

*We all have to deal with politicians at one time or another but what if at least one of your Agency's political representatives is also proposing to become your Agency's vendor? To make matters even more difficult, you live in a suburban community - in fact, it's rural - some might say remote. Your Agency is contemplating issuing a solicitation for a fairly substantial piece of work. One of your Agency's Councilors/Board of Commissioners actually owns a company that provides the goods/services in which you are interested. Research determines that your local politician's company is the only one in your area, and for quite some distance, that does provide the goods/services. Can you ethically contract with this company? Highlight the pros and cons and how you propose to proceed.*

*"A man without ethics is a wild beast loosed upon this world." - Albert Camus*

The ethicalness of the question posed in the situation to be considered for this exercise will test the procurement professionals' procedural knowledge, legal and policy attentiveness and attention to the political and social aspects of the matter. Personal morals and beliefs and our integrity compass may be temporarily skewed but not loosened from their foundation as we struggle to align the public procurement tenet of "fair and equal treatment for all" with prevalent situational mores as implied. Provisionally we may be limited by political and practical realities and forced to acquiesce to higher powers or diligently work to mitigate negative perceptions. Ultimately, the final decision should not taint our professional and ethical standards.

Recognition of the dilemma faced will not diminish the difficulty of the balancing act we must perform. The possibility exists on the one hand that a very articulate, pragmatic and economically sensible argument can be made by proponents of allowing the local politician to equally participate in the solicitation along and like any other bidder. A similar logical, thoughtful, sound, and equitable case may also be made by the opponents of allowing the local politician from participating. Eventually the decision may be taken out of our hands and placed squarely in the hands of persons who may not view the world as a procurement professional does.

The fundamental questions promulgated are about fairness. How fair is it to allow a local politician who happens to be a businessman to participate in a bid? Also, is it fair or ethical not to allow a local businessman with a vested interest in a community to bid? Public procurement prides itself on "fair and equitable treatment" of all participants in the process. Assuming that all legal measures and procedural questions have been answered, now we ask the fundamental question – is it ethical for the politician to

participate in the bid. Furthermore, whose ethics shall we use; Professional ethics (e.g., NIGP Code of Ethics) personal mores, and since the United States is not a theocracy, do we invoke Christian-Judeo-Islamic values' evaluation or even maybe historical ethics and practices?

Technically, a process could be invoked that would allow fair competition without violating any laws. Here however, the reader must remember that just because an action is legal that in and of itself does not make it ethical. The process used to sanction an award may not address potential challenges of an ethical nature or the level of negative perceptions of the action taken. It would be easy to say once the matter has moved forward without major incident that "all's well that ends well." However, the potential denigration of the ethical base of our profession is at risk. Assuming the politician wins the bid, the perception of wrongdoing is very probable. This perception may or may not be tolerable depending on situational or local mores but it will surely have an impact on Procurement. Even when governing bodies allow for a member to recuse themselves, the perception will persist publicly that influence was peddled. In so much as the governing body is used to acting as a body, when one of their own is under consideration the playing field is inevitably affected. The chances that bias has affected the decision are substantial.

How to quell this negative perception? Is it our place to do so? As procurement professionals we are ethically bound to indicate not only potential technical or policy pitfalls but also perceptions about our entity and leadership (as they ultimately reflect on us). Given this fact, under our professional ethical standards it would be expected and certainly prudent to describe to the decision makers how the public may perceive an award of a substantial (albeit properly bid and considered) contract to a politician in a decision-making/influential role. Ethical politicians will prohibit such participation and may even go as far as setting up policy that participation as a private company may not occur for a reasonable period

during and after leaving the political role. Such far-reaching and visionary legislation is not unusual and should be encouraged by all procurement professionals responsible for policy development.

The manner in which the question is posed provides ample opportunity for diluting of resolve and focus by procurement personnel not versed in the comprehensive manner in which a situation like this should be approached and managed. Apt review of this situation cannot be singularly tracked or forced through our ethical filter. Rather, to properly address this situation we must look at the questions it raises and the manner(s) each can be addressed. Keep in mind that in every situation there are (at least) two sides to the issue and usually even more to consider!

What a great world it would be if everyone shared the same values, mores, norms and ethics. The question posed would then be easily addressed without legislation, regulation, admonishment or sanction. But alas we live in the “real world” where all of us have the right to follow principled steps that may not coincide. So ultimately, and for this case it is recommended that if we have not anticipated the situation and established the necessary controls then, we as procurement professionals must stay within our roles and (1) elucidate the potential pitfalls, (2) step aside from the situation but only in such a manner and when we are sure that we mitigate our entity’s exposure and (3) be ready to answer in a value-free manner the steps taken to reach the decision that was reached and recommendations that we promote.

Rey Palma, CPPO, CPPB, MPA

May 24, 2013