

# The New Jersey State League of Municipalities

Presents

The Mini One Day Conference

## Safeguarding The Integrity Of A Local Government's Contracting Process

Conference Center at Mercer

By:

Afternoon Session II

3:10 p.m. - 4:50 p.m.

Room 213

West Windsor, NJ

June 16, 2017

Prepared & Presented

Mary Louise Stanton

Joseph A. Valenti

## **DISCLAIMER**

The information and material provided is not intended to resolve all situations discussed. Given the changing nature of laws, corresponding rules and related laws and rules, the time limitations of the session and local contracting unit traditions, the presenters warrant that the information and material provided are reasonably complete and current.

The session is not intended to be used as legal advice in any general or particular sense. Session participants are encouraged to directly consult with their own legal counsel as to the current laws and rules applicability to particular situations.

"When A Man Assumes A Public Trust,  
He Should Consider Himself As Public Property"

Thomas Jefferson

Quoted from, Life of  
Jefferson (Rayner), p. 356.

## I. The Detection of Fraudulent Purchasing Practices - Fraud, Abuse, and Mismanagement

### A. Introduction

1. Antitrust violations have a more devastating effect on the American public than any other type of economic crime.
2. Such illegal activity contributes to inflation, shakes public confidence in our state's economy and undermines our system of free enterprise.
3. In the case of government procurement, such illegal activities impact upon the ability to effectively obtain the goods and services needed from responsible and responsive contractors/vendors at the lowest competitive price. Further, such economic crimes increase the costs of government, boost taxes, undermine the public perception of integrity of the procurement process, and erode citizens' trust in their government.
4. Procurement personnel, especially those in the position of receiving bids and awarding contracts (quotations) can observe and identify violations of criminal and antitrust laws.
5. Taxpayers always expect that their respective levels of government will spend tax dollars wisely and effectively.

### B. Enactment of the Federal Antitrust Act

1. The Sherman Act prohibits any contract among competitors to fix prices. Violation of the Act is a felony punishable by a fine of up to \$10 million for corporations, and up to \$350,000 or three years imprisonment (or both) for individuals.
2. Other felony violations punishable by a fine or imprisonment or both:
  - a. The Federal Mail Fraud Law
  - b. The Racketeer-Influenced Corrupt Organization (RICO) statute
  - c. Making false statements to a government agency, if false information has been provided on a non-collusion affidavit

C. The New Jersey Criminal Code (N.J.S.A. 2C:1-1 et seq.)

1. The Code contains a number of offenses which are specifically directed at public officials and/or employees.

a. N.J.S.A. 2C:30-2

A public servant commits official misconduct if with a purpose to obtain a benefit for him/herself or another...

b. N.J.S.A. 2C:30-3

This provision of law deals with an individual(s) speculating or wagering on official action or information. Basically, this is an "insider trading" type of statute.

c. N.J.S.A. 2C:30-4

This statute should be of considerable interest to elected officials since it concerns the disbursement of money or incurring obligations by elected officials in excess of appropriations.

d. N.J.S.A. 2C:30-7

An individual commits an offense if he or she violates the provisions of N.J.S.A. 2C:30-2 on more than two occasions.

e. N.J.S.A. 2C:27-2

A person commits the crime of bribery if he/she directly or indirectly, offers, agrees to confer or solicits, accepts, or agrees to accept a benefit as a consideration for official action in political matters.

f. N.J.S.A. 2C:27-3

Under this provision, a person commits a crime if he/she directly or indirectly threatens unlawful harm to any person with a purpose to improperly influence official action or the performance of an official duty.

g. N.J.S.A. 2C:27-9

A public servant violates this provision of law if, while performing his or her official governmental functions, he or she knowingly transacts any business with him/herself, a member of his or her immediate family, or a business organization in which the public servant or an immediate family member has an interest.

h. N.J.S.A. 2C:27-10

The acceptance or receipt of an unlawful benefit by a public servant for him/herself or another person to influence the performance of any official duty, a violation will occur.

## II. Fraud, Abuse, and Mismanagement

### A. Types of Fraud, Abuse, and Mismanagement

1. "Borrowing" schemes - "kiting"
2. "Lapping"
3. Pilfering
4. Travel claim fraud
5. Disposal of surplus equipment
6. Double payments
7. Petty cash fraud
8. False claims

### B. The Merits of Bonding

1. What is it? - employees in sensitive positions be "bonded."
2. Advantages of bonding - background checks, some financial security against losses and reputation of bond company
3. Despite its benefits, bonding is no substitute for an effective internal control structure.

## III. Illegal Bid and Contract Practices and Procedures

## A. Forms of Collusion

1. Price fixing - an agreement among competitors to raise or maintain the price
2. Bid rigging - Essentially, competitors agree in advance who will submit the winning bid on a contract being let through the bidding process. Such conspiracies usually fall into one or more of the following categories:
  - a. Bid suppression
  - b. Complementary bidding
  - c. Bid rotation
  - d. Market division or allocation
  - e. Subcontracting

## B. Other Restraints of Trade

1. Group boycotts - concerted refusals to sell occur when a group of sellers refuse to deal with a particular company or governmental entity until some condition is met
2. Tying arrangements - a situation when the sale of one product is conditioned on the purchase of a second product

## C. Other Types of Contractual Fraud

1. State contracts - scope of service or product substitution, and price of the product
2. Fraudulent contractor/ vendor documents
3. Substandard products
4. Fraudulent billing
5. "Insider information" from government officials

## IV. How Management Can Detect Fraud

### A. Techniques in Detecting Fraud

1. Analytical review

2. Unusual transaction
3. Unusual documentation
4. Suspicious bidding or pricing patterns
5. Suspicious statements or behavior

B. Conditions Favorable to Collusion

1. Purchasing personnel should be aware of certain industry conditions that make collusion more likely to occur
2. An indicator of collusion may be more meaningful when industry conditions are already favorable to collusion

V. What Can We Do

A. Procedures to Discourage Anticompetitive Activity

B. Procurement Personnel Can Take Positive Steps to Stimulate Competition and Prevent Collusive Behavior

C. Create a Climate of Integrity

1. Set the standard
2. Be vigilant
3. Ask questions
4. Document