

North Jersey NIGP Chapter #7 Chartered October 26, 1977

Minutes Regular Meeting

December 12, 2012

Place: The Imperia Conference Center Somerset NJ

President: James J. Jorgensen

Treasurer: Jane Foti

Vice President: Cindy Belanger

Secretary: Paula S. Ferreira

President Jim Jorgensen called the meeting to order. John Davenport led the Pledge of Allegiance. There was a moment of silence for armed forces and victims of Hurricane Sandy. Everyone at each table introduced him or herself. Jane Foti read the treasures report. Motion obtained to approve and adopt both minutes from last meeting and treasurers report.

Gerry Popkins QPA for Monmouth County brought the anniversary award presented to the Northern NJ NIGP chapter for 35 years of participation in the National Association. Gerry attended the national conference in Seattle Washington this past summer representing the Northern NJ chapter President. The award dated August 20, 2012.

Anne Marie Spagnola from the State of NJ Department of the Treasury Division of Purchase & Property spoke about the National cooperatives –The division will be issuing a survey on what the state could do for the locals. Questions can be emailed using the co-op link on the state website. She provided business cards. Joe Valenti mentioned about the negotiation part that is stated but it is not valid for locals. Anne Marie explained that GSA vendors could give a ceiling price that cannot be exceeded. At the federal level, terms and conditions allow negotiations. They can have price increases when they want, the vendors post what they want on the website and the federal government does not control it; Anne Marie has requested that the negotiation be removed for piggy backing. The method of operations needs correction for use by locals. State and local contracting units are not necessarily allowed to do the same things. Contact Ann Marie for further information.

Kathi Cupano from Rutgers discussed the 2013 educational forum. Registration is up 10 percent over last year, this is good news. They are trying to increase the number continuing education opportunities of QPA, RPPO and recertification's.

One hundred and twenty (120) took the exam, 55 passed test and of those 44 took the QPA review course. The 44th annual Rutgers public purchasing educational forum will be coming up on May 1 and 2nd. They are looking for volunteers to help with the event such as vendor leads, registration, setting up the classrooms, scanning and other help that will reduce the cost of the forum. They are looking for organizations utilizing P-cards to be on the panel. A keynote speaker relating to government is also needed.

Joe Valenti, LLC - receives a number of emails back and forth with pay to play because it is confusing to understand. The law allows for non-fair and open and fair and open. They also use the term alternate process when referring to non-fair and open, which by the way is not addressed in the law only the fair and open is defined. Joes reviewed pay to play not focusing on the contribution aspect.

It started in 2004 went underground until 2006 about seven or eight LFNs came out about it, then it went quiet, then the state comptroller got involved. The bid threshold can go up to 36k but you really cannot because the pay to play threshold is 17,500 which in 2004 was the bid threshold.

Joe is keeping it basic for today. Whatever you have been bidding or doing competitive contracting keep on doing it. Pay to play has nothing to do with what is fair and open. They were after professional services but they just did not want that so they said include anything that does not require the receipt of bids (40A:11-5) which is 44 items. Statuary quotes do not count. Joe predicts that competitive contracting will be used for all professional services within the next two or three years.

From a contribution point of view, not procurement point of view, non-fair is fairer than fair and open and pay to play was targeted at contributions. The current players in pay to play are Treasury, DCA through DLGS and Elect, they all share part. Chapter 19 is a disqualification law, you cannot make a reportable contribution of \$300 or more (BEC) Business Entity Contribution certification. This Elect law based the \$300 on a statute. This was signed into law in 2004 but was not in effect until 2006. However, in 2006 chapter 271 came into play, 271 is a disclosure law (PCD form) disclosure of all contributions made. Everyone should be collecting chapter 33, which is the 10% ownership. Pay to play is based on ownership of 10%. There is also a determination of value form this decides if it is worth more than 17,500, in other words what is this going to cost us. Pay to play submissions from a procurement point of view should include the BEC, PCD, and determination of value and the 10% disclosure of ownership.

Bid thresholds are reset in years ending in 0 and 5 – in 2005- 21,500 up to 36k.

Chapter 19 has something called a disqualifying contribution “oops I made a mistake” I shouldn’t of given the money to the candidate and by mistake went over 300 dollars. There was an actual case in Monmouth County with a construction company that does a lot of paving work. They made a \$250 contribution and someone else in the company made a \$250 contribution, now they went over \$300. This was a State job, now he wants his money back because it was a mistake. He did not get his money back. DOT says he cannot have the contract because he did not get his money back; he tried to show he was trying but it was no good because he never got his money back. Court case says it doesn’t care, he didn’t get

money back. This is on the state level they can't make a contribution on any job. Locals make a mistake they have 30 days-- state is 60 days- municipal clerk is responsible for this tracking the money. Chapter 271 broader contract disclosure, annual discloser for contractor 50k. This is an aggregation. Local governments can adopt their own pay to play. There are like 125 local governments that adopt their own ordinances but they have to be consistent with chapter 19 and 271. The ordinance can say no contributions are allowed. Joe's opinion is that on the local level the municipal clerk is responsible for identifying whether contributions were made.

Highlighted points from Joe --chapter 19A:20.4 (county) 19A:20.5 (municipally) shall not have a contract with a value over 17,500 determined in advance and certified in writing. Pay to play is an aggregation by vendor. In order to do fair and open there has to be an ad in the newspaper or your website, need to come up with criteria so they know how they are evaluated, receive these proposals and evaluate them based on the criteria and to make award. The governing body makes award. Fair and open can be formal contracts by formal bids, competitive contracting, or the four-step process. Quotes and four step process can be used. EUS and statutory quotes cannot be used as fair and open. In Non-fair and open the vendor fills out the forms and you pick who you want similar to the way, it was done prior to 2004.

Chapter 19 worries about exigency (emergency) and/or sole source. State treasury has to approve your exigency. The people involved declare emergencies. Chapter 271 does not worry about exigencies they are worried about contributions. Chapter 271 has the words "bid" and "negotiations" that need to be amended. However, to clarify what that meant the governor requested a statement of understanding be written. Joe Valenti and Marc Pfeiffer wrote the statement of understanding and no one made any changes. PCD's (political contribution disclosure) have to apply to everything except if you're doing a true fair and open. Over bid threshold you should do a formal bid, or competitive contract or state contract etc. There is a window of 17,500 (pay to play) through 36,000 (current bid threshold) -- in fair and open you cannot make award in the window contract only governing body can. The QPA can make award of non-fair and open in the window but it is not a good idea because they are usually sensitive contracts.

What about rock salt if it is over the bid threshold it can be bid or use state contract. But what if it's 28K (in the window), you can still bid. You cannot use a statutory quote- because it has the clause "whenever practicable" this is a way out and does not require advertising. You can use a formal quote with the four step fair and open process; you cannot use non fair and open. Non fair and open can only apply to 44 items listed in (40A:11-5).

You can issue request for qualifications for a pool of vendors (such as Professional Engineers). However, for a specific job, a proposal or a formal quote using fair and open process is needed. If all is equal on the proposals then probably the lowest proposal should get it. The law doesn't

go into qualifications it just says establish a pool. There is a bill out there that says all professional services must be bid, then it was amended to say “competitive contract process”.

Joe reviewed the tree chart handed out at the meeting.

Fair and open you have to draft an RFP or RFQ (request for qualifications), publicize in the paper or on the website 10 days prior to opening, publically open and announce the result, review proposals and recommend award (by governing body).

P-card new regulations will come out Jan 18th 2013. They need a program manager that has to be a QPA – the QPA has to sign off that these people are using the card properly and QPA will determine who has it.

Copy of review course on the www.cgs.rutgers.edu programs/public purchasing.

**** important to include in spec language about 20 million range to Iran. Amendment to **40A:11.2.1** talks about Iran. This should be part of the boilerplate. (NJ S1304 | 2012-2013).

40A:11-4.6 amended - energy service company can pick their subs. (Chapter 55) you can require that the subs be listed but they get who they want anyway.

Soil contamination bill **40A:11-23.1** bill 1289 2nd reprint – you have to come up with the documents that tell the vendor there is a problem

Meeting was adjourned at 12:00 p.m.

Minutes prepared by Cindy Belanger (Vice President) – Temporarily standing in for Paula S. Ferreira (Secretary)