



The County of Hendricks in the State of Indiana
Hendricks County Surveyor's Office

CONTRACTORS AND SUPPLIERS ETHICS GUIDE



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PREFACE

The Hendricks County Surveyor spends about 1 million dollars a year contracting for materials, 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 *Contractor's Ethics Guide* (the “Guide”) as a resource to advise County contractors and 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 Surveyor's Office, Law Department or Board of Ethics.

The County Surveyor is charged with the approval of all Surveyor's Office contracts. Any person who believes that there has been unfairness, favoritism or impropriety in any contract should inform the Hendricks County Drainage Board at the Hendricks County Government Center, 355 South Washington Street Suite 170, Danville, IN 46122 telephone 317-745-9221.

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.

CHAPTER 1

WHAT THE CONTRACTOR/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.
- Work for any supplier that has a contract or other business dealings with the County Drainage Board or have an ownership interest in any supplier that has a contract or other business dealing with the County Drainage Board, unless the County Surveyor or Drainage Board has given written approval of the work or ownership interest.
- 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.
- Disclose for private use, including personal or family gain, any confidential information learned as a result of County employment; nor

The State of Indiana/Hendricks County Code of Ethics, contained in Indiana Code, and governs all elected officials and employees of the State and County, including many unpaid public servants. This law is interpreted and enforced by the State 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 the Indiana Code, 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 Surveyor, County Attorney County Executive, or the State 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 County Surveyor, County Attorney, County Executive, or the State Board of Ethics.

The Hendricks County Surveyor 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 Hendricks County Surveyor's Office.
- 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 CONTRACTOR/SUPPLIER

As described in Chapter 1, the County relies upon open, competitive procurements, to ensure that it spends the public's money wisely. To do business with the County, contractors and 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 CONTRACTOR OR SUPPLIER

For every proposed County contract, the Surveyor's Office 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.
- Pay prevailing wages, where legally required.

2. WHEN YOU OFFER A QUOTE, BID OR PROPOSAL

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

A. Undercutting the Competitive Process

Contractors/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 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 contractor/supplier.

Offering a gift to a public servant is a bad idea, regardless of whether or not your intent is to influence that person.

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 Surveyor, Drainage Board and the Board of Ethics.

C. Job Offers

Should you determine that a county employee 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 particular 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 meeting or to direct inquiries to the contracting officer in writing (responses may then be 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 contractors/suppliers/vendors, proposal contents, cost/pricing data, proprietary

information and trade secrets, technical and cost evaluations, and rankings are confidential, at least until the award has progressed to the point where the information is publicly available.

3. *YOUR WORK UNDER CONTRACT*

A contractor's/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 particular 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.
- 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 contractor/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 contractor/supplier is ultimately no more than the contract allows. (At least 10% of the total project cost will be held until the entire project is completed)

C. Improper Claims for Cost Reimbursement

When a contractor/supplier enters into 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 ensure that actions pertaining to the contract, inventory, expenses, and other reportable items are accurately, completely, and fairly recorded and reported.

CHAPTER 3

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 contractor/supplier that will gain notoriety from dishonest, unethical, and poor performance, but also the contractor/supplier's "key persons".

Stay honest. Protect yourself. Do not involve County employees in dishonesty. The County Surveyor has the authority to void a contract between the County and a supplier if the County Surveyor finds that the contract involved a violation of the Code of Ethics. The contractor/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 Hendricks County vendor community.

Name of Company and Signature represent receipt and understanding of the Hendricks County Contractor and Suppliers Ethics Guide

Name of Company/Contractor: _____

Please print

Company Owner or President /Designee: _____

Please print

Company Owner or President/Designee: _____ Date _____

Signature