohibiting unethical practices are also included in the standard contract terms, in some states.
- In 38 responding jurisdictions, the standard practice is to require bidders who bid on state contracts to certify in writing that they have not engaged in some or all of the prohibited activities described above.
- 39 survey respondents have a statute, rule/regulation, or procedure prohibiting a contractor's ability to submit a bid or proposal where the contractor has assisted in preparing a solicitation, statement of work, or specification (organizational conflict of interest).
- 41 jurisdictions have authority to conduct noncompetitive procurements. While competition is the preferred method of performing a procurement process, non-competitive procurements such as sole source procurements may be the appropriate tool under certain circumstances. Best practice is to require written justifications for sole source requests, as well as publishing a notice of intent to sole source.
- Sanctions for vendor payment of kickbacks, bribes, contingent fees, and anything of value to a state officer or employee are laid out in statutes, regulations or standard contract terms for a vast majority of jurisdictions responding to the NASPO survey.

## **Conclusion**

NASPO recognizes the value of having transparent and publicized procurement procedures. Therefore, NASPO suggests timely market research and acquisition planning before pursuing a bid/contract. One-on-ones and/or public meetings to publicize vendor communication between purchasing officials and industries are strongly encouraged. Additionally, fair and open competition is the gold standard of public procurement. NASPO promotes zero tolerance for conflicts of interest, unfair/uncompetitive



practices, and unethical behaviors. Promoting openness of records and public meetings with vendors ensure transparency, integrity, and fairness in procurement practices.

#### **Resources**

NASPO State and Local Government Procurement: A Practical Guide (2nd ed.). (2015). Lexington, KY: National Association of State Procurement Officials.

The 2015 NASPO State Procurement Practices Survey Results

Effective Communication between State Procurement and Industry. (2012). Retrieved from:  
[http://www.naspo.org/dnn/portals/16/documents/1.Final\\_NASPO\\_EffectiveCommunicationWhitepaper\\_040512.pdf](http://www.naspo.org/dnn/portals/16/documents/1.Final_NASPO_EffectiveCommunicationWhitepaper_040512.pdf)

NASPO 2013 State Bid Protests Research Brief. Retrieved from:  
[http://www.naspo.org/dnn/portals/16/documents/.FINAL\\_NASPO\\_BidProtests\\_Research\\_Brief\\_042413.pdf](http://www.naspo.org/dnn/portals/16/documents/.FINAL_NASPO_BidProtests_Research_Brief_042413.pdf)

2015 NASPO Sole Source Procurement Guide. Retrieved from:  
<http://www.naspo.org/SoleSourceProcurement/>

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