

Philadelphia Board of Ethics
Meeting Minutes
Public Session
November 15, 2005
Municipal Services Building
Room 16 B
4:30 pm – 6:30 pm

Present:

Board

Charisse R. Lillie, Esq., Chair
Daniel P. McElhatton, Esq., Vice Chair
Romulo L. Diaz, Jr., Member

Staff

Evan Meyer, Esq.
J. Shane Creamer, Jr., Esq.

Guests

Susan Kretsge
Cheryl Kritz, Esq.
Lewis Rosman, Esq.

Agenda:

I. Approval of Minutes

The Board approved the meeting minutes for the public and executive sessions of the October 11, 2005 Board meeting, subject to several corrections.

II. Executive Director's Report

1. Ethics Training Program Update

A fifth "Train the Trainers" session was conducted on November 1, 2005. This extra session was scheduled because some departments asked to have more trainers trained to deliver the ethics training program. We trained 36 trainers in this session, which bring the total number of ethics trainers to 161.

A sixth "Train the Trainers" session has been scheduled for December 14, 2005. In that session, we will train approximately 80 trainers for the Department of Human Services. That will bring the number of trainers to 241. This will provide us with an employee-to-trainer ratio of approximately 125:1 (assuming 30,000 employees).

Training schedules for individual departments and agencies must be submitted to Central Personnel by December 15, 2005. The Managing Director has sent a memorandum to all commissioners and directors asking them to check with their human resource managers to ensure that their schedules are submitted by the deadline.

2. Legislative Update

As you know, on November 8, 2005, voters approved the ballot question that authorizes City Council to regulate certain no-bid contracts. The Charter amendment was approved by 86% of the voters. The Board's commentary supporting the Charter amendment and comprehensive ethics reform ran in the Daily News on Friday, November 4th.

On November 7, 2005, the Committee of Law & Government issued a public notice that it would hold hearings for six ethics bills on Wednesday, November 16, 2005 at 2:00 PM. Councilman Nutter introduced all six bills.

One bill (Resolution 040817) would create a strong and independent ethics board. The board would have five members "appointed by the Mayor with the advice and consent of a majority of the members of City Council." Members initially serve staggered terms (from one to five years) and five-

year terms thereafter. Members are limited to two terms and are prohibited from seeking or holding a position as an elected or appointed public official. They are also prohibited from making any donations to candidates for any City office or to any incumbent City official. There is a companion bill (040769) that would authorize a ballot question to approve a Charter amendment needed to establish the independent board. Two other bills would expand the duties and powers of the new ethics board.

The first expanded duty bill (051024) would establish a detailed complaint, investigation and referral process for the new board and contains provisions for civil fines for violations of the ethics rules. The other bill (050014) would require all candidates and political committees who are required to file campaign finance reports with the City Commissioners to simultaneously file the same information with the ethics board. The board must then publish the information on the City's website.

The final two bills would apply the same regulations that will apply to no-bid contracts after February 1, 2006 to competitively bid contracts (bill 051023) and to persons and businesses seeking "financial assistance" (grants, loans, tax incentive, bond financing subsidy, etc.) from the City (bill 050613).

3. Web Site Update

We have revised the "recent legislation" chart to reflect the approval of the ballot question on November 8, 2005 and to identify the six bills that are now scheduled for a hearing before the Law & Government Committee on November 16, 2005. We will continue to update the chart as the ethics bills advance through the legislative process.

Our website was "featured" on the City's internet and intranet sites until the first week of November, but then the "features" were taken down due to MOIS's rotation policy for featured items. However, due to the importance of ethics, we have convinced MOIS to restore the featured link on the City's intranet site, at least for another month or so.

4. DOJ Antitrust Awareness Training Update

Ed Panek presented his antitrust awareness training program to the heads of procurement for the City, PGW and the School District of Philadelphia on October 12th. The City's Procurement Commissioner, William Gamble, PGW's Director of Procurement, Kenneth Williams, and the School District's Procurement Supervisor, James Cannon attended the meeting. Each expressed interest in scheduling antitrust awareness training for their procurement staff. Four staff members from the Office of the Inspector General also attended the meeting.

Mr. Panek is scheduled to train the School District procurement officers on December 15, 2005. He is also in the process of scheduling a training date with PGW.

Mr. McElhatton added that he had recently spoken with Mr. Panek, who was very appreciative of the Board's assistance. Mr. McElhatton also noted that the Board's role as facilitator between the Antitrust Division of the US Department of Justice and the various City procurement officers for the Antitrust Awareness Training Program represents an accomplishment for the Board with potential long-term benefits for the City.

III. Whistleblower Protection Policy

Mr. Diaz reminded the Board that he circulated a draft whistleblower protection policy statement and a draft ordinance on November 1st. He noted that the policy was clearly written to ensure that City employees understood both the policy against retaliatory acts against whistleblowers as well as the procedure for employees to submit complaints. The ordinance was drafted for City Council to consider. It contains a procedure for complaints and official sanctions for violations.

Ms. Lillie asked what the penalty would be for violations. Mr. Diaz explained that a person who violates the policy would be subject to appropriate disciplinary action. The Board then approved the policy statement with a recommendation that it be inserted into the ethics training program. The Board also approved a recommendation to send the draft ordinance to the Administration for its review and submit the bill to City Council for their consideration. Ms. Lillie instructed Mr. Creamer to prepare

a transmittal letter for her signature. It was also suggested that the policy be posted on the Board's web site.

IV. Contract Reform Project

Cheryl Kritz, Esq., Deputy City Solicitor and Chief of the Commercial Law Unit, and Susan Kretsge, Deputy Managing Director, gave a presentation to the Board on the City's Contract Reform Project. The Contract Reform Project was initiated by the Managing Director to enhance competition in City contracts and to develop an implementation plan for the new regulations for qualifying no-bid contracts. Those regulations will take effect on February 1, 2006, now that voters approved the ballot question on November 8th, giving City Council the authority to regulate City contracts.

Ms. Kritz explained the legislative changes to the Board. There are two aspects to the new contract reform measures: a Charter amendment and an ordinance passed by Council and signed by the Mayor. The Charter amendment gives City Council the authority to regulate certain aspects of the process for awarding *all* City contracts.

City Council now has the authority to impose disclosure and eligibility requirements and to set requirements for how the City awards contracts. The Charter amendment is effective upon certification of the election, which is expected to occur by Thanksgiving. However, the new regulatory powers will only apply to contracts executed after February 1, 2006. Contracts executed before that date are "grandfathered."

The new powers extend to all contracts with a one-year term; however, contracts with automatic renewals must go to City Council for approval. This applies to concession contracts as well. Contracts with renewal provisions will be required to have renewal certificates, which state that the renewal is in the best interests of the City. These renewal certificates must be sent to both City Council and the Mayor. One-year contracts with options to renew are not subject to this requirement.

The new ordinance passed by the City imposed certain disclosure and eligibility requirements. However, these new requirements only apply to qualifying no-bid contracts, even though the Charter amendment gives Council a broader power to regulate all City contracts.

Procurement must coordinate all contracting. In addition, all new contracting possibilities must be posted on the City's web site. Bidders on qualifying contracts must disclose the following in their applications:

- 1) All subcontractors and amounts to be paid;
- 2) All consultants used to secure the contract;
- 3) Campaign contributions, including those made by immediate family members, and for for-profit companies, the contributions of their partners and shareholders. Applicants must disclose this information on behalf of their consultants;
- 4) The names of any City employees who solicited money or services on anyone's behalf; and
- 5) The names of any City employees who suggested vendors who could help the applicant meet minority business participation goals.

In addition, the City's web site must post a notice of award and disclose the basis for selection if the lowest bidder was not selected. All qualifying contracts must be approved by Procurement, the Finance Director and the Solicitor. City Council contracts must be approved by the Council President. Annual reports must also be generated.

In terms of the new eligibility requirements passed by the City, any person or firm who exceeds the campaign donation limits of \$2,500 for individuals and \$10,000 for firms to a locally elected official becomes ineligible to receive an award of a qualifying no-bid contract. There are attribution rules for PACs and immediate family members as well as some exceptions that are very detailed. Some of these exceptions include: sole source contracts for goods; where delay would risk public health and safety; where there is state or federal preemption; and contracts with nonprofits. However, each exception must be certified by that the contract qualifies for the exception.

Mr. McElhatton asked whether "family members" was defined for attribution purposes. Lewis Rosman said that it was, and that it included a spouse and minor, dependent children.

Ms. Kretsge explained to the Board that she is in charge of implementation for the new no-bid contract regulations. Ms. Kretsge volunteered to lead the implementation effort in June 2005 – well before the February 1, 2006 effective date – knowing that it would take time and effort to develop

systems capable of assuring compliance with the new regulations. She understood when the law was passed that the Administration could not afford to wait until voters approved the ballot question in November 2005 to begin planning for the new requirements.

Ms. Kretsge said that the new regulations present many challenges and that even lawyers familiar with the law are not clear on some of the implications of it. She emphasized that the public needs to know about the changes in how certain no-bid contracts will be let. To begin with, it is a “new day” for vendors with City contracts. In addition, potential vendors will need to learn about the new disclosure and eligibility requirements as well. Finally, City officials and employees need to be educated and trained on the new regulations to insure successful implementation. In short, Ms. Kretsge explained, there will be a massive outreach component to implementation of the new regulations.

Part of the challenge in developing a system to implement the new law has been to identify all contracts throughout all departments and agencies that are potentially captured under the new requirements. To that end, Ms. Kretsge and Ms. Kritz have met with many different departments to learn about their contracting practices, in an effort to ensure that all affected contracts are captured in the new tracking system.

Mr. Diaz said that this process has revealed that there are many “outlying agreements,” which, by their nature and form, are not intuitively part of the group of affected contracts. Only through careful analysis can it be determined whether some of these contracts are included or not. That analysis is ongoing, he added.

Ms. Kretsge explained that the Procurement Department’s existing contracting database, “ACIS,” is being modified to “force” compliance with the new rules. She said that contracts will follow different “paths” through the ASIS database, depending on whether or not the new requirements apply.

Ms. Kretsge said that there will be a new online contract application and disclosure capability for vendors. Ms. Kritz added that they were working with MBEC to ensure that small businesses and minority firms have access to computers. Mr. McElhatton suggested reaching out to the various chambers of commerce, including the Northeast Philadelphia Chamber, the

African American Chamber, the Asian American Chamber and the Hispanic Chamber, to assist with the dissemination of information to minority vendors. Ms. Kretsge thought that was a good suggestion and added that the Mayor has made it clear that everyone needs to know about the changes.

At this point in the process, Ms. Kretsge said that they were turning their focus to generating the materials that vendors and the public will need to understand the new requirements and limitations. They are also considering conducting training seminars for vendors and training for City staff, who will need to know about the changes as well. Mr. McElhatton suggested using the City's cable station to help with the public outreach effort.

Ms. Kretsge understands that there will be many questions, both legal and technical and that a cadre of people will be needed to respond to those questions. She added that Spring is typically a heavy season for contracts, which means that they will have to be very responsive from the beginning.

Mr. Diaz added that it will change the way that the City does business and that despite the unknown cost of compliance for the City, the Mayor is committed to doing the best job possible.

V. Campaign Finance Limits

There was a brief discussion on the campaign finance limits. Mr. Diaz noted that such limits are related to the contract reform project and that it is an evolving area. In fact, another bill being considered by the Committee on Law & Government on November 16th would require candidates to file campaign finance reports with the new ethics board (that would be created under a separate bill and resolution), and would require the new board to cause those reports to be posted on the City's web site. Mr. Diaz said that the City must develop the capacity in terms of systems to comply with these new requirements.

Mr. Creamer circulated a draft Campaign Contribution FAQ for possible posting on the Board's web site. The FAQs were drawn from a summary of the existing campaign contribution limits that was prepared by Mr. Rosman. Mr. Diaz said that he would have the Law Department review it and recommend any appropriate changes.

VI. 2006 Board Meeting Schedule

Prior to the meeting, proposed dates for the Board's 2006 meeting schedule were circulated for consideration. Mr. Creamer proposed a set day of the month for the meetings so that people would know the meeting dates without always having to check their schedules. The second Wednesday of each month was proposed and agreed to by the Board with two exceptions (February and September), to avoid scheduling conflicts. It was further agreed that all meetings would be held at 5:00 pm, to make it easier for members of the public to attend the meetings. The resulting meeting schedule for 2006 is as follows:

January 11th
February 15th
March 8th
April 12th
May 10th
June 14th
July 12th
August 9th
September 14th
October 11th
November 8th
December 13th

Mr. Creamer said that he would request conference room B on the 16th floor of MSB for all meetings and promised to report to the Board when the meeting locations were confirmed.

Mr. McElhatton asked whether telephonic participation would be permitted if necessary. When no objections were raised, Mr. McElhatton offered to lend a polycom whenever needed to facilitate a conference call.

VII. New Business

1. Holiday Gift Ban Reminder Letter

Mr. Creamer circulated a draft holiday gift ban reminder letter for the Board's consideration. The letter could be distributed in different ways. One suggestion was to ask the Managing Director and the Mayor's Chief of Staff

to circulate the letter template to all department heads and commissioners with instructions to send the letter to their vendors. Mr. Diaz said that he would have the Law Department review the draft letter.