

EVERYDAY ETHICS FOR LOCAL OFFICIALS



Values At Stake In This Dilemma

- Responsibility
- Loyalty
- Fairness

SECURING GOODS AND SERVICES: CONTRACTING ISSUES

Institute for Local Government

Question:

I'm very frustrated with our city's contracting process. There's a ton of red tape and it takes forever for vendors to go through the process and then for us to make a decision. Lots of business people I know simply choose not to go through the process because it costs them so much for so little return. Because my own company does business with these folks, I can personally attest that they would give the city quality results at a competitive price. What am I missing here in terms of what best serves the public's and the city's interest?

Answer:

Certainly, the process a city uses to select the provider of goods and services can seem both cumbersome and time-consuming. Like so many ethical issues for public officials, the public's perceptions and expectations play a significant role in the procurement process.

There are two aspects to these expectations:

- 1) that the city will get the best deal for its money; and
- 2) that the process will be fair.

Let's look at each issue.

Getting The Best Deal

Getting the best deal for the city is part of your responsibility as a public official to be a prudent steward of scarce public resources. How do you determine whether your city is getting the best deal? Typically this means receiving materials or services of appropriate quality for a competitive price.

A key way to assure the public of this fact is for a city to use a competitive and comparative process that enables it to evaluate both price and quality. A risk of "sole-sourcing" is that the city has no way of knowing whether there would have been a better deal out there for the city.

This is not to say that a city should put all contracts out to bid. The questions for public officials to ask themselves, however, is whether the process the city uses to select contractors provides assurance to the public that it is receiving the best value for the dollar.

A Fair Process

Both the business community and the public expect public processes to be fair. Some elements of a fair vendor selection process include:

- Widely publicizing the opportunity to compete for the city's business;
- providing the same information to all businesses so that no one business has an advantage;
- applying the evaluation criteria consistently to all bidders; and

- making sure the contract is administered in such a way that the city gets the full benefit of its deal.

Red flags can go up when a city makes multiple demands for "best and final" offers after all bids have been opened and made public. According to one private sector representative, multiple calls for "best and finals" raise concerns about the fairness of the process and give the impression that the city will keep asking bidders to resubmit until the city gets the bidder it wants into the position of being the low bid.

With respect to the contract administration issue, the goal is to avoid having a would-be vendor submit an unrealistically low bid, only to propose amendments to the contract that would increase costs. This would be unfair to a vendor who would have stuck to an original, ultimately lower bid.

Avoiding Favoritism

One aspect of fairness is making sure that a would-be vendor does not have an advantage merely because of

a friendship with local officials, a past history of support for someone's campaign, or a family relationship. This is where the value of personal loyalty to individuals must yield to one's responsibilities as a public official to get the best deal for the public through a fair process.

In a small privately owned business, it can be perfectly ethical and gracious to give preference to a friend or return a favor in a business relationship. So, too, are such pleasantries as being treated to a meal or receiving other niceties to create goodwill and solidify a potential business relationship. In the public sector, however, giving preference to friends is likely to be characterized as cronyism⁴ at best and corruption at worst.

What About Trust?

When confronted with charges of unethical practices, public officials were acting with anything but the public's best interests in mind. Why do the media and the public instantly gravitate toward thinking the worst of someone's intentions?

This is a fundamental distinction between personal and public ethics. As one scholar explains, personal ethics are based on face-to-face relationships with individuals.⁵ Public ethics, on the other hand, tend to involve relationships that are more removed in most communities. Most constituents simply don't know a public official well enough to form an opinion about his or her ethics.

The reality is that the public cannot know how an official sorted through all the efforts - proper and improper - to influence his or her decision-making process on contracts. As a result, the media and the public tend to judge public officials' ethics by the circumstances surrounding those officials' actions. If the circumstances are such that improprieties could have occurred, the public will conclude that improprieties likely did occur.

Media coverage and the existence of those who do in fact abuse the public's trust exacerbate the public perception issue. The public is aware of instances (typically rare) in which an unscrupulous public official will stead-

LOCAL SERVICE REGIONAL RESOURCES NATIONAL EXPERIENCE

As we see it, one of the most important elements of success is being able to service our clients locally. The St. Louis office of Howard R. Green Company is a group of highly talented professionals providing progressive, multi-disciplinary services.

To learn more, visit www.hrgreen.com.



Howard R. Green Company

16020 Swingley Ridge Road, Suite 120
St. Louis, MO 63017
www.hrgreen.com • 636.519.0990

Illinois • Iowa • Minnesota • Missouri • South Dakota



Transportation Services



Water Services



Municipal Services



Construction Management

Typical Steps In The Procurement Process

Step 1:

Establish a need for a product or service not otherwise available to the city through internal resources.

Step 2:

Determine standards or specifications for the product or service.

Step 3:

Invite vendors to submit proposals to supply the product or deliver the service.

Step 4:

Evaluate the proposals according to evenly applied criteria and select the winner.

Step 5:

Negotiate the contract.

Step 6:

Vendor performs according to contract terms.

fastly claim to have the most sterling character. Regrettably, this "bad apple" syndrome creates almost a presumption of untrustworthiness.

This is the origin of the maxim that public officials are wise to avoid even the appearance of impropriety. If the public is inclined to infer wrongdoing merely from circumstances that could

have involved wrongdoing, the most reliable way to promote the public confidence is to avoid those circumstances in the first place. One scholar goes so far as to assert that, because the appearance of impropriety erodes public trust, the appearance of impropriety constitutes a breach of an official's responsibility to promote public trust in government.

About Those Contracting Processes

So, in essence, the answer to the opening question is that the city contracting process is generally not designed for speed. Instead, the process is designed to reassure the public that the process is fair and competitive. To be sure, this can result in businesses declining to participate in the process and a missed opportunity for the public to receive a better product at a more competitive price.

Furthermore, some of the checks and balances in the contracting process are designed to ensure that no one individual plays too great a role in contracting decisions. These layers to the process limit any one official's ability to skew the outcome based on personal interests, as opposed to the public's interests.

Perhaps the ultimate explanation is that the public is willing to incur the costs associated with minimizing the opportunities for mischief in the contracting process, even if the process turns away some would-be contractors. The theory is that, in the long run, fair processes prevent improprieties and increase the likelihood that the public will, in fact, get the best deal over time. □

This column is a service of the Institute for Local Government (ILG) Ethics Project, which offers resources on public service ethics for local officials. For more information, visit www.ca-ilg.org/trust.

HORNER & SHIFRIN, INC.
ENGINEERS
www.HornerShifrin.com

YEARS
1933 - 2008

Contracting Practices: Traps for The Unwary

Here are some examples of scenarios that have attracted unfavorable attention in terms of contracting practices. They are traps for the unwary because they can involve instances in which an official is criticized for the appearance of impropriety, as opposed to any actual impropriety. They also can involve situations in which the norms of the public sector differ from the private sector.

Vouching for the qualifications of a business. Putting in a good word for a contractor can be hazardous, mostly because it's challenging to know everything about a firm's history and business practices. In one instance, a city official found himself receiving unwanted media attention when a firm he was promoting to his fellow city officials was under investigation by the district attorney for embezzling public funds. For elected officials, the wisest course of action is to let the companies' records as presented in the bidding process speak for themselves.

Receipt of gifts or special favors from would-be contractors. Similarly, when a would-be vendor buys meals or bestows other types of gifts on a public official, critics can charge the vendor with trying to curry favor. These same critics can also charge the public official with placing personal gain ahead of the public's interests in having a scrupulously fair and competitive selection process. As harsh as it may seem, critics may also characterize such special benefits as akin to bribery.

Campaign contributions from would-be contractors. Add campaign contributions to the mix, and the unfavorable media attention can become even more charged, as one state agency found when decision-making on a contract for computer services coincided with the receipt of a sizeable campaign contribution from the would-be contractor. Even when the timing is not so close, accusations of quid pro quo (this in return for that) and "pay to play" are easy for critics to make. Moreover, as a number of local officials can attest, the media does not reserve its attention only for state contracting practices. Even if correlation is not causation (as any beginning statistics student will be quick to recite), disproving causation can be difficult. A newspaper editorial illustrates this dynamic when it concluded with the observation that "actions speak louder than words."¹ The editorial was critical of, among other things, a local official's support for easing competitive bidding requirements. The editorial implied that campaign contributions had an influence on that support, even though the official specifically denied such influence. The implication of the "actions speak louder" statement was, in essence, that the official's support for a policy that correlated with the interest of campaign contributors was sufficient for the newspaper to infer causation – no matter what the official said.

Insiders-turned-contractors. Suspicions of unfair selection processes can arise when a public agency does business with a firm that has hired a former employee or official of that agency. Although the city's decision may have been driven exclusively by merit (who could know and serve a city's needs better than a former and well-respected insider?), the perception can be that the insider used his/her former public position for personal advantage and that the city engaged in favoritism in deciding to do business with that particular firm or individual.²

Underestimating the importance of governmental transparency and other ethics requirements. The book *The Ethics Edge* notes that people from the private sector who come to government service can get into trouble by not taking ethics restrictions seriously.³ Author Dennis F. Thompson explains: "Being respectable in their own communities and corporations, they find it hard to understand why they should take these more restrictive standards seriously, especially since they do not have as much respect for government as they do the private sector."

A word to the wise: Take these ethics issues seriously. The media, your political rivals, and the public will be all over you if you don't.



Rock.

Hard place.

As water and wastewater problems grow, our local communities are getting squeezed: capital improvement projects technical challenges shortages of licensed personnel government regulations revenue shortfalls. Missouri's own Alliance Water Resources is a national leader in solving exactly these problems. If you can check any of these boxes, call (573) 874-8080 or visit www.alliancewater.com

Alliance WATER RESOURCES®

● [View Project Profiles at www.alliancewater.com](http://www.alliancewater.com)