



National Association of State Procurement Officials

STATE AND LOCAL GOVERNMENT PROCUREMENT: A Practical Guide

Third Edition

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CHAPTER 1: INTRODUCTION

This 3rd Edition of *State & Local Government: A Practical Guide* (hereafter referred to as this *Practical Guide*) identifies the current and rapidly changing forces that are encountered by state or local government procurement officers and suggests ways in which they may be addressed. The text also describes the principles and practices that are at the heart of a procurement system that must remain both flexible and accountable.

A combination of the factors that are discussed in the pages of this *Practical Guide* indicates that the challenges that public procurement officers are facing are rapidly evolving. State and local central procurement offices are obliged to find creative and innovative ways to adapt to new situations while still upholding traditional legal and ethical standards. Because of this, it is essential to recognize that a central procurement office cannot provide the effective leadership that is required in order to meet today's complex procurement needs if it is located several tiers below the public entity's highest executive level.

EDITION HIGHLIGHTS

There are several differences between this edition and the 2015 edition. They include:

- Issues such as the procurement of information technology (IT), sustainability principles in procurement, and the use of eProcurement systems have been updated. Additionally, the narratives relating to the *bones* of the state and local government procurement process—such as procurement planning, source selection methods, evaluation of bids and proposals, quality assurance, and contract

management—have been significantly expanded upon.

- Each chapter of this *Practical Guide*, except for this one, includes a comprehensive list of recommended best practices that are pertinent to that chapter's topic. Lists of recommended topics for statutory and regulatory coverage have been eliminated in favor of the more practical *best practices* lists.
- A comprehensive list of the resources that were used in the text of this *Practical Guide* is noted for each chapter through endnotes citing those resources.
- There is a significant increase in cross-referencing within each chapter to demonstrate the interrelationships among all of the subject matters that they address.
- Many of the changes in this edition are aimed at providing foundational definitions and explanatory overviews to benefit those readers who have no knowledge of state and local government procurement.

Terminology has been made consistent throughout this *Practical Guide*, and a guide to that terminology is provided at the end of this chapter.

HISTORY AND ORGANIZATION OF THIS TEXT

Although the National Association of State Procurement Officials (NASPO) was founded in the 1940s, it did not achieve its long-held goal of publishing a text on the public procurement profession at the state and local government level until the 1970s, when the Law Enforcement Assistance Administration of the United States Department of Justice provided funding for a study of state and local procurement. As a

result, NASPO, through its then-parent organization the Council of State Governments, published *State and Local Government Purchasing* in 1975.

The book became a companion to NASPO's survey of state purchasing practices, which the organization began conducting in 1949. The second survey was entitled *Purchasing by the States II* and was published in 1954–55. The third version came ten years later. Subsequent broader surveys became part of each edition of the original book. NASPO separated the text and the survey in 1997. NASPO now provides the most recent survey results to everyone through the website.¹

NASPO published a completely updated and restructured edition of this *Practical Guide* called the *First Edition* in 2008. This 3rd Edition is the second update since then.

When studying this text, the reader should keep in mind that state and local governments are not carbon copies of each other. Every procurement program has its own strengths and weaknesses that are attributable to governing law, operating rules/regulations, quality of management, political tradition, and availability of resources. This *Practical Guide* is a roadmap with effective procurement as the destination rather than a detailed blueprint that limits ingenuity and innovation.

Scope of the Text

The word *procurement* as used in this text means the *cradle to grave* of purchasing—from when the need to buy a certain commodity, construction, or service is first identified to the time for a commodity to be disposed of at the end of its useful life or when a service or construction project is concluded. Each chapter of this *Practical Guide* covers the role that the public procurement officer should play at each point of that process.

Given the increasing reliance on IT, Chapter 19 (*eProcurement*) and Chapter 20 (*Procurement of Information Technology*) have gained in importance in this edition.

New challenges and increasing complexity in procurement mean that public procurement officers need specialized training and education. The availability of college courses and majors, in-house training and online programs, and the creation of certifications and other credentials for public procurement officers reinforces the view that persons who possess such education and credentials are truly members of a specific profession. Chapter 21 (*Professional Development*) addresses this very current topic.

Organization of this Text

This *Practical Guide* is divided into 22 chapters—each addressing a component of, or issues pertaining to, the state and local government procurement process.

Guiding Principles of Procurement

This *Practical Guide* seeks to paint a clear picture of the principles of public procurement: competition, impartiality, openness, effective use of public funds, and innovation and flexibility. Those fundamentals call for a public procurement program in which: public business is open to competition; suppliers are treated fairly; contracts are administered impartially; value, quality, and economy are basic and equally important aims; public procurement officers are innovative to meet needs; and the process is open to public scrutiny.

Successful outcomes depend on the effective implementation of those principles. An ideal procurement program derives from a comprehensive law that is accompanied by an easy-to-use set of rules/regulations and guidelines. Effective implementation requires sufficient resources—an adequate budget, competent personnel, and

resourceful management—situated at a high level within the public entity’s organizational structure, along with positive executive and legislative government support.

Some fundamental guiding principles of a good public procurement program are:

- Assurance of consistency of procedures and decision making
- Assurance of consistency of goals, objectives, and policies
- Measurement of the performance of the procurement system in light of its goals and objectives
- Recognition of procurement as a profession
- Recognition that procurement is a strategic function in government
- Centralized leadership of all aspects of the procurement process
- Recognition that procurement begins with coordinated planning with contracting user agencies
- Assurance of the day-to-day adherence to the principles of public procurement, including a balance between accountability, innovation, and flexibility
- Timing to meet user agency requirements and to benefit from advantageous markets and technologies
- Maintenance of an environment of openness and fairness
- Balance between the need for fiscal accountability, the needs of user agencies, and opportunities for suppliers
- Effective leadership through close working relationships and effective communication with users and user agencies

CHANGES IN STATE AND LOCAL PUBLIC PROCUREMENT

Although there have been a number of changes in the role of the state and local public procurement officers over the last decades, it is also

noteworthy that some of the same issues that existed in the past still exist today.

A Look Back

As the procurement process became more complex, the role of the public procurement officer began to evolve into a more strategic one. The procurement officer moved to the center of the web of relationships among key contractors, government administration, and user agencies. He or she was expected to provide expertise to user agencies as they determined their needs, to conduct a process to select a contractor in a manner that generally satisfied both the user agency and competing suppliers, and to manage the resulting contract strictly, but congenially.

As the technology developed that made it possible to automate the procurement system, expectations were raised that faster service was achievable. The public procurement officer was expected to be a leader in the charge to streamline the procurement process. Demands for change occurred at the same time that government’s reliance on purchased services and commodities increased, the services and commodities sought were less routine, and the role that public procurement played within the executive branch became more strategic to the success of essential government programs.

A Look Ahead

The public procurement officer is still responsible for the accountability of the procurement process, while the competing and complex demands of user agencies dictate that the officer be a flexible and creative problem solver, exercising whatever latitude the procurement laws permit. Caution and the temptation to implement all possible safeguards must be balanced with a more user-friendly process that is flexible and cuts through red tape.

The push to exercise that latitude more freely is complicated by the fact that state and local government procurements often receive intensive scrutiny. The public procurement officer and the process become lightning rods for criticism when the media, the legislature, and even the user agency assume that something went awry.

That criticism often demonstrates a lack of understanding of the procurement process. For instance, the media may denounce a failure to award to the low bidder, even though it may be that the public procurement officer used the competitive sealed proposal process authorized by law, permitting award based on multiple factors rather than price alone.

The failure of some executive government officials to recognize that sound public procurement requires strong leadership is an impediment to the future development and maintenance of a sound, modern procurement system, which in turn, mandates placement of a central procurement authority at an executive level within the governmental structure. Public procurement officers cannot be key players in the planning, acquisition, and management of strategic services, construction, and commodities if executive government officials view procurement as a clerical function with commensurately low pay and minimal authorization and training.

NASPO and its members are eager to be agents of change. They urge all those who participate in the state and local procurement process, particularly government executives, to ensure that public procurement officers are provided with the support and resources that are necessary to make those changes.

SOME CRITICAL ISSUES

Some of the most critical issues that challenge procurement professionals now (and most likely in the future, also) are addressed in the various chapters of this *Practical Guide*. A brief scan of the chapter titles and subheadings will offer the

reader a summary of these issues. The following topics are especially challenging.

Procurement Leadership

A central procurement officer cannot offer expertise at the critical decision-making point without being a part of executive-level decisions. The reader will find the case for this primarily in Chapter 2 (*Procurement Leadership, Organization, and Value*), but it is also a theme in many other chapters, such as Chapter 4 (*Strategies and Plans*).

Procurement as a Profession

NASPO continues to work directly with colleges and universities to develop a public procurement curriculum at those institutions. NASPO also continues to be a partner with the National Institute of Governmental Purchasing (NIGP): The Institute for Public Procurement on the Universal Public Procurement Certification Council to advocate for the certification of all public procurement officers at the state and local government level. Chapter 21 (*Professional Development*) provides a narrative on this important issue.

Technology

Technology projects and their procurement are a major focus of resources, and will be so in the future, and eProcurement will continue to grow in importance going forward. Chapter 19 (*eProcurement*) and Chapter 20 (*Procurement of Information Technology*) discuss in more detail the latest thinking on those issues.

Value of Procurement

Today, procurement has become a critical function within the public entity with the potential of contributing as much as, or more than, other governmental functions to the efficient and effective operation of that public entity. For instance, the genesis of eProcurement systems regarding the significant savings in time

and money that they have achieved is an effort that is being led by central procurement offices throughout the country.

Without the oversight of central procurement offices, the integrity of the procurement process can break down with potentially embarrassing or even legal consequences for public leaders.

THE MODEL PROCUREMENT CODE FOR STATE AND LOCAL GOVERNMENTS

It is important to address a noteworthy event in the history of state and local public procurement—the publication in 1979 of the American Bar Association Model Procurement Code for State and Local Governments (hereafter referred to as the Model Procurement Code).²

The American Bar Association revised the Model Procurement Code and its regulations for implementation in 2000. It separately published a Model Code for Public Infrastructure Procurement in 2007, which extracted those portions of the 2000 Model Procurement Code that relate to the procurement of construction. The Model Procurement Code is widely considered to be a model for best practice in public procurement. The American Bar Association designated the Model Procurement Code as a model code and not as a uniform code, so that states might recast parts of its provisions to fit their needs.

The development of the Model Procurement Code, along with its implementing model regulations and the Model Procurement Ordinance for Local Governments and the Model Code for Public Infrastructure, remains a major event that affects both the present and future conduct of state and local government procurement.

Terminologies may have changed over the years since the Model Procurement Code was first issued in 1979. For instance, the term *best*

value, relating to the evaluation of bids and proposals, took hold in some sectors in the 1990s and is discussed in this edition. Additionally, the term *sourcing strategies* is often used in public procurement circles to describe the development of nonstandard approaches to purchasing commodities, services, or construction, particularly of IT.

The key benchmark for any law such as the Model Procurement Code is whether, despite its age, its language is flexible enough to permit the approaches that are reflected in those new terminologies. So far, the Model Procurement Code's language holds up well. It continues to be a starting point—a model law and not one seeking uniformity—for finding good language from which a public entity may draft a solid procurement law or ordinance.

NEW TO THIS EDITION OF THE PRACTICAL GUIDE

Terminology Used

One improvement that this *Practical Guide* strives to make is to ensure that certain terms are used uniformly throughout the text, avoiding the confusion that arises when different terms are used to mean the same thing. The following is a directory of those terms:

- *Chief Procurement Officer* means the person who heads the central procurement office of a state or local government
- *Central procurement office* means the procurement office within a state or local government that is responsible for conducting all or most of the procurements for that government
- *Public entity* and *state and local government* are used interchangeably, although in fact, the term *public entity* is broader since it encompasses entities such as public universities that are not generally deemed to be governments

- *User agency* means the agency, board, or department within a state or local government that is one of the following, depending on the context:
 - ◊ The agency for which the central procurement office conducts a procurement
 - ◊ The agency that has authority to conduct its own procurements outside of the central procurement office
 - ◊ The agency requesting that the Chief Procurement Officer approve its request to engage in a limited or no-competition procurement such as a sole source or emergency procurement
- *User* means the public agency employee
- *Commodities* means all tangible things such as products, equipment, software, and hardware—in contrast to services and construction
- *Supplier* means any entity that sells commodities, services, or construction

The chapters of this *Practical Guide* also use the following shorthand terms:

- *NASPO* means the National Association of State Procurement Officials
- *NIGP* means National Institute of Governmental Purchasing: The Institute for Public Procurement
- *NIGP Dictionary* means the NIGP Online Dictionary of Procurement Terms³
- The *Model Procurement Code* means the American Bar Association Model Procurement Code for State and Local Governments

Negotiation Callouts Used

A final element that is new to this edition of the *Practical Guide* is the use of callouts to highlight important concepts related to contract negotiations. Effective negotiations have become a critical part of the modern public procurement process. In lieu of a new chapter on negotiations, callout boxes were used to discuss negotiations within existing chapters to emphasize how

negotiation planning and execution touches multiple areas of the procurement process. Callouts discussing negotiations can be found in Chapters 4, 9, 20, and 21.

CONCLUSION

Throughout this *Practical Guide*, the kinds of decisions faced by public procurement officers and Chief Procurement Officers illustrate the importance of developing knowledgeable and skilled procurement professionals. NASPO and other organizations, as well as some colleges and universities, have launched initiatives aimed at creating sustained training programs to support state and local government procurement offices. The fact that this *Practical Guide* has been revised only four years after publication of the last edition further highlights the importance of the knowledge and training challenges that are facing procurement offices today.

Preserving the integrity of the procurement system and making it fair and equitable is an objective that is unique to public procurement. Public procurement officers have responsibilities that sometimes cause friction between user agency satisfaction and compliance requirements. The speed of change has refocused the profession on the need for continual growth of knowledge and skills. This *Practical Guide* is intended to help practitioners focus their own learning on the topics of most importance to the profession.

ENDNOTES

1. <https://www.naspo.org/Publications/PID/8806/CategoryID/207/CategoryName/Survey-of-State-Procurement-Practices>
2. A copy of the Model Procurement Code, along with various versions of it including the Model Procurement Ordinance is available at: <http://apps.americanbar.org/dch/committee.cfm?com=PC500500>
3. <https://www.nigp.org/home/find-procurement-resources/dictionary-of-terms>