



# PROCUREMENT ETHICS GUIDE



**Edwin J. Day**  
**County Executive**

**Paul J. Brennan, FNIGP, CPPO**  
**Director of Purchasing**

*REVISED January 2017*

# Preface

The County of Rockland spends about 90 million dollars a year contracting for goods, services and construction. Those with whom we contract are sometimes unfamiliar with the standards of conduct expected from them. In general, since public funds support most aspects of government activity, including procurement, the standards of conduct and ethical behavior tend to be stricter in the public sector than in the private sector. Actions and decision-making that are appropriate in the private sector may be unacceptable or illegal in the public sector.

We have prepared this *Procurement Ethics Guide* (the "Guide") as a resource to advise County suppliers about their ethical obligations and what they can expect of county employees. The supplier who knows the operating and ethical standards that govern County procurement may gain a competitive edge by better understanding the rationale for County employees' decisions and actions, and will be less likely to become involved in dishonest or questionable conduct.

This Guide highlights major ethical pitfalls and offers a detailed discussion of selected issues. As its title implies, this Guide is a reference tool and not an exhaustive compilation of all criminal, civil and ethical laws and rules covering County procurements. When you have doubts about whether procurement conduct is legal or ethical, contact your attorney, or the County's Purchasing Division, Law Department or Board of Ethics.

The County Executive is charged with the approval of all County contracts. Any person who believes that there has been unfairness, favoritism or impropriety in any contract should inform the Director of Purchasing at 50 Sanatorium Road, Bldg. A., Pomona, NY 10970, telephone 845-364-3820 or the County Executive at 11 New Hempstead Road, New City, New York 10956, telephone: 845-638-5122.

For further information on County procurement policies, or for a copy of the Procurement Policy, contact the Purchasing Division at 50 Sanatorium Road, Bldg. A, 2<sup>nd</sup>. Floor, Pomona, New York 10970, telephone: 845-364-3820.

For a helpful overview of the County's Procurement practices, obtain a copy of the Suppliers Handbook. This Handbook is available on the Purchasing Division's website at: [www.rcpurchasing.com](http://www.rcpurchasing.com)

Ethical principles are often easy to state but are sometimes difficult to apply. This Guide is intended to provide direction, and answer the most frequently asked questions.

## **Sources Used to Develop this Guide**

*Model Procurement Code, American Bar Association*  
*Rockland County Procurement Policy*  
*City of New York Procurement Ethics Guide*  
*State of Virginia's Guide to Technology Procurement*  
*State of Maryland Ethics Guide*

## CHAPTER 1

### ***WHAT THE SUPPLIER SHOULD EXPECT FROM COUNTY EMPLOYEES***

Public service is a public trust. For the individual public servant, at all levels of government from the County Executive, agency head, manager, and supervisor to the most junior staff person, that means placing professional and job-related responsibilities before personal gain and individual interest. County employees may neither engage in, nor give the appearance of engaging in, dishonest or unethical actions. Both are injurious to the public's perception of honest government. In the context of County contracting, this means that County personnel may not:

- Show favoritism, and instead must take actions and make decisions based upon merit in accordance with requirements of established laws, rules, policies, and procedures;
- Accept a gift worth \$75 or more from any person or firm doing or intending to do business with any agency of the County (a gift includes cash, goods, meals, travel, sporting event tickets, entertainment, loans, services, or anything else of value; separate gifts within a 12-month period from the same person or firm or from related persons or firms (for example, from two employees of a single supplier) are grouped together);
- Work for any supplier that has a contract or other business dealings with any County agency or have an ownership interest in any supplier that has a contract or other business dealing with any County agency, unless the Board of Ethics has given written approval of the work or ownership interest (the restriction on ownership also applies to the public servant's spouse);
- Accept a gift of any kind, regardless of the value thereof, when it could be reasonably inferred that the gift was intended (or could be reasonably expected) to influence the performance of official duties or serve as a reward for any official action.
- Disclose for private use, including personal or family gain, any confidential information learned because of County employment; nor
- Discuss prospects of employment with any supplier seeking or doing business with the County if the employee remains involved in business dealings with that supplier.

The County of Rockland Code of Ethics, contained in Chapter 66 of the Laws of Rockland County, governs all elected officials and employees of the County, including many unpaid public servants. This law is interpreted and enforced by the Board of Ethics, which promulgates rules and regulations and issues advisory opinions that lend guidance to individuals facing similar situations. When there is doubt as to whether conduct is prohibited by Chapter 66, County officials and employees may seek written or oral guidance from the Board of Ethics.

County personnel have an affirmative obligation to report known or suspected wrongdoing, including supplier offers to engage in the above-described conduct, to the County

Executive, Director of Purchasing, or Board of Ethics. On the other hand, if a supplier knows or suspects that another supplier or a County employee is involved in questionable activity, the supplier should inform the agency Department Head, the County Executive, the Director of Purchasing or the Board of Ethics. The County Executive strictly enforces these obligations against both County employees and those who would induce them to violate their public trust.

County employees responsible for procurement actions are obligated, under requirements of law and policy, to obtain the best price or value for the expenditure of public funds. Generally, this is accomplished through full and open competition, which requires that:

- County contracts are made accessible to a wide number of prospective suppliers through the Internet by visiting the Rockland County Purchasing Division's web site at [www.rcpurchasing.com](http://www.rcpurchasing.com)
- Requirements, designs, work plans, and specifications are not tailored to favor a particular supplier; and
- No competitor is permitted an advantage by the premature disclosure of contract details or the disclosure of competitors' confidential information.

## CHAPTER 2

### ***WHAT THE COUNTY EXPECTS FROM THE SUPPLIER***

As described in Chapter 1, the County relies upon open, arms-length, competitive procurements, to assure that it spends the public's money wisely. To do business with the County, suppliers must respect and not undermine that process. We also expect suppliers to perform fully, timely, and honestly in accordance with the terms of their contracts and to demonstrate their responsibility through a history of successful and honest performance.

#### *1. BEFORE YOU CONSIDER BECOMING A SUPPLIER*

For every proposed County contract, the Purchasing Division is required to consider whether the contractor has the requisite "responsibility" for the contract award. Before engaging in the County procurement process, you may want to take a hard look at your firm's history of business integrity as well as whether your firm has the capability of fully meeting the demands of the work. To do business with the County you must:

- Be prepared to demonstrate that your firm has the resources and experience to do the job successfully;
- Be prepared to publicly and truthfully disclose your firm's management and ownership, officers and owners, and current financial condition with an expectation that any of their legal, financial or performance problems will need to be explained;
- Be current on your obligations, including paying corporate, real property, payroll taxes and social security contributions, as well as water, sewer, and other local assessments; and
- Pay prevailing wages, where legally required.

#### *2. WHEN YOU OFFER A BID OR PROPOSAL*

County officials are generally required to conduct competitive procurements and to award contracts solely based on price and merit. Efforts by a supplier or by a lobbyist acting on behalf of a supplier to gain an "inside tract" by inhibiting competition or exploiting business or political relationships are prohibited.

##### *A. Undercutting the Competitive Process*

Suppliers are expected to independently and honestly prepare and submit bids and proposals based upon their own costs and operations without the benefit of knowing what their competitors will do. By this mechanism, the county obtains the most advantageous price or proposal available among firms doing business in that market.

- Do not "cooperate" or share pricing information with competitors when preparing your bids. Anti-competitive activity, where competitors agree on the prices to be submitted, is known as "collusive bidding, or price fixing or "bid-rigging" and is illegal.

- Do not submit artificially high or low bids to make a competitor's price look more reasonable. This is known as "complementary bidding" and is similarly prohibited.
- Do not submit bids or proposals that are deceptively attractive with an expectation that after winning the contract you will receive your additional costs or inflate profits through change orders or related contracts in which you then have a "sole source" competitive advantage.
- Do not manipulate unit cost awards by selectively underbidding line item costs in the expectation that their quantities will change after award (i.e., do not engage in "unbalanced bidding").

#### *B. Gifts*

Do not offer a gift of any kind to a public servant to directly or indirectly influence the drafting of procurement requirements, evaluations, awards, or payment. Such an offer is not a "gift", but a bribe. The employee must report attempts at bribery. In addition to being a crime, bribery is the fastest way to ensure that you will never do business with the County as a supplier.

Offering a gift to a public servant is a bad idea, regardless of whether your intent is to influence that person. As discussed in Chapter 1, the definition of a gift is very broad and includes anything that has value. Separate gifts from the same individual or firm or from related individuals or firms are combined in calculating whether the \$75 threshold has been met.

Also, the exceptions to the \$75 gift rule are quite complicated. Even if the gift is less than \$75, the Board of Ethics may find the acceptance of the gift gave the appearance that the public servant was using his or her office for private gain.

If a County employee suggests or demands a "gift" for providing any service, consideration, or advantage to you, you should report this to the County Executive, Director of Purchasing and the Board of Ethics.

#### *C. Job Offers*

Should you determine that a County procurement employee, or his or her family member, would make a perfect addition to your firm, you must make sure that the employee is not involved in any capacity with any procurement that affects your firm before discussing a job offer, or even the prospect of a job. Wait until the employee is no longer involved with the procurement or until that procurement is completed before you discuss employment prospects. Otherwise, your attempt to discuss employment may be considered an attempt to improperly influence the procurement.

#### *D. Sensitive and Protected Information*

Unlike private industry, firms competing for County business are not permitted to obtain a competitive advantage by learning more about a proposal or contract than what is available to all other bidders or proposers.

For each procurement, there is generally a mechanism created to apprise potential suppliers of the information they need to prepare their bids or proposals. For example, all interested suppliers may be invited to ask questions at a pre-bid or pre-proposal conference or to direct inquiries to the contracting officer in writing (responses are then shared with all other suppliers). Often, negotiations will be conducted with qualified suppliers based upon a protocol developed for the procurement. Do not circumvent this process by asking a current or former County official to provide you with information to which you are not entitled. Information relating to the identity of potential offerors, proposal contents, cost/pricing data, proprietary information and trade secrets, technical and cost evaluations, and rankings is confidential, at least until the award has progressed to the point where the information is publicly available.

### *3. YOUR WORK UNDER CONTRACT*

A supplier's ethical obligations do not end upon award of a contract. Gifts and job offers may not be offered to improperly influence County employees to approve work, materials, or payments under the terms of a contract. Suppliers are required to perform fully in accordance with the terms of their County contracts. Where progress payments are sought, or payments are made on a budgetary or cost-reimbursement basis, a supplier's business records must truthfully support its claims for payment.

#### *A. Product Substitution*

The unauthorized delivery of goods or services that fall below contractual requirements, and for which the supplier charges as if contractual specifications had been met, is known as "product substitution". Product substitution is a violation of your contract, or worse. The following acts are considered product substitution:

- Providing inferior quality or substandard raw materials and finished products (making payments to County inspectors or quality control personnel to accept or overlook performance deficiencies, or to "expedite" their review invites criminal prosecution);
- Substituting generic or foreign-made products when brand names or domestically produced products are required in the contract specifications;
- Submitting for compliance testing, samples or items that are not representative of actual production materials or products; and
- Substituting used or refurbished products without authorization.

#### *B. Premature Progress Payments*

Certain long-term contracts permit payments to be made as construction or other performance proceeds. These "progress payments" are generally payable upon proof that costs have been incurred or milestones in the contract have been reached. A supplier's falsification of labor or material costs, or a misrepresentation of progress reached, to obtain faster County payments, is illegal even where the total amount paid to the supplier is ultimately no more than the contract allows.

### *C. Improper Claims for Cost Reimbursement*

When a supplier enters a County contract for an amount based upon its actual costs, the supplier must maintain an accounting system that accurately categorizes its costs so that only costs that are "reasonable," "allowable," and "allocable" to County work are claimed for reimbursement. Some examples of costs that should not be claimed for reimbursement include fines, gifts, bribes, entertainment costs, and certain legal costs. "Cost mischarging" occurs when unrelated costs are improperly charged to a County contract.

### *D. Proper Control and Accounting*

Internal controls – Keep control over operations and assets by maintaining adequate systems of internal controls including separation of duties.

Record keeping – Maintain reliable records to help insure that actions pertaining to the contract, inventory, expenses, and other reportable items are accurately, completely, and fairly recorded and reported.



***SANCTION FOR MISCONDUCT***

A wide range of criminal, civil, administrative, and contractual sanctions are available to address procurement fraud or misconduct. These include, but are not limited to, filing of State and Federal criminal charges; civil contract remedies, including treble damages; assessment of liquidated damages; voiding or rescinding a contract; finding a contractor non-responsible; and debarment. Remember, it is not only the supplier that will gain notoriety from dishonest, unethical, and poor performance, but also the supplier's "key persons".

Stay honest. Protect yourself. Do not involve County employees in dishonesty. The County Executive has the authority to void a contract between the County and a supplier if the County Executive finds that the contract involved a violation of the Code of Ethics. The supplier and County employee alike can find themselves facing misdemeanor or felony charges for procurement fraud.

Maintaining a good relationship with the County involves an understanding of both our business needs and our ethical environment. The County looks forward to doing business with the many knowledgeable and honest suppliers who comprise the Hudson Valley's vendor community.

## FREQUENTLY ASKED QUESTIONS

**Q:** *Can I offer to buy lunch for the contracting staff of a County agency with which I have a business relationship?*

**A:** The offer may create an appearance of impropriety, therefore, County employees may accept a free meal only under certain limited circumstances: (1) the meal is offered during a meeting attended for official reasons; (2) the meal is provided by the host entity at a meeting held at an out-of-the-way location, alternative facilities are unavailable, and individual payment is impractical; (3) the meal is offered at a company cafeteria where there is no public price structure and individual payment is impractical; (4) the County employee is attending a meeting for official reasons that begins in a business setting but continues through normal meal hours in a restaurant, and a refusal to participate and/or individual payment would be impractical; (5) it is the customary business practice to hold a meeting over meals, customary business practice for one party to pay for the other and payment by the County employee would be inappropriate, provided that the selection of the restaurant and the meal conforms to the customary business practice and the County employee reports acceptance of the meal to the appropriate authority; or (6) the County employee would not have otherwise purchased food if not placed in such a situation while representing the interests of the County.

**Q:** *I am currently supplying a product to a County agency and I ran into a shortage. Because of this shortage, I have substituted a different item that meets the County's requirements. Did I do the right thing?*

**A:** No. The standard terms and conditions of the contract require agency and Purchasing Division approval before substituting one product for another.

**Q:** *I recently completed work under a County contract. It is December 1 and I would like to thank the agency staff I worked with by sending them holiday gifts. Is this a conflict of interest?*

**A:** Probably. Although gifts valued at less than \$75 are not generally prohibited, where the gift is, or appears to be, tied to a County employee's performance of an official duty, it would be prohibited. Keep in mind that meals, sports activities, or tickets are "gifts" that fall within the \$75 limit.

**Q:** *Can I provide free samples to the contracting officers at a County agency?*

**A:** The County prefers to purchase samples for test and evaluation. However, if a sample is submitted at no cost, acceptance of such a sample should be covered by a letter agreement between the County and the agency.

**Q:** *I hired a lawyer to assist me in getting a County contract. Do the ethical considerations embodied in this Guide apply to my lawyer as they do to me?*

**A:** Yes. Lawyers, lobbyists, expeditors, agents, and other representatives are also bound by the ethical considerations embodied in this Guide. In addition, they may be

bound by other laws, rules, or industry standards. Do not ask someone to do what you are not allowed to do yourself.

**Q:** *I have recently been declared "not responsible" as a result of an activity that I was involved with more than ten years ago. What I can do?*

**A:** There is no specific time limit for consideration of past activities in making a responsibility determination. You can appeal the determination of non-responsibility to the Director of Purchasing and subsequently to the County Executive in accordance with the County's Procurement Policy.

**Q:** *In doing business with the County, is my firm required to develop its own internal code of ethics?*

**A:** No, but it is recommended and may help avoid potential conflicts with other organizations. You can receive sample ethics policy statements or purchasing codes of conduct from the National Institute of Government Purchasing, the National Association of Purchasing Management, or the National Contract Management Association.