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Ethics

Definition of Ethics

Ethics can be defined as the principles of conduct governing and guiding an individual or a group.

Food Taken From Schools

The National School Lunch Program (NSLP) and School Breakfast Program (SBP) are designed and funded to serve children in the school. No food, not even leftover food, is to be purchased and taken from the premises. In addition to the food being misused, other issues, such as sanitation and safe food handling, become major concerns when food or leftovers are removed from the premises. Refer to Section 19, Other Operational Issues, regarding the donation of leftover foods.

Fraud Statement

“Whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program, whether received directly or indirectly, shall, if such funds, assets or property are of a value of \$100 or more, be fined no more than \$25,000 or imprisoned not more than 5 years or both; or if such funds, assets or property are of a value of less than \$100, be fined not more than \$1,000 or imprisoned not more than 1 year or both. Whoever receives, conceals or retains for personal use or gain, funds, assets or property provided under the National School Lunch Program and School Breakfast Program, whether received directly or indirectly, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen or obtained by fraud, shall be subject to the same penalties.”

Ethics of Purchasing

The remainder of this section is taken from the *Texas Education Agency Financial Accountability System Resource Guide, Purchasing Module*. This publication is available from TEA’s publication department or by visiting their website at www.tea.state.tx.us/publications/.

The competitive nature of the public purchasing arena and the expenditure of significant amounts of public funds require that ethical standards be incorporated into the foundation of all purchasing functions.

Purchasing personnel and school food authority (SFA) staff face the difficult task of developing good vendor relations and encouraging vendor competition while avoiding even the appearance of favoritism or other ethical misconduct.

Numerous problems may be encountered, including the following:

- Employees are tempted to circumvent policies, procedures and laws or to make their own liberal “legal” interpretations of existing policies in an effort to get the job done successfully and on time. Such activity, although well intentioned, will cause ethical problems.
- Sequential purchasing of the same items or type of items over the course of 12 months may exceed the SFA and/or state competitive quotation and procurement requirements. Some sequential purchasing usually results from needs that could not be anticipated. It may also result from lack of centralization and/or centralized control of the purchasing function.
- An item (usually equipment) is purchased in component parts. Component purchasing usually is an attempt to circumvent bid laws or other requirements by buying an item through the issuance of multiple purchase orders for the component parts of the item versus a single purchase order for the entire item. Repeated purchases of additional optional equipment or parts after an initial purchase may create the perception of component purchasing.

Ethics relating to conflicts of interest, financial interests in firms conducting business with the SFA, kickbacks and gratuities, and improper use of a position or confidential information should be clearly communicated throughout the SFA.

SFA personnel should be made aware of the penalties for violations of purchasing laws and ethics that may include criminal prosecution and loss of employment opportunities.

General Ethical Standards

There are certain common standards of ethics (Local Government Code 171) that should govern the conduct of employees involved in the purchasing function as follows:

Personal Gain

It is a breach of ethics to attempt to realize personal gain through public employment with an SFA by any conduct inconsistent with the proper discharge of the employee’s duties.

Direct or Indirect Involvement

It is a breach of ethics for any employee of an SFA to participate directly or indirectly in a procurement when the employee knows that:

- The employee or any member of the employee’s immediate family has a financial interest pertaining to the procurement;
- A business or organization in which the employee or any member of the employee’s immediate family has a financial interest pertaining to the procurement; or
- Any other person, business, or organization with which the employee or any member of the employee’s immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

If an SFA board member or other official has a financial interest in a procurement, that person shall abstain from discussion and decisions regarding the award of the procurement contract. In addition, the board member should disclose this financial interest by filing an affidavit with the SFA.

Influence Others

It is a breach of ethics to attempt to influence any public employee of an SFA to breach the standards of ethical conduct set forth in this code.

Gratuities

It is a breach of ethics to offer, give, or agree to give any employee or former employee of an SFA a solicitation, as well as solicit, accept or agree to accept a gratuity or an offer of employment in connection with any decision pertaining to any program requirement or a contract or subcontract. Acceptance of gratuities may be construed as a criminal offense.

Kickbacks

It is a breach of ethics for any payment, gratuity, or offer of employment be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract of a SFA or any person associated therewith as an inducement for the award of a subcontract or order.

Inclusion in Contract Clause

The prohibition against gratuities and kickbacks prescribed above should be conspicuously set forth in every contract and solicitation.

Use of Confidential Information

It is a breach of ethics for any employee or former employee of an SFA to knowingly use confidential information for actual or anticipated personal gain or for the actual or anticipated gain of any person.

Vendor Gifts and Relations

SFA officials and employees cannot accept anything of value from a vendor, such as personal gifts or gratuities that may be construed to have been given to influence the purchasing process. Although such practices may be legitimate and generally accepted in the private sector, giving and receiving gifts in the public sector may constitute a violation of law.

“Gift to a Public Servant” is a Class A misdemeanor offense if the recipient is a government employee who exercises some influence in the purchasing process of the governmental body.

SFAs should also be aware of the disclosure requirements regarding federal conflict of interest regulations that prohibit an employee (and members of the employee’s immediate family) who is involved in administering, directing or authorizing federally-funded transactions from

having a financial interest in a vendor associated with federally-funded transactions.

Another legal consideration is the disclosure of conflict of interest by board members. If a board member or member of their immediate family has a financial interest in a business entity, they are required to disclose this relationship through the execution of an affidavit. Board members should abstain from voting on awards of contracts to businesses in which they or their immediate family members have a financial interest.

Incentives

Vendors often will make a special offer on a particular item. They might offer charbroiled beef patties at a much lower price than the SFA's bid price; offer an item not presently used at a special price that is below market value; or offer an incentive, such as equipment or other prizes. An SFA may take advantage of these specials. For example:

- When a vendor offers an item at a lower price than the bid price. Once you have bid an item and accepted the bid price, you are not free to obtain bids or to purchase from anyone other than the vendor who has received the bid unless you:
 1. have specified an amount in the bid;
 2. will still purchase that amount from the bidder; and
 3. want to purchase an amount in addition to what was bid. Procedures for small purchases may be used in obtaining prices on the additional merchandise, unless the additional purchases will exceed \$10,000.
- When a vendor offers an item you are not presently using at a special price below market value. All purchases under competitive bidding must be based on specifications that clearly describe the item to be purchased. If you have tried a new product and would like to purchase it, competitive sealed bids must be obtained if purchases will be \$25,000 or more (spot purchase procedures may be used to purchase additional quantities of items in a competitive pricing category, if purchases will be less than \$25,000).
- When a vendor offers incentives. The prices paid for all purchases should be based solely on the bid offered by the responsible vendor giving an SFA the best bid prices meeting specifications. When "incentives," such as prizes, equipment, etc., are offered and accepted, (1) the "incentive" must in no way affect the decision to purchase and (2) the "incentive" must become the property of the SFA and under no condition becomes the property of an individual. Special offers often mean higher prices or lower quality or both. Frequently, special prices are offered on old merchandise that the vendor wants to move.