

# ETHICS FOR PUBLIC SERVANTS IN PUBLIC PROCUREMENTS

## **Ethics for Public Servants and its function in Public Procurements**

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### Abstract

This paper will explain how governments could gain citizens' confidence through a change of mindset of public servants, since they get to know ethical principles and practice them in order to properly allocate public resources, avoiding wrong acting as corruption and collusion.

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### Ethics for Public Servants and its function in Public Procurements

Since the beginning of my professional career I have been a public servant. Convinced that it's a privileged position, in which I get to contribute to the design of a better, stronger State, I will use this opportunity to approach a primary subject of the Public Administration: The Ethics for Public Servants and its function in Public Procurements.

Citizens should be able to trust their Government, and people who works in it. Public office should not be performed just as any other job. Officeholders must be aware at every time of the huge responsibility that lies beneath Civil Service, and should perform it within the limits established by law, applying in to their acts the ethical principles that should rule their behavior.

Every person that gets a position on Civil Service should get education in the matter. Along with the training they get to being able to perform their jobs, they should get to know the laws that rule their performance and responsibilities, as well as the ethical principles which are desirable in their conduct, focusing specially on those public servants who have access to public assets. They should procure the biggest benefit to the society by executing them as if they were spending money of their own.

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Educating people who are becoming public servants (and those who already are), should have better results than punishing those who disobey the law and ignoring others who do not care about performing their jobs with care and excellence.

Sadly, in Mexico it is common to stereotype public servants as people who abuse their position to their own benefit and who take advantage of the access to the government procedures to avoid the appliance of the law.

Although there are campaigns to combat corruption, something should be done to prevent it rather than just punishing it.

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## Chapter 1

### Frame of reference

Lets think in public service history as if we were seeing a theater show, in this mood we could see the first act of this play back in 1789 when French people ended an age of absolutism in which the King decided the way the things must being done. One of the most valuable gifts that French Revolution left us was the “Declaration of Rights of Man and the Citizen”, in which democratic principles for a better form of government were established.

For the second act we should travel on time and sit down in to watch the next scene at the Gettysburg cemetery, in November 19th, 1863, back then U. S. President Abraham Lincoln said: “...that this nation under God shall have a new birth of freedom, and that government of the people, by the people, for the people shall not perish from the earth”. This was the Second Step to build a democratic government.

Nowadays, we are playing our role in this act, ones as public servants performing our duty, and in the other side citizens pledging us to do our duties. These actions will lead us to take the next step towards the consolidation of democracy.

I am from Puebla, México, and I want to contribute to the consolidation of a better public service in my own community and change the state of mind of public officers and servants in order to gain citizens’ confidence.

I have been a public servant for fifteen years and I’ve seen how my country has

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walked since the formation of democratic institutions through their first steps into consolidation. Nevertheless, I share feelings about what has been said by Cristina Niolescu: *“With the third wave of democratization, countries reached various stages of consolidation at different paces... presence of political corruption during the democratization process stalls its consolidation”*. (Nicolescu-Waggonner. 2009)

### Definitions

Lets allocate some concepts and come to an agreement about the meanings in this paper.

- **Public Service**

In order to approach this concept it is mandatory to quote Leon Duguit, founder of the Bordeaux School of Thought: “The notion of public service replaces the concept of sovereignty as foundation of public law. For sure, this is not a new notion. It was born in the very same day, that appeared the distinction between governor & citizen.” (Encyclopedia Britannica, 2012. Free Translation.)

In other words: “the state is not a sovereign power but is an institution that has arisen out of the social needs of humans”.(Encyclopedia Britannica, 2012. Free Translation.)

Quoting Fernández Ruiz, we could understand Public Service as: “All kind of technical activities that have to be done in order to satisfy a general necessity, and must be the government who must assure these happen”. (Fernández Ruiz.1995. 165)

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The public service is meant to be a means to an end, not an end in self.

Public servants are hired in order to deliver services and amenities to the public.  
(Painter, Martin & B. Guy Peters. 2010. 78)

*The Standards of Ethical Conduct for Employees of the Executive Branch, prepared by the United States Office of Government Ethics, in 1992, defines Public Service as a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.*

- **Ethics**

Attending to definition of Ethics, at Encyclopedia Britannica, we can understand it as the discipline concerned with what is morally good and bad, right and wrong. The term is also applied to any system or theory of moral values or principles.

Frank L. Perry (2012), Director of Investigations and Public Affairs at Foundation for Ethics in public service tells us “What we value morally, and how we act with respect to those values, is the domain of ethics. The motive or reasons for right or wrong action is more the finer point of *morality*.”

If a public servant acts compatibly with the right to honest services held by the citizens who put their trust in and pay them, then s/he will be acting ethically.

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- **Public Resources**

Citizens elect some people to run governments, which influence the lives of citizens in multiple ways: managing the economy, or at least trying, purchasing goods, operating industries, providing services, and promoting various economic activities. Governments acquire the resources to finance their expenditures through a number of different methods. In many cases, the most important of these by far is taxation.

The practice of budgeting emerged during the 19th century in Europe as a means of dealing with growth in public expenditure. Although the public sector was much smaller in all countries than it has become in the present century, it had grown sufficiently large to require regular procedures for allocating and controlling government expenditure.(Schick, Allen .1998. 3)

The budget should be built as a result of the economic reality and it must fulfill the society's needs, in the short run and long term as well.

In order to perform the assigned roles the state needs to:

- a) Collect resources from the economy, in sufficient and appropriate manner; and
- b) Allocate and use those resources responsively, efficiently and effectively.

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Public service involves public trust. Citizens expect public servants to serve the public interest with fairness and to manage public resources properly on a daily basis.

Public resources must be managed effectively and efficiently, and properly used to maximize profit for money and minimize waste and corruption.

- **Corruption**

I was attending my fourth year at law school, there was this teacher who, at that time, was acting as Attorney General in my hometown. He asked us: “What do you think about corruption?” Everybody charged against public servants, arguing how they asked for money for doing things they were suppose to do because of their duties; we condemned them to be corrupt. Professor Naser then called our attention about how corruption works, “Don’t blame public servants to commit this kind of crime, always its necessary the act of two people, the public officer and the citizen trying to get an unfair advantage”.

We can find multiple definitions of corruption; I will quote some of them, and then I will try to associate this concept with collusion.

**Corruption:**“Is the misuse of public or private office for personal gain. “Misuse” (unlike abuse”) covers both “sins of commission” (i.e., giving illegal favors), and “sins of omission” (i.e., deliberately turning the other way). And the inclusion of

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the term “private” in the definition of corruption underlines the fact that there cannot be a bribe received without a bribe given.(Salvatore Schiavo-Campo, Hazel M. McFerson. 2008. 14.)

**Corruption:** (When) “A public official (*A*), acting for personal gain, violates the norms of public office and harms interests of the public (*B*) to benefit a third party (*C*) who rewards *A* for access to goods or services which *C* would not otherwise obtain.” (Mark Philp at Charles Sampford et al. 2006.P 45.)

In the long run, corruption is bad for economic efficiency and growth; and hurts the poor most.

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## Chapter 2

### Desirable conduct for public servants

Day after day citizens of all nationalities became more and more disappointed with the way their political leaders behave. If people do not trust in their politicians, democratic participation decline and institutions become vulnerable.

In previous definitions we have agreed that the public service is meant to be a means to an end, not an end in itself. Public servants are hired in order to deliver services and amenities to the public. Nevertheless, public servants have different ends, personal goals, and they could be tempted to use the means that their offices provide to achieve higher political positions, or personal economic growth.

When I decided to become a lawyer, I was an idealist law student trying to change the world. My conceptions of public behavior were naive since I thought everybody acts in good faith.

A long time has passed and I have known people with great public service commitment, people who put all that they have into their job, sacrificing their own personal time or even their money in order to get things done; that kind of trustworthy and reliable people is always welcome in public service.

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I have known other kind of persons, those who have the vision of public service as just a means to earn a salary. Although this is a valid statement, that is not the way to transform a country and deliver quality services to citizens.

Now I want to talk about another kind of people, the kind that is always looking out for how to serve themselves, using their privileges, their commanding positions to elevate their careers. This type of person seeks to acquire more economic profits than he or she earns because of their job.

In order to fortify democratic institutions, societies need to align their organizational behavior to their ethical values. Public servants need to know the basic principles and standards they are expected to apply to their work and the boundaries of acceptable conduct.

Ethics is currently seen as an abstract system of ideas, but it should be integrated as a component of all public service.

In the next paragraphs I will show some ethical values addressed by different public institutions, such as the International Monetary Fund (IMF), Organization for Economic Co-operation and Development (ODCE), the World Bank (WB) as a suggestion to offer ethical guidelines for public servants:

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- **Openness.** It's the essence of public service and government. It's the elimination of discreetness, which favors behind closed doors arrangements. The mission of openness is to provide information to the citizens about each step of every government procedure. This way of running public service should be done with total disclosure, so the citizens are able to know about public servants' performances.
- **Effectiveness.** When one person acts responsibly, proactively and productively, he can be qualified as effective, since his performance is always catered towards excellence, quality results and minimum error rate.
- **Justice.** Public servants are obligated to provide each citizen whatever the law entitles them to. No citizen should be constrained, pressured or intimidated to give or share something that is legally his. If a person commits an infraction, public servants are obligated to act according to the law.
- **Integrity.** Is about forging strong links between expected conduct and behavior in practice. To encourage this value public servants' conduct must be in line with the mission of the public organization in which they work.

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Integrity has become the fundamental condition for governments to provide a trustworthy and effective framework for the economic and social benefit of their citizens

- **Impartiality.** Public servants impartial conduct allows them to serve without any political, ideological, religious, economic or racial prejudices. Impartiality allows them to act according to truth and legality; and to serve without any distinction or exclusion if there is no valid reason not to do so.
  
- **Transparency.** There is an expression: “The one who has information, is the one who holds power”. Public officials must know that all data that is trusted in their hands is not for their personal benefit. The essence of transparency is that information is readily available and clear; decision processes are regular, known, open, and participatory (Lewis, Carol W. &Hildreth, W. Bartley. P 19. 2011).

The public has a right to know how public institutions apply the power and resources entrusted to them. Transparent and democratic processes should facilitate public scrutiny, oversight by the legislature and access to public information.

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- **Honesty.** Is the human quality that allows the public servant to practice good habits and behaviors, speak truthfully, act diligently, and fulfill their obligations and act always with honor and disclosure.
- **Equity.** Mission of public servants is to provide services to all citizens. Therefore, they should ensure that all citizens have the same rights and to receive the same opportunities. Hence, public servants should act impartially and fairly.

Societies face a lot of issues to provide good education to their members, this is not always easy. It could be a hard and difficult job trying to set these principles in people's minds and it constitutes a great challenge.

We must take into consideration the condition that the learning process begins at birth, or even before that moment, and we are able to perceive things as either good or bad.

Formal academic education, one that we receive from our teachers since we attend kindergarten and, in some cases college, is not enough to get a "full education". There is a type of social education in which individuals perceive and assume normal conduct and behavior, as people in his or her environment display it.

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If we assume this, our community may determine what kind of people we will be. That is why it is imperative that parents guide their children and give full attention to each one of their actions, and provide them the best possible example of behavior as well.

I'll share a personal example, my parents taught me an important lesson when I was a child: "*If you find some money (or an object) and you know it is not yours, for sure it is someone else's*". This was a lesson that explained the value of honesty and respect for others, so these principles have guided my life and conduct from that moment on, and may helped me to develop a solid professional career.

If we learn at an early age about the golden rule or ethic reciprocity, it will allow us to live in harmony. In other words, this means we must guide our behavior in the same general ways that we expect from others.

As long as we share values and honor them with our conduct, we will raise a better community.

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## Chapter 3

### The human factor in public procurements

People who hold a public service positions must understand that he or she is doing a job for the good of his or her peers. This carries a huge responsibility.

Human resources management plays an essential role in organizations; many actions in different levels are required, such as:

- To recruit trustworthy people aligned with the established values for the agencies;
- To promote an ethical environment by developing professionalism;
- To enforce transparency in daily practices;
- To create promotion based on merit in public service.

As long as legislation provides clear rules about what is expected behavior, the better results we will obtain. Trends in ethical management suggest giving broad guidance, defining values, disseminating codes of conduct, and promoting greater transparency.

We can find different risk factors that could lead into misuse of a public office, Robert Harris in his book proposes two circumstances, both are associated with high corruption, and bribing becomes a rational as well as a normal act (Harris, Robert. 2003. P.39).

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- 1) “*A low compensation model*”. We must understand that governments should hire professional staff to handle public procurements, it implies that is highly qualified personal that deserves earn competitive wages. Otherwise, vendors or bidders could tempt them with job offers, including better remunerative wages in private sector, most of the times as retribution of received favors.
  
- 2) “*Weak monitoring systems*”. There is a Latin expression “*Ei incumbit probatio qui dicit, non qui negat*”, that has evolved in to the “*Principle of presumption of innocence*”, because of it, public agencies must increase their efforts in order to implement several means to watch public servants conduct. These measures should be able to demonstrate when misbehavior has occurred. Remember everybody is innocent until proven guilty.

Public servants should act in proper ways, as it is expected for a guardian of public goods, but his or her commitment could be enforced if someone else is watching what he or she is doing, and they will think twice before misusing the offices he or she runs.

When human beings realize something could harm them, their natural instinct will make them skip any chance of facing it.

If public servants are constantly instructed in organizational values and they are aware of punishment established in criminal law for those actions that are unmoral and constitute

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felonies like corruption, bribery and collusion, they will think twice before involving themselves in that kind of behavior.

If bad public servants are properly prosecuted and punished, governments will discourage any attempt to break the rules, and consequently will set a precedent for the rest of the workers in active service, and will present themselves as trustworthy.

Another main topic that can undermine the fundamental integrity of officials, decisions, agencies, and governments is the direct relationship with conflicts of interest if these are not recognized and controlled properly. This can be easily managed when we create a descriptive code of conduct that gives guidelines about how public servants must react in certain circumstances.

We can generate favorable scenarios by practicing permanent instruction, by fostering constant feedback between public servants and public officers, and by documenting the cases and situations faced day after day. By doing these, teams will share their experiences and take the advise of more experienced people.

If communication prevails in an institution, it will be the key to confront and solve almost any externality.

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The mission of the Organization for Economic Co-operation and Development is to promote policies that will improve the economic and social well-being of people around the world. During 1996 the OECD published “Ethics In the Public Service” highlighting that, “public servants exercise significant discretionary power in their everyday work: in their stewardship of public resources, at the interface with citizens, and in the context of policy making... Ethical standards are a key check and balance against arbitrary use of that public power. As such they are a key factor in the quality of governance.”

Another aspect of acting ethically is considering what economics has taught us about the existence of comparative advantages, and identifying them is how institutions, organizations, or governments, in this case, can focus on their own areas of real expertise.

One of the priorities for governments is making themselves reasonably efficient in allocating public resources in order to satisfy public needs.

Governments need to acquire goods and services to keep the public services working. Procurement is, “the tool by which management obtains the materials, equipment, facilities or services necessary to performance of organisational mission” (Sherman. 1981. P19).

Since public resources are scarce, the efficiency of the procurement process is a primary consideration of every acquisition. It is desirable that regulation of those processes promotes values, which allow them to be open, transparent and non-discriminatory, and

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allow in this way competition among suppliers. And as a natural consequence the management is able to get a good deal.

To understand the evolution of the procurement system in the United States according to these principles, it is helpful to read what Steven Kelman wrote in *Procurement and Public Management*: “In 1809 was passed the first law including the sealed biddings as a response to the efforts by congressmen to obtain contracts for friends. A statute enacted in 1861 made sealed bidding the rule for letting government contracts and remained for almost 100 years...”

Kelman exposes that procurements are regulated by simple commandments transformed in principles and evolved into rules as I show them in the next table:

	Commandments		Principle		Rules
1	Treat everyone the same way.		Equity		Evaluate bidders on criteria established before you knew who the bidders would be.
2	Be honest.		Integrity		Don't take bribes.
3	Get the lowest price for what you want to buy.		Economy		Award the contract to the lowest bidder.

Then he describes how procurements evolved: “...In latter legislative acts, there were included different exceptions to the sealed bidding. Finally the Act passed by the Congress in 1984, bring the alternative trough procuring by competitive proposals. Now the government has considerable more freedom in deciding how evaluate and it need not to make an award to the low-priced bidder”. (Kelman, Steven. 1990. P.15-19.)

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The same author let us know that there are three major limitations on discretion:

- 1) *Rules & practices for establishing the government requirements;*
- 2) *The criteria by which proposals from vendors are evaluated; and*
- 3) *The information may be used in evaluating proposals against those criteria.*

*“ ...If public servants are aware of the importance of public procurement of goods and services and how they are responsible of look for the common wealth, we will be able to address other complex topics, such as how the current legal frame work imposes over-regulation, in which is preferred competition and it has a lot of controls against favoritism and corruption.” (Kelman, Steven. P1. 1990).*

In this sense, and after serving time as Director of Bids and Auctions of the Secretary of Administration of government of the State of Puebla, I have realized that as long as procurement regulation privileges the lowest price bid criteria, we could be facing risks of inefficiently using public funds.

In order to support this personal opinion, let me describe the procurement procedure in a few lines:

- 1) When an invitation to participate in a bid is extended, we set the rules for the bidders according with the legal framework;
- 2) We carefully describe all conditions, qualities and quantities of goods or services that will be contracted;
- 3) Bidders allocate their proposals and set their prices;

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- 4) We analyze all the proposals and dismiss those that do not fulfill the requirements.
- 5) Then we open the envelopes that contain the offers and award the lower bid.

When we publish the document that contains the rules of the game, at step number 2, the conditions must be settled according to the agency needs, but also must fit the legal framework. It is important to remember that the acquisitions law is designed to promote open competence, that is why we cannot ask for products or services of specific trademarks, even though these have proven their quality; and have to take some risks awarding the firm which meets the minimum requirements, because of the lower price, instead of those who warranty full quality.

Since we have to buy products from many different industries, we face a challenge in finding the best quality in the best price. If there is too much control, nothing will get done; but if there is too little control the wrong things will get done.

Despite these efforts to eradicate discretion, human nature could lead those in charge of procurements to give into temptation of committing an illegal act. This shows why it is always desirable to have honest and ethical public servants.

When governments can prove to the public that they are trustworthy, open and transparent, they may want to switch current procurement systems to new ones where

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professional and ethical public servants could make well informed decisions to award contracts to vendors who can provide the best goods or services and fair prices.

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### Chapter 4

#### This is the way we do procurements in Puebla

In January 2011, I was invited by my current boss to work with the new governor of Puebla at the Secretary of Administration, specifically running the Direction of Procurements.

I must admit that my first reaction to this offer was not the most enthusiastic. I hesitated because I knew there is always great pressure on officials in those positions. And I have heard some stories about people that have changed their life because of the way they ran that office, making deals that may not been legal or moral.

As I have pointed out before, I base my behavior in moral and ethical values, therefore I would resist orders of my superiors if they ask me to do things against my own code of conduct and personal values.

I was pondering about all these ideas, when my boss told me: “I came to you because I have known you for a long time now and we share the same values. I need to recruit people with strong moral values; honest, trustworthy, and professional people. I have the chance of recruiting a crew that shares my commitment of doing things right, because that is the way the new governor (Rafael Moreno Valle Rosas) is demanding us to act”.

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When he exposed all his ideas I was convinced that I wanted to be part of this new project. It was my opportunity to contribute making the changes my country needs from a long time ago.

One thing is saying things and another one is to get them done. While I was studying the legal frame and getting to know the specific procedures, it came the day of facing the great challenge of purchasing of goods and services required for State activities, with the basic purpose of securing best value for public money.

When I arrived to the Agency there were some issues we had to face and act fast against them, for example the resistance of people to change, or the fact that during some years the legal frame was not respected, or that the public servants who remained through the government renewal had some experience doing the main activities of the office, but they did not share our values. We had to make some decisions and we implemented some immediate actions. In the next lines I will describe some of them:

- 1) First of all we had to spread what was the philosophy that this new government wanted to promote. So we organized a seminar in which the people could know, understand and learn how things would be done from that day on.

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We identified people who shared our values of honesty, transparency and commitment. Once we have recognized each other it was possible to start the institutional change.

- 2) We redesigned our workflows, attending to an effective division of labor and creating job descriptions, in order to change from an artisanal way of conducting bids into a production chain one. This decision gave the public servant the opportunity of become into a specialist in a specific part of the process. And give to the agency a tool against collusion and corruption, because if more people get involved in the procedure, it will be more difficult for the bidder trying to commit bribery.
  
- 3) We are convinced that we must use all the legitimate means in order to get things done. Technology can provide helpful tools for doing efficient work. Our Information Technologies department designed a new system that allows standardizing the steps of the procedures. The project leader just has to introduce all the data and the system will generate all kind of reports. If we can have all kind of available information it will be easier to make the right decision.

There still a lot of actions to make and at the Secretary of Administration we always keep this in mind. A good guide to review the ethic management system is the document

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that the OECD presented in 1997 under the name of “*Principles for Managing Ethics in the Public Service*”, that proposes to analyze the next issues:

1. Ethical standards for public service should be clear.
2. Ethical standards should be reflected in the legal framework.
3. Ethical guidance should be available to public servants.
4. Public servants should know their rights and obligations when exposing wrongdoing.
5. Political commitment to ethics should reinforce the ethical conduct of public servants.
6. The decision-making process should be transparent and open to scrutiny.
7. There should be clear guidelines for interaction private sectors.
8. Managers should demonstrate and promote ethical conduct.
9. Management policies, procedures and practices should promote ethical conduct.
10. Public service conditions and management of human resources should promote ethical conduct.
11. Adequate accountability mechanisms should be in place within the public service.

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12. Appropriate procedures and sanctions should exist to deal with misconduct.

It is mandatory to promote actions to set and maintain high values in the mind of public servants; it will be necessary the openness and commitment of people and of the agency.

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### Final propositions

As a conclusion I want to share the next propositions as means to improve the procurements in governmental agencies:

1) Promote a transformation in the management framework of human resources in order to:

- Recruit trustworthy people aligned with the established values for the agency;
- Promote an ethical environment by developing professionalism;
- Enforce transparency in daily practices;
- Create promotion based on merit in public service to ensure stability in public servants jobs.
- Set a fair payroll that allows public servants maintain good life standard and prevent them to be tempted to accept briberies.

2) Through education, the agencies would set a new state of mind in public servants, making them aware about the huge responsibility they have with their country and its citizens, getting to know the laws that rule their performance and responsibilities, as well as the ethical principles which are desirable in their behavior.

Public servants should procure the biggest benefit to the society by executing them as if they were spending money of their own.

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- 3) The agencies should establish a “Compliance and Ethical behavior office”, responsible of promulgating and maintaining enforceable standards of ethical conduct of public servants. As well as fostering high ethical standards, which strengthen the public’s confidence, that the government's business is conducted with impartiality and integrity.

This office would support public servants in the decision-making process by helping them to avoid conflict of interests.

- 4) Promote and develop Information Technology that make public servants work easier and that limit them in the decision-making process through the standardization of the majority of steps in procurements.
- 5) Create a descriptive code of conduct that gives guidelines about how public servants must react in certain circumstances. And fostering constant feedback between public servants and public officers, and by documenting the cases and situations faced day after day.

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