



New York State Comptroller
THOMAS P. DINAPOLI



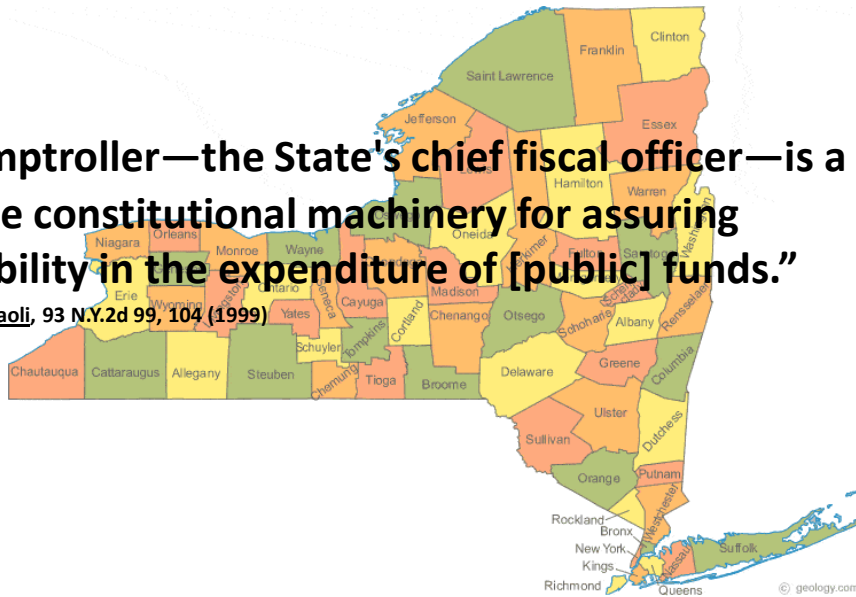
Safeguarding Public Money

Kellie Leinung, Counsel for Investigations
Office of the New York State Comptroller - Division of Investigation
kleinung@osc.ny.gov | 518.474.0588

1

“The Comptroller—the State’s chief fiscal officer—is a vital part of the constitutional machinery for assuring accountability in the expenditure of [public] funds.”

McCall v. Barrios-Paoli, 93 N.Y.2d 99, 104 (1999)



New York State Comptroller
THOMAS P. DINAPOLI

2

2

State Comptroller's Office

- New York State Constitution, Article 5
- Independently elected official
- Broad jurisdiction over public funds
 - Every penny of public funds spent



New York State Comptroller
THOMAS P. DiNAPOLI

3

3

State Comptroller's Office

- **Audit all payments by the State (NY Const. Article 5)**
 - From 1/1/2023- 11/30/2023
 - Approved 27.2 million payments worth \$170.4 billion dollars
 - Rejected 37,500 payments valued at \$212 million dollars
- **Required to approve most State contracts (SFL 112 etc.)**
 - From 1/1/2023- 11/30/2023
 - Approved 21,683 contracts valued at \$65.2 billion dollars
 - Rejected 1,901 contracts valued at \$7.5 billion



New York State Comptroller
THOMAS P. DiNAPOLI

4

4

Division of Investigations

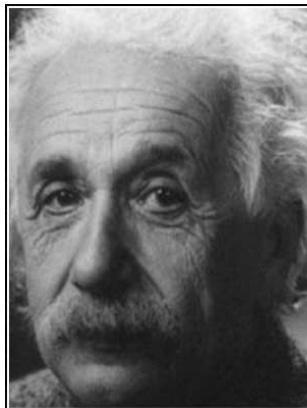
- Attorneys, Investigators and Forensic Auditors
- Investigates public corruption and misuse of public funds
 - Receives and reviews over 5,000 complaints a year
- Results
 - Over 330 Arrests
 - Over \$98 million dollars recovered since 2010



New York State Comptroller
THOMAS P. DINAPOLI

5

5



You have to learn the rules of the
game. And then you have to play
better than anyone else.

— Albert Einstein —

AZ QUOTES



New York State Comptroller
THOMAS P. DINAPOLI

6

6

Procurement Fraud Investigations

2 Aspects



- Contract side
 - How was the contract is awarded?
- Payment side
 - What payments were made under the contract?



New York State Comptroller
THOMAS P. DINAPOLI

7

7

First What Law Applies?



Local Governments & School Districts

- GML§ 103 -Competitive bidding
- GML §104-b-Procurement policies and procedures

State Agencies

- SFL§ 112- Awarding contracts
- SFL§ 163- Competitive bidding

Public Authorities

- §2879- Public Authorities Law
- §2879-a- OSC approval

State Grants

- Article 11-b SFL § 12- OSC review
- OSC's review process – Procurement process is fair and impartial

Must also examine the contract terms and relevant policies and procedures of relevant entities



New York State Comptroller
THOMAS P. DINAPOLI

8

8

State Agencies



State Finance Law § 163

- Provides for a competitive process that results in an award to a responsive and responsible bidder
- **Responsive** = meets the minimum specifications or requirements described in a solicitation for commodities or services by a state agency
- **Responsible** = adequate financial ability, legal capacity, integrity, and past performance



New York State Comptroller
THOMAS P. DiNAPOLI

9

9

Procurement of Goods, Services, and Technology: Method of Award

- **Commodities:** awards on the basis of *lowest price* using an invitation for bids (IFB)
- **Services:** awards on the basis of "*Best Value*" to the State (combo of cost and other technical factors) using a request for proposals (RFP)



New York State Comptroller
THOMAS P. DiNAPOLI

10

10

Exceptions to State Competitive Bidding

SOMETIMES non-competitive awards are permitted:

- **Sole Source:** only one vendor is capable of supplying the required commodities or services
- **Single Source:** the state agency awards a contract to one vendor over another without a competitive process

DOLLAR THRESHOLD

- Generally, under \$50,000



New York State Comptroller
THOMAS P. DINAPOLI

11

11

State Grants

General Rules



- There are no statutory competitive bidding requirements
- However, OSC generally requires a formal competitive process for grants
 - Contracts awarded through a fair and impartial competitive procurement process
 - Except where the agency can document a sole source, single source or emergency justification for a non-competitive award (consistent with SFL §163)



New York State Comptroller
THOMAS P. DINAPOLI

12

12

Vendor Responsibility

State Finance Law § 163(9)(f)

- State agency must initially decide whether a proposed contractor is “responsible”
- **Factors for responsibility include:**
 - Financial and organizational capacity
 - Legal authority
 - Integrity
 - Previous contract performance
- **OSC reviews the agency’s determination**
 - OSC may also make an independent responsibility determination
 - Before a non-responsibility finding, a bidder must be given due



New York State Comptroller
THOMAS P. DINAPOLI

Vendor Responsibility Questionnaire

II. AFFILIATE and JOINT VENTURE RELATIONSHIPS		
2.1 Does the Business Entry have any construction-related affiliates not identified in the response to question 2.0 above? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, identify below and if there is more than one, attach additional pages with the required information.		
Affiliate Name	Affiliate EIN (if available)	Affiliate's Primary Business Activity
Affiliate Address		
Explain relationship with the affiliate and indicate percent of ownership, if applicable (enter N/A, if not applicable):		
Are there any shareholders, directors, officers, owners, partners or proprietors that the submitting Business Entry has in common with the disclosed affiliate(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Individual's Name (include middle initial)	Position/Title with Firm Company	
2.2 Has the Business Entry participated in any construction-related Joint Ventures within the past three (3) years? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, identify below and if there is more than one, attach additional pages with the required information.		
Joint Venture Name	Joint Venture EIN (if available)	Identify parties to the Joint Venture

The undersigned certifies that he/she:

- are knowledgeable about the submitting Business Entry's business and operations;
- have legal authority to bind the Business Entry;
- have read and understand all of the questions contained in the questionnaire, including all definitions;
- have not altered the content of the questionnaire in any manner;
- have reviewed and/or supplied full and complete responses to each question;
- have provided true, accurate and complete responses, including all attachments, if applicable;
- understand that New York State government entities will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entry; and
- are under an obligation to update the information provided herein to include any material changes to the Business Entry's responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State government entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

Date _____



New York State Comptroller
THOMAS P. DINAPOLI

Public Authorities

Public Authorities Law § 2879

- Requires public authorities to adopt their own procurement guidelines governing the purchase of goods and services
- Authorities do not follow SFL § 163 and guidelines
- Need to research or go to the individual authority for their guidelines



New York State Comptroller
THOMAS P. DiNAPOLI

15

15

General Municipal Law

Local Governments and School Districts



General purpose of bidding:

- Guarding against favoritism, improvidence, fraud and corruption; foster honest competition in order to obtain the best goods and services at the lowest possible price, and to ensure the prudent and economical use of public monies for the benefit of the taxpayers

General rule:

- Unless an exception applies, the General Municipal Law (GML) requires that all **political subdivisions** award **purchase contracts** in excess of \$20,000 and all **contracts for public work** in excess of \$35,000 to the lowest responsible bidder



New York State Comptroller
THOMAS P. DiNAPOLI

16

16

Exceptions to Competitive Bidding

Exceptions to bidding include, but not limited to:

(1) emergency; (2) surplus/secondhand equipment; (3) leases/licenses; (4) sole source; (5) preferred source; (6) professional services; (7) “piggybacking” on certain county, state, federal or other governmental contracts

Procurement policies and procedures (GML § 104-b):

Governing boards of political subdivisions must adopt written internal policies and procedures governing the procurement of all goods and services which are **not** required to be made pursuant to competitive bidding requirements (i.e., policies apply to procurements below statutory dollar threshold, or when an exception to competitive bidding applies)



New York State Comptroller
THOMAS P. DINAPOLI

17

17

Common Procurement Fraud Criminal Charges

- Larceny – New York PL Article 155
- Corrupting the Government- New York PL Article 496
 - Public Corruption- New York PL §496.06 (sentencing enhancement)
- Forgery and Related Offenses – New York PL Article 170
- Offenses Involving False Written Statements- New York PL Article 175



New York State Comptroller
THOMAS P. DINAPOLI

18

18

Case Examples

People v. David Decker- Lake George Watershed Coalition



Orange County IDA Investigation



New York State Comptroller
THOMAS P. DINAPOLI

19

19

Background

Lake George Watershed Coalition

- A consortium of municipalities and organizations surrounding Lake George including Warren County, the towns of Queensbury and Bolton and the Village of Lake George and was created in 2001 to preserve the beauty and health of Lake George by coordinating state and Federal grant funds



David Decker

- Well-known Project Manager
- Worked for the Coalition from 2001 until his arrest in 2018
- His responsibilities as a Project Manager included overseeing the beautification projects, hiring the subcontractors for the projects, paying the subcontractors, submitting vouchers to NYS and the Federal Government
- As Project Manager: received **over \$814,000** (Sept. 2008- Aug. 2016)



New York State Comptroller
THOMAS P. DINAPOLI

20

20

Launching the Investigation

- **Allegations:**
 - David Decker not paying contractors
 - Misappropriation of grant funds
- **Funding Sources**
 - Several state grants across different municipalities
 - Reimbursement Contracts with NYS
 - Federal funding



Joint investigation with the Warren County District Attorney's Office,
Warren County Sheriff's Department and New York State Tax and Finance



New York State Comptroller
THOMAS P. DINAPOLI

21

21

Investigation

- **Reviewed the grant contracts and awarding process**
 - Reimbursement Grant
 - Project Manager submitted monthly invoices to the municipalities that were in turn submitted to NYS DOS for reimbursement through the voucher process
- **Reviewed monthly vouchers submitted to the state**
 - Independently gathered records from subcontractors
- **Forensic analysis of bank records and invoices**
- **Interviews of vendors**
- **Interviews of grantees**



New York State Comptroller
THOMAS P. DINAPOLI

22

22

The Forensic Analysis

- **Discrepancies**
 - No corresponding payments to vendors
 - Vendors' records vs. bank records

- **Money being laundered through personal and business bank accounts**



New York State Comptroller
THOMAS P. DINAPOLI

Double Dipping of State & Federal Grant



Date	Description	Amount	Date	Description	Amount
10/7/2010	David Decker submits to the Lake Champlain / George Watershed Coalition:		12/30/2009	David Decker submits to Town of Queensbury:	
	Chazen Invoice # 71072	3,019.60		David Decker P.E. & Associates Invoice 6868-2009-4	10,001.35
	Chazen Invoice # 71248	1,190.14		Chazen Invoice # 71072	3,019.60
	Chazen Invoice # 71704	1,075.96		Chazen Invoice # 71071	3,592.87
		<u>5,285.70</u>			<u>16,613.82</u>
			2/16/2010	David Decker submits to Town of Queensbury:	
				David Decker P.E. & Associates Invoice 6868-2010-1	9,909.24
				Chazen Invoice # 71252	1,190.14
				Chazen Invoice # 71252	4,997.77
					<u>16,097.15</u>
			3/30/2010	David Decker submits to Town of Queensbury:	
				David Decker P.E. & Associates Invoice 6868-2010-3	9,639.89
				Chazen Invoice # 71704	1,075.96
				Chazen Invoice # 71811	1,016.50
				Empire Construction Management Services	5,000.00
					<u>16,730.35</u>

Total Federal Funds Deposited into Ballston Spa Acct 6619	\$ 135,000.00
Total invoiced & received for Empire State Materials & Supply Co. under Queensbury 6868 Grant	\$ 99,300.00
Total paid to Earth Specialty Products & Joita Galusha for top soil and trucking in 2012	\$ (90,800.00)
Total grant money received in excess of expenses paid	\$ 143,500.00
<hr/>	
Total Federal Funds Deposited into Ballston Acct 6619	\$ 135,000.00
Total invoiced & received for Empire State Materials & Supply Co. under Queensbury Grant 6868	\$ 99,300.00
Total paid to Earth Specialty Products & Joita Galusha for top soil and trucking in 2012	\$ (90,080.00)
Total grant money received in excess of expenses paid	\$ 144,220.00



New York State Comptroller
THOMAS P. DINAPOLI

Orange County IDA Investigation

THE ACCELERATOR



New York State Comptroller
THOMAS P. DiNAPOLI

27

27

Overview

- Orange County Legislature raised concerns about Orange County IDA.
 - Misappropriation of funds within the Accelerator Program
- Orange County District Attorney David Hoovler's Office contacted Comptroller DiNapoli's Division of Investigations, a long-standing partner in investigating public corruption
- The Comptroller's Office had a pending investigation of the Orange County IDA that it was conducting with the New Windsor Police Department
- The Comptroller, Orange County DA and New Windsor Police Department launched a joint investigation of the Orange County IDA

New York State
COMPTROLLER
**THOMAS P.
DiNAPOLI**



New York State Comptroller
THOMAS P. DiNAPOLI

28

28



Investigation

THE ACCELERATOR
POWERED BY THE ORANGE COUNTY IDA

- A forensic audit conducted of the IDA, the Accelerator Program and analysis reviewed thousands of pages records
- Interviews conducted of all Board Members and relevant IDA employees, officials, and private parties
- Drafted and released a comprehensive report detailing the criminal activity and governance deficiencies

<https://www.osc.state.ny.us/files/reports/pdf/joint-investigation-orange-co-ida.pdf>



New York State Comptroller
THOMAS P. DINAPOLI

29

29

Vincent Cozzolino

- Galileo Technology hired as Managing Director of the IDA from 2015 to March 2021
 - **Cozzolino sole owner**
- Contracts and payments to Galileo grew exponentially over the five-year period
 - **Cozzolino was paid over \$1 million dollars over the five-year period**
- Contract language was vague and had no duties or deliverables outlined
- Overlapping contracts



New York State Comptroller
THOMAS P. DINAPOLI

30

30

Managing Director of Orange County IDA Contract

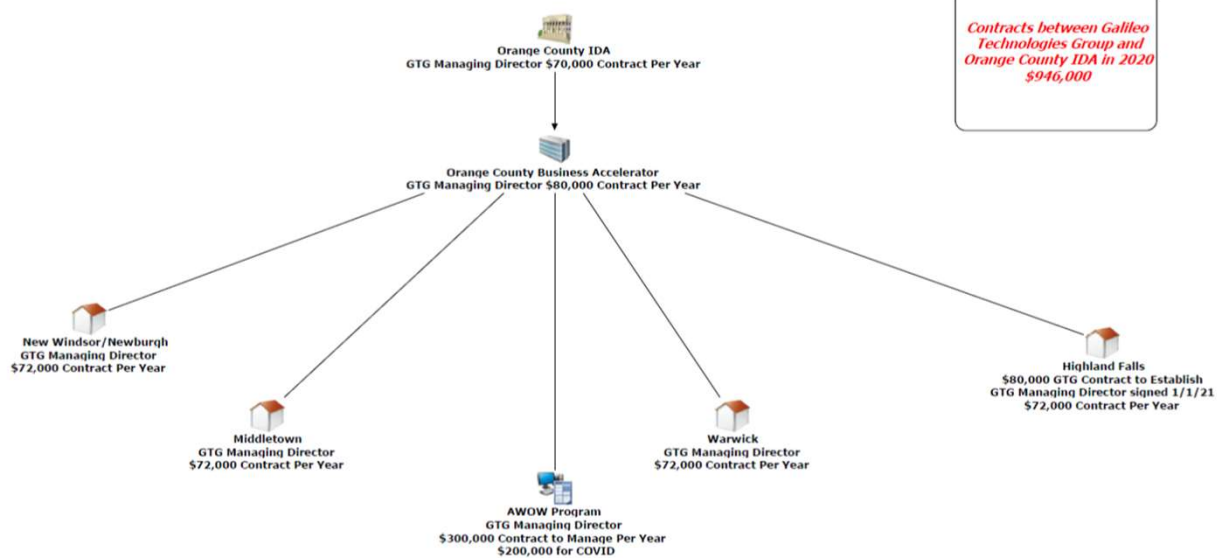
“WHEREAS, by resolution dated as of July 6, 2016, the IDA amended its By-Laws and established the position of Managing Director and appointed Galileo Technology Group, under the supervision of Vincent Cozzolino, to that position; and WHEREAS, the IDA has been very satisfied with the management skills and improvements made by GTG and wishes to have GTG continue to act as the Managing Director of the IDA, specifically through its partner, Vincent Cozzolino.”

Accelerator Management Director Contract

“WHEREAS, GTG has been the Managing Director of the OCBA [Accelerator Program] since July 1, 2015, and the IDA believes that GTG can continue to provide the necessary leadership, experience and direction to the OCBA [Accelerator Program] so that the **OCBA** [Accelerator Program] can fulfill its mission.”

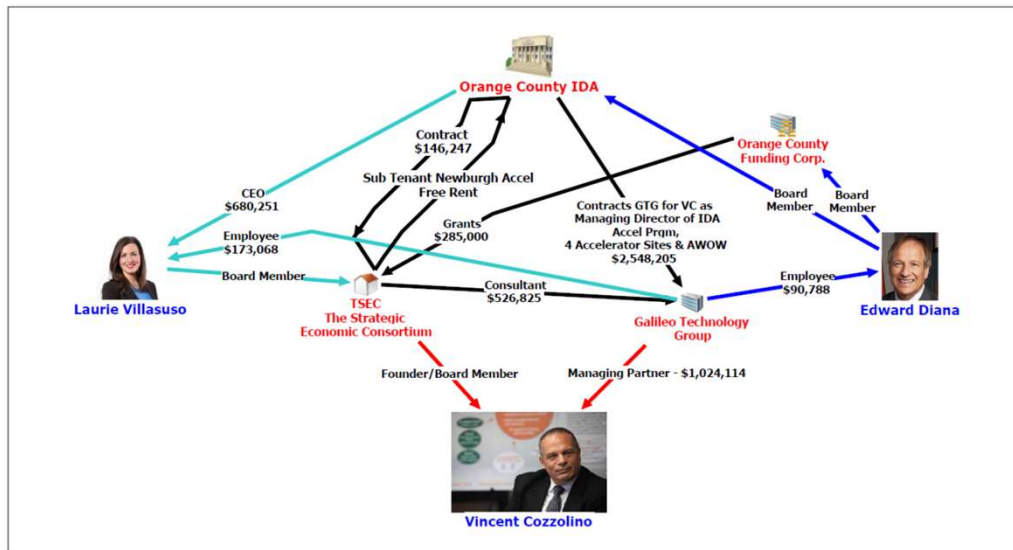


New York State Comptroller
THOMAS P. DINAPOLI



New York State Comptroller
THOMAS P. DINAPOLI

A Tangled Web of Conflicts



New York State Comptroller
THOMAS P. DINAPOLI

33

33

Conflicts of Interest

- Chair of Accelerator Committee, Diana, on GTG payroll
- IDA CEO, Laurie Villasuso, on GTG payroll, and board of TSEC
- GTG employment not reported by either Diana or Villasuso
- Both voted for or approved GTG contracts
- Two Board Members may have been informally aware of the conflicts and took no action
- Edward Diana “we were an absentee board”



New York State Comptroller
THOMAS P. DINAPOLI

34

34

Systemic Failures of the Board

- Lack of due diligence
- Failure to review contracts
- No clear duties leading to duplicate services
- Failure to view Invoices
- Vague/double billing



New York State Comptroller
THOMAS P. DINAPOLI

35

35

Results



- Vincent Cozzolino, former Managing Director -Corrupting the Government 3rd Degree, D felony, restitution \$1,000,000
- Laurie Villasuso, The IDA's former Chief Executive Officer- Corrupting the Government 4th Degree, E felony, restitution \$175,000
- Edward Diana, a former member of the IDA's Board of Directors, (former County Executive of Orange County), 2 counts of Offering a False Instrument for Filing, 2nd Degree and 1 count of Engaging Prohibited Conflict of Interest, both class A misdemeanors, restitution \$90,000



New York State Comptroller
THOMAS P. DINAPOLI

36

36

Reporting Fraud to State Comptroller DiNapoli's Division of Investigation

Division of Investigations

- Email: investigations@osc.ny.gov
- Online Complaint Form:
<https://www.osc.state.ny.us/investigations/complaint-form>
- Mail: Division of Investigations
110 State St
Albany NY, 12236



New York State Comptroller
THOMAS P. DINAPOLI

37

37



Offices of the
Inspector General

Investigating Procurement Fraud: Where the Trail Never Ends!

Presented By:

Katie Q. McCutcheon
Deputy Chief Counsel / Director of Training

Association of Inspectors General
June 26, 2024

For educational purposes only.



38

Offices of the New York State Inspector General



Office of the New York State Inspector General

Office of the New York State Welfare Inspector General

Office of the New York State Workers' Compensation
Fraud Inspector General



39



Jurisdiction

The New York State Inspector General has authority over all executive branch agencies, departments, divisions, officers, boards and commissions, and certain public authorities and public benefit corporations, the heads of which are appointed by the governor, and which do not have their own inspector general by statute.

NYS Executive Law Article 4-A



40

Which Agencies, Boards or Commissions?



And many more...



41



Be on the lookout for fraudulent schemes:
Trust, but verify!



42

Common Procurement Fraud Schemes



o Bid Rigging:

- This involves collusion among contractors to manipulate the bidding process, resulting in inflated prices and reduced competition.

o Kickbacks and Bribery:

- These involve the payment of illegal commissions, bribes, or other incentives to secure contracts or influence project decisions.

o Conflict of Interest:

- Arises when individuals or entities involved in the project have personal or financial interests that could influence their decision-making.

o Misuse of Funds:

- This involves diverting project funds for personal gain, unauthorized expenses, or overcharging for services.



Best Practices for Deterring Procurement Fraud

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

Ethical Violations During the Procurement Process

Public Officers Law § 73: Outside activities, nepotism, gifts, honoraria, travel, future and post-employment restrictions

Commission on Ethics and Lobbying in Government (COELIG) regulations: Honoraria, official activity expense payments, outside activities, gifts, public service announcements, investigations and enforcement proceedings



Public Officers Law § 74: The code of ethics

State Finance Law Article 11: Procurement activities

Civil Service Law § 107: Political activity



Offices of the
Inspector General

45

Ethical Violations During the Procurement Process

Lobbying Law Violations



State Finance Law §§ 139-j and 139-k: **The Restricted Period!**

Must have a "designated contact" during the procurement process.

Must record all contacts made during the procurement process.

Authorizes the NYS COELIG to impose fines and penalties against persons/organizations engaging in impermissible Contacts about a Governmental Procurement and provides for the debarment of repeat

Directs NYS OGS to publicly maintain a list of non-responsible bidders and debarred contractors.

Procurement Lobbying Law FAQs can be found at: <https://ogs.ny.gov/acpl/lobbyinglawfaq/viewall>



Offices of the
Inspector General

46

Procurement Fraud **Red** Flags

- Redirecting the use of grant/contract funds in a manner different than outlined in the agreement.
- Lack of or fake supporting documents.
- Vague description of services or goods delivered.
- False or misleading entries in books and records.
- False representations regarding project status, percentage completion.
- Manipulation of information
- Billing for expenses that have not been incurred/paid.



47

Common Procurement Fraud Schemes

o MWBE/Contract Fraud:

- This involves fraudulent activities related to the execution, management, and delivery of project contracts, including misrepresenting project progress, falsifying documentation, and overcharging for work performed.
- MWBE must serve a Commercially Useful Function (CUF). Certification is not enough!

o Employee Benefit Fraud:

- Contractors must maintain required workers' compensation coverage; unemployment insurance; prevailing wages; etc.

o Environmental and Social Risks:

- These involve environmental impact, social displacement, and human rights violations associated with infrastructure projects.

Effective monitoring and oversight of infrastructure projects can help identify and mitigate these risks and prevent fraud and corruption from occurring.

Procurement personnel and on-site staff can be critical in preventing and detecting potential fraud and corruption, ensuring that all stakeholders are held accountable.



48

Minority / Women Owned Business Enterprise Fraud

M/WBE Certification by Empire State Development NYS Executive Law Article 15-A

At least 51% owned and controlled by a minority member and/or woman.
The ownership interest is real, substantial, and continuing.
Exercises authority to independently control the day-to-day business decisions.
Minority / woman owner's personal net worth cannot exceed \$15 Million.

M/WBE 100 - Utilization Plan Form



Offices of the Inspector General

49

What is a Commercially Useful Function (CUF)?

The M/WBE. . .
is responsible for a distinct element of work
manages and supervises the work
performs work it normally performs
has its own W2 employees perform the work
and adds value.

CERTIFICATION IS NOT ENOUGH!

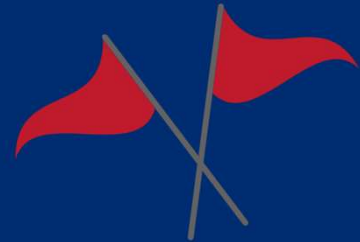


Offices of the Inspector General

50

M/WBE Fraud **Red** Flags

- “Pass-Through”: MWBE/SDVOB partakes in a government project in name only - serve no CUF.
- “Flip-flopping”: Employees of a non-MWBE/SDVOB entity are temporarily placed on the payroll of a MWBE/SDVOB. Cannot work for two companies at same time.
- Business names on equipment and vehicles covered with paint or magnetic signs.
- Orders and payment for supplies made by individuals not employed by MWBE/SDVOB.
- Contractor facilitated purchase of MWBE/SDVOB-owned business.
- MWBE/SDVOB owner/supervisor never present at job site.
- Joint bank accounts (Contractor/MWBE/SDVOB).
- Absence of written contracts.
- Lack of certified payroll.



51

From Suspicion To Conviction

Case Examples



52

Case Example - Eastern Building & Restoration Inc.

CAPITAL REGION CONSTRUCTION EXECUTIVE SENTENCED TO PRISON FOR FRAUD SCHEME INVOLVING MILLIONS OF DOLLARS IN PUBLIC CONTRACTS AS WELL AS SIX-FIGURE INSURANCE AND WAGE THEFT

Michael Martin Fraudulently Obtained Public Construction Contracts Worth Millions of Dollars Through Identity Theft of Minority-Business Enterprises; Separately Stole Over \$350,000 from a Minority-Owned Business and an Insurance Company and Failed to Pay Workers More Than \$400,000 in Prevailing Wages

Martin Facing \$800,000 in Judgments Favoring the Victims

Non-M/WBE company subsumed M/WBE companies by controlling their bank accounts, employees, contracts, and day-to-day operations.

Non-M/WBE company listed the M/WBE companies as sub-contractors on MWBE 100 - Utilization Plan Forms to meet the M/WBE goals for State contracts.

Non-M/WBE company also failed to pay prevailing wages and other employee benefits despite being required by law.



53

Case Example - Focused Technologies Imaging Services, Inc.

STATE CONTRACTOR TO PAY MORE THAN \$3 MILLION IN PENALTIES FOR ILLEGAL AND COVERT OUTSOURCING OF MILLIONS OF FINGERPRINT RECORDS TO INDIA FOR DATA ENTRY

Capital Region Tech Company Violated Strict Confidentiality Requirements in Handling of 22 Million Fingerprint Records Containing Social Security Numbers and Other Personal Information

Contractor abused New York State's Preferred Source Procurement Program which is meant, in part, to employ persons with disabilities through the New York State Industries for the Disabled (NYSID).

Contractor shipped approximately 16 million fingerprint cards to India for processing,

despite contract terms requiring strict confidential procedures.

Contractor required to repay more than \$3 million under the False Claims Act; retain independent monitor for 5 years; increased Preferred Source contract percentages.



54

Case Example - Contractor Fraud

**Democrat & Chronicle
Holley contractor sentenced for
defrauding state DOT on federally
funded contracts**

syracuse.com

Upstate NY contractor sentenced for defrauding state DOT

Contractor submitted fake invoices to NYSDOT in order to conceal that he was not buying the materials needed to perform bridge maintenance contracts in the Buffalo and Binghamton regions, for which his company was ultimately paid more than \$1 million.

Convicted after trial on all charges – eight counts of wire fraud and one count of mail fraud.

Sentenced to 18 months in prison, 2 years PRS, \$600,000 restitution.



55

Best Practices for Deterring Procurement Fraud

- o **Establish clear project objectives, milestones, and performance metrics:**
 - This helps to ensure that the project stays on track and can be evaluated accurately. These should be established at the project's outset and communicated to all stakeholders.
- o **Develop a risk management plan that identifies and prioritizes risks:**
 - A plan should be developed to identify and prioritize risks, including fraud and corruption risks, and outline strategies to mitigate them.
- o **Implement an effective project management system that includes regular monitoring and reporting:**
 - This should include regular monitoring and reporting on project progress, expenditures, and risks. This system should also include mechanisms for identifying and addressing issues and deviations from the project plan.
- o **Incorporate a no-collusive bidding clause within the bid packages and contracts:**
 - Including a no-collusive bidding clause within the bid packages and contracts can help prevent bid rigging and other forms of collusion. This clause should clearly define the prohibited behavior and the consequences for violating the clause.



56

Best Practices for Deterring Procurement Fraud

o Conduct regular audits and inspections:

- These measures can help ensure the project complies with established policies and procedures. These audits should include a review of financial records/transactions and an evaluation of project performance.

o Provide training for project staff and stakeholders:

- Training can help ensure that project staff and stakeholders have the knowledge and skills necessary to monitor and oversee the project effectively.

o Encourage transparency and stakeholder participation:

- This can help ensure that project decisions are made in the best interest of all stakeholders. This can be achieved through regular communication and engagement with stakeholders and by establishing mechanisms for soliciting feedback and addressing concerns.

By incorporating these best practices, you can help ensure effective project monitoring and oversight while also reducing the risk of fraud and corruption.



57



Katie Q. McCutcheon
Deputy Chief Counsel
Director of Training
Katie.McCutcheon@ig.ny.gov

Website
www.ig.ny.gov

Number
1-800-DO-RIGHT
(1-800-367-4448)

Email
Inspector.General@ig.ny.gov

Twitter/Instagram
@NewYorkStateIG

Integrity: The Foundation of Public Service
SLMS Class Code: NYSIG-INTEGRITY



58



59

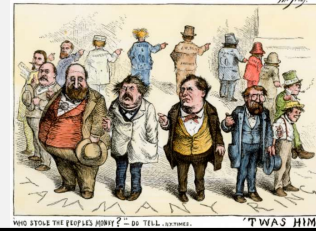
THE NEW YORK CITY
DEPARTMENT OF INVESTIGATION

- **DOI is New York City's Inspector General**

60

WHAT IS DOI?

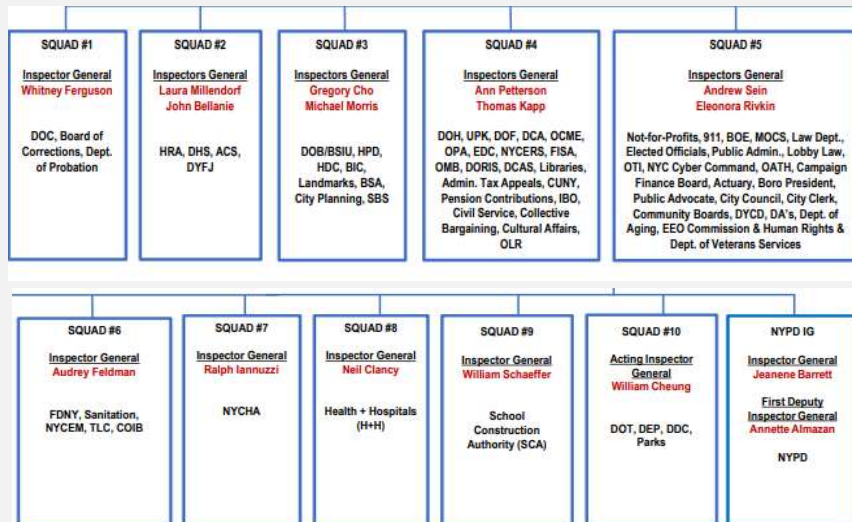
- DOI is one of the oldest law enforcement agencies in the country, established in 1873 in response to the widespread corruption where millions of dollars were skimmed from the City's coffers by William "Boss" Tweed and his cronies.
- DOI is made up of Inspectors General, attorneys, investigators, auditors, data and policy analysts, information technology specialists, and administrative personnel.



61

DOI'S ORGANIZATION

- Ten investigative squads (and OIG for the NYPD) report to the Chief of Investigations, who reports to the DOI Commissioner



62

DOI AUTHORITY

- Chapter 34, New York City Charter
 - Section 803 Powers and duties.
 - The commissioner is authorized and empowered to make any study or investigation which in their opinion may be in the best interests of the City, including but not limited to investigations of the affairs, functions, accounts, methods, personnel or efficiency of any agency.

63

DOI AUTHORITY

- Executive Order No. 16
 - Section I Responsibilities of Commissioner
 - The Commissioner of Investigation shall have general responsibility for the investigation and elimination of corrupt or other criminal activity, conflicts of interest, unethical conduct, misconduct and incompetence (i) by City agencies, (ii) by City officers and employees, and (iii) by persons regulated by, doing business with or receiving funds directly or indirectly from the City, with respect to their dealings with the City.

64

DOI'S JURISDICTION

- DOI's jurisdiction includes:
 - The City's workforce of over 300,000 employees, including elected officials
 - Licensees of the City of NY
 - Anyone doing business with the City, such as vendors contracting with the City, not-for-profits receiving City funds, construction companies building public projects.
 - Security contracts at certain non-public schools
 - Recipients of grant money or city funding such as not-for-profits
 - Anyone who gets a public assistance benefit through NYC, including but not limited to:
 - Section 8 or public housing subsidies
 - Other public assistance benefits such as those from the Supplemental Nutrition Assistance Program (SNAP)

65

Risk Management at the Procurement Stage

EVALUATING VENDOR RESPONSIBILITY BEFORE PROCUREMENT

66

Procurement by NYC

Parties Involved in the Contracting Process

- **City agency** making the purchase
 - Ex: NYC Department of Sanitation seeks to procure road salt to aid in snow removal.
 - Each agency has an Agency Chief Contracting Officer (ACCO) who is responsible for overseeing procurement for their agency.
- **Mayor's Office of Contract Services (MOCS):** the office responsible for managing the City's procurement functions, led by the City Chief Procurement Officer
- **Procurement Policy Board (PPB):** entity responsible for setting out the New York City Procurement Policy Board Rules
 - Rules govern the procurement process, how sources are selected, contract administration.
- **New York City Comptroller's Office**

67

Procurement by NYC

Methods of Selecting a Vendor

- PPB Rule 3-01(b) (9 RCNY 3-01(b)): "Except as otherwise provided in these Rules, contracts shall be awarded by competitive sealed bidding."
 - Competitive sealed bidding intended to award contracts to responsive and responsible vendors whose proposals represent the best value to the City by optimizing quality, cost, and efficiency.

68

Procurement by NYC

Methods of Selecting a Vendor

- Some exceptions to competitive sealed bidding.
- Agencies may use limited or non-competitive procurement methods in certain circumstances, including:
 - **Negotiated Acquisitions** (PPB Rule 3-04):
 - Time-sensitive situations;
 - Limited number of vendors available and able to perform the work;
 - Need to procure consulting or legal services in support of current or anticipated litigation, investigative, or confidential services;
 - Unforeseen or unforeseeable construction-related service needs, usually after work has begun.
 - **Micropurchases:** No competition required for procurements of goods and all non-construction services valued at \$20,000 or less and for procurements of construction valued at \$35,000 or less, no competition is required. PPB Rule 3-08.

69

Risk Management at the Procurement Stage

The Vendor Vetting Process

- PPB Rule 2-08(a)(2): "A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors."

70

The Vendor Vetting Process

“RESPONSIBILITY DETERMINATIONS”

PPB Rule 2-08(b)(1)-(2):

“A responsible contractor is one which has the capability in all respects to perform fully the contract requirements and the business integrity to justify the award of public tax dollars.” PPB Rule 2-08(b)(1).

“Factors affecting a contractor's responsibility may include”:

Financial resources (i);

Experience (iii);

Satisfactory record of performance (iv);

Satisfactory record of business integrity (vi).

71

The Vendor Vetting Process

“RESPONSIBILITY DETERMINATIONS”

- The City collects information that assists in making the responsibility determination. PPB Rule 2-08(d).
- Disclosures (discussed in next slide)
- IG check: Contracting agency contacts DOI to determine whether it has reportable information. PPB Rule 2-08(f)(1).
- Other public information (e.g., for nonprofits, IRS Forms 990).

72

Vendor Responsibility Determination

Disclosures/Other Sources of Information

- NYC's online procurement system (PASSPort) requires vendors to answer standard questions. Administrative Code of the City of NY § 6-116.2.
- Questions asked of entities include:
 - Corporate affiliations.
 - History of revocations, disqualifications, sanctions.
 - Tax payment history, existence of adverse audits, bankruptcies.
 - Investigative history.
- Questions asked of principals include:
 - Other entities that the principal has ownership interest in.
 - City government affiliations, if any.
- Case example discussed below.

73



THE RESPONSIBILITY DETERMINATION

- Agency Chief Contracting Officer evaluates information, including red flags, and makes final determination. PPB Rule 2-08(g)-(j).
- Appeal process. PPB Rule 2-08(k).

74

“Caution” Notices

“Caution” Notices in the City’s Procurement System

- Agencies can also seek to place a “caution” notice in PASSPort, the City’s procurement system, about a particular vendor.
- Puts agencies across the city on notice about potential vendor integrity concerns.
- These notices may be challenged by a prospective vendor through an Article 78 proceeding.
 - They can be challenged in state court as “arbitrary and unreasonable.”

75

Procuring Human Services In New York City

- Significant amount of procurement in NYC is for human services
- Outsourced government services
- Homeless shelters, senior centers, after-school programs, etc.
- Typically provided by nonprofit sector
- Typically reimbursement-based contracting model

76

Procuring Human Services In New York City

- Wide range of contracts, both in type and in size:
- Long-term commitments totaling hundreds of millions of dollars
- Discretionary awards from City Council Members that can be \$5,000

77

Vetting Human Service Providers

Possible Red Flags

- Many of these nonprofits serve as long-term partners of the city and are administering programs on behalf of the city.
- Given level of control over public money, vetting is particularly important.

78

Vetting Human Service Providers

Possible Red Flags

- Possible red flags (all of which are fact-specific and require case-by-case determination).
 - Conflicts of interest
 - Ex: Nonprofit's CEO owns a home improvement contracting company that is hired to perform repairs at the nonprofit's senior center.
 - Other related party transactions (See New York Not-for-Profit Corporation Law §§ 102(23)-(24), 715).
 - Ex: Nonprofit is leasing space for a homeless shelter from a wholly-owned subsidiary that owns the building.
- Independence of the board of directors:
 - Ex: Board member is close relative of executive director; board member has financial relationship with executive director.

79

Case Example

- Nonprofit provider of homeless shelter services.
 - Hired companies controlled by top executive's husband to perform pest control, construction, cleaning services.
- Relationships were not disclosed at the procurement stage, so the city did not know about them when it found the vendor responsible.
- Investigation highlighted deficiencies in the questionnaire discussed above.
 - Questionnaire does not ask about companies that spouse controls.
 - Questionnaire can be submitted by someone else (for example, CEO can submit CFO's questionnaire).

80

Disclosures May Contain Evidence Relevant to Subsequent Investigations

- Potential for misrepresentations to the government during the vetting process.
- What information was collected from the vendor during procurement stage?
- NYC's PASSPort disclosures: Similar disclosure forms available?
- Emails or other correspondence to agency staff?

81

Disclosures May Contain Evidence Relevant to Subsequent Investigations

- If disclosures do exist:
 - Who signs them? Chief executive vs. a designee.
 - Are the signatures submitted electronically? Potential for password-sharing?
 - Certified under penalty of perjury?
 - How are historical versions maintained?

82

Investigations of Corruption in the NYCHA Micro- Purchase Process

Office of the Inspector General
for NYCHA



83

Competitive vs. Non-Competitive Procurement

- Similar to State and City Rules, the procurement process differs depending on the type of good or service to be procured, the amount of money to be spent, and the agency's selection among available, permissible methods.
- Competitive Bidding Preference:
 - Promotes transparency, encourages quality, and reduces the risk of fraud.
 - But it is a slow process that cannot always be completed in time to meet an urgent need for goods or services.
- Non-competitive procurement is permitted to expedite purchasing, subject to certain rules.

84

PROCUREMENT

Micro-Purchases

- **Definition:** Purchasing of goods or services costing not more than \$10,000, with some exceptions allowing contracts greater than \$10,000. **2 C.F.R. § 200.1.**
- **Requirements:**
 - Quotes/bids not required. ***Id.* at § 200.320(a)(1)(ii).**
 - Contract price must be reasonable based on market prices, purchase history, experience, etc. ***Id.***
 - Contracts should be distributed equitably among qualified suppliers to the maximum extent practicable. ***Id.* at (a)(1)(i).**
- **Example:** If a NYCHA employee discovers a broken stairwell door and the development does not have a replacement, then the NYCHA employee may make a micro-purchase to procure the stairwell door from a vendor for a reasonable price, not more than \$10,000, without having to solicit multiple quotes or follow competitive bidding requirements.

85

PAST DOI INVESTIGATIONS

Past Micro-Purchase Investigations: Vendors

- In November 2018, a NYCHA Assistant Superintendent reported to DOI that a vendor offered him money for the micro-purchase jobs he received.
- DOI then conducted a joint investigation with the Kings County DA's Office.
 - In September 2021, the Kings County DA indicted nine vendors on bribery charges. Later, three more vendors were indicted.
 - In total, 12 vendors pled guilty.
- After this investigation, DOI issued five recommendations to NYCHA to improve the Authority's micro-purchase process.

86

PAST DOI
INVESTIGATIONS

September 2021 Micro-Purchase Recommendations

- Remove responsibility for small purchases from front-line Superintendents and Property Managers – **Rejected.**
- Lower threshold for DOI vendor integrity screening from \$250,000 to \$100,000 in aggregate contracts – **Rejected.**
- Enable oversight of small purchases by requiring uploading of invoices to NYCHA’s payment database – **Rejected.**
- Prevent overbilling for small purchases by adopting fixed prices for routine jobs – **Implemented.**
- Conduct cursory integrity screening of small purchase vendors – **Implemented.**

87

PAST DOI
INVESTIGATIONS

Past Micro-Purchase Investigations: Two NYCHA Superintendents

- In approximately 2019, after receiving numerous allegations of corruption in NYCHA’s micro-purchase process, the U.S. Attorney’s Office for the Southern District of New York (“SDNY”) and DOI initiated a joint investigation.
- In October 2019, a confidential informant (“CI”) alleged that, between approximately 2016 and August 2019, he witnessed or participated in bribing various NYCHA Superintendents for micro-purchase contracts.

88

PAST DOI INVESTIGATIONS

Past Micro-Purchase Investigations: Two NYCHA Superintendents

- SDNY and DOI investigators then conducted undercover operations.
 - During the operations, DOI discovered that, on ten separate occasions, two NYCHA Superintendents demanded money in exchange for awarding micro-purchase contracts.
- SDNY indicted the two NYCHA Superintendents on bribery charges, both of whom later pled guilty.

89

RECENT INVESTIGATION

70 Current and Former NYCHA Employees

- After the arrests of the two NYCHA Superintendents, DOI discovered that one of the Superintendents had been accepting bribes from many other vendors, not just the CI who cooperated in that investigation.
- DOI then:
 - Searched the vendors' phones;
 - Subpoenaed bank and phone records; and
 - Interviewed the vendors, some of whom were willing to cooperate in the investigation.
- In these interviews, the vendors made bribery allegations implicating dozens of NYCHA employees.
- In response to this information, DOI recognized that corruption in the micro-purchase process was a pervasive, systemic issue requiring a large-scale, comprehensive investigation.

90

RECENT
INVESTIGATION

70 Current and Former NYCHA Employees

- **Investigative Team:** DOI, U.S. Department of Housing and Urban Development OIG, U.S. Department of Labor OIG, U.S. Attorney's Office for SDNY, and U.S. Homeland Security Investigations
- During the investigation, the team:
 - Subpoenaed approximately 60 witnesses, some of whom ultimately cooperated as CIs;
 - Conducted approximately 140 interviews;
 - Performed multiple field operations;
 - Reviewed phone and bank records; and
 - Analyzed job patterns.

91

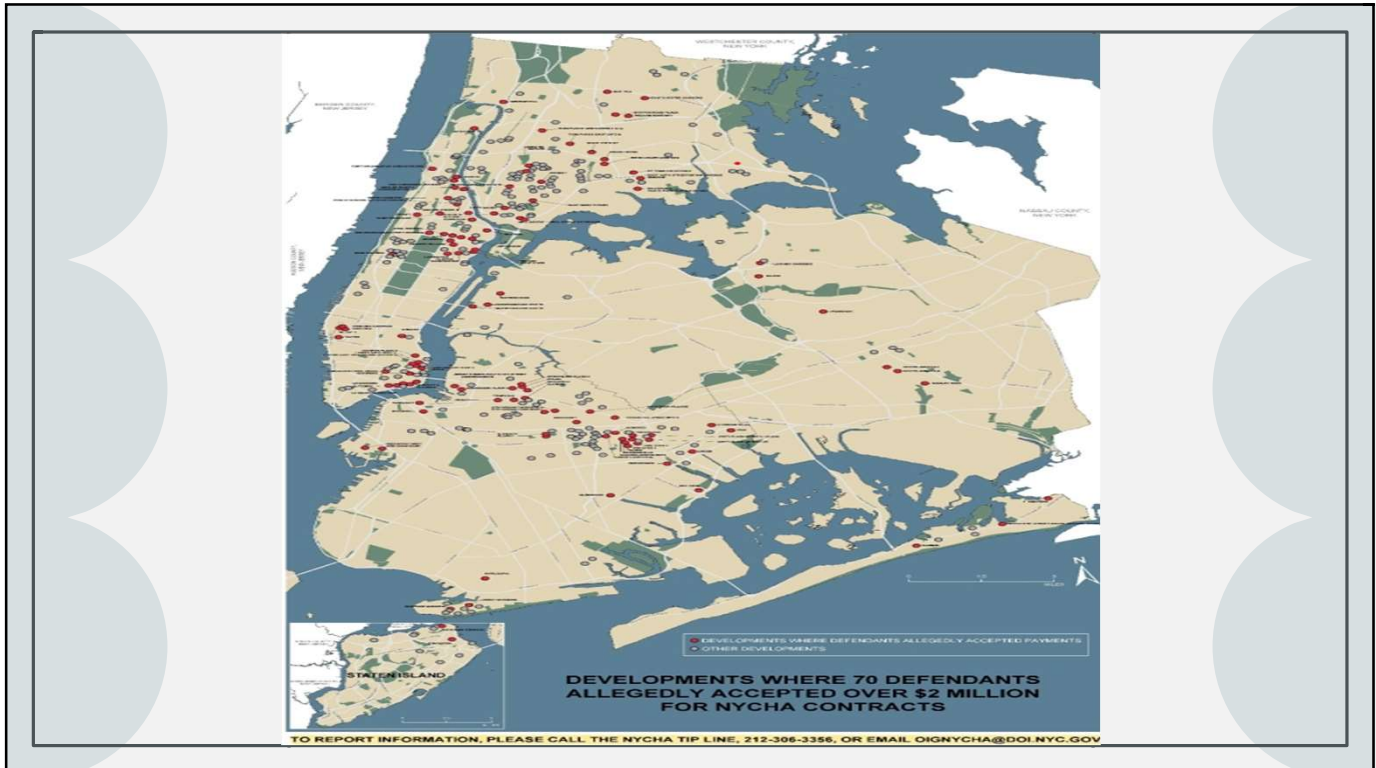
RECENT
INVESTIGATION

70 Current and Former NYCHA Employees

Findings

- **Typical Bribe Amount:** Approximately 10% to 20% of the contract value (usually \$500 to \$2,000)
- **Totals:** In total, these defendants demanded over \$2 million in payments from contractors in exchange for awarding over \$13 million worth of micro-purchase contracts.
- **Impact on NYCHA Developments:** Approximately one third of NYCHA developments (approximately 100 of 335 developments) were affected by this pervasive corruption.

92



93

RECENT INVESTIGATION

70 Current and Former NYCHA Employees

Results

- **Indictments:** In February 2024, SDNY indicted 70 current and former NYCHA employees on bribery and extortion charges—the largest number of federal bribery charges on a single day in DOJ history.
- **Pleas:** 31 defendants have pled guilty; pleas of current employees included stipulation that they resign.
- **Suspensions:** 55 active employees were suspended at the time of arrest.
- **Recommendations:** DOI issued 14 recommendations

94

FEBRUARY 2024 RECOMMENDATIONS

- Remove responsibility for micro-purchases from housing development staff and instead place responsibility with specialized, centralized staff – **In progress.**
- Require use of a Pre-Qualified List (“PQL”) to choose micro-purchase vendors and, to the extent practicable, choose vendors on a rotating basis – **In progress.**
- Create, with the assistance of DOI, a micro-purchase training program that vendors must attend to be placed on the PQL – **In progress.**
- Create, with the assistance of DOI, an annual micro-purchase training program for all staff involved in the micro-purchase process – **Implemented.**
- Create, with the assistance of DOI, an annual Compliance Advisory Alert pertaining to bribes, gratuities, criminal liabilities, and Executive Order 16 of 1978 (duty to report bribery and gratuity allegations to DOI) – **Implemented.**

95

FEBRUARY 2024 RECOMMENDATIONS

- Study the micro-purchase process to identify and implement feasible alternatives that ensure both efficiency and integrity – **In progress.**
- Set a schedule of cost estimates for common micro-purchase goods and services and require written requests to Neighborhood Administrators for approval of proposals that exceed set costs – **In progress.**
- Pending development of the cost schedule, require the Executive Vice President for Property Management Operations and the Compliance and Quality Assurance Departments to conduct monthly reviews of all micro-purchases for services – **Implemented.**
- Require all micro-purchases to be reviewed by NYCHA staff outside the development commissioning the work – **In progress.**
- Display signage at developments and offices stating that it is a criminal offense to offer, give, and/or accept bribes, gratuities, and/or gifts – **Implemented.**

96

FEBRUARY 2024 RECOMMENDATIONS

- Program IT systems to generate a pop-up box requiring employees commissioning micro-purchases to acknowledge that offering, giving and/or accepting bribes, gratuities and/or gifts is a criminal offense – **Implemented.**
- Revise the vendor micro-purchase proposal form to include the acknowledgement that offering, giving and/or accepting bribes, gratuities and/or gifts is a criminal offense – **Implemented.**
- Requiring semi-annual audits of micro-purchase data – **Implemented.**
- Continue to report any irregularities (e.g., frequent use of the same vendor, regular requests for micro-purchases exceeding scheduled prices, etc.) to DOI – **Implemented.**

97



QUESTIONS?

Contact us at:

Andrew Sein

Inspector General

Asein@doi.nyc.gov

Website

<https://www.nyc.gov/site/doi/index.page>

Telephone

(212) 825-5900

Lauren Kropiewnicki
Assistant Counsel, NYCHA-OIG

Lkropiewnicki@doi.nyc.gov

X

@NYC_DOI

98