

Northern New Jersey NIGP
Minutes of the Regular Meeting – March 13, 2014
The Imperia Conference Center, Somerset New Jersey

The meeting was called to order at 10:04 AM by President James J. Jorgensen. After the flag salute, followed by a moment of silence, the President welcomed all new guests and introductions were made by the attendees.

By motion, the Treasurers Report was approved. At this time, Jim explained to the attendees the circumstances of an email that was sent out by Paula Ferreira, concerning her tenure as Secretary. Jim apologized for not contacting Paula first to explain his actions. The nomination of Mary Richers to serve as Secretary was made and approved. There were no minutes from the previous meeting to approve.

Jim announced the speakers for the meeting:

- **Joe Valenti (Retired DCA)**
- **Kathy Cupano (Rutgers University)**

Jim introduced Joe Valenti as retired, but now incorporated, and thanked him for all his work on the association's behalf. Jim will be sending out an email at a later date to discuss this further.

Joe Valenti (Retired DCA)

Joe began by stating that in July he will be out of DLGS for 5 years and that it is hard currently to obtain correct information. He mentioned a recent article about the downsizing of government, where more reliance is now placed on outsourcing and third parties and that the people that are hiring these third parties do not realize that they are not doing the job.

He then discussed in depth, the "bombshell" that recently hit concerning charging for specifications as a result of the recent court decision in the *Bozzi vs. Atlantic City* case. A synopsis had previously been sent out as an email attachment to all the members by Jim who later stated he would also put it on the NIGP website.

The plaintiff, Bozzi, claimed that had verbally requested and been charged a flat fee of \$25 for a bid specification, which he stated was excessive as OPRA limits the costs of public documents to 5 cents per page for letter size and 7 cents per page for legal size. Basically Bozzi was overcharged by \$3. The court found there was no provision in LPCL regarding fees to be charged for bid specifications and that they do fall within OPRA's definition of government records.

The actual citation out of OPRA law is N.J.S.A. 47:1A-5.B.

Joe then stated that there was a lot of back and forth in the counties regarding this decision. He relayed the opinion of Monmouth County's attorney that Monmouth

County will need to revisit the fact that the County Engineer's section charges a fixed amount for their specifications and Joe then enumerated the questions that was raised by

Geri Popkin, Purchasing Agent for Monmouth County, regarding this issue to her counterparts such as:

- Do you charge for specs, 1/3 of the counties do and the cost is not based on OPRA.
- What happens when you receive 10 sets of specs from your consulting engineer as part of their contract and then more are needed? Will need to work out something with them, practically speaking, concerning the cost and the fact that they may consider it intellectual property and that the cost to the bidder must be in compliance with OPRA.

Joe relayed the opinion of Mark Pfeifer regarding putting the specifications on your website and issuing them electronically as an option.

Joe then discussed then Iran boilerplate, which amended the LPCL (40A:11-2.1) in 2012. This topic will be discussed at the Rutgers forum in May. If at the time of receipt of a bid or proposal a person or entity is on the list promulgated by the Department of Treasury for engaging in investment activities in Iran, as a provider of goods or services of \$20 million or more to provide oil, or money for pipelines or credit for development of the energy sector, they can't engage in business with the state and also at the local level.

If the Disclosure Form is not completely filled out they have to be considered a non-responsive bidder. You have to rely on the list of entities that the state issued on Jan 28, 2013, which is supposed to be updated every 180 days and has not been.

You should include this list and the disclosure form that was issued April 2013 in your bid specifications. In lieu of this disclosure form you could also have used the Stockholder Disclosure Form (Chapter 33) to check against the list.

Five states have adopted this law so far.

The differences between a bid cancellation and a bid postponement were then discussed. Cancellation of a bid will require that it must be re-advertised for 10 full days. You must notify bidders who have picked up the specs or that had already submitted bids.

You should also post a notice where the bids would normally be opened. Postponement for unforeseen circumstances requires the bids to be opened within 5 days of the originally scheduled date. Never on Monday does not apply in this circumstance. Also postponements don't have to be just because of weather.

Joe then reviewed recent/pending legislation.

- A minor point of the LPCL was just amended to allow state colleges to enter into joint purchasing agreements with local entities for services (i.e. snow plowing).

He pointed out that the term joint purchasing agreement is not being used correctly.

- Being reintroduced is the bill that would require school districts that contract for food or custodial services located within a county that has a QPA with a county-wide purchasing system to purchase these services through the County wide purchasing system.
- Senate Bill 187 would require bidders to provide proof that prevailing wage will be paid. Consensus was this was not needed and would be onerous as prevailing wages can be made up with fringe benefits.
- Senate Bill 1048 would prohibit requiring Financial Statements in bids. If you get a bid guarantee, why would you need it and do you know what you are looking at anyway.
- Senate Bill 933 would establish best practices for procuring and paying for Legal Services (based on report of OSC).
- Assembly Bill 277 will require insurance to be a Competitive Contract.
- Assembly Bill 947 concerns access to the Bid List.
- Assembly Bill 2027 requires certain public bids to contain certified cost estimate ranges and the bid guaranty will be \$50% with a NTE of \$100,000.

In total there were 37 bills that would affect NJ LPCL with 13 affecting procurement.

Joe then stated that the yearly update of the Municipal Bid Specifications for garbage collection by outside contractors is available (NJAC7:26H). You can call 609-292-9880 or look on the website, nj.gov/dep/oshw/munibidguide.pdf.

He concluded his presentation with a mention of the AshBritt contract, awarded by the state as a result of Superstorm Sandy and an article concerning this that was in the Asbury Park Press.

The state was cleared in their handling of the contract, but municipalities who went beyond the 60 day period could be audited by FEMA.

Joe concluded with the results of a 3 year study of the state, by Rutgers University, that cited inadequate oversight of third party contracts. With the downsizing of state and local government, third party contracts are increasingly relied on.

Kathi Cupano from Rutgers University

Kathi Cupano then addressed the meeting. She explained that there are 75 people signed up so far for the forum in May. She needs volunteers, particularly for scanning (some technical skills required) and coordinators for scheduling.

The RPPO and RPPS certifications will still be accepted as long as there is an interest. She will try to sync it up with expiration dates of the QPA.

There was no old or new business and the meeting adjourned at 12:10 PM for lunch.