Ethical Conduct in Procurement Transactions

I. Authority granted within the University to individuals to place orders, specify products, write specifications and sign contracts brings with it a duty to conduct oneself in an ethical manner within a government procurement environment.

A. The procurement environment in which UWM exists is a state government procurement environment characterized by utilization of an open, fair competitive procurement process. All procurement records, subject to few exceptions, are open to inspection by the public. State government procurement practices define a different standard of ethical or fair conduct than may exist in a private institution or business.

B. The procurement environment in which UWM exists is a commercial procurement environment which is defined by standard practices in commercial transactions outlined by the Wisconsin Statutes incorporating the Uniform Commercial Code which applies to commerce "between merchants" (as business-to-business transactions are called). This type of environment defines different standards of ethical or fair conduct than exists in transactions between a retail merchant and a consumer buying for personal use. Individuals engaged in commercial transactions are assumed to be sophisticated in those transactions. Determination of such issues as warranties, unsuitable goods and services and consequences of unsatisfactory vendor performance are not weighed as heavily in favor of the commercial buyer as they are for an individual consumer.

C. Vendors deserve and have a right to ethical treatment. They are typically federal and state taxpayers. They often attend or support dependent students who attend the University. In addition, the vendor supports a payroll of taxpayers who may attend the University. In all of these roles, the vendor is supporting the University financially.

II. The following published guidelines apply to ethical conduct in the University:

A. Wisconsin Statutes, section 19.41: Code of Ethics for Public Officials and Employees. High moral and ethical standards are essential to the conduct of free government.

B. Wisconsin Administrative Code, Chapter ER-Pers 24 Code of Ethics 24.04: No employee may solicit or accept from any person or organization, directly or indirectly, money or anything of value if it could reasonably be expected to influence such employee's official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of such employee.

C. State Procurement Manual Section PRO-D-8: No state employee or public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated.

D. UWS 8.03 Standards of Conduct (1) (b): No member of the unclassified staff may solicit or accept from any person or organization anything of value pursuant to an express or implied understanding that his or her conduct of university business would be influenced thereby.
E. UW System Financial Policy and Procedure Paper 30: If the institution judges that an employee should attend a vendor-sponsored education session, the institution (not the vendor) should pay all the necessary costs associated with attendance.

III. It is not possible in this procedure to cover all the situations which pose ethics or fairness issues in commercial dealings. A few of the following are more common situations or practices:

A. Bid Trading: This is the practice of revealing a vendor's bid price to another vendor to induce the second vendor to reduce its price even lower than the first vendor's price. Prices in public procurement are established by bids which are not revealed to other vendors until the competitive process is complete. Awards are made to the lowest responsive, responsible bidder.

B. Restrictive Specifications: This is a practice of writing overly restrictive specifications which are not necessary to obtain the required performance level of goods or services with the intent of unfairly barring competitors from supplying goods or services which meet requirements.

C. Unfair delays in payment: This practice typically occurs when the University department which ordered the goods is not prepared for acceptance or test of the goods. If a vendor supplies goods as ordered, we are obligated to receive, test and pay for the goods or dispute the payment for unacceptable goods in a timely manner.

D. Acceptance of Gratuities: This is the practice of acceptance of gifts from vendors which benefit the individual recipient. This practice or even the appearance of this practice shall be avoided.

E. Serial Procurement: This is the practice of breaking larger procurements into smaller transactions with the intention of avoiding the competitive procurement process or withholding information regarding future procurement activity related to a current transaction. This results in lack of fair competition based on lack of information.

IV. Formal state procurement processes are not required for certain categories of purchases. That lack of process does not eliminate the necessity for complying with ethical and fair conduct standards in the consummation of those purchases.

V. The Purchasing Office investigates vendor complaints of unfair treatment in University transactions. Internal Audit is charged with investigating alleged incidents of unethical conduct which violate University, System or State rules and guidelines.

VI. The Wisconsin "whistle blower" law protects state employees from retaliation for reporting to a supervisor, an employee's attorney, collective bargaining agent or legislator, information which the employee reasonably believes violates any state or federal law, rule or regulation, or demonstrates mismanagement or abuse of authority, substantial waste of public funds, or a danger to public health and safety. Wisconsin Statute, Section 230.80 et seq.

VII. Individuals who violate ethical considerations may be subject to an internal complaint process and discipline or, in very serious cases, civil liability or criminal prosecution for misconduct in public office. The University may also be adversely affected by exposure to potential liability, waste of public funds, and loss of credibility with the public and funding authorities.

Questions regarding Ethical Conduct in Procurement Transactions should be addressed to Purchasing. See Legal Affairs Ethics page for further references.