

FOUNDATIONS OF SCHOOL PROCUREMENT

January 21, 2021

Oklahoma Association of School Business Officials

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OBJECTIVES

- Ethics in purchasing
- Identify potential areas of purchasing fraud
- Examine purchasing authority
- Examine the purchasing/sourcing cycle
- Examine International procurement

IMPORTANCE OF PUBLIC (SCHOOL) PROCUREMENT

- To purchase the goods and services at the right quantity, right price, right quality and when needed for effective teaching and learning.
- To ensure public funds are spent prudently and transparently in a manner that fosters public confidence.

“The public must have confidence that public funds are spent prudently, on its behalf, and not for the personal benefit of government, employees, officials, or their friends.”

(Watt, 1995, p.2)

ETHICS IN PURCHASING

“School administrators, ...should see themselves as servants of the people and of the people’s government. They are not entrusted with the important leadership responsibilities in order to profit themselves, their friends or their families.” (Oliver, 2002, p.7)

ETHICS AND PROFESSIONAL STANDARDS

- ASBO's International School Business Management Professional Standards and Code of Ethics³

Purchasing

The school business official understands and demonstrates the ability to

- Develop and implement an integrated purchasing process that complies with all government regulations;
- Adhere to a strict code of purchasing and procurement ethics;
- Obtain good value;
- Conduct all procurement without conflict of interest, impropriety, or any attempt to obtain personal gain.

(<http://asbo.dev.networkats.com/asbo/media/documents/Resources/ASBO-Professional-Standards.pdf>)

PROCUREMENT FRAUD

“The destructive elements of actual or perceived conflict of interest, fraud, and abuse have most often reared their ugly heads during the procurement process.”⁴ (Watt, 1995,p.2)

Former Oklahoma Superintendent sentenced to federal prison for bribery and tax fraud

Calling his actions an “egregious violation of public trust” a federal judge handed a former...superintendent a 12-month one-day prison sentence..” (Morgan, 2013, online ref.)

FRAUD IN PROCUREMENT

- Cited case issues from the Tulsa World article
 - Fraud
 - Bribery
 - Embezzlement
 - Vendor was ordered to pay \$420,606 in restitution
 - The Superintendent “*accepted items of value including cash, tickets to college football games, and the costs of travel, food, entertainment and lodging, documents show*”
(Morgan 2013, online ref.)

THE FACES OF PROCUREMENT FRAUD



Favoritism
- Steering



Undue Influence



Conflicts of Interest



Collusion



Anticompetitive practices



Bias (blackballing)



Scoring manipulation

Source: (State of Utah, PPT)

PREVENTING PROCUREMENT FRAUD

- Policies & procedures
- Practices
- Conflict of Interest
- Internal procedures
 - Separation of duties
- Supplier & source selection

POP QUIZ – TEST YOUR KNOWLEDGE

- Polling questions based on Oklahoma Attorney General's Opinions... True or False

STRETCH BREAK

- One minute to stand-up, stretch, deep breath (Turn off your video before standing and stretching.)

GOVERNMENT'S AUTHORITY

- Over-arching theory
 - Government entities are charged with conducting business according to what they are authorized by law to do, while private business have more autonomy in doing just about anything, provided it is not prohibited by law.
 - Agree or disagree? Discussion?

LAW OF AGENCY AND TYPES OF AUTHORITY

- Law of Agency
 - Authority to act on behalf of another, as the “agent” of another.
- Three primary types of authority
 - Expressed
 - Explicitly stated authority (statute, administrative code, policy)
 - Implied
 - Extension of expressed authority conferred upon procurement official. Authority granted by position or operation, e.g., signature on a PO.
 - Apparent:
 - Acts in a position that leads others to believe he or she is an authorized agent.

Source: (NIGP, 2009 p. 90)

AUTHORITY TO PURCHASE

- School board's statutory authority – 70 O.S. § 5-117 (OSCN, 2021)
 - A. The board of education of each school district shall have power to:
 - ✓ 3. Maintain and operate a complete public school system of such character as the board of education shall deem best suited to the needs of the school district.
 - ✓ 7. Purchase, construct or rent, and operate and maintain, classrooms, libraries, auditoriums, gymnasiums, stadiums, recreation places and playgrounds, teacherages, school bus garages, laboratories, administration buildings, and other schoolhouses and school buildings, and acquire sites and equipment for the operation of public schools or conversion schools.

AUTHORITY TO PURCHASE

- A. The board of education of each school district shall have power to:
 - ✓ 10. Lease real or personal property to the state or any political subdivision thereof or a not-for-profit entity operating pursuant to [Section 868 of Title 18](#) of the Oklahoma Statutes for nominal cash consideration for so long as the use of the property by the lessee substantially benefits, in whole or in part, the same public served by the school district;
 - ✓ 11. Dispose of personal or real property no longer needed by the district by sale, exchange, lease, lease-purchase, sale and partial lease back, or otherwise.
 - ✓ 12. Purchase necessary property, equipment, furniture, and supplies necessary to maintain and operate an adequate school system;

AUTHORITY TO PRESCRIBE AND ADMINISTER

- 70 O.S. § 5-135 (OSCN 2021)
 - C. It shall be the duty and responsibility of the board of education of the school district to prescribe and administer adequate business procedures and controls governing the purchase or confirmation of purchase and delivery of goods or services. The procedures shall include delivery of an acceptable invoice by document, facsimile, electronic or other standard form that includes the information required by the district. Such procedures shall include the designation of authorized persons to purchase goods or services for the district and the method of determining the school employee receiving delivery of each purchase.
 - D. Prior to the issuance of a purchase order, the encumbrance clerk must first determine that the encumbrance will not exceed the balance of the appropriation to be charged.

AUTHORITY TO PURCHASE

- Competitive Bidding Act of 1974
 - The governing body of any political subdivision of this state may duly appoint as its agent any individual or individual of a legal entity, with whom the political subdivision has duly entered into a public contract pursuant to law, to make purchases necessary for carrying out the public contract. (61 O.S. §103.2)

SCHOOL DISTRICT AUTHORITY:AG OPINIONS

A multi-year lease contract between a school district and a vendor which contains a nonappropriation clause is not authorized. A multi-year contract between a school district and a vendor must contain a provision for mutual ratification of renewal, which is contrary to the operation of a valid nonappropriation clause. *April 27, 2005 (AG Op. No. 05-14)*

School board did not have statutory authority to adopt student hair code which required boys to wear their hair “above [the] eyebrows, collars, and ears” and required that their hair be well-groomed and that their sideburns be no longer than the bottom of their earlobes; such a code lacked a clear showing of reasonable connection to a proper educational function. *ISD No. 8 v. Swanson*, 553 P.2d 496 (Okla. 1976)

AUTHORITY TO ISSUE PURCHASE ORDERS

- 70 O.S. 5-123 (OSCN 2021)
 - No expenditure involving an amount greater than Five Hundred Dollars (\$500.00) shall be made by a board of education except in accordance with the provisions of a written contract or purchase order.
- Why \$500 for written contracts or purchase orders?
 - 12A O.S. § 2-201(1) of the Oklahoma Uniform Commercial Code
 - ✓ (1) Except as otherwise provided in this section a contract for the sale of goods for the price of Five Hundred Dollars (\$500.00) or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

<https://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=64983>

AUTHORITY TO ISSUE PURCHASE ORDERS

- 70 O.S. § 5-135.4
 - D. Prior to the issuance of a purchase order, the encumbrance clerk must first determine that the encumbrance will not exceed the balance of the appropriation to be charged.
 - D. Encumbrances must be submitted to the board of education in the order of their issuance on a monthly basis, subject to a monthly business cycle cutoff date determined by the board of education. Approved encumbrances shall be listed in the minutes by the minute clerk.
 - E. Before any purchase is completed, a purchase order or encumbrance must be issued.

SCHOOL PURCHASING AUTHORITY: QUESTIONS FOR YOUR OWN SCHOOL TRANSACTIONS

- Who is expressly given board authority to purchase?
- Without specific board authorization in policy, does the superintendent have the authority to purchase?
- Case law says...

District superintendent, who allegedly told materialman orally that he would receive payment for materials delivered on school district project, lacked authority to bind school district by his assurances; moreover, the oral promise or contract was not valid unless it was in writing and signed by the party charged. *Haskell Lemon Const. Co. v. ISD No. 12*, 589 P.2d 677 (Okla. 1979)

SCHOOL PURCHASING AUTHORITY: QUESTIONS FOR YOUR OWN SCHOOL TRANSACTIONS

- Are purchase orders approved by the board?
- Are employees allowed to sign non-purchase order documents, e.g., a signed quote form, agreement, etc. without school board approval?

SUPPLIER'S AUTHORITY

Danger!

Warning!

Caution!

- Caveat Emptor – “Let the Buyer Beware”
- Who has the responsibility to ensure the seller’s representative is an authorized “agent” of the seller?

POLL QUESTIONS TIME

- Two (2) Building fund questions

THE PURCHASE ORDER: AN OFFER TO SELL OR AN OFFER TO BUY?

- The purchase order as a contract
 - Elements of a contract
 - ✓ Offer and acceptance
 - ✓ Consideration
 - ✓ Competent parties
 - ✓ Legality of purchase

THE PURCHASE ORDER: AN OFFER TO SELL OR AN OFFER TO BUY?

- The sale of goods
 - Governed by the Uniform Commercial Code (UCC) for interstate transactions
 - Governed by the Oklahoma Statutes, Title 12A, Article 2, Uniform Commercial Code.
 - The school purchaser should have a basic understanding of the UCC in his/her purchasing toolbox of knowledge.

THE PURCHASE ORDER: AN OFFER TO SELL OR AN OFFER TO BUY?

- Soliciting offers to sell
 - Formal request for quote, invitation for bid, request for proposal
 - Solicit a quote from a supplier (often arrives in email, or on supplier's quote form)
- “It is advantageous for the buying organization to solicit suppliers' offers to sell.”⁶

(Hartley, 2016, P. 107)

THE PURCHASE ORDER: AN OFFER TO SELL OR AN OFFER TO BUY?

- An organization maintains more control over the offer to sell when it issues a solicitation.
 - Potential supplier responds to the solicitation
 - Buyer determines the terms and conditions
 - Buyer maintains ability to accept or not accept the offer

THE PURCHASE ORDER: AN OFFER TO SELL OR AN OFFER TO BUY?

- In the offer to buy (purchase), who has control over acceptance?
 - The seller
- What is the purchase order? Is it an offer to sell or an offer to buy?
 - It depends on the terms of acceptance and offer
 - ✓ A purchase order can accept the offer
 - ✓ A purchase order can accept the offer with different terms or rejection of the term

THE BATTLE OF THE FORMS: PURCHASE ORDER VS. SUPPLIER QUOTE

- Caveat Emptor “Let the Buyer Beware”: A case study moment...

The baseball coach obtains a quote from a supplier for a new pitching machine and submits a requisition with the quote attached, what should you do?

- Thank the coach for submitting a requisition before ordering the machine?
- Issue a PO referencing the quote?
- Allow the coach to sign the quote and return it to the supplier?
 - ✓ Question from earlier: Are employees allowed to sign non-purchase order documents, e.g., a signed quote form, agreement, etc. without school board approval. What does your policy say?

THE BATTLE OF THE FORMS: PURCHASE ORDER VS. SUPPLIER QUOTE

- Review supplier's quote form carefully for the following?
 - ✓ Prevailing term and conditions (supplier's terms on their website prevail)
 - ✓ Expiration
 - ✓ Quote vs. Estimate (Is an estimate a firm-price offer?)
 - ✓ Requires quote to be signed.
 - ✓ Returns
 - ✓ Down payment and payment terms
 - ✓ Shipping terms (F.O.B. shipping point)

THE BATTLE OF THE FORMS: PURCHASE ORDER VS. SUPPLIER QUOTE

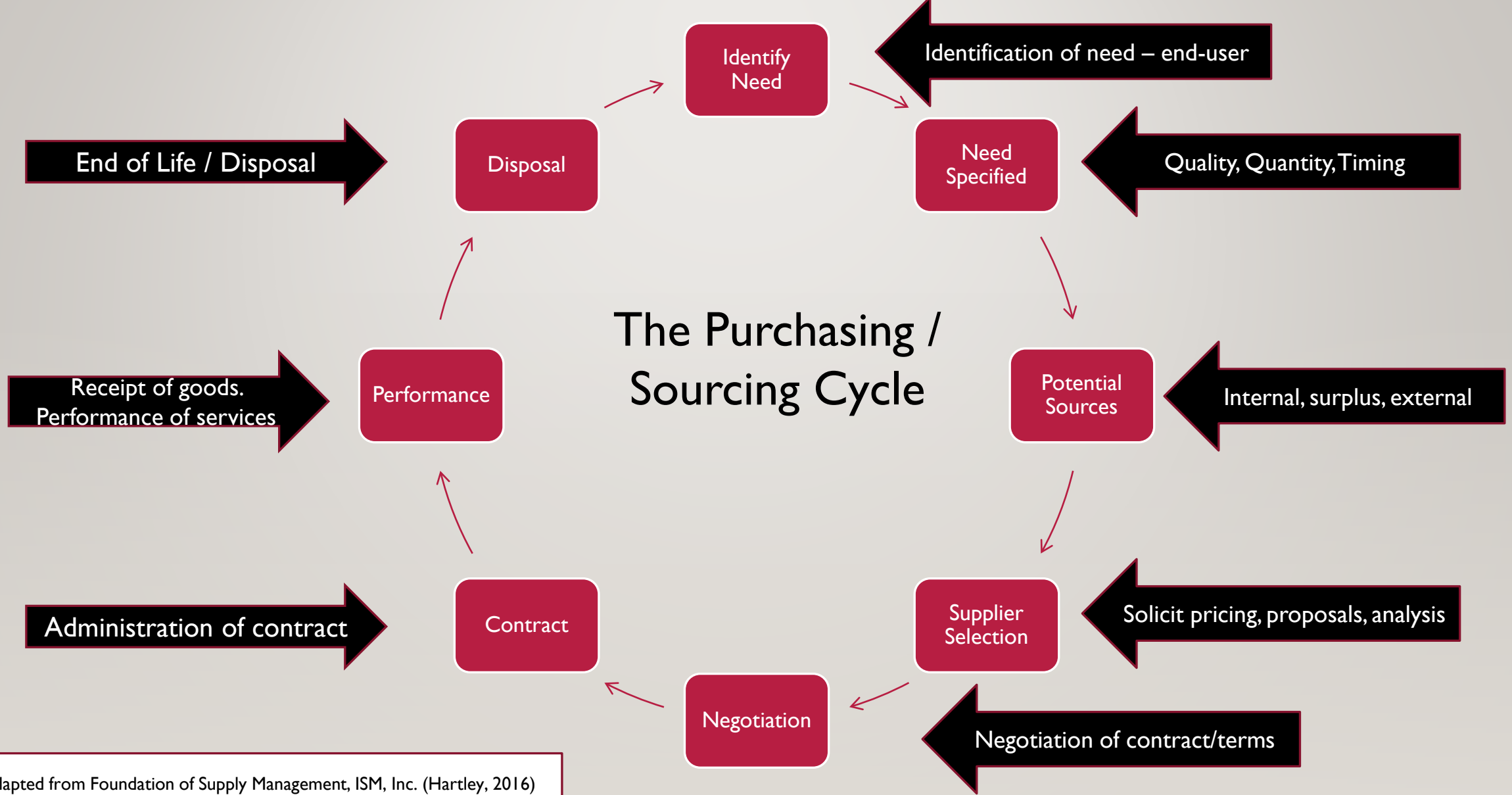
- Renegotiate the terms of the quote before issuing the purchase order?
- Issue a purchase order accepting the price and quantity of the quote, but reject the other terms?

PURCHASING ONLINE

- Pitfalls to online purchasing
 - Offer is made by the supplier
 - Often supplier's terms and conditions prevail
 - Determine the governing terms
 - May only require a PO number, if any number at all
- Before signing up with online suppliers, negotiate the terms of agreement and use.
 - Purchase of goods
 - SaaS programs

POLL QUESTION TIME

- Freight question
- One-minute stretch (You may need to turn your video off for this.)
- Up next... The Purchasing / Sourcing Cycle



Adapted from Foundation of Supply Management, ISM, Inc. (Hartley, 2016)

THE SOURCING CYCLE AND SCHOOL PURCHASING

1. Identify the need (End-user)

- The teacher, school principal, department, superintendent

2. Specifications

- Product or service specifications, quality, quantity, timing, funding source
- Furnished by the end-user
- Procurement irregularities can rear its ugly head
 - End-user gets a bidder to write the specifications
 - End-user tries to steer the business towards a certain supplier, i.e., the favorite
 - A supplier tries to influence the procurement process

THE SOURCING CYCLE AND SCHOOL PURCHASING

3. Identifying potential sources

- Internal - search school surplus, other schools, etc.
- External – identify potential external sources
- Bidder's lists
- E-Procurement solution (bidders self-register for solicitations)

4. Supplier selection (Seller)

- Avoiding the faces of fraud

THE FACES OF PROCUREMENT FRAUD



Favoritism
- Steering



Undue Influence



Conflicts of Interest



Bid Rigging



Collusion



Anticompetitive practices



Bias (blackballing)



Scoring manipulation

THE SOURCING CYCLE AND SCHOOL PURCHASING

4. Supplier selection (Seller)

- Sourcing methods (Determined by Board Policy and Statute)
 - Request for quotes
 - Invitation for bids (sealed bids)
 - ✓ Competitive Bidding Act of 1974 (Public Improvements/buildings)
 - ✓ School buses
 - ✓ Federal procurements and child nutrition

THE SOURCING CYCLE AND SCHOOL PURCHASING

4. Supplier selection (Continued)

- Sourcing methods
 - Request for Proposals
 - ✓ Federal fund procurements
 - ✓ Food service management companies
 - Request for Information
 - State contracts
 - Cooperative agreements, contracts or piggybacks
 - Local suppliers using P-card
 - E-Procurement solutions

THE SOURCING CYCLE AND SCHOOL PURCHASING

- Supplier selection
 - Statutory imposed conflicts of interest
 - ✓ School board members (70 O.S. § 5-124)

A. Except as otherwise provided in this section, no board of education of any school district in this state shall make any contract with any of its members or with any company, individual or business concern in which any of its members shall be directly or indirectly interested. All contracts made in violation of this section shall be wholly void. A member of a board of education shall be considered to be interested in any contract made with any company, individual, or any business concern if the member of the board of education or any member of the immediate family of the member owns any substantial interest in same.

THE SOURCING CYCLE AND SCHOOL PURCHASING

4. Supplier selection

- Statutory imposed supplier selection issues
 - ✓ Uniform Guidance Rules (2 CFR § 200)
 - Parties excluded from federal procurement
 - Conflict of interest requirements
 - Use of women owned, minority, and small business requirements
- School board policy
 - ✓ Conflict of interest regarding employees selling to the district
- Responsible and responsive

THE SOURCING CYCLE AND SCHOOL PURCHASING

5. Negotiation and contracting

- Win/Win
- Purchase order and/or contract document
- Terms and conditions
 - ✓ Federal procurement termination clauses

6. Contract administration

- Issuance of purchase order/contract
- Expediting the delivery of goods and services
- Overseeing the contract
 - ✓ Who is the contract administrator?

ENCUMBRANCE
SCHOOL BOARD APPROVAL
PURCHASE ORDER

THE SOURCING CYCLE AND SCHOOL PURCHASING

7. Receipt of goods / evaluation of performance

- Receiving, inspection, 3-way/4-way match
- Service deliverables
- Payment of goods and services
- Fixed assets
- Maintenance of goods
- Evaluation of supplier's performance for ongoing contracts
 - ✓ Required under Federal programs and child nutrition
 - ✓ Should be required for all service contracts

END USER
RECEIVING
ACCOUNTS PAYABLE,
ENCUMBRANCE CLERK
TREASURER DUTIES

THE SOURCING CYCLE AND SCHOOL PURCHASING

8. End of Life / Disposal

- *“Procurement professionals should be concerned about environmental sustainability and identify potential opportunities to incorporate environmental sustainability into the procurement process.”*⁷ (NIGP: The Institute for Public Procurement, 2020, p 21)

THE SOURCING CYCLE AND SCHOOL PURCHASING

8. End of Life / Disposal

- Considerations during the specification phase
 - Impact of disposal
 - Total cost of ownership
 - Hazardous waste
 - Pollution contribution
 - Disposal of solid waste
 - Salvage value

INTERNATIONAL PROCUREMENT

- The United Nations **Convention on Contracts for the International Sale of Goods** (CISG)
 - Multilateral treaty between countries on international commerce
- INCOTERMS® - 2020 International Chamber of Commerce
 - Shipping and freight terms for international shipments
 - Title must be defined in the contract

REFERENCES

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PRESENTER INFORMATION

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