

PUBLIC CORRUPTION IN CONTRACTING

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TITLE 18 STATUTES

Agenda

- Importance of the partnership
- DOJ resources
- Public Corruption Statutes
- State and Local Corruption
- Trends
- Non-Profits
- State and Local Lobbying

Importance of a Partnership

- Corruption must be fought at every level
- Customer service of local and state agencies
- \$100 for a passed building inspection
- \$500 for a valid driver's license
- \$1000 for passed safety inspection
- Effect of public corruption becomes more real
- Public corruption has an identifiable public face

Importance of a Partnership

- Local and State offices uniquely positioned
- Knowledge of the players
- Knowledge of the behind-the-scene powerbrokers
- Knowledge of the political landscape and terrain
- Uniquely positioned to sustain corruption programs
- Positioned to help as a valuable asset and ally federally

Resources of DOJ

- Public corruption is one of our top priorities
- FBI now has more than 600 agents dedicated
- Yearly training by the Public Integrity Section
- Active public corruption units in most USAOs
- Expertise in investigations and prosecutions
- Complements our local and state counterparts

Resources of DOJ

- Investigative tools may lend assistance
- Stricter grand jury rules
- Greater reach across state lines
- Single party consensual requirements
- Title IIIs
- Less stringent marital privilege rules
- No state Speech or Debate concerns

TITLE 18 STATUTES

Federal Public Corruption Statutes

Bribery and Gratuity – 18 U.S.C. § 201

- Classic federal corruption statute
- Bribery – Section 201(b) (quid pro quo)
- Gratuity – Section 201(c) (thank you)
- Thing of value to self and others
- Dixon exception

TITLE 18 STATUTES

State and Local Corruption Statutes

Federal Funds Bribery - 18 U.S.C. § 666

- Thing of value for state transaction or business
- To a state or local public official
- Transaction must be at \$5,000 or more
- More than \$10,000 in federal funds
- No nexus between crime and federal funds

TITLE 18 STATUTES

State and Local Corruption Statutes

The Hobbs Act - 18 U.S.C. § 1951

- Prohibits certain acts under color of official right
- No need to prove force, violence or duress
- Public official's power

TITLE 18 STATUTES

State and Local Corruption Statutes

Honest Services Fraud - 18 U.S.C. § 1341/3/6

- Use of interstate mail or wire
- In furtherance of scheme to defraud
- Honest services = duty to act in best interests of the public
- Concealment vs. bribery honest services fraud
- Personal gain

TITLE 18 STATUTES

Miscellaneous Statutes

False Statements - 18 U.S.C. § 1001

- Material statement
- Made to agency of United States
- False, fraudulent, fictitious misleading
- Material omissions sufficient
- Conflicts of interest

TITLE 18 STATUTES

Miscellaneous Statutes

False Claims - 18 U.S.C. § 287

- False or fraudulent claim
- Presented to a federal agency or contractor
- Defendant knew claim false or fraudulent

Trends in Public Corruption

- Federal Grants, Loans, Assistance
- Non-profit organizations
- Earmarks
- Local and State Lobbying
- Local and State Authorities

Federal Grants, Loans, Assistance

- Indirect funding approximates direct funding
- 900 grant programs through 26 federal agencies
- \$236.1B in grants in aid to State/Local in 2008
- \$124.7B in discretionary funding
- Not include Medicaid
- \$37.2B drop in discretionary funds
- More competition, fighting over less money

Non-Profit Organizations

- Increased proliferation of non-profits
- Not as transparent as local and state agencies
- Board of directors stacked with friends/allies
- Less rigid contracting/hiring requirements
- State oversight resources stretched thin
- Non-profits new form of patronage

Earmarks

- 3,023 earmarks worth \$19.5B in 1996
- 12,852 earmarks worth \$64B in 2006
- Earmarks increasingly secured for State/Locals
- Increasing use of federal lobbyists
- \$70M in 2007 up from \$35M in 2000
- Pennsylvania - \$10M (1999); Indiana - \$2 M (1999)
- City/County Denver - \$2.9M (1999)
- Competition for business/money more intense
- Risk of gift and gratuity violations risen

State and Local Lobbying

- Corresponding increase in lobbying
- Lobbying fees/costs increased as well
- Revolving door issues
- State staffers becoming consultants/lobbyists
- Confluence of money and relationships
- Risk of close relationships becoming corrupt

State and Local Authorities

- Proliferation of quasi-public, private entities
- Transit authorities, housing authorities
- More transparent than non-profits
- Huge amounts of discretionary funding
- HUD grants, DOT grants
- Board of directors selected by local politicians
- More flexible contracting/hiring rules
- State oversight resources stretched thin
- Another form of patronage

OVERVIEW OF TITLE 18 STATUTES

Questions?

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