

Bids Gone Bad

{ **How to Spot and Prevent
Wrong-doing in the Contracting Process**

City headlines tell the story....

Man charged with overbilling city for computer work

By Bob Warner
INQUIRY@PHILLY.COM

A 65-year-old Philadelphia businessman, Barry Jones, was accused Monday of overbilling the city of more than \$1.2 million by overbilling several agencies for computer-related work that was not performed.

Jones, principal owner of a Haddonfield-based information-technology firm, Kurva

Management Services Inc., received \$5.9 million over four years from contracts with the city Revenue and Water Departments, along with Community Behavioral Health, the city-related mental health and substance abuse clinic and Philadelphia 2012 for Philadelphia Medicals receipts, federal prosecutors alleged.

Jones hired subcontractors

to perform much of the work on these contracts, according to a federal indictment, but Jones reportedly overbilled the number of hours that these subcontractors worked on the projects in order to get inflated monthly payments.

Between mid-2004 and mid-2008, the city was billed for 17,000 hours of work, worth \$1.2 million, that was

never performed, the government alleged.

From 2006 to 2008, the prosecutors said, Jones charged the city for work by software administrator, Peripetone Systems Inc., that had stopped working on the city's projects in 2004 because it had not been paid by Jones.

The government said Jones personally kept about \$2.7 million his company received

from the city. The charge, a count of mail fraud, is punishable by up to 20 years in prison and a \$250,000 fine. The government is also seeking \$1.2 million in restitution.

Jones' attorney, Joseph Rungione, did not return calls seeking comment. Philadelphia's inspector general, Amy Kurland, said the investigation began when one of Jones' subcontractors

called the Revenue Department in complaint it had not been paid for its work. The Revenue Department contacted Kurland's office and, after a preliminary investigation, the case was referred to the U.S. Postal Inspection Service.

Contact Bob Warner: 215-251-5665 or warnerb@philly.com

philly.com

2 companies penalized in sham minority contract scheme, another will pay city

Jan Ransom

Posted: Thursday, January 12, 2012, 4:08 PM

A story with consequences...

- Discipline or termination of City Employees
- Civil Lawsuits
- Criminal Charges
- Suspension or Debarment of City Vendors
- Ethics Board Fines
- Millions of Dollars Lost

**Prevention is the key to
ending the headlines.**

Agenda

- Purpose & Background
- Rules of the Contracting Road
- Who's Who
- BREAK!
- Issues in the Contracting Process
- BREAK!
- What Would You Do?
- Recommendations
- Closing Points

Purpose & Background

Today's Goals....

1. **Understand:** basic rules governing contracting process
2. **Spot:** fraud and misconduct within the contracting process
3. **Safeguard:** against potential issues during the contracting process

Our Goal is Not to....

- Provide a step-by-step overview of the contracting process
- Train you on the relevant procurement and contracting systems

IF YOU ARE INVOLVED IN THE CONTRACTING PROCESS

It is your responsibility to get trained on the rules, regulations, and relevant systems governing these processes.

What is Contract Fraud?

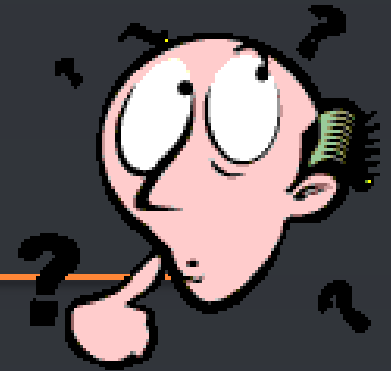
A false representation of the truth within the contracting process, involving deception or trickery, in order to illegally enrich the fraudster

- Involves some type of loss, public health/safety risks
- Fraudster typically with deep knowledge of contracting process
- Indicators often dismissed as administrative oversights
 - What initiates investigation may lead to totally different fraud scheme
- Hurts morale, destroys trust, shatters public's confidence

Why Should this Matter to Me?

- As a public employee involved in the contracting process, you are:
 - A steward of tax-payer dollars
 - Obligated to report wrong-doing immediately
- Unethical behavior:
 - Creates suspicion
 - Destroys trust
 - Hurts morale
 - Shatters public confidence

Ask Yourself...



- want to be charged for something that you did not purchase?
- pay for something that you never received or for a price that was not agreed upon?
- pay for work without confirming it had been done and done properly?
- allow a plumber to paint your house even though they never painted before?

Framing the Problem



Six in Ten

Government employees saw at least one form of misconduct in the past twelve months



\$2.1 billion

Total amount of awarded contracts in Fiscal Year 2013 by the City of Philadelphia

30%

Percentage of misconduct that goes unreported to management in the government sector



\$4 million

Amount saved or recovered from vendors in 2013 by the Inspector General's Contract Compliance Unit

100

Approximate number of complaints about contract misconduct received by the Inspector General in the last 2 years

Sources:

National Government Ethics Survey, 2007. Ethics Resource Center
2013 Annual Report. City of Philadelphia Office of the Inspector General

Rules of the Contracting Road

Rules of the Contracting Road

- Contracting process mainly governed by:
 - Section 8-200, Home Rule Charter
 - Chapter 17-1400, Philadelphia Code
- Other laws, executive orders, and regulations regulate behavior during process
- Together, ensure competitive and transparent process, free of influence and favoritism, for all City contracts

Rules of the Contracting Road

City public integrity laws govern the actions of City employees and vendors during the contracting process.

They can be broken down into three main categories:

Procedure

Rules that lay out contracting process

Examples:

- Bid and RFP process
- Award
- Contract
- Payment
- Debarment

Ethics

Rules that prohibit certain behavior during the process

Examples:

- Conflicts of Interest
- Post-employment
- Gifts, gratuities
- Confidentiality
- Disclosures (campaign finance, lobbyist, financial)
- Transparency
- Representation

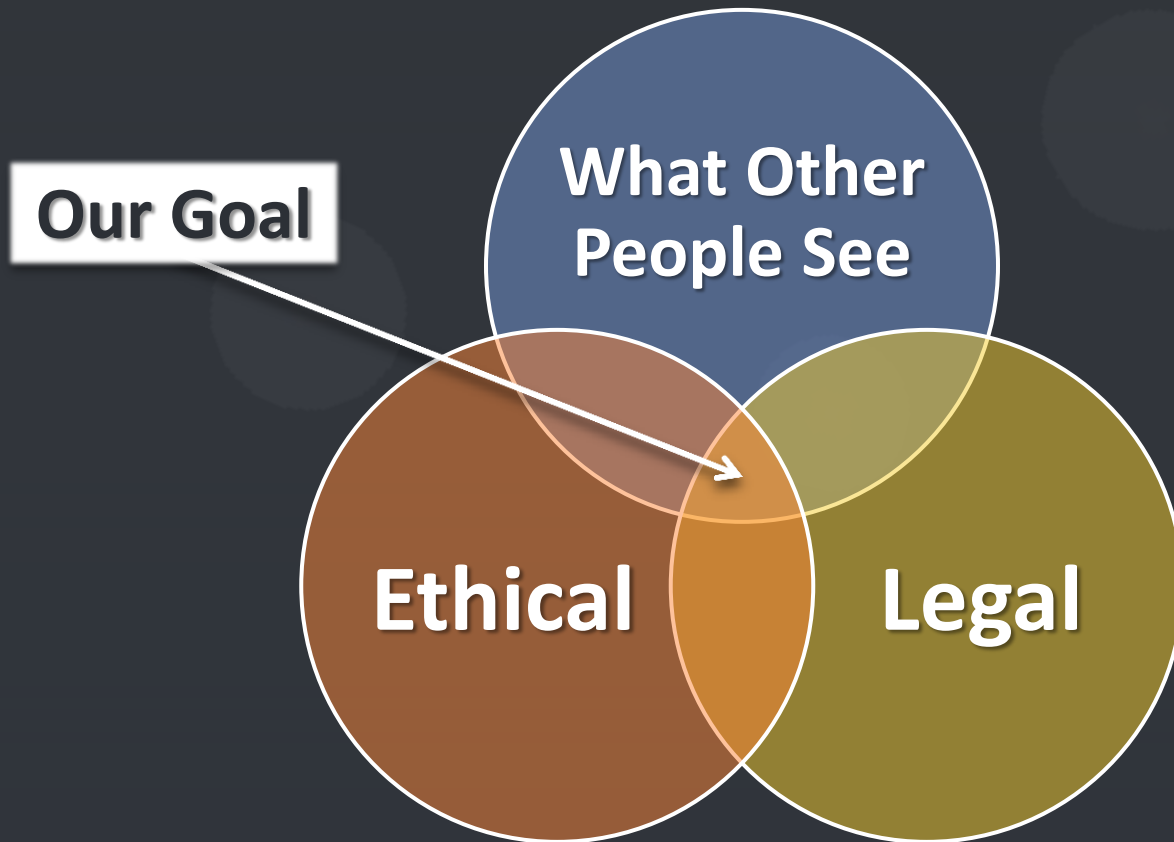
Criminal/Enforcement

Rules that detail criminal behavior. Give agencies power to investigate and enforce

Examples:

- Kickbacks
- Bribery
- Investigatory and enforcement powers

Procurement in the Public Eye



Who's Who

Who's Who

{ Internal

- Several agencies work to ensure fairness and transparency in the contracting process

{ External

- We are held accountable by the public at-large

Together, City has a strong network of watchdogs.

Who's Who

Procurement or Finance, Contract Legislation Unit

- Bid/RFP requirements
- Award questions
- Disqualification of bidder/applicant
- Contract approval process

Law Department

- Bid/RFP drafting
- Negotiation/approval of contract
- Vendor protests
- Termination, suspension, debarment

Board of Ethics

- Conflicts of Interest
- Political Activity
- Post-employment restrictions

Inspector General or Integrity Officer

- Misuse/abuse of City resources
- Fraud
- Theft of time or resources

Office of the Chief Integrity Officer

- Mayor's Executive Order on Gifts
- "Grey areas" – may be legal but looks bad
- Transparency or impropriety within the contracting process

City Controller

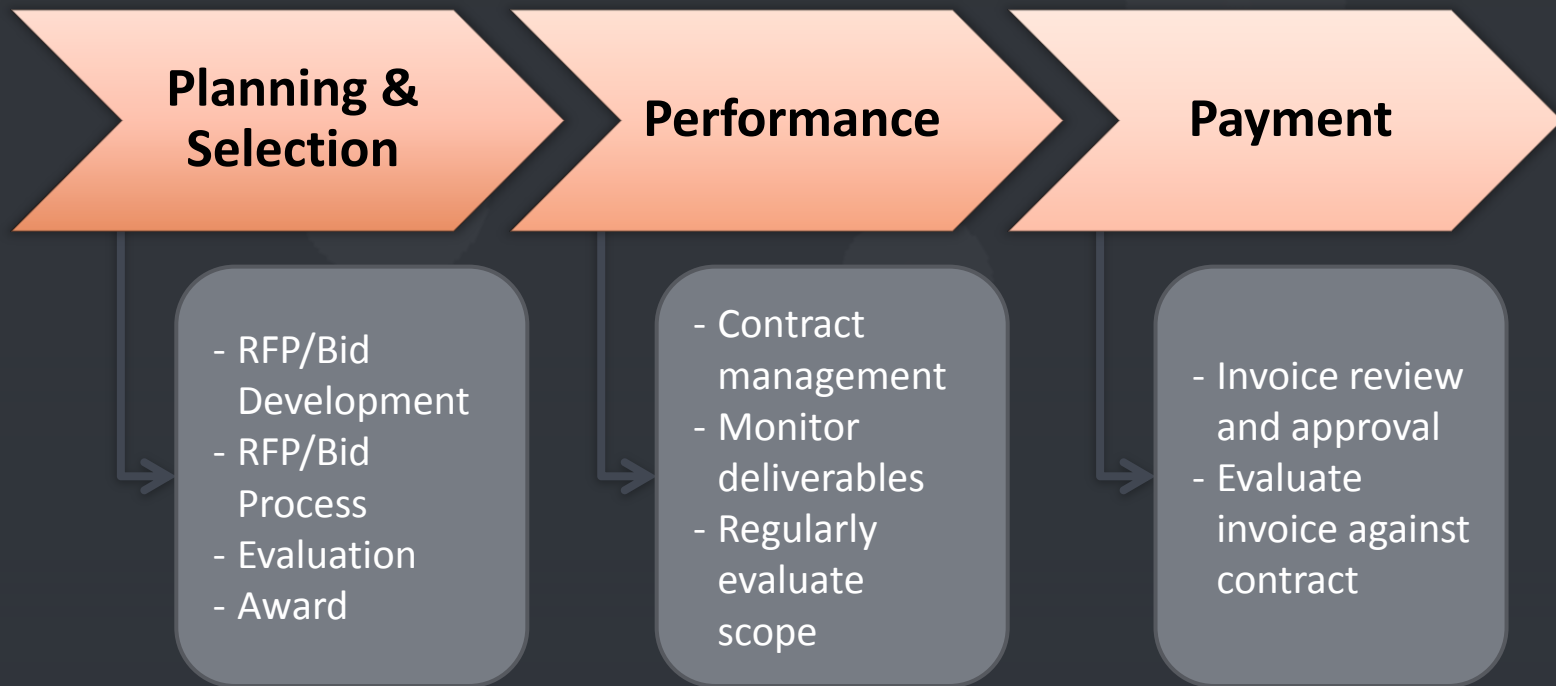
- Purchase order approval
- Disbursement of vendor payments
- Audits

Your Role in the Process

- Serve: as 1st line of defense to spot and report fraud
- Understand: contracting rules, regulations, and processes

Issues in the Contracting Process

Overview: Contracting Process



The PA Turnpike

{ A Case Study in Bad Behavior

Some Questions....

- What are the main issues raised by AG Kathleen Kane in her description of this case?
- What do you think is the most problematic aspect of this case?



{ Woo Hoo!

Break

Issues: Planning & Selection

{ **Inappropriate Vendor Interactions**



Red Flags:

Inappropriate Vendor Interactions

- Provide advance notice to potential applicants/bidders of contracting opportunities
- Disclose confidential information to certain vendors
- Overly friendly interactions/relationships with some vendors but not all



Things to Remember: Inappropriate Vendor Interactions

- **Maintain:**
 - “arms length” distance from vendors
 - professional relationships with contractors
- **Avoid:**
 - phone calls/other one-on-one verbal interactions with bidders/applicants
- **Require:** all pre-award interactions to occur in writing



Issues:

Planning & Selection

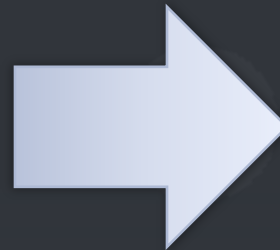
{ Rigged Specifications

Ripped from the Headlines....

Pittsburgh Post-Gazette®
post-gazette.COM

**Two former Pa. Turnpike
officials plead guilty to
conflict of interest**

November 21, 2014 12:49 AM



“Last year, prosecutors charged numerous former turnpike officials, a contractor and former state senator with being involved in what they alleged was a wide-ranging bid-rigging scheme.”

Contractor helped write the RFP for contract they were ultimately awarded – despite being highest bidder.

Red Flags: Rigged Specifications

- Specifications and winning contractor's product/services identical
- Winning contractor helps draft specifications
- Unreasonable/unusual specification for item/services being procured
- Multiple awards to one supplier in a competitive field
- Use of name and brand terms instead of generic terms to define request



Things to Remember: Rigged Specifications

- **No involvement:** by potential bidders/applicants in drafting process
- **Review:** specification with an eye towards competition and inclusion
 - For example, review brand specificity (where possible)



Issues:

Planning & Selection

{ Unbalanced Bidding

An Example: Unbalanced Bidding

- Longo Mechanical – had contract with City to repair electric motors
 - Reality = Motors needed replacement, not repairs
 - As a result, Longo placed a low price on repairs and high price on equipment
 - City learned that Longo was manipulating the bidding process by appearing to be the low bidder on paper
 - Longo deemed “unresponsive”
 - Decision confirmed by Court of Common Pleas

Things to Remember: Unbalanced Bidding

- May Indicate:
 - Bidder's non-compliance with other contract requirements (ex: prevailing wages)
 - A mistake, miscalculation, or misunderstanding of bid specifications - could lead to disqualification
 - Disclosure of confidential information
 - Vendor taking advantage of the City
- Could lead to excessive change orders or over-charging



Issues:

Planning & Selection

{ Split Purchases



An Example: Split Purchases



City department is seeking training services and has preferred training vendor.



Total cost of training services = \$50,000.

$\$50,000 > \$32,000$ (City threshold for formal RFP)



Department “splits” purchase into two contracts
@ \$25,000 each to avoid formal RFP.

Contract 1: training devo/Contract 2: training facilitation



Preferred vendor is awarded both contracts
without formal RFP.

Red Flags: Split Purchases

- Multiple small contracts with same vendor for similar items just below bidding thresholds (typically in same department)
- Unnecessary or unjustified separation of services for single contract
- Small contracts under bidding thresholds followed by amendments that increase the amount



Things to Remember: Split Purchases

- May be indicator of other fraudulent schemes (ex: kickback)
- Decreases competition and transparency
- Small contract may have less stringent bonding/insurance requirements = increase risk to the City



Issues: Performance

{ Change Order Abuse

More About: Change Order Abuse

- Look out for dishonest contractor submitting unjustified or inflated change order requests to increase profits
 - Change Order Abuse is also an indicator that another issue is at play
 - Mischarging costs – Vendor passing on equipment rental fee to City for equipment that it needs to perform the contract
 - Misrepresentation of Work – Vendor hired to perform emergency maintenance, but also doing routine maintenance and going over the contract value
 - Bribery/Kickback/Inappropriate Vendor Interactions – Colluding with City employee to increase price and profits by bidding low and submitting change order requests after the contract is awarded

Red Flags: Change Order Abuse

- Numerous change orders
- Pattern of change orders
- Poorly justified or documented change order requests
- After contract awarded, contractor argues that the bid specifications lack detail and are clarified by change order
- Period of agreement is extended by change order instead of re-bidding



Things to Remember: Change Order Abuse

- Review all proposed change orders to ensure that the additional costs are necessary
- Procurement does not see all change orders
- Reach out to Procurement or Finance for more assistance
 - Can determine whether bid is actually responsive and whether this is a City-wide issue



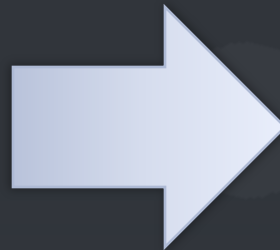
Issues: Payment

{ **Mischarging Costs**

Ripped from the Headlines....



**Main Line Company
Bilks Philly out of
\$500,000**



May 19, 2014 7:02 PM

“In one instance, Airmatic falsely invoiced the City for a bearing assembly, an expensive industrial product and approved contract item, when, in fact, Airmatic delivered 12 asphalt rakes, items for which the defendant had no contract.”

Contractor submitted false and fraudulent invoices that listed products unapproved by the City at higher costs.

Red Flags: Mischarging Costs

- Costs billed greatly exceed estimates
- Duplicate billing for same products or services
- Proposed costs do not seem directly related to the contract or are not on contract at all



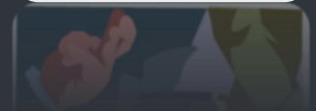
Things to Remember: Mischarging Costs

- Know:
 - The rates established in your contract
 - What are acceptable charges under contract and City's standard Cost Principles and Guidelines
- Invoice:
 - Compare against contract
 - Don't approve if service or good was defective, not delivered on-time or in a manner not acceptable to the City



Issues: All Phases

{ False Statements and Claims

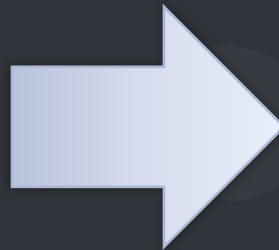


Ripped from the Headlines....

 CBS Philly

**Nutter Administration
Tightening Checks on City
Construction Bidders**

October 25, 2013 12:04 PM



“They (Hart’s firm) did not disclose that there was a prior conviction, that there were negative judgments, that there were outstanding liens, and that their company owed back taxes.”

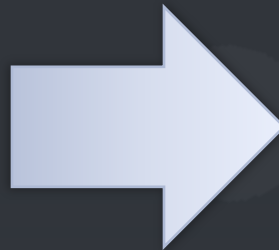
In addition to misrepresenting prior experience, the contractor also submitted fraudulent bonds to the City.

Ripped from the Headlines....

philly.com

**Minority Contracting Scam
Busted by City's Inspector
General**

July 26, 2012



“Prison Health Services (PHS) — which has received \$196 million from the city since 1995 — told the city that JHK Inc. was getting 40 percent of the contract. But in fact PHS paid JHK only for the use of its name.”

Contractor paid a \$1.85 million penalty for misrepresenting the amount of work performed by a M/W/DSBE.

Red Flags: False Statements and Claims

- Inability/refusal to provide supporting documentation
- Discrepancies between reported facts, observed data, and:
 - Documentation provided by contractor
- Submitted documents appear fraudulent or do not follow standard or requested form



Things to Remember: False Statement and Claims

- You are the best line of defense to catch false statements



Issues: All Phases

{ **Bribery & Kickbacks**



Bribery vs. Kickbacks

{ Bribery

- Offering, giving, receiving, or soliciting any thing of value to influence action as official or in discharge of legal public duty

{ Kickbacks

- Providing something of value in exchange for preferential treatment
 - Negotiated bribery
 - More cooperation involved by all parties

Is a Tip a Bribe?

- Gratuity = A “tip” in the form of money or otherwise provided to a City employee in the course of their public work
 - Different than a Bribe or Kickback
 - No request for improper action in exchange for what is given

DISCLAIMER:
**Gratuities are not permissible under the
Home Rule Charter.**

Red Flags: Bribery & Kickbacks

- City employees interested in award to particular contractor
- Unexplained increase in wealth
- Contracting employee has undisclosed business
- Contracting employee declines a promotion
- Maintaining excessively high inventory levels from a particular vendor



Spotlight On...

{ Pay-to-Play

Issues: All Phases

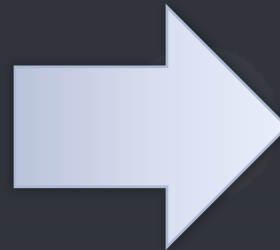
{ Conflicts of Interest

Ripped from the Headlines....

philly.com

**School official faces charge
of steering \$900,000
contract**

Thursday, May 28, 2015 1:08 AM



“When the Philadelphia School District was trying to save money two years ago by closing schools, the manager in charge of small business development steered a \$900,000 contract to businesses owned by her friends or her family.”

Employee urged family and friends to bid on contracts and subcontracts - and made sure they won those bids.

Examples of Potential Conflicts of Interest

- Close familial relationship between vendor working in the Department and City employee
 - Parent and Child
 - Spouses
 - Mother-In-Law and Son-In-Law
- Contracting employee has a second job with a vendor who submits a bid/RFP
 - Employee must be in a position to take action or execute authority
- City employee interviews for a job with contractor that they are involved with as a City employee



Conflicts of Interest: Avoiding Appearance Issues

- Employee Issues
 - Employee steering contracts towards a company with which they are affiliated
 - Whether or not there is a financial interest
 - Member of the Board of Directors at Non-profit
 - Company of Friend, Neighbor, Cousin, etc
 - Former employer or close relationship with vendor
- Vendor Issues
 - Same/affiliated companies performing production function and testing/evaluation functions



Things to Remember: Conflicts of Interest

- Disclose and Disqualify:
 - Employee's responsibility to disclose conflict and disqualify him/herself from action
 - Get guidance from the Board of Ethics
 - Provide members of selection committee an opportunity to disclose conflicts prior to review process



Issues: All Phases

{ **Post-Employment Restrictions**



Post-Employment Restrictions & Contracting

- City and State rules prohibit certain post-employment activities with those who do business with or seek official action from the City
- State Law: One-year restriction
- City Law: Two-year and permanent restrictions

Well, thanks for the info...
What does this have to do with contracting?

Red Flags: Post-Employment Restrictions

Some Examples....

- Former City employee representing a City contractor in front of the City
- Hiring a former City employee as a consultant



Things to Remember: Post-Employment Restrictions

- Seek Advice:
 - From Ethics Board
 - Restrictions depend on situation
 - Could lead to fines and misdemeanor charge





{ Woo Hoo!

Break

What Would You Do?

{ An Exercise in Spotting the Issues



Scenario #1

Mike Leaks, owner of Leaks Plumbing Supply, has a supply contract with the Water Department. On one delivery to Water, Mike accompanies his delivery men and makes friends with the Water employees while Mike's employees are unloading the supplies. Among other things, they discuss their mutual love for the Eagles. Mike tells the Water Department employees that he can make it "worth their while" if they need more supplies by offering to buy Eagles tickets for the employees. The Water Department orders more supplies from Leaks Plumbing Supply and included with the next shipment of supplies are Eagles tickets.

Scenario #2

You are responsible for processing invoices on a HVAC maintenance contract with your department. You've begun to receive invoices from the Project Manager overseeing the contractor's work that are for landscaping services. When you inquire about the work, you are informed that, while this work wasn't in the original contract, it was included as part several change orders. While it seems strange, you do know that the vendor is a very large company with a diverse product offering so it is possible that they are qualified to perform landscaping services. Plus, the Project Manager tells you that "the landscaping work has been completed, anyway" so you should just approve the invoices. Otherwise, it's likely the contractor is going to complain to your Department Head if they don't get paid for the work that they've done. You noticed, when processing the invoices, that the additional landscaping work has now increased the contract from \$200,000 to \$800,000.

Scenario #3

Your supervisor orders you to obtain widgets for a high-profile and very important City project. The widgets are needed to meet a key deadline for the project. You know that if your department does not meet certain project deadlines, the City is in jeopardy of losing the federal funding for the project, which makes up about 75% of the total funding for the project. When you talk with Procurement about purchasing the widgets, you are informed that there is no contract in place for widgets. They tell you it will take at least 3 months to get a vendor to supply widgets for your department.

When talking with another vendor, you learn that they can easily provide you with widgets through their City contract even though their contract is for thing-a-ma-bobs and not widgets. They will guarantee you get the widgets within 48 hours.

You are feeling pressure by your supervisor to get those widgets as soon as possible.

Scenario #4

You are a Project Manager and will be participating in a selection committee for a RFP that was recently issued by your department. You've worked with many of the firms that plan to submit proposals to this new RFP, including managing their performance on other contracts with your department and even working next to some of the consultants from these firms, including Sam. Sam asks you to lunch and you accept since you and Sam regularly grab lunch together. While at lunch, you vent to Sam about how much you dislike working with a particular subcontractor, Subs R Us, because their work is consistently subpar and not completed on time. Despite this, though, they are frequently used by many of the firms that work with your department because they are a Minority-owned Business. A few weeks later, after proposals have been submitted to the RFP, you attend the first selection committee meeting. You notice that one of the proposals was submitted by Sam's firm and they are the only respondent to propose not using Subs R Us as their subcontractor.

Scenario #5

Paul is a Deputy Commissioner at Public Property, which has a contract with Clean Consulting. As a congratulations on his retirement, Carol, an employee of Clean Consulting, takes Paul out to dinner. During dinner, Carol mentions to Paul that she is also retiring soon but is hoping to do some part-time work after she retires. She asks Paul if he knows of any job opportunities.

Paul recommends that Carol reach out to his wife, who is starting a new woman-owned business. With his new spare time upon retirement, Paul plans to run most of the business. Also, with Carol's expertise, Paul is convinced that the new business could secure lucrative City contracts. In fact, Paul is going to recommend to his wife that she submit proposals for two upcoming projects with his department. Once he retires, Paul plans to manage any City contracts awarded to his wife's business.

Scenario #6

John Doe is a project manager at Public Property. He is in charge of the City's efforts to improve security in all City-owned buildings. John used to work at Safety R Us several years ago according to John's LinkedIn page. John is still in contact with several of his former Safety R Us colleagues, though. He often meets them for lunch and attends the annual holiday party Safety R Us hosts at Dave & Busters. Recently, several companies bid on one of John's projects, including Safety R Us which didn't have the lowest bid but clearly had the best qualifications. After the bid opening, one of John's former Safety R Us colleagues informs him that they believe the apparent low-bidder miscalculated their prices when developing their bid. John alerts the Procurement Department of this alleged miscalculation. Upon Procurement's review of the bids, it turns out that the apparent low-bidder did, in fact, miscalculate their bid and their bid is thrown out, thus making Safety R Us the low-bidder and they are ultimately awarded the contract. During the term of the contract, Safety R Us completes the work on time and exceeds the City's expectations. As a thank you for his continued help throughout the project and helping them secure the bid, Safety R Us gives a Safety R Us North Face Fleece Jacket to John, which they present to John at their annual holiday party.

Recommendations

{ **Some Tips to Prevent Bad Behavior**

Recommendations

- Overlap responsibilities
- Checks and balances
- Know your contract
- Ask for originals and verify documents
- More than one person involved in selection decisions
- Disclose conflicts of interest
- Document everything

As a Smart Person Once Said...

“The only thing necessary for the triumph of evil is for good men to do nothing.”

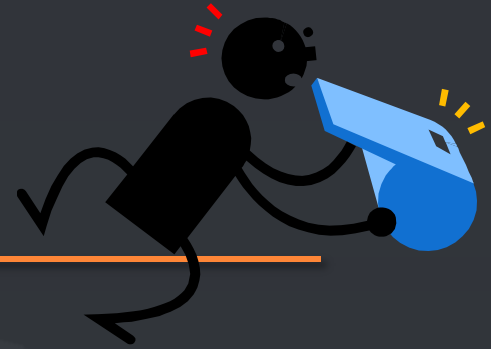
That smart person was Edmund Burke.

Or in Our Case...

“The only thing necessary for the triumph of contract fraud is for good people to do nothing.”

SO SAY SOMETHING!

PA Whistleblower Law: What You Should Know



- **Protects:**
 - City employees reporting wrongdoing/waste or participate in an investigation, court action, etc.
- **Prohibits:**
 - Employer retaliation against whistleblower
- **Good-faith Effort:**
 - By whistleblower to report wrongdoing/waste to appropriate authority (ex: Inspector General)

Closing Points

- Issues rarely black and white
- Use the 6 o'clock news test
- Not knowing rules not an excuse – it's your responsibility to get trained and ask questions
- Multiple avenues to report wrong-doing

WHEN IN DOUBT, ASK FOR ADVICE



Employees & Officials

Resources

IntegrityWorks for Everyone

» Employees & Officials

Boards & Commissions

Vendors

Frequently Asked Questions

Have a Question? ▶

Information for:

For Elected Officials: Campaign Finance »

For Employees during the Holiday Season »

As a City employee, you are in the public service business.

"Public service" means just that – your job is to serve the public. Regardless of your job or office here – manual labor or a skilled trade, public health or public safety, clerical or professional – you work for the well-being of the City and the people who live, work and visit here. Your pay is funded by taxes and fees collected from the City's citizens, businesses, and visitors.

The public (which includes you, too, in your nonwork hours) is entitled to have you perform your job with honesty and fairness. You give no person extra favors, and give no person any less service, because of a relationship you might have or because of someone's political views.

You're also the public face of City government. When you perform ethically and honestly, the public sees that City government operates ethically and honestly, and only in the public's best interest.

To ensure this evenhandedness, State and City rules, including those described in Rules of the Road, govern your conduct. Generally, the rules cover the following situations:

- Gifts, gratuities, and honoraria
- Invitations
- Financial conflicts of interest
- Outside civic or charitable activities
- Outside employment
- Political activity
- Financial disclosure

You must know and follow the rules. If you haven't yet received ethics training from the independent Ethics Board, contact them at 215-686-9450 or your supervisor. You may also visit the Frequently Asked Questions section to learn more about how these rules apply to you as a City employee or official.

You can also apply the "six o'clock news" test: would you want the news media to report your actions or inaction? If the answer is no, or even "I'm not sure," then you should refrain from that course of action.

Bids Gone Bad Workshop Presentation ▶

Bids Gone Bad Handout_Vendor Communication Tips ▶

Bids Gone Bad Handout_Rules of the Road ▶

Bids Gone Bad Handout_PA Whistleblower Law Information ▶

Bids Gone Bad Handout_Contact Information ▶

Bids Gone Bad Handout_Conflict of Interest/Confidentiality Statement ▶

Workshop materials available online.



Open Discussion

{ Questions?