



Procurement & Ethics

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The Underlying Principles of Procurement

- Procurement should be
 - Fair
 - Open
 - Competitive



Code of Federal Regulations

7CFR 3016.36 (b) – (h)

- Title 7 – Agriculture
 - Section 3016 - **UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**
 - Section 36 – Procurement
 - Subsection (b) through (h)



7 CFR 3016.36 (b)

Procurement Standards



7 CFR 3016.36 (b) (2)

Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.



7 CFR 3016.36 (b) (3)

Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.



7 CFR 3016.36 (b) (8)

Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.



7 CFR 3016.36 (c)

Competition



7 CFR 3016.36 (c) (1)

All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 3016.36.

7 CFR 3016.36 (c) (1)


Some of the situations considered to be restrictive of competition include but are not limited to:

- i. Placing unreasonable requirements on firms in order for them to qualify to do business,
- ii. Requiring unnecessary experience and excessive bonding,
- iii. Noncompetitive pricing practices between firms or between affiliated companies,
- iv. Organizational conflicts of interest,
- v. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement, and
- vi. Any arbitrary action in the procurement process.



7 CFR 3016.36 (d)

Methods of Procurement



7 CFR 3016.36 (d) (1)

- Procurement by *small purchase procedures*.

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$150,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

- Procurement by *sealed bids* (formal advertising).

Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

- Procurement by *competitive proposals* (RFP).

The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.

- Procurement by *noncompetitive proposals*

Procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.



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7 CFR 3016.36 (f)

Contract cost and price



7 CFR 3016.36 (f) (1)

Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications.



7 CFR 3016.36 (f) (4)

The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.



So what's it all mean?

At the end of the day, all purchases should meet the goal of providing the best meals to children at the least cost to the district.


Any activity that undermines this goal is unacceptable.


Some activities that undermine this goal may also be unethical

For example*:

- Bonifacio Garcia, former attorney for Sweetwater schools:
“When you are representing governmental officials, you have to deal with elections. And so we support our friends, let’s put it that way. As you work with people over a long period of time, you develop a relationship with folk and there are folk you like and folk you don’t like. And you want to support your friends in terms of especially breaking bread or spending, spending time with folk. And so it is a practice of all businesses, I am not, most businesses, especially representing school districts, to entertain.”

* San Diego Union Tribune, June 17, 2013, Excerpts from Grand Jury Testimony

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- Jaime Mercado, former Sweetwater board member: *“When I got on the board, my first meeting, Bonny Garcia, who was an attorney for the board, brought in a leather attaché case with my name embossed in gold, and I refused it. I said I would take nothing from anyone, not even a cup of tea. Two weeks after I got elected, I got a call... from a contractor who said he wanted to treat me and my wife to a weekend in San Francisco, that they would pay for it. When I asked him what for, he said, ‘We just want to get to know you.’ I said, ‘You can get to know me here, and it won’t cost you a penny.’ ”*

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- Jose Mireles of Latino Builders, on why he provided \$110 concert tickets for former Sweetwater board member Greg Sandoval to see Marco Antonio Solis: *“You know, I knew him. It was something that he wanted to go to, this concert. And I said, well, yeah. I mean, I didn’t think about the consequence. I didn’t think about whether it was — I knew that — that, um, maybe I shouldn’t have done it, but I just didn’t feel like, you know. I guess I am a nice guy sometimes. And I don’t have a lot of money, but I am a nice guy sometimes. And maybe that’s a part of, you know, part of the relationships that you have with people.”*



Ethics in procurement

- If it doesn't feel right, it probably isn't
- If it's something that you would cringe to see in a headline, think twice.
- Everything has a cost associated with it
 - Gifts
 - Prizes
 - Meals
 - Sponsorships
 - Donations