

Internal Audit Department



**KAREN E. RUSHING**  
Clerk of the Circuit Court  
and County Comptroller  
SARASOTA COUNTY

## **FINAL REPORT**

**Project 2010-256**

**July 2010**

**A Limited Scope Review  
of Consultant Services Procurement Controls**

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July 15, 2010

James L. Ley, County Administrator  
Sarasota Board of County Commissioners

Dear Mr. Ley

Enclosed is the report you requested in response to your concerns regarding Request For Proposal (RFP) #09851RC - Owner's Representative Services for the Design and Construction of Spring Training Facilities.

In summary:

- Controls embodied in law (the Sarasota County Procurement Code - Ordinance 2003-084) and procedure (the Sarasota County Procurement Manual) had been planned and designed in a manner that provides reasonable assurance the related business risks can be managed and the related business goals and objectives can be achieved efficiently and economically.
- We did not identify any instances of RFP #09851RC non-compliance with the Sarasota County Procurement Code or Procurement Manual.
- We found no evidence in the public record of undue influence in the RFP #09851RC development or evaluation processes.
- We noted activities that occurred outside the actual RFP #09851RC development and evaluation processes that could have been better managed.
- We believe business risk mitigation associated with activities outside the actual RFP #09851RC development and evaluation processes could be enhanced by strengthening the control environment, information, and monitoring components of management control.

We wish to express our appreciation for the cooperation and assistance provided throughout the audit. Please do not hesitate to contact me should you have any questions.

---

Mark R. Simmons, CIA CFE  
Director, Internal Audit

cc: Karen E. Rushing, Clerk of the Circuit Court and County Comptroller

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**Summary**

This review was performed at the request of, and in response to the concerns of, the County Administrator regarding Request For Proposal (RFP) #09851RC - Owner's Representative Services for the Design and Construction of Spring Training Facilities.

We reviewed the Sarasota County Procurement Code and Procurement Manual, Human Resources Procedures and Guidelines, and applicable Florida Statutes; and gathered sufficient information related to this procurement to assess compliance with relevant requirements. All requirements of the Procurement Code had been met.

However, the risks associated with related activities occurring outside the actual RFP development and evaluation processes could be mitigated going forward by strengthening the control environment, information, and monitoring components of management control.

**Background**

The County Administrator requested that the Clerk evaluate the process for obtaining the services of consultants to assist with drafting requests for proposals; determine whether activities related to the procurement of Owner's Representative Services (RFP #09851RC) were compliant with the Sarasota County Procurement Code (Ordinance 2003-084); and, if appropriate, make recommendations to improve controls going forward.

The Clerk of Circuit Court and County Comptroller is a Constitutional Officer whose authority is derived from the Florida State Constitution and Florida law. The Clerk has five major areas of responsibility under the state constitution, one of which is County Auditor. The Clerk, as County Auditor, is autonomous from the Board of County Commissioners, the County Administration, and all other elected officials of Sarasota County government. This constitutional separation of powers enables the Clerk and the Clerk's Internal Audit Department to act with independence and objectivity.

**Audit Objective**

- Determine whether controls in place are adequate in comparison to generally accepted best practices for procurements of consulting services.
- Determine whether the controls in place, if adequate, have been applied effectively in obtaining Owner's Representative Services for the Design and Construction of Spring Training Facilities.
- Determine whether the controls in place, if adequate, have been applied effectively in obtaining facilitation services to assist with negotiations with Major League Baseball team franchises.
- Determine whether significant shortcomings exist in current policies and procedures associated with retaining consultant services, and if so, make recommendations to improve controls.

**Scope Limitation**

Our activities were limited to RFP #09851RC - Owner's Representative Services for the Design and Construction of Spring Training Facilities and activities we deemed relevant to that procurement. In addition, as the Sarasota County Procurement Code authorizes the County Procurement Official to exempt facilitation, legal and other specific types of procurements from the competitive requirements specified in the Code, and as the procurement of facilitation services for negotiation with the Baltimore Orioles franchise was deemed exempt, our review of the procurement of those facilitation services was limited to confirming that Competitive Procurement Exemption Request forms were properly documented and authorized. Finally, we did not have access to original source data under the control of third parties outside Sarasota County Government.

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**Methodology**

We conducted a review of the contract procurement and RFP development and evaluation processes in place and the policy and procedure requirements in the “Sarasota County Procurement Code” and County “Procurement Manual”.

Our review considered:

Contract Procurement

1. Policy requirements
2. Procedure requirements
3. Policy and procedures relevant to consultants
4. Best practices
5. Risk Exposures

RFP/Bid Evaluation Committee

6. Policy requirements
7. Procedure requirements
8. Best practices
9. Risk Exposures

Evaluation Committee Oversight

10. Policy and procedure requirements
11. Accountability
12. Risk Exposures

Procurement Ethics

13. County Ethics Policy
14. Applicable procedure requirements
15. Communication process

Interviews

As appropriate:

16. County personnel responsible for the procurement process.

Documents

Reviewed applicable documents, records and files for compliance with County and State laws, regulations, rules and policies.

17. Applicable Florida Statutes
18. County Procurement Code
19. County Procurement Manual
20. County Ethics Policy
21. Procurement records
22. RFP files.

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**Results**

1. Controls embodied in law (the Sarasota County Procurement Code - Ordinance 2003-084) and procedure (the Sarasota County Procurement Manual) were adequate in comparison to best practices. "Adequate" means management has planned and designed controls in a manner that provides reasonable assurance the related business risks can be managed and the related business goals and objectives can be achieved efficiently and economically.
2. Our inspection of documents related to RFP #09851RC - Owner's Representative Services for the Design and Construction of Spring Training Facilities and discussions with the Procurement Manager did not identify any instances of non-compliance with the Sarasota County Procurement Code or Procurement Manual.
3. We noted the following about activities that occurred outside of the actual RFP development and evaluation processes (details can be read in Appendix A starting on page 7):
  - While voting evaluation committee members were required to complete a Conflict of Interest Statement, this requirement did not extend to non-voting participants in the larger overall process. Similarly, non-County personnel were not subject to the County's policy for ethical conduct specified in the Human Resources Procedures and Guidelines, section 12.03–Ethics.
  - Procurement staff is not always aware of the sources of the information provided to them for development of the RFP document.
  - E-mails associated with RFP development were not included in the RFP file.

**Suggested Options**

- (a) The procurement process could be strengthened by amending appropriate policies, the conflict of interest form, and the RFP document itself to conspicuously reflect the values embodied in the County's ethics policy.
- (b) All individuals, both county employed and non-county individuals, involved directly and indirectly in the procurement process, or who provide information used in RFP development, could be held accountable for conformance to Sarasota County Government's ethical values.
- (c) Those retained through purchase orders (e.g. retained under the exemption clause of the County Procurement Code) could be held accountable as agents of the County for conformance to Sarasota County Government's ethical values.
- (d) Completion of the Conflict of Interest Statement could be extended to include all direct and indirect participants in the procurement process, and the Conflict of Interest Statement could be modified to list potential sources of conflict.
- (e) The names, affiliations, and contributions of those involved in providing source information could be documented in the RFP file.
- (f) All actual sources of information used in RFP development could be documented in the RFP file.
- (g) The Procurement Official could be delegated explicit written authority to disqualify potential bidders based on information pertaining to sources of information that contribute to RFP development.
- (h) The Procurement Official could be delegated explicit written authority to approve/disapprove the composition of evaluation committees.
- (i) In the interest of transparency, consideration could be given going forward to disclosure in the RFP file summaries of all communications, written and verbal, relevant to the RFP development and evaluation processes.

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4. We did not find evidence of undue influence in the RFP development or evaluation processes. The RFP #09851RC had been developed appropriately, and the decision processes of September 15 and September 18, 2009 had been appropriately and publicly conducted (details can be read in Appendix B starting on page 9).
5. Use of purchase orders to secure services exempt from the procurement process bypasses the typical contractual language or RFP language that stipulates expectations for ethical behavior and associated penalties for unethical behavior or collusion (details can be read in Appendix C starting on page 12).

**Suggested Options**

- (a) Consideration could be given going forward to avoiding use of purchase orders in lieu of a formal contract when procuring exempt services excluded from the Procurement Code.
6. We found other related activities that could have been better controlled during the 2008 procurement of facilitator services associated with the Boston Red Sox baseball franchise negotiations, and during the 2009 procurement of facilitator services associated with the Baltimore Orioles baseball franchise negotiations (details can be found in Appendix D starting on page 13).

**Actions Planned or Taken**

The Procurement Manager has recently taken or considered the following actions:

- Beginning June 4, 2010, purchase orders will incorporate the General Terms and Conditions of Solicitations on the back of the document and a statement to the effect that acceptance of the purchase order constitutes agreement with the terms. One of the conditions pertains to Florida Statutes, Chapter 112, Part III, Code of Ethics for Public Officers and Employees. The Procurement Manager also may want to consider supplementing that with standards of ethical conduct similar to those specified in the Human Resources Policies and Guidelines manual.
- The Procurement Manager is considering the implementation of training for RFP evaluation committee members and requiring successful completion of this training as a prerequisite to serving on an RFP evaluation committee.
- During Procedural Meetings, emphasize the need to inform the Procurement Official of individuals who are informally providing assistance (e.g. consultant assisting with drafting an RFP).

**Report Distribution List:**

James L. Ley, County Administrator

Karen E. Rushing, Clerk of the Circuit Court and County Comptroller

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Consultant Services Procurement Controls  
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**APPENDIX A**

**Adequacy of RFP Procurement Controls Compared to Generally Accepted Best Practices**

**Sources of Information**

**Laws**

- Sarasota County Procurement Code (County Ordinance 2003-084)
- 255.20 F.S. - Local Bids and Contracts for Construction Work
- Chapter 112 F.S. Part III - Code of Ethics for Public Officers and Employees

**Policies**

- Sarasota County Procurement Manual versions adopted 03/17/09 and 01/06/10
- Sarasota County Human Resources Procedures and Guidelines

**Interviews**

- Cognizant Procurement managers and staff

**References**

- Contracting Municipal Services, a Guide for Purchase from the Private Sector  
John Tepper Martin, Editor  
John Wiley & Sons
- Contracting Out in Government  
John A. Rehfuss  
Jossey-Bass Publishers

**Purpose**

Determine whether Sarasota County policies and procedures for procurement of services conform to generally accepted best practices.

**Scope**

Sarasota County policies and procedures in effect as of April 30, 2010.

**Conclusions**

While Sarasota County policies and procedures for procurement of services through competitive bidding conform to generally accepted best practices, more can be done to strengthen the integrity of the RFP development and evaluation processes by addressing practices occurring outside the actual RFP development and evaluation processes.

- The Sarasota county Procurement manual states that the evaluation committee can include advisory staff, outside consultants and citizens with subject-matter expertise. While voting evaluation committee members are required to complete a Conflict of Interest Statement, this requirement did not extend to non-voting participants in the overall process.
- Similarly, non-employees were not subject to the County's standards for ethical conduct specified in the Human Resources Procedures and Guidelines, section 12.03–Ethics.

**APPENDIX A**

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**APPENDIX A**

**Adequacy of RFP Procurement Controls Compared to Generally Accepted Best Practices**

- The standard RFP language of Section 12. “Code of Ethics” is in our estimation too narrowly focused. The current language of Section 12 only addresses interactions between proposers and public employees.
- The standard RFP language of Section 13. “Collusion” is in our estimation too narrowly focused. The current language of Section 13 addresses only interactions between other proposer or other parties to the proposal.
- Procurement staff is not always aware of the sources of the information provided to them for development of the RFP document.
- E-mails associated with the development of the RFP were not included in the RFP file.

**Recommendations**

1. The procurement process could be strengthened by amending appropriate policies, the conflict of interest form, and the RFP document itself to conspicuously reflect the values embodied in County policy (the Human Resources Procedures and Guidelines, section 12.03–Ethics) so as to hold not only County employees, but also non-County individuals engaged in County procurement activities, to the same high level of expected behavior. The following parties are offered for consideration:
  - Non-county advisors, outside consultants, and members of the general public who serve as members of, or advisors to, the evaluation committee
  - Non-county individuals who develop, or who serve as advisors to those charged with developing, the RFP document
  - Respondents to RFPs
  - Providers of professional services who are retained under the exemption clause of the County Procurement Code.
2. Consideration could be given to expanding RFP Section 12 language beyond the requirements of Chapter 112, Part III F.S. to include any party involved directly or indirectly in the RFP process. Consideration could be given to expanding RFP Section 13 language to include any party involved in the RFP process, whether or not an actual party to the proposal.
3. Completion of a Conflict of Interest Statement could be extended to include all direct and indirect participants in the RFP development and evaluation process, and could be modified to list potential sources of conflict.
4. The names, affiliations, and contributions of those involved in providing source information could be documented in the RFP file.
5. The Procurement Official could be delegated explicit written authority to disqualify potential bidders based on information provided
6. The Procurement Official could be delegated explicit written authority to approve/disapprove the composition of evaluation committees.
7. In the interest of transparency, consideration could be given going forward to including in the RFP file summaries of all communications, verbal and written, relevant to the development and evaluation processes.

**APPENDIX A**

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**APPENDIX B  
Effectiveness of Controls**

**Owner's Representative Services - Design and Construction of Spring Training Facilities**

**Sources of Information**

Laws

- Sarasota County Procurement Code (County Ordinance 2003-084)

Policies

- Sarasota County Procurement Manual (versions adopted 03/17/09 and 01/06/10)

Documents

- Procurement Office audio, electronic and paper records on file for RFP #09851RC - Owner's Representative Services for the Design and Construction of Spring Training Facilities (re: the Baltimore Orioles Baseball Franchise)

Interviews

- Evaluation committee members; cognizant managers and staff

**Purpose**

- Determine whether the controls in place, if deemed adequate, have been applied effectively in obtaining Owner's Representative Services for the Design and Construction of Spring Training Facilities.
- Determine whether available evidence indicated the possibility of bid-rigging

**Scope**

Procurement Period of July 1, 2009 through October 15, 2009

**Criteria**

- Sarasota County Procurement Code (County Ordinance 2003-084)
- Sarasota County Procurement Manual (versions adopted 03/17/09 and 01/06/10)
- "Bid Rigging" is defined generally as a type of fraud in which businesses that are competing against each other for a contract secretly make arrangements with each other in order to get advantages for themselves, for example by agreeing to take turns in being the successful bidder; and/or an illegal conspiracy in which competitors join to artificially increase the prices of goods and/or services offered in bids to potential customers. It may also include carving up the potential business among the conspirators. "Collusion" is defined generally as an improper secret agreement between two or more parties acting together to influence, or to otherwise indulge in, a forbidden, illegal, or illegitimate activity. While "collusion" is a necessary element of "bid-rigging", it is not one of the primary elements by which "bid-rigging" is defined.

**Conclusions**

1. RFP #09851RC - Owner's Representative Services for the Design and Construction of Spring Training Facilities was conducted in accordance with proscribed policies and procedures found in the Sarasota County Procurement Code and Sarasota County Procurement Manual.

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**APPENDIX B**  
**Effectiveness of Controls**

**Owner's Representative Services - Design and Construction of Spring Training Facilities**

2. We did not find evidence of undue influence in the RFP #09851RC development or evaluation processes. We found that RFP #09851RC had been developed appropriately. We also found that the decision processes of September 15 and September 18, 2009 had been appropriately and publicly conducted and that the information associated with those decisions-making processes had been public information.

**Based on the following facts, we conclude there was no undue influence in the development of the "Scope of Service" focus points or the "preferred qualifications" criteria used in RFP #09851RC; and there was no undue influence in the development of the "past experience" component of the scoring matrix used to establish final rankings for responses to RFP #09851RC:**

- Public e-mail records indicate that on July 27, 2009 Dan Barrett forwarded requested sample "Scope of Services" material and sample RFP material via e-mail to Jennifer Yarabek, with copies to Dave Bullock and Steve DeMarsh. There was no attempt to hide the source of the provided material: In this e-mail Dan Barrett informed the recipients that "IFG provided these examples to me.", but did not state from whom at IFG he received the material. (We believe "IFG" to be International Facilities Group LLC.)
- We found that the provided sample RFPs relevant to development of RFP #09851RC were the published public documents of other governmental entities. The Wild Horse Pass Development Authority RFP file served as the primary source for the RFP #09851RC "Scope of Service". Meta data for the source RFP file indicated the file was an unaltered copy of the one prepared by the original authors, confirmed by comparison of the source RFP file provided by Dan Barrett to an original we obtained from the Wild Horse Pass Development Authority.
- We found that in the County's RFP #09851RC, 56 of the 63 "Scope of Service" focus points had been derived almost verbatim from the Wild Horse Pass Development Authority published public document and 5 of the 63 County RFP items were unique to the County RFP. The remaining 2 of the 63 County RFP items were "punch list" and "consult on construction bidding methods" also found in IFG's sample scope material. We noted that the IFG scope material consisted of 39 items, 16 of which were reflected conceptually in 25 items of the source Wild Horse Pass Development Authority RFP used by the County (this suggests the 39 IFG scope items were most likely generic in nature). Those 16 items reflected in the source RFP were also reflected in a similar number of the County's RFP items that had been taken directly from the source prepared by the Wild Horse Pass Development Authority .
- We found that the two published public documents provided as sample RFPs contained 'past experience' wording that when combined, are very similar to that used in the development of "preferred qualifications" used in RFP #09851RC.
- An internet search indicated: of the two published public document RFPs, one never went forward as a project, and IFG likely either did not bid on, or was not the successful bidder on, the other project; neither public entity appeared to be a client of IFG or of Dan Barrett's firm.
- Interviews indicate that the document for RFP #09851RC as a whole was created from multiple sources, and also with the input of several individuals inside of Sarasota County Government as well as individuals outside of the County who were not connected with the project.
- Six of the ten respondents to RFP #09851RC met the preferred qualifications.

**APPENDIX B**

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**APPENDIX B**

**Effectiveness of Controls**

**Owner's Representative Services - Design and Construction of Spring Training Facilities**

**Based on the following facts, we conclude that none of the evaluation committee voting members exerted undue influence over the final ranking of respondents:**

- Public records indicate that on September 15, 2009 at 2:30 p.m., the evaluation committee met and identified five of ten RFP respondents to be invited to present their proposals to the evaluation committee on 9/18/09. Interviews and recordings indicated that IFG was not one of the top three respondents initially, but it is customary to permit voting members to request additional respondents be included if the other voting members concurred. Interviews and recordings indicated that one reason IFG had not been among the top three choices during the September 15, 2009 evaluation committee discussion was because the IFG response had not identified the person who would fill the key owner's representative position. Two evaluation committee voting members suggested IFG be included, and after discussion among the voting members, IFG, as well as one other respondent, were added to the group that would be invited to make oral presentations.
- Public records indicate that on September 18, 2009, the evaluation committee met in public to hear the respondents oral presentations in response to pre-defined questions asked of all five respondents, and then, again in public, voted independently in silence on all ten respondents to complete the final ranking for the Owner's Representative RFP results. The final scores, which added points for local preference, showed a 25 point spread between the top respondent (88) and the respondent in fifth place (63), and what appeared to be a reasonable spread in final scores among the top three respondents: IFG-88; Fawley/Bryant-79; URS-72. Our analysis of the voting scores and methodology indicated that even with the vote of one key member completely removed, IFG would have been the top respondent.
- We independently reviewed the proposals submitted by the five respondents invited back for oral presentations. We also listened to audio recordings of oral presentations and evaluation committee discussions. Nothing in the material we reviewed suggested undue influence.

**Based on the following facts, we conclude the County obtained the most qualified services at the best possible price:**

- Public records indicate that on September 28, 2009, Dave Bullock, through the County Administrator, wrote in an interoffice memorandum to the Sarasota Board of County Commissioners a recommended motion for the Board "To consider the ranking and a proposed contract for an Owner's Representative for the Baltimore Orioles Spring Training Facilities." Included in the memorandum was information about the RFP and negotiation process, and the RFP evaluation committee's top three candidates in ranked order, with International Facilities Group LLC ranked in the top position. IFG's bid response included a bid of \$600,000; second ranked Fawley-Bryant's bid was for \$604,600. Interviews indicate that (a) negotiations with IFG almost fell through because IFG would not meet the County's offer of \$500,000 to perform the work; (b) the project manager, if necessary, was prepared to begin negotiations with the second ranked respondent; (c) as a result of the County's firm stance, IFG ultimately agreed to perform the work for the amount offered by the County.
- Public records indicate that as a result of the RFP process (and in accordance with the Procurement Code), the Board of County Commissioners authorized contract #2009-467 with the highest ranked respondent, International Facilities Group LLC, in the amount of \$500,000.

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**APPENDIX C  
Effectiveness of Controls**

**Facilitation Services to Assist with Baltimore Orioles Baseball Franchise Negotiations**

**Sources of Information**

Laws

- Sarasota County Procurement Code (County Ordinance 2003-084)

Policies

- Sarasota County Procurement Manual (versions adopted 03/17/09 and 01/06/10)

Documents

- Competitive Procurement Exemption Request forms related to procurement of facilitator services related to the Baltimore Orioles baseball franchise

Interviews

- Cognizant Procurement managers and staff

**Purpose**

Determine whether the controls in place, if adequate, have been applied effectively in obtaining facilitation services to assist in negotiations with Major League Baseball team franchises.

**Scope**

June 2009 through October 2009

**Conclusions**

- The Sarasota County Procurement Code authorizes the County Procurement Official to exempt facilitation, legal and other specific types of procurements from the competitive requirements specified in the Code.
- As the procurement of facilitation services for negotiation with Major League Baseball team franchises was deemed exempt, our review of the procurement of facilitation services was limited to confirming that Competitive Procurement Exemption Request forms were properly documented and authorized.
- Use of a purchase order to secure this service bypassed the typical contractual language or RFP language that stipulates expectations for ethical behavior; and associated penalties for unethical behavior or collusion.

**Recommendations**

1. Consideration could be given going forward to avoiding use of purchase orders in lieu of a formal contract when procuring exempt services excluded from the Procurement Code.

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**APPENDIX D  
Other Related Activities**

**Sources of Information**

**Laws and Policies**

- Sarasota County Procurement Code (County Ordinance 2003-084)
- Sarasota County Procurement Manual (versions adopted 03/17/09 and 01/06/10)
- Relevant State of Florida Civil and Criminal Statutes
- Florida Supreme Court Jury Charging Instructions - Criminal Statutes
- Sarasota County Human Resources Procedures and Guidelines

**Documents**

- Procurement Office audio, electronic and paper records on file for RFP #09851RC - Owner's Representative Services for the Design and Construction of Spring Training Facilities
- Sarasota County e-mails related to initiation and development of RFP #09851RC
- Sarasota County e-mails and documents related to facilitator services for the Baltimore Orioles baseball franchise (2009) and for the Boston Red Sox baseball franchise (2008)
- Sarasota County phone logs for the period September 2008 through October 2009

**Interviews**

- Evaluation committee members; cognizant managers and staff

**Purpose**

Follow-up on other activities relevant to RFP #09851RC

**Scope**

- A. Procurement Period of September 2008  
(re: Boston Red Sox facilitator services)
- B. Procurement Period of June 2009 through September 2009  
(re: Baltimore Orioles Owner's Representative)

**Limitations**

We did not have access to any of the original source data under the control of third parties outside of Sarasota County Government. Absent this source of "best evidence", our assessment has been limited to the official records generated by and in the possession of Sarasota County Government.

**Criteria**

- The Sarasota County Government Human Resources Procedures Manual (revised as of 6/1/09) on pages 50 and 51 delineate at 12.03 the Ethics policies for Sarasota County Government employees.
- Elements of Proof, Relevant State of Florida Civil and Criminal Statutes

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**APPENDIX D**  
**Other Related Activities**

**Conclusions**

We found related activities that could have been better controlled during the 2008 procurement of facilitator services associated with the Boston Red Sox baseball franchise negotiations, and during the 2009 procurement of facilitator services associated with the Baltimore Orioles baseball franchise negotiations.

**A. 2008 Request for Qualifications and Fees (RFQ)**

It appears Barrett Sports Group (BSG) had access to and used RFQ development material provided to the County by International Facilities Group LLC (IFG). That material had been obtained initially by a County employee through the County employee's prior business relationship with a relative of an IFG principal. In passing on information about potential bidders and RFQ material to decision-makers, the County employee may not have disclosed to decision-makers that IFG was the true source of the material; or that one of the names on the provided list of potential bidders was a principal of IFG; or that the employee had several telephonic contacts with IFG principals, and one with Dan Barrett, after passing on the material and before BSG had submitted its response to the RFQ. We found that decision-makers, upon becoming aware of BSG's use of the IFG material, applied different criteria in arriving at a final award decision. The work was awarded to the firm of Jacobs, Chase, Frick, Kleinkopf & Kelley, LLC, a business partner of both BSG and IFG. It appears that, with the knowledge of decision-makers, Jacobs, et. al. then retained BSG as a subcontractor to assist in facilitation services, but did not engage IFG.

**B. 2009 RFP #09851RC - Dan Barrett**

An Agent/Principal relationship between Dan Barrett and Sarasota County Government may have existed during the period of this procurement (July through October 2009). If that relationship existed, it would have required Dan Barrett to exercise a fiduciary duty to act at all times first and foremost in the best interests of Sarasota County Government in his dealings on behalf of Sarasota County Government, to the exclusion of other third-party interests. The public e-mail record indicates that Dan Barrett, writing in regard to RFP #09851RC, had expressed an interest in assisting IFG: "...let me know if you have any specific language or requirements that could be included in an RFP that would differentiate you guys from others". As described in Appendix B, we found no indication in the public record that IFG acted on Dan Barrett's offer.

**C. 2009 RFP #09851RC - County Employees**

Public records indicate a key Sarasota County Government employee had telephonic and e-mail contacts with IFG principals, including the e-mail that contained the quotation above. None of these contacts occurred while the employee participated as a voting member of the evaluation committee for RFP #09851RC. The employee may not have fully disclosed those contacts to decision-makers prior to appointment, or upon appointment, to the evaluation committee, and it appears the employee did not inform decision-makers of Dan Barrett's interest in assisting IFG.

Public records indicate that during the pendency of the final public meeting for proposal evaluations, a key Sarasota County Government employee had individual meetings with three voting members of the evaluation committee, writing to one: "...before the Friday meeting? I want to talk about what I am looking for in the owner's rep so you can consider that during your interviews with proposers". When we inquired as to the propriety of such a request, we were told that such a request is not typical or normal to the procurement process. The involved evaluation committee voting members told us that while they found the meeting request unusual, they did not believe there was any attempt to influence their voting in favor of a particular respondent.

**APPENDIX D**

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**APPENDIX E**

**Criteria for Evaluation of Management's Control of Business Risk**

**The Nature of Internal Auditing**

Internal auditing is an integral part of the constitutional duties assigned to the Clerk of the Circuit Court and County Comptroller as Auditor of the Board of County Commissioners. The Clerk's internal audit department provides independent, objective assurance, attestation, and other services designed to add value and help improve County operations. This is accomplished by bringing a systematic, disciplined approach to evaluate the effectiveness of County business risk management, control, and business-governance processes. Our audit work is performed under guidance provided by the professional auditing standards of the Institute of Internal Auditors and the U.S. General Accountability Office; and professional fraud examination guidance provided by the Association of Certified Fraud Examiners.

**The Nature of Business Risk Management, Control, and Governance Processes**

Business risk management, control, and governance processes are all those activities designed and engaged in by the Board of County Commissioners, County Administration, executives, directors, and staff to provide reasonable assurance of (1) reliable financial and operating data and reports, (2) compliance with laws and regulations, (3) effective and efficient business practices, and (4) sound stewardship of the public resources and assets entrusted to them. Reasonable assurance that these core business objectives can be achieved is dependent upon the presence of the five components of management control listed below:

- The Control Environment
- Risk Assessment Practices
- Control Activities
- Information and Communications, and
- Monitoring Activities.

To control business risk, all five components must operate effectively and in unison, and all County employees share in that responsibility. Please read the following two pages for additional information.

**The Nature of Reportable Issues**

The Institute of Internal Auditors defines these as situations that are of such significance that they require the attention of the senior leadership.

**Critical Conditions**

Any condition that has caused, or is likely to cause, errors, omissions, fraud or other adversities of such magnitude as to force immediate corrective actions to mitigate the associated business risk and possible consequent damage to the organization.

**Important Conditions**

Any condition that has caused, or is likely to cause, errors, omissions or other adversities that increase business risk and possible consequent damage to the organization, but does not require immediate corrective actions to mitigate the associated impact on operations or outcomes. Important conditions require attention within the short term (typically less than one year from disclosure).

**The Nature of Opportunities for Enhancement**

These represent improvements to the system of management control that the responsible manager may wish to consider as time and resources permit.

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**DEFINITION OF MANAGEMENT CONTROL**

Management control is broadly defined as a process, affected by managers and other people, that provides reasonable assurance of achieving the three primary objectives for which all businesses strive:

- Effective and efficient operations, including achievement of performance goals and safeguarding of assets against loss
- Compliance with laws and regulations
- Reliable operational and financial data and reports

**COMPONENTS NECESSARY FOR EFFECTIVE MANAGEMENT CONTROL**

**The CONTROL ENVIRONMENT**

**The foundation for effective control. It sets the tone for the organization, and influences the control consciousness of its people. It addresses:**

- Integrity, ethical and cultural values
- Competence of the organizations' people
- The manager's philosophy and operating style
- Assignment of authority and responsibility
- Organization and development of human resources
- The attention and direction given by senior management

**RISK ASSESSMENT**

**The process of recognizing and prioritizing operational risks and obstacles.**

- Statement of clear objectives
- Recognition of critical risks and obstacles
- Identification of factors critical for success
- Identification of significant changing conditions

**CONTROL ACTIVITIES**

**Flow from Risk Assessment. Control Activities are the policies and procedures that managers establish to minimize risks and obstacles to desired outcomes. Examples include:**

- Guidance, processes and practices
- Safeguarding resources
- Information systems and processing controls
- Approvals, authorizations, verifications, and reconciliations
- Division of work and separation of responsibilities

**INFORMATION and COMMUNICATION**

**Provide the knowledge people need to meet responsibilities.**

- The systems of information gathering
- The systems of internal/external communications flowing down, across and up the organization
- Internal and external data for decision-making
- Employees' understanding of their control responsibilities
- Employees' understanding how their work fits into the "big picture"

**MONITORING ACTIVITIES**

**Involve assessment of control effectiveness by appropriate people on a timely basis.**

- Measurement of outcomes
- Comparison of expected and actual results
- Performance comparisons and variance analyses
- Review of work assignments
- Upward reporting to senior management of significant concerns and issues

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**CRITERIA FOR ASSESSMENT OF EFFECTIVE MANAGEMENT CONTROL**

Management control can be judged effective if the responsible managers and senior leadership have reasonable assurance that they understand the extent to which desired outcomes are being achieved; the extent to which operational and financial data is being prepared reliably; and the extent to which legal and regulatory requirements are being met.

This reasonable assurance exists when the five components of control are present and operating effectively. When this happens, the system of control should bring to light and routinely correct any critical or important conditions. These would be events that are likely to cause errors, omissions or other adversities of such magnitude that prompt corrective actions are required to mitigate the associated business risk and possible consequent damage. The expectation is that, in the normal course of operations, critical or important conditions can be identified, addressed and corrected; and not allowed to become persistent or pervasive. When significant issues are not detected and corrected, or when they become persistent or pervasive, then it can be inferred that operations are out of control.

Should any one of the five components of the control framework be absent or seriously flawed, then it would be highly unlikely that effective control could exist. In practice, the need for efficient operations implies that the benefits derived from controls should exceed the cost to implement and maintain control processes. This acknowledges that there is a certain amount of residual risk associated with an effective system of management control.

**INHERENT LIMITATIONS**

The effectiveness of controls changes over time. Moreover, controls designed to prevent all problems would not be cost effective. Limitations which may hinder the effectiveness of a system of controls include resource constraints, faulty judgments, unintentional errors, circumvention by collusion, and management overrides. The presence of these limitations may not always be detected by the audit process.

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**APPENDIX F**

**Laws, Policies, References**

Laws

- Sarasota County Procurement Code (County Ordinance 2003-084)
- 255.20 F.S. - Local Bids and Contracts for Construction Work
- Chapter 112 F.S. Part III - Code of Ethics for Public Officers and Employees
- Florida Supreme Court Jury Charging Instructions - Criminal Statutes
- 838.022 F.S. - Official misconduct
- 838.22 F.S. - Bid tampering
- Chapter 501 F.S., Part II - Deceptive and Unfair Trade Practices
- Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1)

Policies

- Sarasota County Procurement Manual
- Sarasota County Human Resources Procedures and Guidelines

References

- Contracting Municipal Services, a Guide for Purchase from the Private Sector  
John Tepper Martin, Editor  
John Wiley & Sons
- Contracting Out in Government  
John A. Rehfuss  
Jossey-Bass Publishers

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**APPENDIX F**

**Title X - Public Officers, Employees and Records**

**Chapter 112 F.S. General Provisions Part III - Code of Ethics for Public Officers and Employees**

*(Standard of Proof: The weight of available evidence must strongly indicate a violation has occurred.)*

**112.312 (6)** "Corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

**112.313 (2) Acceptance of Gifts**

No public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

**112.313 (4) Unauthorized Compensation**

No public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

**112.313 (6) Misuse of Public Position**

No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.

**112.313 (8) Use or Disclosure of Certain Information**

A current or former public officer, employee of an agency, or local government attorney may not disclose or use information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.

**112.3143 Voting Conflicts**

(3)(a) No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(4) No appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter.

(d) For purposes of this subsection, the term "participate" means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.

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**Chapter 838 F.S.- BRIBERY; MISUSE OF PUBLIC OFFICE**

*(we were unable to locate charging instructions for these two statutes)*

*(Standard of Proof: The weight of available evidence must indicate beyond a reasonable doubt a violation has occurred.)*

**838.022 Official misconduct.--**

- (1) It is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause harm to another, to:
  - (a) Falsify, or cause another person to falsify, any official record or official document;
  - (b) Conceal, cover up, destroy, mutilate, or alter any official record or official document or cause another person to perform such an act
  - (c) Obstruct, delay, or prevent the communication of information relating to the commission of a felony that directly involves or affects the public agency or public entity served by the public servant.
- (2) For the purposes of this section:
  - (a) The term "public servant" does not include a candidate who does not otherwise qualify as a public servant.
  - (b) An official record or official document includes only public records.
- (3) Any person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**838.22 Bid tampering.--**

- (1) It is unlawful for a public servant, with corrupt intent to influence or attempt to influence the competitive bidding process undertaken by any state, county, municipal, or special district agency, or any other public entity, for the procurement of commodities or services, to:
  - (a) Disclose material information concerning a bid or other aspects of the competitive bidding process when such information is not publicly disclosed.
  - (b) Alter or amend a submitted bid, documents or other materials supporting a submitted bid, or bid results for the purpose of intentionally providing a competitive advantage to any person who submits a bid.
- (2) It is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause unlawful harm to another, to circumvent a competitive bidding process required by law or rule by using a sole-source contract for commodities or services.
- (3) It is unlawful for any person to knowingly agree, conspire, combine, or confederate, directly or indirectly, with a public servant to violate subsection (1) or subsection (2).
- (4) It is unlawful for any person to knowingly enter into a contract for commodities or services which was secured by a public servant acting in violation of subsection (1) or subsection (2).
- (5) Any person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084

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**5.1 ATTEMPT TO COMMIT CRIME**

**§ 777.04(1), Fla.Stat.**

*Use when attempt is charged or is a lesser included offense.* [To prove the crime of Attempt to Commit (crime charged), the State must prove the following two elements beyond a reasonable doubt:] *Use when necessary to define "attempt" as an element of another crime (such as felony murder).* [In order to prove that the defendant attempted to commit the crime of (crime charged), the State must prove the following beyond a reasonable doubt:]

1. (Defendant) did some act toward committing the crime of (crime attempted) that went beyond just thinking or talking about it.
2. [He] [She] would have committed the crime except that
  - a. [someone prevented [him] [her] from committing the crime of (crime charged).]
  - b. [[he] [she] failed.]

*Defense. § 777.04(5)(a), Fla.Stat.* It is not an attempt to commit (crime charged) if the defendant abandoned [his] [her] attempt to commit the offense or otherwise prevented its commission, under circumstances indicating a complete and voluntary renunciation of [his] [her] criminal purpose.

**5.2 CRIMINAL SOLICITATION**

**§ 777.04(2), Fla.Stat.**

To prove the crime of Criminal Solicitation, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) solicited (person alleged) to commit (offense solicited).
2. During the solicitation, (defendant) [commanded] [encouraged] [hired] [requested] (person alleged) to engage in specific conduct, which would constitute the commission of (offense solicited) or an attempt to commit (offense solicited). It is not necessary that the defendant do any act in furtherance of the offense solicited. *Define the crime solicited. If it is Burglary, also define crime that was object of the burglary. Also define "attempt" (see 5.1). Definition* To "solicit" means to ask earnestly or to try to induce the person solicited to do the thing solicited.

*Defense. Give if applicable. § 777.04(5)(b), Fla.Stat.* It is a defense to the charge of criminal solicitation if the defendant, after soliciting (person solicited) to commit the (offense solicited), persuaded (person solicited) not to do so, or otherwise prevented commission of the offense.

**5.3 CRIMINAL CONSPIRACY**

**§ 777.04(3), Fla.Stat.**

To prove the crime of Criminal Conspiracy, the State must prove the following two elements beyond a reasonable doubt:

1. The intent of (defendant) was that the offense of (object of conspiracy) would be committed.  
*If there is an issue as to whether the subject of the conspiracy was a crime, it may be necessary to define that crime.*
2. In order to carry out the intent (defendant) [agreed] [conspired] [combined] [confederated] with (person[s] alleged) to cause (object of conspiracy) to be committed either by them, or one of them, or by some other person. It is not necessary that the [agreement] [conspiracy] [combination] [confederation] to commit (object of conspiracy) be expressed in any particular words or that words pass between the conspirators. It is not necessary that the defendant do any act in furtherance of the offense conspired.

*Defense. § 777.04(5)(c), Fla.Stat.* It is a defense to the charge of criminal conspiracy that (defendant), after conspiring with one or more persons to commit the (object of conspiracy), persuaded (person alleged) not to do so, or otherwise prevented commission of the (object of conspiracy).

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**19.1 BRIBERY OF PUBLIC SERVANT**

**§ 838.015(1), Fla.Stat.**

To prove the crime of Bribery of a Public Servant, the State must prove the following four elements beyond a reasonable doubt:

1. (Person bribed) was a (office of person bribed).
2. (Defendant) [gave] [offered] [promised] to (person bribed) the thing described in the charge in this case as (read from charge).
3. The (read from charge) was something of value, benefit, or advantage to [(person bribed)] [a person in whose welfare (person bribed) was interested] not authorized by law.
4. The [gift] [offer] [promise] was made for the purpose of corruptly influencing (person bribed) in the performance of some act or omission that  
*Give 4a or 4b as applicable.*
  - a. [(defendant) believed to be [within the official discretion of (person bribed)].] [in violation of a public duty of (person bribed)].] [in performance of a public duty of (person bribed)].]
  - b. [(person bribed) represented as being [within [his] [her] official discretion].] [in violation of [his] [her] public duty].] [in performance of [his] [her] public duty].]

*Definition § 838.014(6), Fla.Stat.* "Corruptly" means acting knowingly and dishonestly for a wrongful purpose.

*§ 838.015(2), Fla.Stat.* In order for the defendant to be guilty, it is not necessary that the act with respect to which the bribe was [given] [offered] [promised] was properly pending before (person bribed), or that by law it might be properly brought before [him] [her], or that [he] [she] was qualified to act in the desired way, or that [he] [she] had jurisdiction over the matter, or that [his] [her] official action was necessary to achieve the purpose of the defendant.

*Give if applicable. § 838.014(4), Fla.Stat.* For the purpose of the laws against bribery, any person who has been elected or appointed to, or who is a candidate for election or appointment to, any public office is regarded as already being in that office with respect to any transaction relating to an act to be done if and when [he] [she] actually assumes office.

**19.2 BRIBERY BY A PUBLIC SERVANT**

**§ 838.015(1), Fla.Stat.**

To prove the crime of Bribery by a Public Servant, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) was a (office of defendant).
2. (Defendant) [requested] [solicited] [accepted] [agreed to accept] from (person making bribe) the thing described in the charge in this case as (read from charge).
3. The (read from charge) was something of value, benefit, or advantage to [(defendant)] [a person in whose welfare (defendant) was interested] not authorized by law.

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4. The [request] [solicitation] [acceptance] [agreement to accept] was made with intent of corruptly being influenced in the performance of some act or omission that  
*Give 4a or 4b as applicable.*
- a. [(person making bribe) believed to be [within the official discretion of (defendant)].] [in violation of a public duty of (defendant)].] [in performance of public duty of (defendant)].]
  - b. [(defendant) represented as being [within [his] [her] official discretion].] [in violation of [his] [her] public duty].] [in performance of [his] [her] public duty].]

*Definition § 838.014(6), Fla.Stat.* "Corruptly" means acting knowingly and dishonestly for a wrongful purpose. The court now instructs you that a (office of defendant) is a public servant.

§ 838.015(2), Fla.Stat. In order for the defendant to be guilty, it is not necessary that the act with respect to which [the bribe was [requested] [solicited] [accepted]] [an agreement was reached for the bribe] was properly pending before the defendant, or that by law it might be properly brought before [him] [her], or that [he] [she] was qualified to act in the desired way, or that [he] [she] had jurisdiction over the matter, or that [his] [her] official action was necessary to achieve the purpose of the person making the bribe.

*Give if applicable. § 838.014(4), Fla.Stat.* For the purpose of the laws against bribery, any person who has been elected or appointed to, or who is a candidate for election or appointment to, any public office is regarded as already being in that office with respect to any transaction relating to an act to be done if and when [he] [she] actually assumes office.

**19.3 UNLAWFUL COMPENSATION OR REWARD OF PUBLIC SERVANT  
§ 838.016(1), Fla.Stat. (performance, non-performance, violation, or omission)**

To prove the crime of Unlawful Compensation or Reward of a Public Servant, the State must prove the following four elements beyond a reasonable doubt:

1. (Person bribed) was a (office of person bribed).
  2. (Defendant) [gave] [offered] [promised] to (person bribed) the thing described in the charge in this case as (read from charge).
  3. The (read from charge) was something of value, benefit, or advantage to [(person bribed)] [a person in whose welfare (person bribed) was interested] not authorized by law.
  4. The [gift] [offer] [promise] was corruptly made for the past, present, or future performance, nonperformance, or violation of any act or omission of (person bribed) that  
*Give 4a or 4b as applicable.*
- a. [(defendant) believed to be [within the official discretion of (person bribed)].] [in violation of a public duty of (person bribed)].] [in performance of a public duty of (person bribed)].]
  - b. [(person bribed) represented as being [within [his] [her] official discretion].] [in violation of [his] [her] public duty].] [in performance of [his] [her] public duty].]

*Definition § 838.014(6), Fla.Stat.* "Corruptly" means acting knowingly and dishonestly for a wrongful purpose. The court now instructs you that a (office of person bribed) is a public servant.

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§ 838.016(3), *Fla.Stat.* In order for the defendant to be guilty, it is not necessary that the exercise of official discretion or violation of a public duty or performance of a public duty for which the bribe was [given] [offered] [promised] was accomplished or was within the official discretion or public duty of the public servant whose action or omission was sought to be rewarded or compensated.

*Give if applicable.* § 838.014(4), *Fla.Stat.* For the purpose of the laws against bribery, any person who has been elected or appointed to, or who is a candidate for election or appointment to, any public office is regarded as already being in that office with respect to any transaction relating to an act to be done if and when [he] [she] actually assumes office.

§ 838.016(1), *Fla.Stat.* *There is no prohibition against a public servant accepting a reward for services performed in apprehending a criminal. Therefore, if the evidence presents a factual issue on this point, an appropriate instruction should be given.*

**19.4 UNLAWFUL COMPENSATION OR REWARD BY PUBLIC SERVANT**

**§ 838.016(1), Fla.Stat. (performance, non-performance, violation, or omission)**

To prove the crime of Unlawful Compensation or Reward by a Public Servant, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) was a (office of defendant).
2. (Defendant) [requested] [solicited] [accepted] [agreed to accept] from (person making bribe) the thing described in the charge in this case as (read from charge).
3. The (read from charge) was something of value, benefit, or advantage to [(defendant)] [a person in whose welfare (defendant) was interested] not authorized by law.
4. The [request] [solicitation] [acceptance] [agreement to accept] was corruptly made for the past, present, or future performance, nonperformance or violation of any act or omission of (defendant) that

*Give 4a or 4b as applicable.*

- a. [(person making bribe) believed to be [within the official discretion of (defendant)].] [in violation of a public duty of (defendant)].] [in performance of a public duty of (defendant)].]
- b. [(defendant) represented as being [within [his] [her] official discretion].] [in violation of [his] [her] public duty].] [in performance of [his] [her] public duty].]

*Definition* § 838.014(6), *Fla.Stat.* "Corruptly" means acting knowingly and dishonestly for a wrongful purpose. The court now instructs you that a (office of defendant) is a public servant.

§ 838.016(3), *Fla.Stat.* In order for the defendant to be guilty, it is not necessary that the exercise of official discretion or violation of a public duty or performance of a public duty for which the bribe was requested or solicited was accomplished or was within the official discretion or public duty of the defendant.

*Give if applicable.* § 838.014(4), *Fla.Stat.* For the purpose of the laws against bribery, any person who has been elected or appointed to, or who is a candidate for election or appointment to, any public office is regarded as already being in that office with respect to any transaction relating to an act to be done if and when [he] [she] actually assumes office.

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**19.5 UNLAWFUL COMPENSATION OR REWARD OF PUBLIC SERVANT**

**§ 838.016(2), Fla.Stat. (exertion of influence over another public officer)**

To prove the crime of Unlawful Compensation or Reward of a Public Servant, the State must prove the following four elements beyond a reasonable doubt:

1. (Person bribed) was a (office of person bribed).
2. (Defendant) [gave] [offered] [promised] to (person bribed) the thing described in the charge in this case as (read from charge).
3. The (read from charge) was something of value, benefit, or advantage to [(person bribed)] [a person in whose welfare (person bribed) was interested] not authorized by law.
4. The [gift] [offer] [promise] was corruptly made for the past, present or future exertion of any influence upon or with (person sought to be influenced) regarding any act or omission that  
Give 4a or 4b as applicable.
  - a. [(defendant) believed to be [within the official discretion of (person sought to be influenced)].] [in violation of a public duty of (person sought to be influenced)].] [in performance of a public duty of (person sought to be influenced)].]
  - b. [was represented to (defendant) as being [within the official discretion of (person sought to be influenced)].] [in violation of the public duty of (person sought to be influenced)].] [in performance of the public duty of (person sought to be influenced)].]

*Definition § 838.014(6), Fla.Stat.* "Corruptly" means acting knowingly and dishonestly for a wrongful purpose. The court now instructs you that a (office of person bribed) is a public servant and that a (office of person sought to be influenced) is a public servant.

§ 838.016(3), *Fla.Stat.* In order for the defendant to be guilty, it is not necessary that the exercise of influence for which the bribe was [given] [offered] [promised] was accomplished or was within the influence of the public servant whose action or omission was sought to be rewarded or compensated.  
*Give if applicable.*

§ 838.014(4), *Fla.Stat.* For the purpose of the laws against bribery, any person who has been elected or appointed to, or who is a candidate for election or appointment to, any public office is regarded as already being in that office with respect to any transaction relating to an act to be done if and when [he] [she] actually assumes office.

**19.6 UNLAWFUL COMPENSATION OR REWARD BY PUBLIC SERVANT**

**§ 838.016(2), Fla.Stat. (exertion of influence over another public officer)**

To prove the crime of Unlawful Compensation or Reward by a Public Servant, the State must prove the following four elements beyond a reasonable doubt:

1. (Person bribed) was a (office of person bribed).
2. (Defendant) [requested] [solicited] [accepted] [agreed to accept] from (person making bribe) the thing described in the charge in this case as (read from charge).
3. The (read from charge) was something of value, benefit, or advantage to [(defendant)] [a person in whose welfare (defendant) was interested] not authorized by law.

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4. The [request] [solicitation] [acceptance] [agreement to accept] was corruptly made for the past, present, or future exertion of any influence upon or with (person sought to be influenced) regarding any act or omission which  
Give 4a or 4b as applicable.
- a. [(Person making bribe) believed to be [within the official discretion of (person sought to be influenced)].] [in violation of a public duty of (person sought to be influenced)].] [in performance of a public duty of (person sought to be influenced)].]
- b. [was represented to (person making bribe) as being [within the official discretion of (person sought to be influenced)].] [in violation of the public duty of (person sought to be influenced)].] [in performance of the public duty of (person sought to be influenced)].]

*Definition § 838.014(6), Fla.Stat.* "Corruptly" means acting knowingly and dishonestly for a wrongful purpose. The court now instructs you that a (office of person bribed) is a public servant and that a (office of person sought to be influenced) is a public servant.

*§ 838.016(3), Fla.Stat.* In order for the defendant to be guilty, it is not necessary that the exercise of influence for which the bribe was requested or solicited was accomplished or was within the influence of the public servant whose action or omission was sought to be rewarded or compensated. *Give if applicable.*

*§ 838.014(4), Fla.Stat.* For the purpose of the laws against bribery, any person who has been elected or appointed to, or who is a candidate for election or appointment to, any public office is regarded as already being in that office with respect to any transaction relating to an act to be done if and when [he] [she] actually assumes office.

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**APPENDIX F**  
**TITLE XXXIII - CHAPTER 501**  
**PART II**

**DECEPTIVE AND UNFAIR TRADE PRACTICES**

**501.201 Short title.**--This part shall be known and may be cited as the "Florida Deceptive and Unfair Trade Practices Act."

**501.202 Purposes; rules of construction.**--The provisions of this part shall be construed liberally to promote the following policies:

- (1) To simplify, clarify, and modernize the law governing consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices.
- (2) To protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.
- (3) To make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.

**501.203 Definitions.**--As used in this chapter, unless the context otherwise requires, the term:

- (3) "Violation of this part" means any violation of this act or the rules adopted under this act and may be based upon any of the following as of July 1, 2006:
  - (a) Any rules promulgated pursuant to the Federal Trade Commission Act, 15 U.S.C. ss. 41 et seq.;
  - (b) The standards of unfairness and deception set forth and interpreted by the Federal Trade Commission or the federal courts;
  - (c) Any law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.
- (6) "Interested party or person" means any person affected by a violation of this part or any person affected by an order of the enforcing authority.
- (7) "Consumer" means an individual; child, by and through its parent or legal guardian; business; firm; association; joint venture; partnership; estate; trust; business trust; syndicate; fiduciary; corporation; any commercial entity, however denominated; or any other group or combination.
- (8) "Trade or commerce" means the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. "Trade or commerce" shall include the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity.
- (9) "Thing of value" may include, without limitation, any moneys, donation, membership, credential, certificate, prize, award, benefit, license, interest, professional opportunity, or chance of winning.

**501.204 Unlawful acts and practices.**--

- (1) Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.
- (2) It is the intent of the Legislature that, in construing subsection (1), due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2006.

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**501.2075 Civil penalty.**--Except as provided in s. 501.2077, any person, firm, corporation, association, or entity, or any agent or employee of the foregoing, who is willfully using, or has willfully used, a method, act, or practice declared unlawful under s. 501.204, or who is willfully violating any of the rules of the department adopted under this part, is liable for a civil penalty of not more than \$10,000 for each such violation. Willful violations occur when the person knew or should have known that his or her conduct was unfair or deceptive or prohibited by rule.

**Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1)**

**§ 45. Unfair methods of competition unlawful; prevention by Commission**

**(a) Declaration of unlawfulness; power to prohibit unfair practices; inapplicability to foreign trade**

- (1)** Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.
- (2)** The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, savings and loan institutions described in section 57a (f)(3) of this title, Federal credit unions described in section 57a (f)(4) of this title, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to part A of subtitle VII of title 49, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended [7 U.S.C. 181 et seq.], except as provided in section 406(b) of said Act [7 U.S.C. 227 (b)], from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

**(n) Standard of proof; public policy considerations**

The Commission shall have no authority under this section or section 57a of this title to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the Commission may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.