

Purchasing and Contracting Practices

Procurement policies and practices enable an agency to promote maximum value and economy for the agency's constituents through fair and competitive processes. The goal underlying such policies is to select vendors and service providers using processes in ways that minimize opportunities for favoritism and that provide for competitive pricing. For service providers, the task also involves assessing whether the provider's skills best meet the agency's needs.

Purchasing presents a number of ethical and legal hazards for local officials, despite what can be a relatively small impact on overall agency spending. This is because missteps can undermine the public's overall confidence in the agency's financial practices. For more information, see www.ca-ilg.org/post/fair-procurement.

For public works projects, state law generally defines when local agencies must use competitive bidding.¹

Questions to Ask

- What steps does the agency use to have a fair, open and competitive purchasing process?
- Does the agency's purchasing process explain the respective roles of staff and elected officials in that process?
- Have employees involved in the purchasing process received training or informational materials on the importance of both the appearance and substance of fairness in the procurement process?
- Are the purchasing rules straightforward enough so that everyone who has a part in implementing them understands the underlying goals and key rules? One element of clarity can be having separate policies depending on the nature of the purchase (for example, one for goods, one for services and another for public works projects).
- If the agency has a decentralized purchasing system (in other words, if purchase are made separately by different departments), does the agency have clear organization-wide standards and guidelines?
- Does the agency take advantage of cooperative purchasing opportunities with other public agencies?
- Does the agency have policies in place to comply with applicable prevailing wage requirements? These are especially common for vehicles and other big-ticket items.
- Would increased reliance on "just-in-time" deliveries that eliminate large inventories and warehouse systems be useful for the agency?

- Does the agency have policies in place for the proper disposal of surplus property? How has staff been made aware of such policies?
- Is the agency alert to and actively monitor contract terms for cost escalators and automatic renewals that can cause increases that can cause the agency to lose control of costs?
- Are staff responsible for purchasing decisions required to file annual disclosure statements relating to economic interests and gift receipt (known as “Form 700s”)?

Limits on Agency Expenses/ Proper Uses of Public Resources

Invariably, there are more worthy uses for public funds than there are funds available. Deciding how limited public resources will be allocated is a key responsibility of elected officials, although it is important to acknowledge that decision-makers may have less discretion than one might expect in deciding how public monies are spent.

That being said, the law imposes some basic restrictions on how public resources may be used. For example, any use of public resources must serve the needs of the agency’s constituents. California’s Constitution expresses this principle by prohibiting “gifts” of public funds by the Legislature, general law cities, and agencies created by state statute;² some city charters also contain this restriction. Agency counsel can provide guidance on the issue of what constitutes an impermissible gift of public funds. An example, however, is a payment to another public agency for their purposes, with no benefit flowing back to the donor agency’s constituents.³

Along similar lines, personal or political uses of public resources also are not allowed.⁴ This prohibition applies to not only public money, but also to anything paid for with public money (for example, agency equipment, supplies and staff time). An example of how this prohibition applies is that public resources may not be used for advocacy efforts on ballot measures. (For more information, see www.ca-ilg.org/BallotMeasureLegalIssues). Elected officials should ask how staff and newly elected officials are made aware of these restrictions.

Finally, local agencies must adopt expense reimbursement policies for elected and appointed officials.⁵ Agency counsel should review the policy for compliance with state law. Most agencies have adopted expense reimbursement policies for staff as a matter of sound practice.

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References and Resources

Note: Sections in the California Code are accessible at leginfo.legislature.ca.gov. Fair Political Practices Commission regulations are accessible at www.fppc.ca.gov/index.php?id=52. A source for case law information is www.findlaw.com/cacases/ (requires registration).

- ¹ For county projects, the threshold for complying with state law relating to public work contracts and bidding procedures is based on population: counties with populations of 500,000 or more (\$6,500); counties with populations of 2 million or more (\$50,000); and all other counties (\$4,000). *See* Cal. Pub. Cont. Code §§ 20120-20123. *See also* Cal. Pub. Cont. Code § 20390- 20409 (relating to work on county roads). For general law cities, public works projects worth more than \$5,000 are subject to the state's competitive bidding requirements. Cal. Pub Cont. Code §§ 20160-20162. The state's Public Contract Code also has various competitive bidding requirements for special districts based on the kind of district. *See* Cal. Pub. Cont. Code §§ 20190-20381. Note that it is a misdemeanor to split projects to avoid competitive bidding requirements. *See, e.g.,* Cal. Pub. Cont. Code §§ 20123.5, 20163.
- ² Cal. Const. art. XVI, § 6.
- ³ *See, for example, Golden Gate Bridge & Highway Dist. v. Luehring*, 4 Cal. App. 3d 204 (1970).
- ⁴ *See* Cal. Gov't Code § 8314; Cal. Penal Code § 424. *See also* Cal. Gov't Code § 54964.
- ⁵ *See* Cal. Gov't Code § 53232.2(b) ("If a local agency reimburses members of a legislative body for actual and necessary expenses incurred in the performance of official duties, then the governing body shall adopt a written policy, in a public meeting, specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging, and other actual and necessary expenses."). *See also* www.leginfo.ca.gov/calaw.html for additional information on what such policies must include.