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Seminole County spends approximately $151 million a year contracting for goods, services and construction in a centralized procurement operation. Vendors 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 is 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’s vendors about their ethical obligations and what they can expect of County employees. The vendor who knows the operating and ethical standards that govern County procurement will better understand 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 on 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 and Contracts Division. Any person who believes that there has been unfairness, favoritism or impropriety in any contract or purchase order should inform the Purchasing and Contracts Manager or the County Manager. All the County’s procurement policies and procedures are available on the County website. 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.
Public service is a public trust. For the individual public servant, at all levels of County government, 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’s purchasing and 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 gifts 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.

• Work for any vendor that has a contract or other business dealings with any County agency or have an ownership interest in any vendor that has a contract or other business dealing with any County agency, unless special approval by the Human Resource Division. This restriction on ownership also applies to the public servant’s spouse.

• Accept a gift of any kind, regardless of the value thereof, under circumstances in which 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 as a result of County employment.

• Discuss prospects of employment with any vendor seeking or doing business with the County as long as the employee remains involved in business dealings with that vendor.

All County personnel have an obligation to report known or suspected wrongdoing, including vendor offers to engage in the above-described conduct, to the County Manager or the Purchasing and Contracts Manager. On the other hand, if a vendor knows or suspects that another vendor
or a County employee is involved in questionable activity, the vendor should inform the Purchasing and Contracts Manager.

County solicitations 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 solicitations are made accessible to a wide number of prospective vendors through the Internet by visiting the Purchasing and Contracts Division’s web site at www.seminolecountyfl.gov/purchasing.**
- **Requirements, designs, work plans, and specifications are not tailored to favor a particular vendor.**
- **No competitor is permitted an advantage by the premature disclosure of procurement information.**
Chapter 2

WHAT THE COUNTY EXPECTS FROM VENDORS

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, vendors must respect and not undermine that process. We also expect vendors 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 VENDOR

For all procurement actions, the Purchasing and Contracts Division is required to consider whether the vendor 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 licenses, and insurance.

2. WHEN YOU OFFER A BID OR PROPOSAL

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

a. Undercutting the Competitive Process

Vendor are expected to independently and honestly prepare and submit bids and proposals based upon their own costs and operations. 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, price fixing or bid-rigging and this activity 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 additional costs or inflate profits through change orders or that you will have a competitive advantage in the award of related contracts.

- Do not manipulate unit cost awards by selectively underbidding particular 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 vendor. Offering a gift to a public servant is a bad idea, regardless of whether or not 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. 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 Manager or Purchasing and Contracts Manager.

c. Job Offers

Should you determine that a County employee, or an immediate member of their family 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 benefits your firm before discussing a job offer, or even the prospect of a job. Wait until the 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 vendors of the information they need to prepare their bids or proposals. For example, all interested vendors may be invited to ask questions at a pre-bid or pre-proposal conference or to direct inquiries to the Procurement analyst in writing (responses are then shared with all other vendors). Often, negotiations will be conducted with qualified vendors based upon a protocol developed for the procurement. Do not circumvent this process by asking County personnel to provide you with information to which you are not entitled. Information relating to the identity of proposal contents, cost/pricing data, proprietary information and trade secrets, technical and cost evaluations, and rankings is confidential, until the recommendation of award or 30 days after the proposals or bids were received.

3. YOUR WORK UNDER CONTRACT

A vendor’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. Vendors are required to perform fully in accordance with the terms of the County’s contracts. Where progress payments are sought, or payments are made on a budgetary or cost reimbursement basis, a vendor’s business records must truthfully support its claims for payment.

a. Product Substitution

The unauthorized delivery of goods or services that do not meet the contractual requirements, and for which the vendor charges as if contractual specifications had been met, is known as “product substitution.” Product substitution is a violation of your contract, and can be considered fraud. The following acts are considered product substitution:

- Providing inferior quality or substandard raw materials and finished products (making payments to County inspectors/administrators or quality control personnel to accept or overlook performance deficiencies).
• Substituting generic or foreign-made products when particular brand names or domestically produced products (Buy American) are required in the contract specifications.

• Submitting for compliance testing, samples or items that are not representative of actual production materials or products.

• 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 progresses. These “progress payments” are generally payable upon proof that costs have been incurred or milestones in the contract have been reached. A vendor’s falsification of labor or material costs, or a misrepresentation of progress reached, to obtain faster County payments, is illegal.

c. Improper Claims for Cost Reimbursement

When a vendor enters into a County contract for an amount based upon its actual costs, the vendor 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, entertainment costs, and certain legal costs. “Cost mischarging” occurs when unrelated costs are improperly charged to a County contract.

d. Proper Control and Accounting (non-fixed fee contracts)

The vendor is required to have the appropriate internal controls that monitor costs, schedule, assets and general operations. The vendor needs to 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.

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 damages; assessment of liquidated damages; voiding or rescinding a contract; finding a contractor non-responsible; suspension; and debarment. Remember, it is not only the vendor that will gain notoriety from dishonest, unethical, and poor performance, but also the vendor’s “key persons.”
Stay honest. Protect yourself. Do not involve County employees in dishonesty. The County has the authority to terminate a contract between the County and a vendor if the County determines there was a violation of the code of ethics. The vendor 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 vendors who comprise Seminole County’s vendor community.
Frequently Asked Questions

Q: Can I offer to buy lunch for the staff of a County agency with which I have a business relationship?
A: No. The offer creates an appearance of impropriety.

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 the Purchasing and Division approval before substituting one product for another usually resulting in a change order to a construction contract or a revision to a Purchase Order.

Q: I recently completed work under a County contract. It is December 1st and I would like to thank the agency staff I worked with by sending them holiday gifts. Is this a conflict of interest?
A: In most cases yes. Although gifts valued at less than $25 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. Generally a goodwill gift under $25 can be accepted and shared by all Division or Department staff.

Q: Can I provide free samples to the County?
A: Generally speaking, the County will purchase samples for test and evaluation to be unbiased on any future purchases. However, if a sample is submitted at no cost, acceptance of such a sample should be documented in writing without any strings attached for future promises.

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, expediters, 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” by the County. What can I do?
A: There is a letter sent to the vendor stating on the reason for this non-responsive determination. If you do not agree you may protest the determination of non-responsibility to the Purchasing and Contracts Manager.

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 Public 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.