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Public Corruption and Special Investigations Alert

What Florida's Business Community Should Know

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It is hereby declared to be the policy of the state that no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the Legislature or legislative employee, shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his or her duties in the public interest. S. 112.311(5), Florida Statutes

If you conduct business with a local, state or federal government agency in Florida, you will want to be aware of the current emphasis by law enforcement on public corruption cases.

Florida's United States Attorneys, local State Attorneys, and Florida's Attorney General and Statewide Prosecutor are making public corruption cases a high priority. Last fall, the Governor called for the empanelment of a Statewide Grand Jury to investigate public corruption in South Florida, citing 30 officials he's had to remove from office in the past three years for violating the public trust, largely for their dealings with private enterprise for their own personal benefit. The grand jury is seated in Palm Beach County and hears case from all over the State. Florida's Attorney General has established a web-based hotline for citizens to report suspected public corruption. *One of the first questions asks the complainant to*

submit the name of the business involved.

Public contractors can come under fire in public corruption cases in a number of ways. It is not uncommon for contractors to be charged with obstruction of justice if the government believes that important documents have been withheld or destroyed or evasive statements were made during interviews. If evidence gives rise to an inference of knowing and intentional participation in a corruption scheme, the contractor can be charged as a principal with the same violations as a public official, or at the very least, as a conspirator or an aider and abettor. No matter what the end result, a public contractor under investigation by a State law enforcement agency will undoubtedly see its name in the news media – almost everything eventually becomes public record in State investigations.

How can you protect yourself from becoming unwittingly involved in a criminal public corruption scheme? There are several important strategies you may invoke as preventative measures and steps you should seriously evaluate in the event the government includes you or your company in the scope of an investigation.

- Create and implement a Code of Ethics that specifically deals with issues related to transactions with public officials. Make sure everyone in your company knows, as an example, what they can and cannot give to a

public official in the way of a gift, discount, or other favorable treatment.

- Know your financial reporting requirements. Implement procedures to ensure compliance, for monitoring, and for dealing with deficiencies. Consider consulting with a certified fraud examiner to evaluate your protocols.
- Set up a reporting mechanism for anonymous reports to upper management regarding suspicious transactions with public officials. Handle every complaint as if it could result in significant exposure to your company. Consult with an attorney about the scope of an internal investigation and the proper way to conduct one. Ask the attorney to conduct the investigation for you if you don't have experienced personnel on hand. Consider retaining outside counsel in order to avoid conflicts of interest.
- Every agency has a Code of Ethics; if they do not, refer to general laws for descriptions of forbidden conduct involving bribery, kickbacks, theft of honest services, and official misconduct. Make sure every employee who interacts with a public official knows and understands what the agency's regulations require in terms of interaction with the public official.
- Every agency has an Inspector General or someone in charge

of enforcing its Code of Ethics. Make sure you are familiar with the process whereby the suspicions of your employees regarding a government official should be reported to that official. To have information about a corrupt public official, and do nothing about it, can place your company in serious jeopardy. Keep records of complaints that are filed with the agency. Document your attempts to report suspicious activity.

- If you receive an inquiry from law enforcement, understand that every word you say could wind up in an official document. Your response could harm the company if not presented accurately. Do not take such inquiries lightly. They are generally backed-up by more than just suspicion. By the time they knock on your door, law enforcement officers have generally conducted an investigation of some sort so they can test your truthfulness when they question you. It is highly recommended that you consult with an attorney before answering questions of a law

enforcement investigator.

- If you receive a grand jury subpoena, immediately stop the routine destruction of company records of any kind. Contact a lawyer immediately. Your employees will need to be notified that they may be contacted by law enforcement and they should be advised of their rights and responsibilities by someone who understands the legal requirements of such advice.
- Be sure your public relations manager is aware of the investigation and what can and cannot be made public if asked. If you don't have a public relations manager, consider hiring a PR consultant. Their advice can be invaluable in protecting the image of your company.
- Conduct regular and specific training for your employees regarding their contact with public officials. Maintain records of the training.
- Regularly audit your interaction with government officials, your

contract performance, and the paper trail of proof that you have followed your own protocols. Follow-up on any discrepancies and document how you handled breaches. Consult with an attorney regarding your obligations to report breaches to law enforcement.

Law enforcement agencies and prosecutors have a mandate to safeguard the public trust and make an example of those who violate it. In the months ahead, Florida's business community can expect to experience the impact of the heightened interest in public corruption cases. ■

**Courtesy of Berger Singerman's White Collar Criminal Defense and Special Investigations Practice Group with offices in Fort Lauderdale, Miami, Boca Raton and Tallahassee.*

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