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PROCUREMENT PONDERABLE

Procurement Ethics at Ground Level

Stephen B. Gordon, PhD, FNIGP, CPPO

We all are acutely aware of the collateral damage we procurement folks have to absorb both individually and as a community when the politicians get their hands caught in the procurement cookie jar. Yet, are we equally aware of the reputational damage we incur personally and collectively when someone to whom our code or ordinance-based procurement authority has been delegated (or possibly redelegated without our approval), gets caught with their hands in the till?

What transpired last year in the branch office of a state government department that possesses its own procurement authority independent of its state's central procurement operation's authority provides a stark reminder of what can happen if no one is watching what is happening in the field. The department's procurement staff had set up a multiple award schedule of indefinite delivery/indefinite quantity contracts to provide for the delivery of a seasonal service very familiar to many of us who live in the higher latitudes of North America. And, yes, you guessed it, the staff in the department who were authorized to assign which contractors got which and how much work installed a pay-to-play system. You will be spared the sordid details but suffice it to say that the pictures painted in the newspaper articles were not pretty.

So how can the risk of such things as this happening in your entity be reduced to an acceptably low level of probability? As you know, there are several viable ways. At least two things should be done on the front end of the contracting process. First, procurement staff should work with their counterparts in the department to ensure, to the extent possible and practical, that the departmental officials who will assign work under the contracts possess the integrity their role and responsibilities demand. Second, procurement staff should work with their counterparts in the department to develop and install a transparent process that will support equitable allocation of work without creating an undue burden. On the back end, procurement staff and departmental staff should monitor the assignment of work to the various contractors as part of their overall contract administration responsibilities; then, take the necessary steps if things are not working as they should.

These actions sound so obvious, so straightforward and so simple to take. That is because they are. Do we really want to allow bad scenes that could be avoided to delay the involvement of procurement in the big pictures of governmental entities? Action have consequences as do inactions.

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STATE CIOs WANT TO MAINTAIN THE COST AND QUALITY OF SERVICES: HOW PROCUREMENT CAN HELP

By Jean Clark

> **S**tate chief information officers have made it clear that they are as focused on strict fiscal management this year as they are on aggressive IT modernization. One can assume that there is a direct correlation: States don't have unlimited funds to execute these large-scope technology projects, but they don't have the luxury of delaying their digital transformations either.

There is an immediate need for greater information security and privacy controls. There is also an urgent demand for more advanced digital infrastructure that can facilitate data-centric "business" models across all government functions and support a rapidly-expanding portfolio of online citizen services. As a result, states must stretch their budgets and apply firm cost controls to avoid dipping into rainy day funds. At the same time, CIOs are searching for ways to better manage risks during highly complex IT projects, deliver highly specialized IT services and find more qualified resources to help consolidate and optimize IT systems, as noted in a 2017 the National

Association of State Chief Information Officers (NASCIO) survey. What does this all have to do with public procurement? In my opinion, everything.

It is abundantly clear in NASCIO's report that technology leaders are challenged to formalize digitalization strategies – and fully deliver on the well-optimized services and systems that stakeholders demand – within their narrow fiscal margins. And though state CIOs have taken it upon themselves to prioritize cost controls, fiscal management is in fact a shared responsibility between IT and procurement. Both sides should be working in concert to develop and implement savings strategies that can help CIOs succeed in their endeavors, despite inadequate funding and budget constraints. And, at the end of the day, procurement should take ownership of spend management – or at least take the lead on informing CIOs about how to maximize spend impact, reduce waste and introduce quality controls. Procurement should also be advising CIOs on how to diversify their sourcing pool, and

modernize IT sourcing methods, to reduce the inherent risks of agile and incremental projects.

Government leaders need access to organized purchase data in order to analyze spend and make smarter decisions. It's tough to assess the return on investment, much less manage future spend or standardize your IT systems if you don't have visibility into what your agency has bought to-date or how it is currently being used. They also need a collaborative dashboard from which all stakeholders can monitor project status and, if needed, make adjustments to procurement actions to better control spend and quality – especially during agile projects. Procurement is in a unique position to deliver on these requirements and more:

- **ORGANIZATION** – CIOs expect full visibility into their spend. They can't afford to take educated guesses; they need exact figures to make well-informed decisions about the scope of projects and track actual performance. That is why procurement's use of the NIGP Code is so valuable. This purchase classification tool makes it easy to manipulate reports to extract specific spend data in IT categories. CIOs will no longer have to make assumptions or clumsy calculations using generalized spend reports or inaccurate data sets. Procurement can provide around-the-clock access to actionable business intelligence using highly focused IT sector parameters so that CIOs know exactly what is purchased for their projects.
- **COLLABORATION** – It is going to take a team effort between procurement, finance and IT to meet CIO's goals. But, if you expect every stakeholder to work seamlessly together, then every system must work seamlessly together. Fortunately, a highly-integrated hybrid eProcurement-ERP solution can facilitate constant communication and coordination between all parties. It can also provide two-way visibility between your procurement platform and third-party systems so that everyone can access – and react to – the same organized data sets, in the most appropriate format for their business function, in real time.
- **CONTROL** – Procurement doesn't just provide complete transparency into cost and vendor quality metrics, it provides a complete set of spend management tools. Built-in audit trails help you track actual spend, and monitor vendor performance, throughout the project so that you can immediately flag issues to CIOs. This enables you to adjust contract pricing terms during renewals and sourcing strategies to better manage budget reductions. Procurement can also help CIOs reduce legal, financial and regulatory risk

through standardized language and reporting. eProcurement systems, specifically, make it easy to measure compliance, deliverables and performance on contracts and vendors so that CIOs maintain more quality control over their project throughout the contract lifecycle and eliminate activities that lead to wasteful spend.

- **DIVERSIFICATION** – Agencies that use eProcurement technologies not only extend the reach of their solicitations to a broader vendor pool, but they receive 20 percent more responses – including more from small, minority, and woman-owned businesses that may have the specialized expertise and resources that CIOs require. In other words, procurement's efforts to expand supplier networks and increase competition will not only provide access to the specialized resources that CIOs are seeking, but they can translate into more competition and, therefore, greater cost savings during bidding and negotiation processes.
- **VALUE** – The whole purpose of public procurement is to maximize the value of government spend. Our job is to identify ways to lower the risk of lost revenue; eliminate inaccuracies in the sourcing and contract execution process to save money; and ensure that customers receive a quick return on investment for their projects. That should be a relief for CIOs who are concerned about fiscal management. Even more, procurement can help CIOs pinpoint ways to maximize resources so that they can better manage evolving project demands – and reduce or avoid unexpected costs – throughout the entire contract life cycle for each vendor.

Just keep in mind that procurement cannot play an effective role in helping CIOs meet these mutual cost and quality control goals if it is not equipped with the right technology tools. Cloud-based technologies are a top three priority for CIOs, but they must be the number one technology priority for public procurement this year. Cloud-based eProcurement platforms provide the framework necessary to implement better risk management and fiscal management strategies. They make both your job – and your CIO's job – much easier. And, they ensure that your entire agency receives a greater ROI for all spend, whether it's a back-office ERP system, consolidated data center or new digital citizen service.

To learn more about how the NIGP Code and eProcurement technologies can directly support your fiscal management efforts, visit www.nigpcode.com or www.periscopeholdings.com.



The Procurement Professional's Guide to Negotiating Energy Supply Agreements

PART THREE: ADDING & DELETING ACCOUNTS

By Bob Wooten

> Previously in this series on negotiating energy supply agreements, we covered “payment terms” and “termination fees” – both of which are very important in structuring a contract that meets the needs of your organization. This installment will discuss the use of “add/delete language.” In the final two installments, we will delve into “usage bandwidth” and “material changes.”

Add/delete language is of primary interest to organizations with a significant number of energy accounts. This can take one of two main forms:

A large number of accounts in one area – such as a city contract with hundreds of electricity accounts, or a company with many locations all under one contract – as with a department store chain that has 50 stores on a state-wide electricity contract

In either of these cases, there is a very strong possibility that an account may need to be added here or there over the life of the contract (when adding a street light or opening a new store, for example) or that some of the individual accounts will be deleted (due to things like relocating a facility or closing a branch). Regardless of the reason, it becomes very important that the energy supply agreement addresses these issues and needs so that you aren't subject to fees or penalties of some kind.

ADDING – IS THIS A NEW CONTRACT?

Let's consider the scenario that you are a growing school district that is one year in to a five-year electricity contract. A particular school within the district is expanding rapidly, and

there is the need to place several temporary buildings on site to accommodate classes. Each of these buildings needs a new electricity meter; therefore, you need to add several new accounts to the district's overall supply agreement.

If the account were something really small – like a guard light, for instance – most suppliers would just add to the supply agreement at the contract rate. But when it is something larger, as in the case of these school buildings, energy suppliers take other action. You may have to sign a whole new agreement, or your added account may be added at the current market rate – not your original contracted rate. This scenario is typical if the market rates have moved up since the time you signed your original contract.

If you, as the energy procurement specialist for the school district, have negotiated your contract from the beginning to include language allowing you to add new accounts, you can ensure that these new locations pay the contract rate even in if the current market rate may be much higher. Ultimately, this provides you true savings to your school district.

DELETING – IS THIS TERMINATING A CONTRACT?

For this case, let's say you are a restaurant chain with 30 locations around the state, all under one electricity supply agreement. The chain has decided to sell two of these locations; they are removed from the supply agreement. As in the school district case, the main impact on the energy contract has to do with how large these accounts are in relation to the overall contract.

In this restaurant chain scenario, actually removing a full-size location is significant enough that the supplier assesses an "early termination fee" to account for the unused power for the remainder of the agreement term (see our previous article regarding termination fee language). The primary way to avoid such early termination fees is to include language in your original contract that allows for deletions so that multiple sites could be removed with no resulting fee to the organization.

ADD/DELETE LANGUAGE – HOW MUCH LEEWAY IS THERE?

From the scenarios we just discussed regarding adding or deleting accounts, a common theme has to do with how much "energy" is involved in adjusting the contract. Add/delete language is typically addressed in terms of the percentage of energy being added to or deleted from the supply agreement. So if the estimated total load of your electricity contract is 1,000,000 kWh, and you are adding a new account that will use 100,000 kWh annually, you are increasing the supply agreement by 10 percent.

Most energy suppliers address add/delete by allowing it within a particular bandwidth or percentage. Not every supplier offers add/delete language, but for those that do, the bandwidth usually ranges from 5 percent to 20 percent. This provides you contract rate stability within that range.

A "standard" energy supply agreement has no specific add/delete language – each issue is discussed individually. This usually means that significantly sized accounts are added at current market rates or are deleted for an early termination fee.

YOUR CONTRACT – DOES THE LANGUAGE FIT THE NEED?

Because of the convenience factor, add/delete language typically comes with a premium. When negotiating your contract, keep in mind that your rate will be higher with this language included – and even more so if you push for, say, a 20 percent add/delete clause as opposed to a 10 percent clause. The exact amount of the premium differs by supplier.

Keep in mind, though, that this kind of premium is just a small part of the overall cost. Providing yourself protection, if your organization is likely to fluctuate in size and number of contracts, can easily pay off if otherwise faced with higher energy rates for added accounts or an early termination fee for removing an account from your contract.

You always just want to pay for what you need. As with many such clauses, add/delete language should be viewed as a type of "insurance policy"... if you feel you will need it. If you are a one-location, one-account business, this doesn't apply – so don't bother. But if you are a city with 400 meters, you should definitely consider inclusion of this language.

Include this verbiage in the specifications as you go through your procurement and evaluation process, and ask for quotes containing different percentages of add/delete language. This way, you can specifically see the incremental costs and make an educated decision as to how much protection you need. By addressing the add/delete language, you ensure your organization's contract is truly customized to your needs.

BOB WOOTEN, C.P.M., CEP, is Director of National Accounts for Tradition Energy, and has over 20 years of experience managing commercial, industrial and governmental procurement programs for a wide variety of clients. Bob holds professional certifications from the Association of Energy Engineers and the Institute for Supply Management, as well as a B.A. from Texas A&M University, and a Masters in Public Administration from the University of Houston.

LANGUAGE MATTERS: SCOPE VERSUS STATEMENT

By Lisa J. Premo, MPM

> **T**he recently-published public procurement practice provides practical guidance for distinguishing between scope of work and statement of work. The idea for the practice topic began by listening to discussions during the development of an online specifications course and face-to-face workshop, and was confirmed by working on the specifications practice. Conversations regularly returned to scope of work and statement of work.

Each week, participants wrestled with explanations of what these terms looked like in their agencies, a focus that spotlighted the confusion surrounding the two terms. Scope of work and statement of work were being used interchangeably - the SOW abbreviation could mean either. Were we talking

about the solicitation or the contract? Goods or services? Agency outcomes or contractor solutions?

It turns out that the two terms have been evolving. The first dictionary of procurement terms, published in 2007, defined the terms as follows:

Scope of work/statement of work (SOW): A written description of the contractual requirements for materials and services contained within a request for proposal (RFP). The SOW can be compared to the specifications contained within an invitation for bid (IFB). A well-conceived and clearly written SOW serves four main purposes:

- > Establishes clear understanding of what is needed
- > Encourages competition in the marketplace and promotes economic stimulus



- > Satisfies a critical need of government
- > Obtains the best value for the taxpayer

During discussions of the 2011 version of the dictionary, the desire for distinguishing between the two terms arose. Procurement professionals cited numerous conflicting sources concerning definitions of scope of work and statement of work, and shared their views about how to reach clarity. Ultimately, the two terms were separated and made their way into the 2012 version of the dictionary. Each term is presented with its own distinct definition.

Scope of work: A detailed, written description of the conceptual requirements for the project contained within a request for proposal.

The scope of work should establish a clear understanding of what is required by the entity.

Statement of work: The response from the supplier/contractor outlining specifically how the supplier proposes to complete the work as outlined in the scope of work. It defines what will be done, how, by whom and cost factors.

Scope of work and Statement of work were each coming into their own, distinct from, but related to one another. The 2012 definitions drew a connection between scope of work and RFPs. The scope of work laid out what was required, at least, conceptually. The statement of work responded to those requirements with specific details.

Today, the public procurement practice distinguishes between scope of work and statement of work. The definition for each term has evolved. In the current definition, the scope of work becomes the basis for any resulting solicitation whether IFB or RFPs. The statement of work becomes the basis for the contract.

A scope of work is developed at the beginning of the procurement cycle and is a written description of the entity's needs and desired outcomes for the procurement and becomes the basis for any resulting solicitation. The scope of work helps to ensure that the product or service meets the stated outcome and establishes the parameters of the resulting contract.

A scope of work must provide sufficient information for the supplier to:

- > Determine whether the solicitation aligns with their business
- > Decide whether responding to the solicitation

Scope of work and statement of work were being used interchangeably - the SOW abbreviation could mean either. Were we talking about the solicitation or the contract? Goods or services? Agency outcomes or contractor solutions?

is profitable and worth the effort

- > Determine whether they can submit a responsive and responsible offer

This January, an NIGP webinar featuring the task force presented examples of scope of work and statement of work in both an IFB, with its corresponding bid and contract, and an RFP with its corresponding proposal and contract.

The webinar revealed the transformation of a scope of work into the statement of work and resulting contract. Practiced this way, the procurement professional can much more easily match the offeror's detailed statement of work to each requirement of the scope of work.

The scope of work to statement of work evolves during the procurement process and differs depending on the solicitation method used, i.e., IFB vs. RFP. With an IFB, the agency knows the requirements and is interested in the lowest price for a responsive bid and responsible bidder. The transformation is more visible in an RFP, with a scope of work that describes a desired outcome without specifying how to achieve that outcome. The offeror responds with a proposed solution, negotiations may be conducted, and the resulting statement of work becomes the basis for the contract.

The statement of work is a written description

in the contract detailing performance expectations and deliverables between the contracting parties. After a supplier has been selected, the statement of work becomes the basis for the contract and must provide sufficient information to:

- > Meet the entity’s needs and achieve successful outcomes
- > Describe and define the expectations of the parties
- > Set price and payment schedules
- > Mitigate or avoid disputes

Why distinguish between scope of work and statement of work? Procurement progresses more smoothly when we communicate with the same “thought bubble” over our heads. Sharing the same terminology helps establish a professional language and elevates the public procurement profession. Distinguishing between the scope of work and statement of work helps us clarify and conceptualize what we are doing. It draws our attention to what changes and evolves during the procurement process, and provides another example of the continuous growth and refinement within our profession.

Whether developing a public procurement practice document or planning a procurement,

we are most effective when we start with a shared understanding. Using “SOW” creates confusion. One person may interpret SOW as contract, another may infer solicitation, and others may be thinking services or outcomes or specifications. Let’s transform our operations by using a precise and shared terminology, accessible to us through the useful guidance and clear definitions in this public procurement practice. “Practical Guidance for Distinguishing between Scope of Work and Statement of Work is available” on the NIGP website.

LISA PREMO, NIGP Global Practices Manager, collaborates with public procurement practitioners and academics to conduct research and develop useful guidance on public procurement topics. The task force that developed the public procurement practice includes Sally Barkley, CPPO, PMP, C.P.M., M.B.A.; Terri Gerhardt, CPPO, CPPB; Jon Walton, CPPO, CPPB, JD, CPM; Christine Weber, CPPB, C.P.M.; and Kevin Yin, CPPB.

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THE TEXTBOOK PURCHASING GAUNTLET

By Laura Harrington

➤ **A**re you surprised that textbooks are a difficult purchase involving significant hurdles? In Michigan K-12 public education, competitive invitations to bid (ITBs) are required by law whenever the contract for construction, renovation, repair, or remodeling; or the purchase of supplies, materials or equipment exceeds \$23,417 (the 2017 minimum threshold amount). This threshold amount may increase annually based on adjustments in the Consumer Price Index.

Textbooks are considered materials and need to be competitively bid whenever the purchase exceeds the threshold amount. Sounds simple, right? The ITB is a straightforward process, requiring unit prices for specific quantities to identified school buildings. Each item is individually listed; whether it is a hard cover textbook, soft cover consumable or software subscription. There are even more opportunities for bidders by providing pricing on both used and new condition textbooks. Boilerplate language includes, among other things, the district's exhaustive reservation of rights.

PILOT PROGRAM HURDLE

This simple purchase becomes complicated. The first hurdle occurs when curriculum classroom leaders evaluate the textbook in a pilot program offered by the publisher. This program is a free test to evaluate a new program in the classroom from November to March. Curriculum leaders then choose whether or not to approve the program. Sounds great, right? Except the publisher may require brand-new condition on all returned materials, and charge the district for all shipping charges.

The second hurdle occurs when the publishing company convinces the educational services department that they are sole source and the department simply needs to send them a purchase order for the entire cost. Sometimes, the publisher ties in the free pilot program to a requirement that the district must exclusively purchase from them for a number of years.

The purchasing department becomes aware of this procurement after the department has typed a purchase order that well exceeds the bid threshold amount. Note that Michigan does not allow sole source as an exception from the competitive

bid requirement. The purchasing department is seemingly arbitrarily delaying the purchase of materials that are needed to help educate students. Since the publisher told the department that these materials can only be purchased from them, why is the purchasing department holding the order?

After many conversations, the ITB is quickly issued and bids are publicly received from numerous companies. Remember, the publisher said that they are sole source for this material. Low bid is recommended for every item, with the publisher commonly awarded the software subscriptions and resellers awarded the remaining materials. The Board approves the recommendation, purchase orders are sent, products are delivered, invoices are paid, state law has been followed and the district saved 20 to 50 percent in the process.

DEACTIVATE SOFTWARE SUBSCRIPTION HURDLE

The final significant hurdle occurs, however, when the publisher deactivates our paid software subscriptions at the start of the school year. The publisher's rationale being that the district violated the pilot agreement to purchase all materials from them for many years, and they will only reactivate the subscriptions when we purchase all the hard copy materials from them. This deactivation significantly affects both teachers and students since these subscriptions include assessment, review and testing tools that go beyond the standard textbook.

The purchasing department now learns about the obscure pilot material agreement that a teacher may have unknowingly agreed to without authority nine months ago. The district never receives a copy of the signed pilot agreement.

The purchasing department reminds the publisher that they signed and submitted ITB pricing on these items without clarifications nor exceptions and without referencing any prior agreement. Furthermore, the publisher did not protest the bid award nor question the purchase order. The publisher sent itemized invoices that corresponded to their bid submission and deposited the district's payment. Lastly, the publisher is reminded that tie agreements are illegal, and

the district will not be party to any such request.

The software subscriptions are reactivated, solving the last hurdle for this procurement... until the department surprises me with a new textbook program.

LAURA HARRINGTON, CPPO, CPPB, is Purchasing & Risk Management Supervisor at Chippewa Valley Schools in Clinton Township, Mich., She can be reached at lharrington@cvs.k12.mi.us



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LP CONSISTENTLY LEADING THE WAY...

BLOCKCHAIN: A PATH TO UNBLOCKING GOVERNMENT PROCUREMENT PROCESSES?

By Joe Kim



> **I**t looks like the United States government may have found an ideal solution to expedite its procurement efforts.

In late 2017, the General Services Administration (GSA) began looking at blockchain, the distributed ledger technology mainly known for bitcoin transactions, to accelerate its FAST Lane contract award process. Currently, that process is designed to help the government award contracts within 34 days, but the GSA believes that blockchain technology could reduce that time frame significantly.

The hope lies in blockchain's ability to accelerate verification processes by using a vast number of interconnected peer-based computers (known as nodes) to store blocks of information. Blockchain is transparent by design, and that transparency allows data to be shared more easily between parties. Plus, blockchain connects multiple systems and allows them to interact with each other. In short, blockchain creates a mechanism for more effective communication between different points of the procurement processes. In doing so, it can accelerate that process.

Certainly, blockchain has the potential to truly revolutionize the way government agencies acquire

services and solutions, just as it has revolutionized the way the world's banks handle the exchange of currency. But, as the financial world has discovered, network monitoring and management strategies play a critical role in blockchain's success. They are the supportive technologies that will ultimately help blockchain reach its potential within the government by enabling a strong and reliable end-user experience.

GAINING HIGH VISIBILITY FOR HIGHTHROUGHPUT

That enablement can be a challenge, due to the distributed nature of blockchain. The success of blockchain as a well-oiled procurement apparatus is dependent on high throughput and low latency. Unfortunately, those goals can be difficult to achieve over such a wide-ranging and heavily taxed network, where each node is under pressure to process every transaction.

It is important for IT professionals to have a means to access and monitor performance information regarding the different nodes that make up their blockchains. A single node experiencing latency issues can undermine the blockchain's overall performance by inhibiting its ability to deliver data

between destination points in a timely manner. Administrators must be able to identify these performance issues and their causes so they can rectify them before they impact the procurement process.

It is also worth noting that, much like the peer-to-peer system that makes blockchain function, many agency networks are themselves highly distributed. On-premises, hosted, and hybrid network infrastructures are the norm. Teams must be able to monitor data as it passes between all of these services to help ensure that their networks are operating efficiently and dependably. They must deploy monitoring strategies that provide unfettered access and visibility into the entirety of the network, wherever it may exist.

MAKING A HARD TARGET EVEN HARDER TO HIT

Better visibility also leads to better security. Indeed, despite publicized breaches, blockchain technology has gained a reputation for being highly secure due to its decentralized nature, which makes it a harder target for hackers to hit. But nothing in this world is truly hacker-proof. As such, agencies must still take care to maintain good old-fashioned security hygiene.

Implementing a security and information management system that patrols the network and scans for malicious activity is still extremely important. Continuous, proactive monitoring and encrypting data in transit and at rest must remain a fundamental part of an agency's security posture.

The fact is that blockchain remains a relatively new technology. As such, there may very well be vulnerabilities that have not yet been exposed. No doubt enterprising hackers are, at this moment, attempting to identify and exploit those vulnerabilities. Maintaining a sound security posture can help agencies fortify themselves against those efforts while taking strides to improve their procurement processes.

SUPPORTING INNOVATION AND ELIMINATING BLOCKAGES

Blockchain is an innovative, powerful and exciting technology that truly has the capacity to change the way government procurement works. Indeed, it could become the solution that finally enables agencies to accelerate the process of landing and finalizing contractual agreements.

However, it will only succeed if agencies take care to support their blockchain efforts with proper network management strategies. Implementing these strategies can help ensure the security of their networks and effectively take any and all blockages out of their chains.

JOE KIM is executive vice president and Global CTO of SolarWinds.

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Earning a Seat at the Table

As procurement matures, the profession is finding its voice

By Derek Prall





here is an ongoing debate in this industry – should procurement be a stand-alone entity, or should it fall under the purview of the finance department? The short answer, it seems, is it depends on who you ask.

In early April, *Government Procurement* magazine sought to do just that. By sending out a survey to the readership, we hoped to gain insights into this issue and the factors surrounding it. After analyzing thousands of responses from hundreds of readers, valuable information has been generated that can help better quantify and qualify the issue at hand.

“The results of this survey shed light on a variety of issues related to the ongoing discussion as to whether or not procurement should be its own entity,” Bill Wolpin, *Government Procurement’s* editorial director says. “Exploring this topic in a data-driven way highlighted the importance of the discipline and its continued maturation.”

The first important item to note is that about 45 percent of respondents said their procurement departments functioned independently from their organizations’ finance departments, while 55 percent said procurement is under the umbrella of finance. However, given the sample size and audience, Taylor Adams, director of finance for Virginia Beach, Va., thinks that figure might be a little skewed. He would guess the number is closer to a 50/50 split, which makes the conversation even more interesting.

“This is a discussion that is ripe for us to have,” says Adams. “The public-sector practitioners in

this field are split on how it should be.”

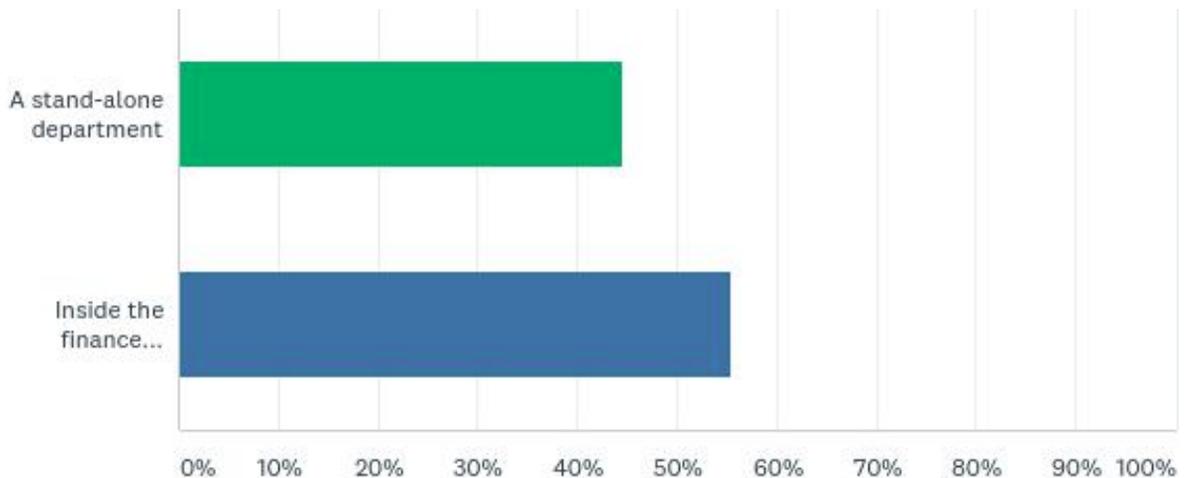
Don Buffum, director of procurement and contracts for Mississippi State agrees that the conversation is worth having, and says that while the survey figures offer a snapshot, he feels as time goes on and the procurement industry grows, more departments will become independent. “As procurement operations become more professional and strategic, it will move into a cabinet-level position,” he says, although there have been recent instances of independent municipal departments being folded into finance departments.

This debate has been going on for years and is strengthened by the fact that different departments have different needs. Taking a very simplistic view of the issue, at smaller organizations it would not be efficient or feasible to establish a standalone department when the small amount of purchasing, HR and risk management functions may all be performed by one person, Buffum says. In larger organizations, a stand-alone department makes more sense.

Adams, whose procurement department functions out of the finance department agrees that, simply put, different departments have different needs, and that one organization isn’t necessarily better than the other. “Each public sector organization is different,” he says, “The requirements of each entity will guide where purchasing should be located. For the city of Virginia Beach, procurement within the finance department is absolutely the best way forward.”

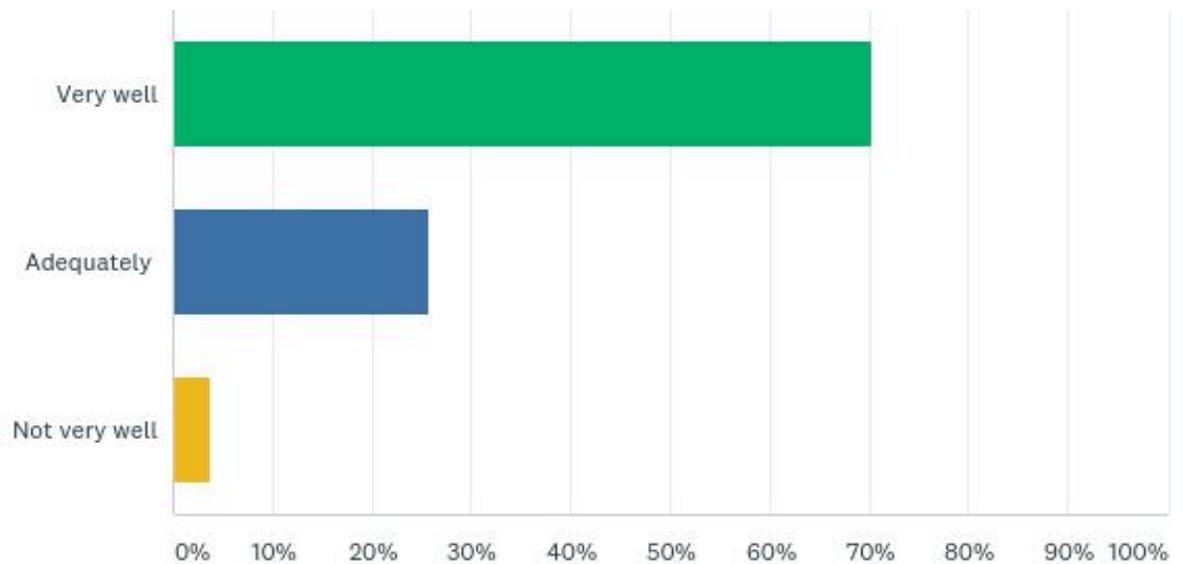
However, the conversation and disagreements continue. “There will always be a debate because there is no clear answer,” Buffum, whose agency stands alone, adds.

Is your procurement department a stand-alone department or inside the finance department?

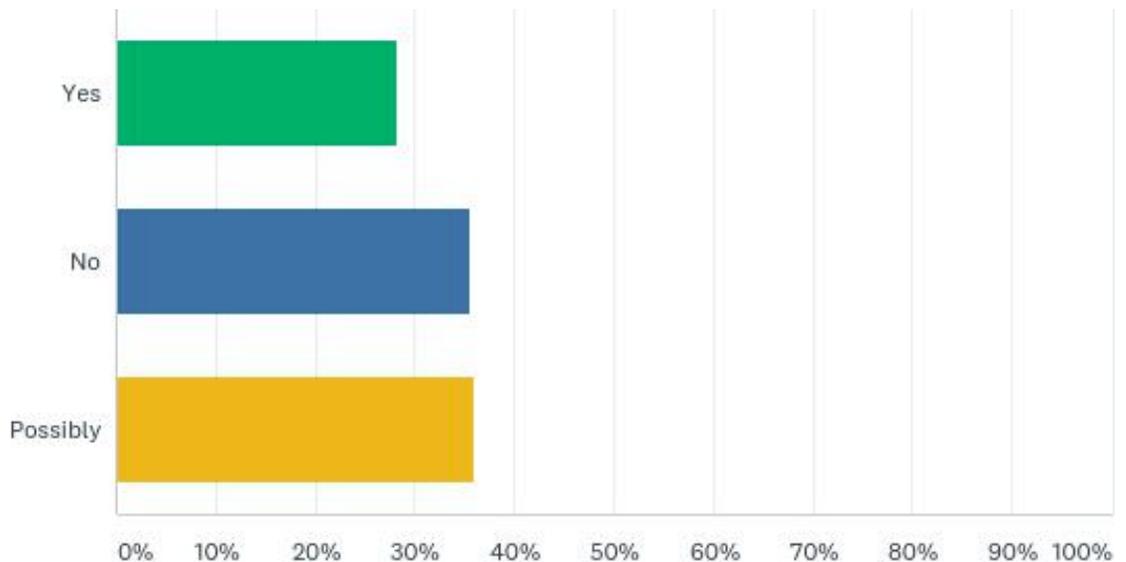


IN DEPTH [procurement & finance]

If you're in a stand-alone procurement department, how well do you understand the financial ramifications of your procurement decisions?



If you're in a stand-alone procurement department, would you like to have more exposure to the finance department?



However, one thing is clear in his mind – however the agency is organized, for procurement to add value to an organization, it needs to have a seat at the table.

“The general concept is that if you look at abilities to impact an organization, the lower you are in the organization the less impact you can have. If you believe – as I do – that procurement is a primary function of government, it needs to have a voice.” Buffum says. “If it doesn’t, it becomes a clerical task of ordering pens and pencils.”

To Buffum, purchasing and finance are two separate functions of an organization and serve separate needs. In theory, if purchasing is a stand-alone department, they are at the table with the other cabinet-level departments when discussing the organizations budget, mission and future.

“If procurement is to be a separate entity, it gives that department the opportunity to bring greater value to the organization by sharing their expertise and knowledge of the marketplace and other issues that



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directly impact other parts of the organization,” according to Buffum. “By putting the procurement department under finance, their role tends to be diminished.”

Adams agrees that under a finance umbrella, it's difficult for procurement to stand out as a unique profession. “Procurement [under finance] is going to have to move more proactively to establish procurement as a profession and not a clerking function – to move away from the tactical aspects of the job,” he says. If a procurement department stands alone, Adams says it allows the right professional better opportunity to build the future of the profession.

However, Adams believes that there are benefits to be gained from having a procurement arm within a greater finance department. “For one there are efficiencies that can be gained within the organizational structure,” he says. “Also, you have a broader pool of candidates from which you can cross-train and offer people opportunities to advance... If we're trying to recruit top talent and give them full careers, within the broader function of finance I think we offer a better opportunity to do that.”

Additionally, Adams says even if procurement functions as a stand-alone department, it can't be removed from the greater finance ecosystem. “You can never fully remove the accounting responsibilities from the [procurement] function,” he says. “To know what we're buying and to be able to

track and manage our spend, we have to get the accounting piece correct, because that's going to govern how we pay it. There's no way to really remove one from the other.”

If a procurement department is to truly add value to an organization, as Buffum believes it can, it needs to be looked at as an equal. “For example, when budgets are being prepared, finance people need to be involved because they are the ones that determine how much money is coming in. HR needs to be involved because they know your staffing, and procurement needs to be involved because they know what's going on in the marketplace,” he says.

It's this distinct skillset procurement offers that make their perspective valuable, Buffum says. The survey appears to agree with this sentiment. Approximately 60 percent of respondents to the survey said their agency has a defined set of skills for procurement officials while only 22 percent said their governments have defined skills for finance.

“My assumption would be that Procurement, historically is easier to define,” Buffum says. Finance is a little harder to pin down because it involves so many different branches. If procurement is within finance, “what other tasks are under finance, and how can you define a single set of skills for all of these areas?” Buffum asks.

Adams agrees that often procurement involves skills that fall outside the finance realm, but it matters how

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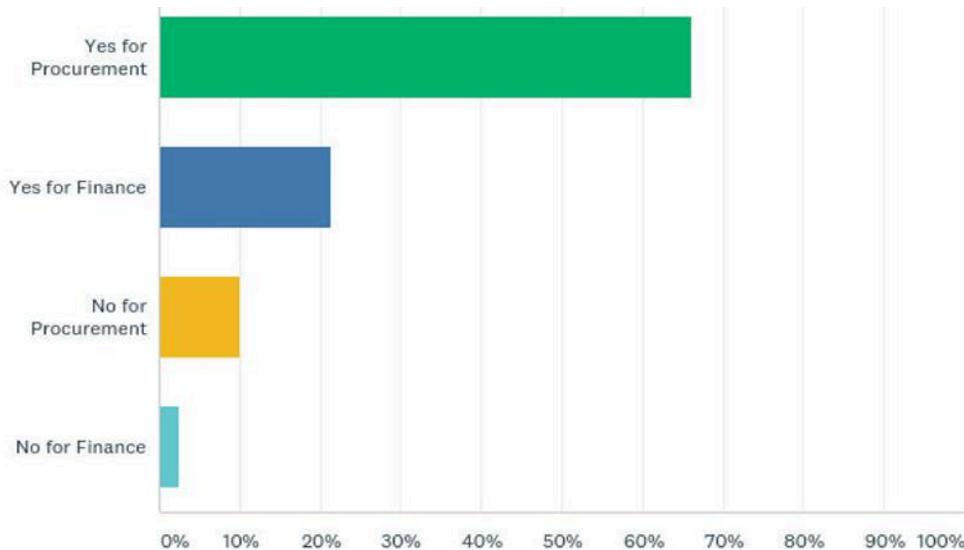
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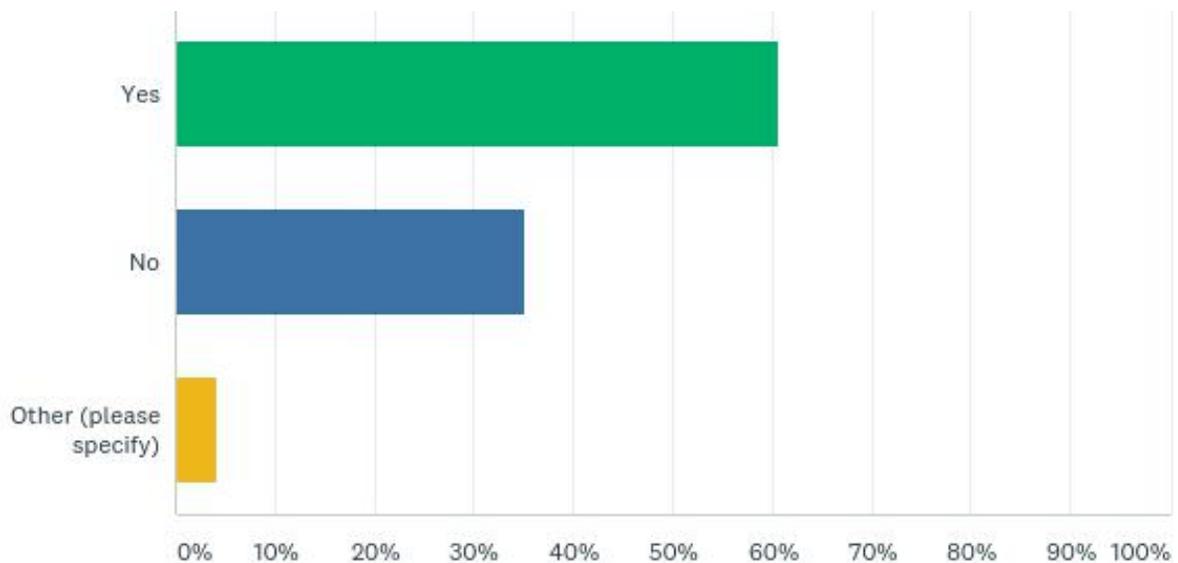
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Does your government body have a defined set of skills for either procurement or finance?



Do you have sub-sector type experts, for example in IT or construction?

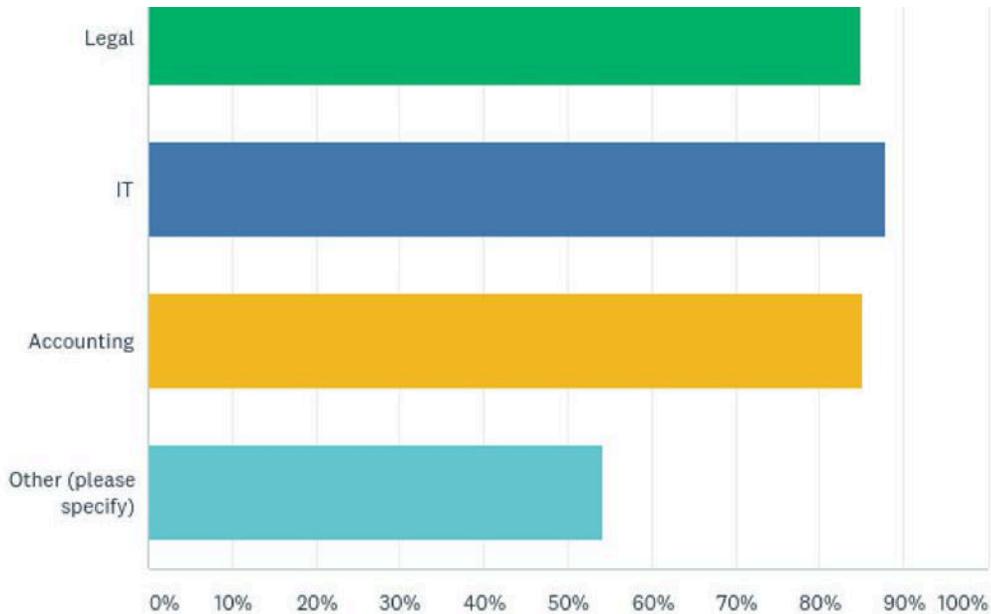


and where those skills are expressed. “If you’re at a public agency where procurement really is a public administration/policy focus that is most heavily dependent on legal frameworks and public processes, then you probably are leaning more towards a stand-alone department,” he says. “On the other hand, if you view the skills to do the job as most closely identified with business finance and supply chain management then it becomes a lot easier to place procurement within finance and find a successful home

for it... it depends on how the individual organization values the skills that are required to do the job.”

It comes down to a matter of perspective, Buffum says. “It depends who the bosses are, whether it’s the mayor, the legislatures, the governors, city councilmen, boards of supervisors, or finance people – do they see value in public procurement? It’s up to our profession to do a better job of telling our story so that we can explain to people why procurement is important.”

Which of the following departments do you work with?



Buffum says that at the individual level, this means procurement professionals who may not have a lot of clout in their organizations should be looking for small wins. “I should be showing my superiors what we could do differently to save money and create value,” he says. “It’s a matter of people in procurement positions doing the research and finding potential successes and pushing them up the ladder. People need to stand up and say ‘Hey, I have a new idea.’”

Adams agrees that in order to have a respected voice, procurement as a profession needs to be more proactive. “Procurement seems to be this emergent profession that is still looking for a seat at the table in the larger public hierarchy,” Adams says. “A stand-alone department offers the opportunity for self-actualization for the young profession that is public procurement – I think there are advantages to that.”

However, Adams says this won’t be handed to anyone. Procurement professionals need to justify this autonomy and earn their say. “If procurement people want to be viewed as professionals in the workplace, you have to be willing to deliver more value to the organization than that of a clerk or that of a process monitor.”

This means being able to speak the same language as that of the accountants, of the risk managers, of the human resources professionals, Adams says. This will mean committing to learning negotiation skills and investing in delivering what is the best value for the public organization. “Procurement folks have to invest in the skills that professionals within the organization have to earn that respect and earn that seat at the table,” he says.

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You be the Judge

> **R**ecently I had the opportunity to participate as a guest judge in a wine tasting competition. The annual Monterey International Wine Competition features some of the finest wines in the world. A friend and I were judges among a panel of wine experts. While others shared observations about “soft finish” and “velvety tannin”, I noted that the Pinot Noir was “very red”

While I am no wine expert, I do consider myself relatively knowledgeable in public procurement. That is why I was particularly pleased with a different kind of judge in Portland, Oregon.

Some years back I was called to testify in court on a contract decision regarding copier equipment. My organization had evaluated several responses to an RFP and selected what we believed was the top proposer. The second ranked proposer did not care for our decision and immediately filed a legal motion to halt our proposed contract award.

The protesting supplier, who had retained one of the area’s top attorneys, contended that the top ranked proposer could not meet the functional requirements of the RFP. They asked the circuit court to deem their competitor’s proposal non-responsive and to, instead, award the contract to their company (a classic position of a protesting supplier and what they seek as a remedy). With this news, I was off to court.

After two days of testimony I was pretty worn down. Both the director of information technology (subject matter expert and customer) and myself as director of procurement had answered every question thrown at us. My approach? I focused on the aspects of the project related to the procurement process, proposal evaluation, and contract award. When asked about technical issues, such as software capabilities, I would defer to my IT counterpart.

When taking the stand, I was definitely nervous. My hands were sweaty, my mouth was dry, and I wanted nothing more than to exercise my “right to remain silent.” But since that really wasn’t an option in this case, I did my best to address the other party’s attorney and explain our evaluation process and how we arrived at the award decision. Looking back now, I still think we did a great job. Our committee was fair and objective, and strictly evaluated responses based on the evaluation criteria we listed in our RFP (great idea, right?).

In the end the judge must have thought we did a pretty good job too. In a landmark decision, Judge Janet Wilson ruled the following: It was not the role of the court to determine whether a proposal was responsive or non-responsive; that was the role of the government. Her only role was to determine whether or not our agency (and myself) had abused our authority. She stated that she found no reason to believe such abuse existed and awarded in the favor of my agency.

As the prevailing party, we also sought to recover our attorney fees, which were substantial. The judge ruled favorably on this matter as well. “Show me the money!” I said privately to my attorney.

Was the value of the public procurement process confirmed? You be the judge.

It was not the role of the court to determine whether a proposal was responsive or non-responsive; that was the role of the government



DARIN MATTHEWS, FNIGP, CPPO, CPSM, is the director of procurement for the University of California, Santa Cruz. He has extensive management experience, speaks throughout the world on procurement issues, and has published several books and articles on supply chain management. Contact Matthews at darin@ucsc.edu

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