Ethics, Conflicts and the 2 CFR 200

By: Dr. Jesus J Amezcua, CPA RTSBA
Ethics, Conflicts and 2 CFR 200

Local governments receive federal dollars and they are required to adhere to federal standards. In addition, they must meet federal, state and local procurement requirements. In this session, we will explore *case studies and examples* regarding the 2 CFR 200. We will also discuss *risk assessment* over federal programs and a *sample procurement proposal* that meets all federal, state and local requirements.
Today, we will discuss four topics:

• 1. First things first: Let’s define it; Understand it
• 2. Identify ways of dealing with right or wrong
• 3. Look at examples - Issues
• 4. Identify the rules for procurement officers
Exercise A “Towards defining an ethical person”

Ethics can be defined in various formals contexts, but for purposes of accounting, let just define it as doing the right thing when no one is looking.

1. Now, think of one or two of the most ethical people that you know.
2. How many people do you think would list you when asked that question?
3. Is it important to you that they list you?
4. Would you like to be in such a list when people are asked “Who is the most ethical person you know?”
5. Do you think that you should be on the list? If so, Why?
6. What are you doing that you ought to be doing?
7. Generally, most people want to do the right thing, but situations often cloud their judgment and they look to justify and rationalize their actions. Now, let’s think about the person that you regard as most ethical. What are the characteristics that you associate with this person?
Develop a list of 10 attributes that you think might be the ideal characteristics of an ethical person.

Discuss each of these items and provide an example of why this is important or how this person exhibited these traits.
Let’s begin with a simple question?
Are you Ethical?

Are you moral?
Are you ethical?
Do you care?
Can you teach morality?
Can you teach ethics?
Can you teach to care?

Distribute the Ethics Handout:
List the top 10 characteristics and ask everyone to write on a sheet of paper.
<table>
<thead>
<tr>
<th>Rank</th>
<th>Rank top ten attributes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Table</td>
<td>By table – come to consensus about what are the top 5 attributes.</td>
</tr>
<tr>
<td>Discuss</td>
<td>Discuss the top 5 attributes.</td>
</tr>
</tbody>
</table>
What are some of those attributes?

**Honesty and Integrity** – having the courage of one’s convictions But they must be good convictions What is the difference? Can you be honest, but have no integrity? Act on principle rather than expediency is one we all expect.

**Promise Keeping** – Not the same as honesty- Can you be honest, but not keep your promises?

**Fidelity and loyalty** – usually the most cause of ethical problems? Where does your loyalty lie? Company, Friends? Clients? You?

**Fairness** – Are you fair? What is it to be fair?

**Caring** – Do unto others as you would do unto you. How would you like to be treated? With Care?

**Respect** – Respect for others – different than caring – Can you respect someone you do not care for?

**Responsibility** -Accountable, law abiding, part of the community. Are your decisions responsible?

**Excellence** – Pursuit of excellence infers that we do our job well. More than just competent. Accountants have a moral obligation to be excellent.

**Accountability** – Can you be representational and accountable?
Integrity- Trustworthiness, Trust, Ethics

What does it mean?

and How do you know you have it?

Samples:
<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conducted personal business on company time?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Used or taken company resources for personal purposes?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Called in sick when I really wasn’t?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Used an ethically derogative term when referring to another person?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Told or passed along an ethically or sexually oriented joke?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Engaged in negative gossip, or spread rumors about someone?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>&quot;Bad mouthed&quot; the company or management to co-workers?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>&quot;Snooped&quot; into a co-worker’s conversation or private affairs?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Passed along information that was shared with me in confidence?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Knowingly ignored (violated) an organizational rule or procedure?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Failed to follow through on something I said I would do?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Withheld information that others needed?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>&quot;Fugged&quot; on a time sheet, billing sheet, estimate, or report?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Knowingly delivered a poor quality (or defective) good… or service?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Been less than honest (lied or manipulated the truth) to make a sale?</td>
<td></td>
<td></td>
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<tr>
<td>Accepted an inappropriate gift or gratuity?</td>
<td></td>
<td></td>
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<tr>
<td>Taken or accepted credit for something that someone else did?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Failed to admit to or correct a mistake I made?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Knowingly let someone screw up and get into trouble?</td>
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<td></td>
</tr>
</tbody>
</table>

Source: Performance Systems with permission.
Ethical conflict:

Ethical problems occur only when an individual interacts with other people. They are relationship kinds of problems;

Barteis [1967] succinctly states the nature of ethics conflict In a pluralistic society not one but many expectations must be met. Therefore, resolution of what is right to do produces a balance of obligations and satisfactions.

Ideally, full satisfaction of the expectations of all parties would constitute the most ethical behavior. This is impossible, for expectations are often contradictory and sometimes exceed social sanction. Therefore, skill and judgment must be used to guide one in determining the point at which his own integrity can be best maintained.
What are some conflicts?

**Internal Conflicts**
- From the Top
- From the middle and bottom

**External Conflicts**
- Political Stakeholders
- Agency – Local – state – federal
- Community
- Public
- Business

Story: Taxes, Projections, balanced budget
Let’s look at the federal laws and state laws?

- EDGAR - Conflict of interest issues
- USDA & DOJ – Requirements for Ethics Code of Conduct
- State – CIS and CIQ – (Texas)
- Intermediary 1295 Form (Texas)
- Local – Local policies
The rationale for Internal Controls

"Stay with me now, people, because in Step C, things get a bit delicate."
c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
§200.112 Conflict of interest.
The Federal awarding agency must establish conflict of interest policies for Federal awards.

The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.
§200.61 Internal controls

Internal controls means a process, implemented by a non-Federal entity, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

(a) Effectiveness and efficiency of operations;
(b) Reliability of reporting for internal and external use; and
(c) Compliance with applicable laws and regulations.

HCDE has implemented a risk assessment and fraud assessment process to evaluate the effectiveness of internal controls. This is conducted every six months and reviewed by executive team administration. (State Audit)
USDA (Texas and US Department of Agriculture)

Processes or procedures established by the CE that (1) define actions related to the procurement process, (2) establish standards of ethical conduct, and (3) provide full and open competition.

Written procurement procedures must address the following issues:

• Code of conduct for financial transactions for all employees
• Disclosure of all conflicts of interest
• Disclosure of all real or apparent conflicts of interest
• Certification regarding lobbying
• Debarment and suspension
What is Internal Control? A definition.

Internal Control is a set of procedures implemented to secure financial assets or to prevent loss of physical assets.

Qualities of Internal Control:

• Detection: (offense) To discover the possibility of a problem arising or the existence of a problem. (Getting good value for the procurement)

• Prevention: (defense) To keep problems from occurring. (ie. Noncompliance)
Under CFR 200, there are several guidelines that are intended to prevent fraud:

- Policies
- Procedures
- Fraud Programs
- Risk Assessment Programs
Let's define -- > What is Fraud?

A definition.

Fraud (unlike an error) is *intentional* misuse and usually involves *deliberate* concealment of the facts.

**Elements of Fraud**

- Potential - design
- Incentive - return
- Opportunity - design

**Story** - Bridge Tolls
Common Grant Fraud Risks

Most instances of grant fraud fall into one or more of three general categories:

   §200.318 General procurement standards.

2. Material False Statements Including Failure to Adequately Document the Use of Funds.
   §200.403 Factors affecting allowability of costs.

3. Theft.

Source: DOJ Grant Training Module

NIGP FORUM 2020
Conflicts of Interest and Procurement Process Issues

Award recipients are required to use federal funds in the best interest of their program and ensure their decisions related to the use of the funds are free of personal and organizational conflicts of interest.

2 C.F.R. 200.112 requires recipients and subrecipients of federal funds to disclose in writing to the awarding agency any potential conflicts of interest. Undisclosed conflicts of interest can, in some cases, constitute criminal fraud because they are "material omissions." This means that had the government or the pass-through entity initially known the truth about the undisclosed facts (e.g. family members), the government would likely not have approved or allowed drawdowns on the grant.

Source: DOJ Grant Training Module
Conflicts of Interest and Procurement Process Issues

Award recipients should carefully consider the following issues to better manage this risk: The procurement process must be fair and well-documented and free of organizational and personal conflicts of interest, such as a vendor inappropriately participating in the procurement process or an employee of the recipient organization personally benefiting from a contract award. Consultants can play a valuable role in many programs, but they must be selected through a valid procurement process, their pay must be fair and reasonable for the services received, and recipients must adequately document the purpose and validity of the consultant arrangement. Employees of recipient organizations cannot use federal funds to pay family members without first disclosing the transaction to the awarding agency and receiving permission. Recipients cannot delegate their financial and fiduciary responsibilities to a consultant or other vendor. For example, it would be inappropriate to allow a consultant to request drawdowns and complete and submit financial and progress reports without appropriate oversight by the recipient organization.

§200.318 General procurement standards.
Source: DOJ Grant Training Module
Material Misstatements Including Failure to Adequately Document the Use of Funds

Award agreements create a legally binding obligation for the recipient to use funds in a certain way and to comply with various certifications, assurances, applicable federal law, rules and regulations. **By signing the award agreements**, the recipient **is accepting responsibility** for the proper oversight and administration of the grant, in compliance with all applicable rules, regulations and statutes.

Source: DOJ Grant Training Module
Material Misstatements Including Failure to Adequately Document the Use of Funds

Award recipients should pay close attention to the following issues to better address this area: Recipients must establish and maintain an adequate accounting system and, when requested, be able to provide sufficient documentation to prove that all grant drawdowns were for allowable, allocable and reasonable expenses. A recipient's accounting system must be able to track the specific use of each source of revenue to avoid commingling issues. In some cases, all drawdowns for an award can be called into question if commingling of separate grant revenues and expenses makes a proper accounting for federal award funds impossible.

Funds must be used for the purposes identified in the grant solicitation and award documents — they cannot be unilaterally re-directed for another use. Certain uses of award funds are categorically prohibited or restricted, such as lobbying or purchasing land and armored vehicles. Recipients should be familiar with these restrictions to properly oversee or manage award funds. Recipients should carefully review their accounting procedures and other internal controls related to indirect costs, matching funds, and employee time and effort records — three specific areas that have been identified as an enhanced risk for fraud and other misuse scenarios.

§200.302 Financial management
Source: DOJ Grant Training Module
Theft

Theft is the most common fraud issue in virtually every organization — including those that receive Federal funding.

Source: DOJ Grant Training Module

How: Story: If controls are there.
Theft

Award recipients should consider implementing policies or procedures consistent with the following suggestions to better mitigate this risk:

Theft schemes are often perpetrated by very intelligent and creative individuals who take advantage of the fact that "no one" will suspect them of wrongdoing. Consider the fact that embezzlement could be perpetrated by virtually anyone in your organization, and establish a check and balance system to mitigate that possibility.

**Story:** The “Fajita” Beef Skirts or flank steak- King

Recipients must have and enforce solid financial internal controls to help prevent theft. The most common control weakness is often a lack of separation of duties. For example, if one employee is allowed to use an organization credit card to make purchases, receive and account for these purchases, review the credit card statement, make payment on the credit card account, and balance the organization check book, no separation of duties exists. That organization has allowed one person to perform all relevant functions for purposes of dispersal of funds. This environment increases the risk of mistakes in the process and potentially fraud.

Credit cards, payroll, travel and other out-of-pocket reimbursements, are often misused as a way to steal funds — exercise professional skepticism and other due diligence when processing these types of transactions.

**Story:** Dallas County Schools

Source: DOJ Grant Training Module
MINEOLA, N.Y., Oct. 10 — Frank A. Tassone, the once-adored superintendent of the Roslyn school district, was sentenced on Tuesday to 4 to 12 years in prison for his role in an $11.2 million larceny scandal that has deeply shaken one of Long Island’s best school systems.

The Real Frank Tassone and the True Story Behind HBO's *Bad Education*

Everything you need to know about the real events behind the new Hugh Jackman movie, which tells the story of how Frank Tassone stole millions from a Long Island high school.
Fraud Remedies
When fraud, waste or abuse is identified in a federally funded program, the government can take administrative, civil and/or criminal action as appropriate. Administrative actions could include termination of an award, drawdowns restrictions, or recoupment of funds. Civil actions can include lawsuits under the False Claims Act or other laws that prohibit presenting false claims or otherwise obtaining federal funds under false pretenses. Criminal actions often involve arrest and incarceration — in a grant fraud scenario criminal remedies typically relate to a theft scheme.

Story: Charter School – E-rate Supt and Board
Source: DOJ Grant Training Module
See examples.

NIGP FORUM 2020
$4.4 Million Seized From Houston Charter School Fraudsters

HOUSTON (CN) – The husband and wife founders of a Houston charter school amassed a fortune preying on their students’ parents. The duo pocketed fees they charged students to go on field trips and to wear street clothes on Fridays instead of school uniforms.

Federal prosecutors announced Tuesday they had recovered over $4.4 million in restitution payments from the couple, who are now behind bars, and $604,000 of that will be distributed to more than 4,000 parents.
2012: Former EPISD Superintendent Garcia admits fraud, faces 4 years in prison

Adrianna Chavez  El Paso Times

Published 11:41 a.m. MT May 3, 2016

Original publication date: June 13, 2012

Once one of the most powerful men in El Paso in control of a $460 million annual budget and 64,000 students, former El Paso Independent School District Superintendent Lorenzo García on Wednesday found himself in unfamiliar territory -- one in which he was no longer in control.

García appeared in front of a federal judge to plead guilty to two counts of conspiracy to commit mail fraud. One of the charges involves cheating on student test scores and the other deals with a $450,000 contract given to one of his lovers.
Former Dallas County Schools Superintendent Rick Sorrells Pleads Guilty to Federal Wire Fraud Charge

By Scott Friedman, Jack L. Douglas and Ken Kalthoff and Frank Heinz • Published April 2, 2018 • Updated on April 3, 2018 at 2:15 pm

In the unsealed documents, Sorrells admits to receiving more than $3 million in bribe and kickback payments in exchange for entering into $70 million in contracts with an unnamed company that provided cameras for DCS school buses. Based on prior reporting by NBC 5 Investigates, the only company that provided cameras to DCS was Force Multiplier Solutions.
Testimony in North Forest ISD case traces alleged fraud to 2003

Witness claims ex-bookkeeper at North Forest ISD was the ringleader

By Ericka Mellon    Published 6:30 am CST, Friday, December 1, 2006

A woman testified Thursday that a complex scheme to defraud the North Forest Independent School District began with a simple question: Do you know anyone who can "wash a check?"

Cynthia Kay Bailey told jurors that her friend — Valerie Renee Gibson, a former North Forest bookkeeper — posed that question to her in 2003.

A year later, both women were indicted, accused of defrauding the property-poor district out of more than $200,000. Bailey has since pleaded guilty and now is the lead witness testifying against Gibson, whose trial started this week.
SIG Samples

E-rate Story - Charter
Supt. receiving kickback from vendors - El Paso
Checks being copied and passed as original – Ck # on your site.
Vendors trying to change your ACH payments
Personnel inquiries – Dallas County DOE – Supt and Mayor

Special Ed Consultants Story
Supt. using health insurance for students
CFO using personal flower shop for expenditures
Tips that may aid Procurement in preventing ethical issues and conflicts

- Separation of duties
- Access to vendors and checks
- DBA vendors
- Duplicate vendors – check names
- Add in Fuzzy look up – duplicate vendors or other software.

- Debarment for Principals –
- Communication between purchasing, grants and finance
- Check for quotes or formal bids and proposals
Why does this occur?

Because of the **SIG** fever!

Over the years, these samples have **three** things in common:

- **S** – word. .. Less than knowledgeable
- **I**ncompetence – Does not know their job.
- **G**reed- More money or otherwise.
Fraud Remedies

Reporting Obligations

2 C.F.R. Part 200.113 "Mandatory Disclosures" specifically requires that "The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in § 200.338 Remedies for noncompliance, including suspension or debarment. (See also 2 C.F.R. Part 180 and 31 U.S.C. 3321)."

Award recipients should be familiar with this requirement and establish a culture which will facilitate making appropriate disclosures.

Story: CAA Local – Annually, employees review Fraud Policy and sign.
Fraud Remedies

Waste, fraud and abuse can be reported to the Department of Justice Office of the Inspector General (OIG). OIG's mission is to detect and deter fraud, waste, abuse, and misconduct in DOJ programs and personnel, and to promote economy and efficiency in those programs. One area of oversight responsibility includes DOJ's wide variety of grant and cooperative agreement awards. For additional information about the OIG, please see www.usdoj.gov/oig. Recipients with any concerns about fraud waste or abuse in any DOJ program are encouraged to contact the OIG. OIG can be reached by mail:

Office of the Inspector General
U.S. Department of Justice
Investigations Division
950 Pennsylvania Avenue, NW
Room 4706
Washington, DC 20530

Award recipients and subrecipients can also report such waste, fraud, abuse, or misconduct by email to oig.hotline@usdoj.gov, online through use of one of the reporting forms (www.justice.gov/oig), via the hotline at 800-869-4499 (contact information in English and Spanish) or hotline fax to 202-616-9881.

Story: Systems should have a way to report instances of fraud. Fraud Policy, Online, Internal Audit, etc.
NDAA Whistleblower Matters

The National Defense Authorization Act of 2013 (NDAA) included a provision that makes it illegal for an employee of a Federal contractor, subcontractor, or grantee to be discharged, demoted, or otherwise discriminated against for making a protected whistleblower disclosure.

Under NDAA, the DOJ OIG has jurisdiction to investigate allegations of reprisal for whistleblowing by employees of DOJ contractors, subcontractors, and award recipients.

Additional information about whistleblower rights and protections, including how to report suspected reprisal can be found at: https://oig.justice.gov/hotline/whistleblower-protection.htm.

Story: Most organizations have a whistleblower policy and process.

Source: DOJ Grant Training Module
So how does an organization assess so that it does not have any **SIG sickness** or otherwise risk elements:

1. Assess your systems
2. Get buy in from **the top** to make sure that all folks are accountable AND
3. That the process is in place to detect and prevent
4. Implement a Risk Assessment Process
Risk Awareness

A Risk Awareness Process provides an organization-wide process to address internal control and risk-based standards and to satisfy an audit requirement per Statement of Auditing Standards No. 115. Communicating Internal Control Related Matters, from the AICPA.
At HCDE, we have a risk assessment process.

HCDE Business has implemented an annual Risk Awareness Process. Process includes a Mid-Year Review, Executive Team review and a Year-End Review of risk and internal controls.

Forms include:
- Division Inventory
- Planning Form
- Self Evaluation Risk Awareness (SERA)
What is Risk Assessment?

A step in a risk management procedure. The determination of quantitative or qualitative value of risk related to a concrete situation and a recognized threat (also called hazard).

*Quantitative risk assessment* requires calculations of two components of risk: $R$, the magnitude of the potential loss $L$, and the probability $p$, that the loss will occur.
Rationale from mandates and best practices

**SOX -401 of 2002 requirement** - Issuers are required to publish information in their annual reports concerning the scope and *adequacy of the internal control* structure and procedures for financial reporting.

**Office of the Inspector General (OIG)** plans to conduct quality control reviews, special reviews, investigations, and follow up reviews possibly down to the subcontractor level.

The **Texas Workforce Commission (TWC)** invites agencies to look at internal controls more closely.

The **OMB Circular A-133 (Now 2 CFR 200 Part F)** Consistent with the requirements of this Part includes generic audit objectives and suggested audit procedures to test internal control.

**SAS #112 & SAS 15** ....SAS # 115 includes much of what was outlined in SAS # 112 as it provides guidance to enhance the auditor’s ability to *evaluate deficiencies in Internal Control* identified during an audit, and then communicate those deficiencies that the auditor believes are significant deficiencies or material weaknesses to management and those charged with governance.

**GFOA Best Practices** state that *Government management as a whole can do a better job establishing and assessing its Internal Control structure.*
Certify the sufficiency of the governmental unit’s Internal Control structure and provide appropriate penalties for non-compliance. Establish an internal audit department to monitor Internal Controls and to safeguard the assets of the community. [This department should report to an independent audit committee.]

Perform a government-wide risk assessment to determine liabilities and identify internal control needs.

Establish internal controls structure with policies and procedures to address them.

Develop assessment and monitoring mechanisms for oversight and provide assurances to constituents as to the effectiveness and efficiency of operations; compliance with laws, regulations and agreements.
Provide training for management in their responsibilities for establishing and assessing Internal Control structures and financial reporting basics. Develop an Internal Control tool/questionnaire in a standard format to assist management with their review, and a standardized disclosure statement for signature by management. Establish a standard formalized review and assessment process for use government-wide by all management. Develop government-wide strategic planning with all entities coming together to identify government goals, mission, vision statements and produce a 5-20 year plan to be utilized to overcome politically motivated measures. Develop information systems that interface with one another. Develop shared systems to eliminate redundancy and promote regionalism.
Establish the parameters of the review.

Three basic questions that the Board, Superintendent, CFO, Program Managers, and the Program Analyst should be able to answer:

1. What are Internal Controls?
2. What is COSO?
3. What is risk assessment?
What are Internal Controls?

*Internal Control* is an integral component of an organization’s management that provides reasonable assurance that the following objectives are being achieved:

- effectiveness and efficiency of operations.
- reliability of financial reporting for internal use, and
- compliance with applicable laws and regulations.

2 CFR 200.61
COSO Internal Control Framework

Guidance on controls from COSO as part of a federal audit 2 CFR Subpart F 200.514

- Test -> Compare data -> reconcile -> check
- Procedures -> Meetings -> email, etc
- Access -> Authority -> Segregation of Duties
- Process -> Likelihood -> Impact
- Objectives: Tone
Eight Risk Factors are Evaluated

1. Quality of Internal Controls
2. Change in Personnel
3. Nature of Financial Transactions
4. Complexity of Operations
5. Competence of Management
6. Change in Computer Systems
7. Regulatory Requirements
8. Time Since Last Review
Results

1. Used to **review, evaluate and strengthen** internal controls
2. Used to assess risk factors and implement areas for **reduction, elimination and—or mitigation of risk**
3. Used by external auditors and federal review to make sure that internal controls are evaluated
4. Used as a **preventive tool** for program and budget manager to improve the quality and accountability of programs and services
Risk Assessment Report

Summary

Number of Divisions assessed
Divisions with 5 High Risk ( ) ___%
Divisions with 4 Medium High
Divisions with 3 Medium
Divisions with 2 Low Medium
Divisions with 1 Low Risk

For all items above a 3, a mitigation control activity is required and had been documented. Thus,
1) Internal control awareness is high and controls are reviewed to determine action needed by the divisions.
2) Allows HCDE to achieve 4 factors to increase program effectiveness.
<table>
<thead>
<tr>
<th>Risk Factors</th>
<th>Adult Education</th>
<th>CASE Safe &amp; Secure Schools</th>
<th>Business Services</th>
<th>Asst Supt Student Svcs</th>
<th>Client Development &amp; Marketing</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mid Year EOY</td>
<td>Mid Year EOY</td>
<td>Mid Year EOY</td>
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<tr>
<td>1. Quality of Internal Controls</td>
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<td>2. Change in Personnel</td>
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<td>2 2</td>
<td>1 1</td>
<td>1 1</td>
</tr>
<tr>
<td>3. Nature of Financial Transactions</td>
<td>1 1</td>
<td>1 1</td>
<td>2 2</td>
<td>1 1</td>
<td>1 1</td>
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<tr>
<td>4. Complexity of Operations</td>
<td>2 2</td>
<td>1 0</td>
<td>3 3</td>
<td>2 2</td>
<td>1 1</td>
</tr>
<tr>
<td>5. Competence of Management</td>
<td>1 1</td>
<td>1 1</td>
<td>2 2</td>
<td>1 1</td>
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<tr>
<td>6. Change in Computer Systems</td>
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<td>2 2</td>
<td>3 3</td>
<td>1 1</td>
<td>1 1</td>
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<tr>
<td>7. Regulatory Requirements</td>
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<td>2 2</td>
<td>2 2</td>
<td>1 1</td>
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</tr>
<tr>
<td>8. Time Since Last Review</td>
<td>1 1</td>
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</tbody>
</table>

Totals by Division-Number of each Factor

- **Low Risk = 1**
  - Adult Education: 6
  - CASE Safe & Secure Schools: 6
  - Business Services: 6
  - Asst Supt Student Svcs: 8
  - Client Development & Marketing: 4
- **Low-Medium = 2**
  - Adult Education: 2
  - CASE Safe & Secure Schools: 2
  - Business Services: 2
  - Asst Supt Student Svcs: 2
  - Client Development & Marketing: 0
- **Medium = 3**
  - Adult Education: 0
  - CASE Safe & Secure Schools: 0
  - Business Services: 0
  - Asst Supt Student Svcs: 0
  - Client Development & Marketing: 3
- **Medium-High = 4**
  - Adult Education: 0
  - CASE Safe & Secure Schools: 0
  - Business Services: 0
  - Asst Supt Student Svcs: 0
  - Client Development & Marketing: 3
- **High = 5**
  - Adult Education: 0
  - CASE Safe & Secure Schools: 0
  - Business Services: 0
  - Asst Supt Student Svcs: 0
  - Client Development & Marketing: 0
Summary Lessons Learned

If I only had known

Takeaways:

1. Follow the rules
2. Learn what you are obligated to do.
3. Assess your Risk and Ask for help
4. Do not Assume that auditors are all the same
5. Signature means something
Other Professions perceptions and suggestions from those that will defend us

Tips from a school attorney:

- Legal Obligations
- Consequences
- Advise
- Legal Fees
So my colleague Sarah Langlois-Attorney says

1) Understanding the legal requirements imposed by the grant at the beginning of the grant – checklist of NOGA requirements ie. Time and effort

(2) During a review or desk audit: Challenge findings and provide explanation – sometimes auditors need more assistance in reviewing the data. Help them. Document, Document and Document
Other Professions perceptions and suggestions from those that will audit us.

Tips from a school auditor:

EXTERNAL AUDITOR

• Compliance Issues
• Reporting Issues
• Follow up Issues
Suggestions from our auditors

Comments - audio -

Suggestions from and Auditor- Celina Cereceres, CPA - Whitley Penn

Make sure that the auditee’s staff understand the questions from the auditor. At times, auditors will use technical terms. If the auditee is unsure of the request or question, you should **obtain clarification**.

Make sure the auditee **agrees on the facts** of any findings, especially those with questioned costs. The federal agency will not hesitate asking for a check in the exact amount stated in the audit report.

At a minimum auditees, should know **2 CFR 200.4xx**; these are the shall and shall nots of federal compliance. All staff involved in managing a grant should be aware of these requirements.

If the auditor does issue a finding and the auditee agrees with the finding, make sure that the **corrective action plan is attainable and realistic**. If the finding continues to be an issue in subsequent years, the federal government or state government will definitely assess a greater risk to that entity.

**Pass-through entities** (PTEs) must ensure that **monitoring activities** are current at all times. Although, PTEs are administering federal dollars, the buck stops with the PTE and not the federal entity. PTEs also have a reputation to uphold. Just like PTEs perform a **risk assessment on its subrecipients**, the subrecipients do not want to deal with a PTE that has inadequate controls and management issues.
Top Ten Things

I have a Top 10 Things (Best Practices for Auditees in a Single Audit) that I include in my presentations (GFOAT for example): Auditor- Celina Cereceres - Whitley Penn

1. Involve all departments that could have applied for grants and find an effective mode of communication to stress the importance of reporting those grants to the business office.

2. Throughout the year ensure that all grant administrators are aware of the compliance requirements and costs that are allowable or not allowable.

3. All performance and financial reports are completed timely.

4. Evaluate internal controls surrounding the compliance requirements.

5. Procurements are executed in accordance with the (2 CFR 200) Uniform Guidance.

6. Compile and analyze your SEFA/SESA.

7. Reconcile it to the General Ledger.

8. Document your decisions for all areas of compliance (if it wasn’t documented then it never happened).

9. Ask questions of your auditors and ask for status updates.

10. Understand the report and ensure you agree with all that has been reported.
Questions and Answers
Sample CH Local and CH legal – Texas ISDs

**Fraud and Financial Impropriety**

The Department prohibits fraud and financial impropriety, as defined below, in the actions of its Trustees, employees, vendors, contractors, agents, consultants, volunteers, and others seeking or maintaining a business relationship with the Department.

**22 page policy**

**Federal Awards Disclosure**

The Department shall disclose, in a timely manner in writing to the federal awarding agency or pass-through entity, all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting a federal grant award. [See CBB]
LOCAL GOVERNMENT OFFICER
CONFLICTS DISCLOSURE STATEMENT

Section 175.003 of the Local Government Code requires certain local government officers to file this form. A "local government officer" is defined as a member of the governing body of a local governmental entity; a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. This form is required to be filed with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of this statement.

A local government officer commits an offense if the officer knowingly violates Section 176.003, Local Government Code. An offense under this section is a misdemeanor.

Please refer to chapter 176 of the Local Government Code for detailed information regarding the requirement to file this form.

INSTRUCTIONS FOR COMPLETING THIS FORM

The following numbers correspond to the numbered boxes on the other side.

1. Name of Local Government Officer. Enter the name of the local government officer filing this statement.
2. Office Held. Enter the name of the office held by the local government officer filing this statement.
3. Name of vendor described by Sections 176.001(7) and 176.003(a), Local Government Code. Enter the name of the vendor described by Section 176.001(7), Local Government Code, with whom the officer has an employment or other business relationship as described by Section 176.003(a)(2)(A), Local Government Code.
4. Description of the nature and extent of employment or business relationship with vendor named in Item 3. Describe the nature and extent of the employment or other business relationship with the vendor in Item 3 as described by Section 176.003(a)(2)(A), Local Government Code.
5. List gifts accepted, if the aggregate value of the gifts accepted from vendor named in item 3 exceeds $100. List gifts accepted during the 12-month period (described by Section 176.003(a)(2)(B), Local Government Code) by the local government officer or family member of the officer from the vendor named in item 3 that in the aggregate exceed $100 in value.
6. Affidavit. Signature of local government officer.
What are some of the amounts in your organization?

$100 $150 $50

$250 $500

Story: Seminar in SPI
Do you know anyone who has SIG?

Not like Corona virus, but more like a behavioral diagnosis.

Story: My Supt and I were talking, and we said some folks just have SIG?

But it is Because I Care that I tell you about this.... So you do not contract it or pass it on...
**200.320** Procurement Methods - CH Legal / Local - more restrictive than 200.88 SAM $150k and $3,500 for Micro purchase 200.67

**Needs**

(A) Below $9,999
- Price Quote
- or
- Use Coop.

(B) Under $49,999
- 3 quotes
- or
- Use 1 Coop. quote

(C) Above $50,000
- RFP
- or
- 1 Coop Quote
- Board Action

- **Start**
- (1) Necessary
- (2) Reasonable
- (3) Allocable Costs by Program Staff

- **End**
- Audit Process 200.501 $750K
- Drawdown, Reporting & CFO Certification Documented 200.403

**Contract andApproval Process**

- **Start**
  - (1)200.404 Reasonable
  - (2)200.403 Necessary
  - (3)200.405 Allocable Costs by Program Staff

- **End**
  - Board Approval Above $50,000
  - Contract Development
  - Israel/Terror
  - Proposal Evaluation

**Other:** 200.318 Inter Local Agreements includes CFR Certifications & 1 & 3 (Sole Source – Rare event - 200.320)
Why ethics in important in procurement – & CH 2269 (Tx) Methods of Building – Architects, Surveyors, Testing, Flood Zone, FEMA Construction contracts
Bids, CSP, Construction At Risk – Construction –Agent – Design Built Permits
Flood Zone
Zoning
Ethics in Procurement – CH 2254 and CH 791 Prof Services (Texas)

CPAs
Financial Advisors
Surveyors
Architects
Attorneys

2 step process – Qualification and then negotiate
Ethics in Procurement - Types of Contracts – P Cards- Inter locals, Vendor Packets- etc.- Attorney

Contract tips
State of Texas Laws
County Law
Indemnification
Termination Clause
Right to Audit
Renewals
Federal dollars

Vendor packet
Contract provisions
Attorney Review
There is no “one size fits all” solution to creating a contract. Each unique situation mandates which clauses are included and which clauses are not included. The goals are to protect HCDE interests and to be fair and equitable.

LIST OF CLAUSES
- Amendment
- Intellectual Property Rights
- Assignment
- Introductory Paragraph-Interlocal Agreement
- Changes
- Introductory Paragraph-Contract
- Compensation
- Non-Appropriation of Funds
- Completion & Liquidated Damages
- Non-Completion of Contract
- Confidential Data
- Non-Exclusivity
- Conflict of Interest
- Notice
- Contractor Status
- Payment Bond or Performance Bond
- Entire Agreement
- Property Warranty/Indemnification
- Examination of Records
- Publication Rights
- Felony Conviction Notice
- Purpose
- Force Majeure
- Recitals
- Funding Clause
- Review of Progress
- Governmental “Funding Out” Clause
- Scope of Work
- Governing Law
- Services to be Provided
- Hold Harmless-Speaking Engagement
- Severability
- Incidental Sales
- Signature
- Indemnification-Patent, Trademark, or Copyright
- Sole Agreement
- Independent Contractor Status
- Term
- Insurance Requirements
- Termination
- (No) Third Party Beneficiary Clause
- Venue
CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 175.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(e).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

1. Name of vendor who has a business relationship with local governmental entity.

☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3. Name of local government officer about whom the information is being disclosed.

[Name of Officer]

4. Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes  ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes  ☐ No

5. Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

☐ 

6. Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

☐ 

7. Signature of vendor doing business with the governmental entity

[Signature]

Date

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 11/30/2015
CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at http://www.statutes.legis.state.tx.us/Docs/LG/hhtm/LG.176.htm. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): “Business relationship” means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:
(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
(B) a transaction conducted at a price and subject to terms available to the public; or
(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):
(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(1) the vendor:
(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that:
(i) a contract between the local governmental entity and vendor has been executed; or
(ii) the local governmental entity is considering entering into a contract with the vendor;
(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than $100 in the 12-month period preceding the date the officer becomes aware that:
(i) a contract between the local governmental entity and vendor has been executed; or
(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1): (a) A vendor shall file a complete conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
(3) has a family relationship with a local government officer of that local governmental entity.
(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
(1) the date that the vendor:
(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity;
(2) the date the vendor becomes aware:
(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
(B) that the vendor has given one or more gifts described by Subsection (a); or
(C) a family relationship with a local government officer.
CERTIFICATION REGARDING TERRORIST ORGANIZATIONS & BOYCOTTING OF ISRAEL

Vendor hereby certifies that it is not a company identified on the Texas Comptroller’s list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State. Vendor further certifies and verifies that neither Vendor, nor any affiliate, subsidiary, or parent company of Vendor, if any (the “Vendor Companies”), boycotts Israel, and Vendor agrees that Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term “boycott” shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory.

__________________________
Initials of Authorized Representative of Vendor

CERTIFICATION REGARDING EMPLOYMENT ASSISTANCE PROHIBITED

Vendor certifies and agrees that it shall not assist an employee, contractor, or agent of HCDE or of any other school district in obtaining a new job if the Vendor knows, or has probable cause to believe, that the individual engaged in sexual misconduct regarding a minor or student in violation of the law. Routine transmission of an administrative or personnel file does not violate this prohibition. See HCDE Policy CJ (Legal) and (Local).

__________________________
Initials of Authorized Representative of Vendor

REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS – APPENDIX II TO 2 CFR PART 200

The following provisions are required and apply when federal funds are expended by HCDE for any contract resulting from this procurement process.

(A) Contracts for more than the simplified acquisition threshold currently set at $250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Federal Rule (A) above, when federal funds are expended by HCDE, HCDE reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree? YES__________________________
Initials of Authorized Representative of vendor

(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)
Cooperatives are not all the same. Some are compliant and some are not.

- Letter from COOP.
- State laws
- Federal Laws
Something to think about….

One of my favorite movies … from the God Father

If you want to be stupid, that’s your choice.

But when your stupidity begins to affect my quality of life, we’re going to have issues.
Something to think about….
One of my favorite movies … from Wall Street
Do you know anyone who has SIG?

“I only hire incompetent idiots. I like being the smartest guy around here.”
Why is this important?

Knowing this, a business official, YOU, must know the rules and some of ours colleagues have been tempted or fallen into Temptation...

There are 45 traps in the “The Ethical Executive...”
I think that people are basically good, but then we work with other people..... Thus, we are vulnerable to wrongdoing...
The Way we ACT …

According to Sigmund Freud, our behavior is multi determined. The way we act is the result of complex *weave of situational factors, history and personality*.

The situation often overpowers the *influence of personality*. There are traps that often influence our perception of right and wrong. Thus, **we must be aware so that you do not fall in the trap**.
Three types of traps

Primary – predominated by external stimuli – propel you to act without regard to ethical principles. (i.e. obedience to authority, self interest, greed, conflicts, loyalty, conformity, time pressure, decision schemas, enact a role, power, obligation,

Defensive - maneuvers that are reactions to two internal stimuli: guilt and shame. Denial of previous action and setting up for repeated unethical behavior. (i.e. anger, alcohol, minimizing, renaming, biases, addiction, perception by others)

Personality – guided by internal stimuli. Traits that can make you vulnerable to wrongdoing (i.e. psychopath, poverty, low self esteem, authoritarian, need for closure, empathy).
SIG Formula

+ Stupidity
+ Incompetence
+ Greed

= Prison

Let’s look at some samples.
You are a staff auditor that was hired by a local firm to conduct audits of the hospitals in Texas. You mainly work on Medicare and Affordable Care Act (ACA) audit compliance work. You are so great at your job that you get promoted. You now become a lead manager and oversee staff with the hospitals. This allows you to work with CFOs and CEOs. People in the business look at you and are mesmerized with your knowledge and skill. Your friends recommend you other folks and they let you know of possible other jobs in the industry. You are told about a job with a hospital which could be a promotion and a nice bump in salary. You realize that such hospital is next on your audit list. The CFO of the hospital knows that you are looking and feels that you would be great on her team. You reflect on the situation and ask yourself is this is appropriate and whether you should take the step to apply for the position.

Discuss the case with your colleagues and address the following questions:
What is the ethical dilemma?
Should you apply?
Should you disclose?
What do you recommend the young auditor to do?
This then leads to the idea that an individual is capable of developing his or her moral reasoning.

This may involve not just a recognition of the moral elements of a situation and the (potentially) conflicting ways of assessing that moral dimension but also of refining and developing the complexity and maturity of the ethical reasoning process ('wisdom' as Paradice and Dejoie (1991) suggest).

The most widely employed articulation of this developmental process is Kohlberg's levels of ethical development (see, for example, Kohlberg, 1969, 1981; Rest, 1979; Ponemon, 1990, 1992; and Paradice and Dejoie, 1991, for useful reviews of this). A summary of Kohlberg's 'ladder' is presented in Table 4.

Kohlberg further divides up the ladder into three levels which focus upon the self (stages 1 and 2), focus upon relationships (stages 3 and 4) and focus upon principles (stages 5 and 6). These three levels have important implications for accounting education.
You are a member of the food service program management team. You have a private business which has in the past submitted proposals to the school district. The food service program decides that they need you new product to offer to the children of the districts. It is a delicious product that is packaged with nutritional contents. Are you able to receive a contract paid by the USDA?
You are a member of the food service program management team. You have a private business which has in the past submitted proposals to the school district. The food service dept decides that they need you new product to offer to the children of the district while being transported. It is a delicious product that is packaged with nutritional contents. Are you able to receive a contract paid by general funds?
Kohlberg's levels of ethical development

1. Heteronomous morality: the avoidance of punishment

2. Individualism, instrumental purpose and exchange: immediate self-interest

3. Mutual interpersonal expectations, relationships and interpersonal conformity: conform to what is expected by others; concern for others is evident; desire to be a good person

4. Social system and conscience: duty driven, upholding the law and rules becomes very important; cooperation beyond immediate self-interest

5. Social contract or utility and individual rights: recognition of the variety of views held and that values are relative to one's social group; recognition of equity and fairness

6. Universal ethical principles: self-chosen principles on a non-irrational basis derived from general principles (actually very rare)
Other Theories of decision making

Cultural Relativism – it is all relative
Subjectivism – according to me.
Religion and Ethics – religious beliefs
Egoism – because I said so.
Utilitarianism – common good.
Absolute Moral Rules – is there anything that you would not do?
Virtues – values -
What is your philosophy?
Best Practices

1. Conflict of interest Policies – Know the law and what you should require of your staff and business processes.
2. CIQ Questionnaire
3. Procurement Memos – for recommendation and evaluation
4. Questionnaire for staff at other levels – Survey
5. Training, training and training
6. Transparency
7. Update ASAP and deal with options
8. Reflect for Action and see the top 10 things to implement.
My top ten suggestions for a procurement officer and finance officer.

1. Trustworthiness is key despite all of other attributes.
2. Do only what you are comfortable!
3. Perception is reality! Do not do things that look like?
4. Find the code(s)!
5. Let your conscience be your guide!
6. Keep promises and Walk the talk!
7. Remember your values and your heroes. Do you have an absolute rule?
8. Everything Counts- We live in a fish bowl.
9. When in doubt.. ASK.
10. Reflect and Improve
   Plus
1. Say no with tact!
For additional information or training, contact:
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