CAN I KEEP THIS IPAD?
ETHICS IN CONTRACTING & PROCUREMENT

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CHAPTER 13

Janet Hasty's Biography

Janet Hasty is a 30-year veteran of State of Texas procurement. She has worked in procurement management positions in several state agencies including the Texas Department of Transportation, Texas Building and Procurement Commission, Department of State Health Services and Texas Parks and Wildlife Department.

Janet has a bachelor's degree in Public Administration from St. Edwards University and a master's degree in Public Policy from the University of Texas, LBJ School of Public Affairs. She is certified as a Certified Public Purchasing Officer (CPPO) and a Certified Texas Procurement Manager (CTPM). She is also a certified trainer with the Texas Comptroller of Public Accounts.

Since retiring from state government in 2007, Janet founded Government Procurement Services (GPS). GPS provides procurement training and consulting to government purchasers.

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POWERPOINT PRESENTATION

Can I Keep This iPad?

Ethics in Contracting & Procurement

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Why Are Ethics Important in Public Contracting?

- Stewards of public money
- Shapes public confidence and trust in the procurement process
- Professional and personal responsibility
- The law requires it
- It is the right thing to do

Acceptance of Benefits

State employees may not accept or solicit any gift, favor or service that might reasonably tend to influence the employee in the discharge of his official duties…

… or that the employee knows is being offered with the intent to influence his official conduct.

Penal Code §36.08

Exceptions to Gift Prohibitions

- May accept non-cash items <$50 value

BUT… Wait – don't get excited yet!
(see next slide)



Penal Code §36.10(a)(6)

Exceptions to Gift Prohibitions

- A public servant who "exercises discretion in connection with contracts, purchases, payments, claims…
- …may NOT accept a benefit from a person the public servant knows is interested in or likely to become interested in such a transaction."

Penal Code §36.08(d)

What if the iPad is a Door Prize?

- Some state agencies allow acceptance of such gifts if they are received by way of a "door prize".
- Rationalization is:
  - Open to all attendees at the event
  - Vendor does not know who the "door prize" will go to.
  - Allowed if the "door prize" is accepted by the agency and not by the individual attending the event.

Appearance of Impropriety

- Circumstances in which the government employee appears to have acted inappropriately.
- These situations get employees into trouble more often than actual or "real" acts of impropriety.

Ethical Environment

- Even of someone is "ethical", it may be difficult to act ethically if their environment is not conducive to such behavior.
- Ethical environment is usually set at the senior management level.

Employees Must Be Comfortable with the Ethical Environment

- Employees must be able to voice their opinion about something they feel is not ethical – without risk of retaliation.
- Yes – there is the Whistleblower Act – but employees must be confident in the process.

Recent Case: Health & Human Services (HHSC) and & 21CT

- State Auditor's Office Investigative Report – issued April 2, 2015.
- 21CT was pre-selected by HHSC Inspector General (IG) to develop Medicaid fraud detection software in 2012.
- Initial contract was for $19.9 million. HHSC IG sought an additional $90 million extension, but HHSC executive commissioner cancelled it in Dec 2014.

Recent Case: HHSC & 21CT

- The procurement was primarily directed by the OIG's former deputy inspector general (IG) for enforcement. IG became the HHSC Interim chief counsel in February 2014.
- The IG did not have professional procurement experience or required training.
- When the IG became the Chief Counsel, he also became the HHSC ethics advisor.

SAO Finding: Working Environment

- HHSC failed to establish and maintain a working environment that emphasized ethics, integrity, and accountability.
- Multiple interviews with staff revealed that staff were concerned about the working environment and potential retaliation by the IG if they did not carry out his instructions.

SAO Finding: Working Environment

- The Deputy Executive for Contracting & Procurement said he had concerns about extending the contract with 21CT for $90 million. However, he did not include those concerns in the written comments on the extension provided to the executive commissioner.
- Instead, his written comments specified only that because it was a Department of Information Resources contract, there were no impediments to proceeding with the extension.

So What Can You Do?

- Create and maintain an ethical environment in your entity.
- Be a role model for ethical conduct.
- Educate employees on ethics and standards of conduct.
- Create an environment where employees feel safe reporting unethical behavior.

Thank You!

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