

# Avoiding Procurement Pitfalls: What is the Board's Role?

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An easily accessible and  
transparent database of contract  
information will bring sunshine into  
the **confusing** and sometimes  
**shadowy** practice of **government  
contracting**.

— Sen. Tom Coburn



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## Procurement Code

- ❑ “The purposes of the Procurement Code are:
    - ❑ To provide for the fair and equitable treatment of all persons involved in public procurement;
    - ❑ To maximize the purchasing value of public funds; and
    - ❑ To provide safeguards for maintaining a procurement system of quality and integrity.”
- NMSA 1978 § 13-1-29.



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## Governmental Conduct Act

- ❑ Treat positions as a public trust.
  - ❑ Advance only the public interest, not personal benefits.
  - ❑ Earn the confidence of the public.
  - ❑ Maintain integrity and act ethically.
  - ❑ Fully disclose real and potential conflicts of interest.
  - ❑ Do not receive money, anything of value, or a promise in exchange for promised performance of a public act.
- NMSA 1978, § 10-16-3



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**In the News**

**AG documents incriminate legislative, education leader Sheryl Williams Stapleton**  
 Sherry Robinson All She Wrote  
 Published 9:58 a.m. MT Aug 3, 2021

**Stapleton focus of kickback probe**  
 BY MIKE GALLAGHER / JOURNAL INVESTIGATIVE REPORTER  
 PUBLISHED: WEDNESDAY, JULY 28TH, 2021 AT 8:49AM  
 UPDATED: THURSDAY, JULY 29TH, 2021 AT 7:58AM

POLITICS - GOVERNMENT


**“OK to pay,” the search warrant of Sheryl Williams Stapleton**

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**Sheryl Williams Stapleton Investigation**


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- ❑ The following information comes from the affidavits filed in support of the state search warrant.
- ❑ The affidavits include information taken from:
  - ❑ Subpoenas to banks and other businesses;
  - ❑ Video surveillance; and
  - ❑ Documents
- ❑ For this presentation, we assume these allegations are true.
- ❑ But remember, there is a presumption of innocence.




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- ❑ APS entered into contracts with Robotics Management Learning System, a software development company.
- ❑ In 2017, Ms. Williams Stapleton signed a Sole Source Justification Request Form, indicating that the software was unique and thus exempt from many Procurement Code requirements.
- ❑ Ms. Williams Stapleton signed invoices from Robotics and handled paperwork to and from Robotics.




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- ❑ Robotics provided APS with a conflict-of-interest form declaring that no APS employees had a direct or indirect financial interest in Robotics.
- ❑ Also declared that Robotics did not employ any APS employee or close relatives of APS employees.
- ❑ Ms. Williams Stapleton's son is listed as "coordinator" and business contact of the software program.




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- ❑ Robotics' website is not operational.
- ❑ Robotics does not have an Albuquerque or New Mexico business license.
- ❑ A former Washington, D.C. license for Robotics has been revoked.




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- ❑ APS made payments to Robotics at an Albuquerque P.O. Box, owned by Ms. Williams Stapleton's son.
- ❑ Surveillance video shows Ms. Williams Stapleton opening this P.O. Box on multiple occasions.




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- ❑ Video surveillance shows Ms. Williams Stapleton negotiating checks written by APS to Robotics.
- ❑ Ms. Williams Stapleton previously questioned the APS Procurement Department as to why they were "looking into" Robotics.
- ❑ Ms. Williams Stapleton requested procurement of another company that purported to train teachers on use of the Robotics software program.




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- ❑ Ms. Williams Stapleton has direct involvement with the following companies and organization, which received the following amounts of money from Robotics from 2014-2021:
  - ❑ Charlie Morrissey Foundation: \$202,105.76
  - ❑ The Ujima Foundation: \$153,385.10
  - ❑ S. Williams and Associates: \$279,772.20
  - ❑ Taste of the Caribbean: \$319,122.98




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- ❑ April 2021: APS submitted letter to New Mexico Attorney General, stating that it "suspected violation[s] of the Governmental Conduct Act and the Procurement Code, by Sheryl Williams Stapleton."
- ❑ July 2021: Agents served a search warrant on Ms. Williams Stapleton's home, family restaurant, and APS office.
- ❑ July 2021: Ms. Williams Stapleton resigned from the New Mexico House of Representatives.
- ❑ August 2021: APS fired Ms. Williams Stapleton.




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- ❑ September 2021: Ms. Williams Stapleton was indicted on 28 criminal counts (26 felony; 2 misdemeanors), including:
  - ❑ 10 counts of using public office for personal or financial gain;
  - ❑ 5 counts of money laundering;
  - ❑ 2 counts of prohibiting sales to the District;
  - ❑ 1 count of racketeering;
  - ❑ 1 count of fraud;
  - ❑ 1 charge of soliciting or receiving an illegal kickback;
  - ❑ 1 count of bribery; and
  - ❑ 1 count alleging Ms. Williams Stapleton profited from a deal between the District and Robotics.



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- ❑ December 2021: APS Board unanimously approved new procurement policy
  - ❑ Creates code of conduct for procurements;
  - ❑ Establishes rules pertaining to competition, impartiality, and transparency;
  - ❑ Sets forth internal controls to curb “fraud, waste and abuse of APS resources”; and
  - ❑ Prohibits APS employees from participating in procurement process if the employee or an immediate family member has a financial interest in obtaining the contract.



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## Entity Summary

- ❑ APS contracted with **Robotics Management Learning Systems LLC**.
- ❑ Robotics developed and licensed the **CyberQuest** software.
- ❑ SWS requested an additional procurement from **TriTech Enterprises, LLC**.
  - ❑ TriTech works closely with and may be a subcontractor to Robotics.
  - ❑ TriTech provides training for CyberQuest.



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**Law**

**WG**

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Buying a product or a service is not procurement, that is purchasing.... “Procurement” solicits for proposals in a **formal** fashion and allows for a **fair, competitive, ethical** environment.  
— Victor Manan Nyambala



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## How are Procurements Fair and Ethical?

- ❑ The Procurement Code insulates purchases from the users.
  - ❑ School boards and districts are subject to the Procurement Code. NMSA 1978 § 13-1-67.
  - ❑ Procurement shall be performed by a central purchasing office designated by the Board, except as otherwise provided in the Procurement Code. NMSA 1978, § 13-1-97(C).
- ❑ Exceptions remove some or all of the normal procurement safeguards.



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## Why Allow Exceptions?

- ❑ Following the Procurement Code is difficult.
- ❑ That difficulty raises the costs of procurement.
- ❑ The Code does not apply to 34 categories listed in the Code (§ 13-1-98).
- ❑ Rules are simplified for:
  - ❑ Small purchases (§ 13-1-125);
  - ❑ Sole source procurement (§ 13-1-126); and
  - ❑ Emergency procurement (§ 13-1-127).



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## Sole Source Procurement

- ❑ Contracts can be awarded without competition if:
    - ❑ There is only one source for the goods or services;
    - ❑ The goods or services are unique and substantially related to the intended purpose of the contract; and
    - ❑ Nothing else can meet that intended purpose.
  - ❑ The central purchasing office makes these determinations and negotiates the contract.
  - ❑ The contract specifications cannot be narrowly written to circumvent these restrictions.
- NMSA 1978 § 13-1-126.



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## Potential Violations

- ❑ Did the central purchasing office independently determine that sole source was justified?
  - ❑ SWS provided a sole source justification form.
  - ❑ The contract was sole source from 2006-2017.
  - ❑ APS later determined it was a “standard online quiz application”.
  - ❑ An RFP was issued in 2019, which the same company won.
  - ❑ The cost went from \$468,000/yr. to \$40,000/yr.



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## Employee Participation in Procurements

- ❑ **Procurement Code:** Employees may not participate directly or indirectly in a procurement when the employee or any member of the employee's immediate family has a financial interest in the business seeking or obtaining a contract.
  - NMSA 1978 § 13-1-190.
- ❑ **Governmental Conduct Act:** Employees must disclose real and potential conflicts of interest and may not receive anything of value in exchange for promised performance of an official act.
  - NMSA 1978, § 10-16-3.



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## ***State v. Gutierrez, 2020-NMCA-045***

- ❑ Held Section 10-16-3(B) of the GCA (“Legislators and public officers and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.”) void for vagueness.
  - ❑ Court could not determine what behavior it was intended to preclude
- ❑ Held Section 10-16-3(C) of the GCA (“Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.”) void for vagueness.
  - ❑ Court could not tell who this provision applies to
- ❑ Petition for cert. granted



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## **Further Restrictions on Official Actions**

- ❑ Public officers and employees cannot take an official action for the primary purpose of their own financial benefit.
  - ❑ If their finances would be affected, they are disqualified from related official acts, unless the financial benefit is proportionately less than the benefit to the general public.
  - ❑ Public officers and employees cannot acquire a financial interest that will be affected by their official acts.
- Governmental Conduct Act, NMSA 1978 § 10-16-4.



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## Governmental Conduct Act - Definitions

- ❑ The Act applies to family members: spouse, parents, children or siblings.
- ❑ A “financial interest” means an interest held by an individual or the individual’s family that is:
  - ❑ An ownership interest in business or property; or
  - ❑ Any employment or prospective employment for which negotiations have already begun.



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## Potential Employee Interest

- ❑ Did SWS have a direct interest in the business?
  - ❑ Video surveillance showed SWS negotiating deposits of checks from APS for Robotics.
  - ❑ Video surveillance showed that SWS had a key to and accessed the Albuquerque P.O. Box to which APS’s checks to Robotics were sent.
- ❑ SWS was associated with entities that received money from Robotics:
  - ❑ Charlie Morrissey Foundation: \$202,105.76
  - ❑ The Ujima Foundation: \$153,385.10
  - ❑ S. Williams and Associates: \$279,772.20
  - ❑ Taste of the Caribbean: \$319,122.98
- ❑ SWS’s son worked for CyberQuest and received checks from Robotics.



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## Potential Employee Involvement

- ❑ SWS signed and approved invoices from Robotics.
- ❑ SWS asked about payments to Robotics and handled paperwork to and from the company, which was not a regular practice.
- ❑ SWS contacted the APS Procurement Department when it asked questions of teachers who used the software.



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Government officials and employees are supposed to manage public property and provide services by applying the law as it is written and in ways that best serve the **public interest** - not to allow officials or their friends or families to profit personally by dealing in their **public trust**.  
— NM Attorney General



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The GCA's ... 'guiding principle' of full disclosure, applies to any bias or interest that would adversely affect a government employee's ability to perform the employee's duties **exclusively in the public interest.**

— NM Attorney General



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## The Board's Role



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## The Board's Role

- ❑ Policy development.
- ❑ May participate in evaluation scoring committees, but may not have a personal conflict of interest.
- ❑ Finance Subcommittee.
  - ❑ "Each local school board shall appoint at least two members of the board as a finance subcommittee to assist the board in carrying out its budget and finance duties." NMSA 1978 § 22-8-12.3(B).
  - ❑ "The finance subcommittee shall make recommendations to the local school board in the following areas: . . . review of financial statements and periodic monitoring of revenues and expenses . . . and procurement; and serve as an external monitoring committee on budget and other financial matters." NMSA 1978 § 22-8-12.3(C).



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## Search Warrant Conclusions



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## Search Warrant Conclusions

- ❑ “APS employees and NMAG Investigators have noted that the procurement process with regard to Robotics was not performed in accordance with state law.”
- ❑ “Sheryl Williams Stapleton participated directly and/or indirectly in the procurement process with APS at a time when she would have known that she or any member of her immediate family had a financial interest in Robotics who had sought and obtained a contract from APS. There is no evidence to indicate that Sheryl Williams Stapleton declared any potential conflict of interest to any party regarding Robotics/CyberQuest.”



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## Search Warrant Conclusions

- ❑ “Investigators calculated that approximately 60% of money paid to Robotics by APS between 2014 and 2021 was subsequently redirected to Sheryl Williams Stapleton's' direct interests . . . [totaling] approximately \$954,386.04. The evidence also indicates that in some cases that money was further redirected into Sheryl Williams Stapleton's personal bank accounts.”
- ❑ Probable cause exists that there are items of evidence related to felony criminal offenses of, among others:
  - ❑ Unlawful employee participation prohibited (Procurement Code) NMSA § 13-1-190;
  - ❑ Ethical principles of public service; certain official acts prohibited (Governmental Conduct Act) NMSA § 10-16-3; and
  - ❑ Committing an official act to improve one's direct financial interest (Governmental Conduct Act) NMSA § 10-16-4.



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