LENNOX AWARDS, INC.,
Petitioner,

v.

DIVISION OF PURCHASE AND PROPERTY,
Respondent.

Decided February 7, 1980

Initial Decision

SYNOPSIS

Lenox, an unsuccessful bidder, challenged the award of a contract for the production of service awards and sought an order awarding it the contract, or in the alternative, rejecting all bids. It argued that the Division of Purchase and Property improperly bypassed its lower bid and erroneously rejected submitted samples as not being in compliance with the Division’s Request for Proposal. While finding that proper samples had been submitted and that the Division erroneously bypassed Lenox’s bid, the administrative law judge concluded that Lenox lacked standing to challenge the Division’s methods for evaluating the bid prices since no objection was raised before the bids were opened. However, it was found that both bidders had communicated with employees of the Division prior to the opening of the bids to tilt the bidding system to their advantage, contrary to N.J.S.A. 52:34-12(d) and thus all bids should be rejected and the bidding process start new.

Stuart B. Dember, Esq., for Petitioner (Coleman, Segal, Dember and Jaffe, Attorneys)

David J. Meeker, Esq., for O.C. Tanner Co., Inc.

Joseph L. Yannotti, Deputy Attorney General for Respondent (John J. Degnan, Attorney General of New Jersey, Attorney)

VOLIVA, ALJ:

This matter concerns the challenge of Lenox Awards, Inc. (petitioner) to the Notice of Intent of the Director of the Division of Purchase and Property, Department of the Treasury (respondent) to award a contract for the production of service awards. N.J.S.A. 52:34-12(d). The Director issued a Notice of Intent to award the contract to O.C. Tanner Co., Inc. on September 28, 1979. Lenox seeks an order awarding it the contract, or in the alternative, rejecting all bids. The matter was heard on November 30, December 5, and December 12, 1979. Briefs were received and the record was closed on December 28, 1979.
The Division issued a Request for Proposal (RFP) on March 23, 1979, for the production and furnishing of service awards (five year pins, etc.) to all state agencies on an "as required" basis. Bid proposals were submitted by Lenox, Tanner, and the Robbins Co. The RFP required samples of service awards to accompany each bid proposal. Due to various factors, which will be discussed infra, the award to Tanner was not made until September 28, 1979. On October 4, 1979, Lenox filed a notice of objection to the intent to award and requested a hearing. The Robbins Co. did not challenge the Director's action and is not party to these proceedings.

Lenox made two primary challenges to the award. First, it was argued the Division's rejection of Lenox's samples, as not being in compliance with the RFP, was erroneous and, second, that it was improper for the Division to bypass Lenox's bid which was lower than Tanner's. The Division, which was joined by Tanner in opposing Lenox, contended that Lenox, as an unsuccessful bidder, did not have standing to make its challenge.

The testimony adduced at the hearing revealed that the essential facts were not in dispute. The contract period was to run from May 7, 1979 to May 6, 1980. The three bids were opened on April 4, 1979. Robbins, which had been awarded the prior year's contract, did not submit samples with its proposal. Lenox submitted samples, consisting primarily of awards it was producing for Exxon. It was not clear whether Tanner submitted samples with its bid or whether the Division utilized products from its contract with Tanner for the years prior to 1978. The bids were received by Miss Grace Breen, senior buyer, on behalf of the Division.

Upon receipt of the proposals, Miss Breen forwarded the samples to Anthony C. Wisneski, chief of quality assurance, for inspection and comparison. Neither Miss Breen nor Mr. Wisneski made a determination, pursuant to the RFP, that the samples submitted were proper.

Sometime after the bids were opened, Robert W. Lickfelt, general sales manager for Lenox, contacted Miss Breen by telephone to determine the status of the contract. Miss Breen advised Mr. Lickfelt that additional Lenox samples would be necessary, especially samples with detail work more similar to that required by the specifications, for a determination on quality to be made. On April 12, 1979, Mr. Lickfelt forwarded the additional samples to Miss Breen. The samples consisted of awards then being produced for the Hughes Aircraft Company and were of two-piece construction. Mr. Lickfelt also advised Miss Breen that Lenox had made a clerical error in its bid proposal, which it was prepared to correct to the State's benefit.

On April 19, 1979, Paul Soraparu, regional manager for Tanner, wrote to Miss Breen concerning the gold price adjustment. This letter implies that
they had a conversation prior to April 19, but subsequent to the opening of
bids. On the same date, Mr. Soraparu also wrote to Mr. Wisneski. Therein,
Mr. Soraparu refers to a meeting Mr. Soraparu and Mr. Wisneski had,
which occurred on either April 18 or 19, at the State's laboratory. They
discussed the subject contract, including the standards of quality which
should apply. Further, Mr. Soraparu stated his opinion that Lenox's and
Robbins's work lacked quality and that these companies provided poor
service. This letter also makes reference to an estimated contract amount
in excess of $100,000. Mr. Wisneski's testimony corroborated the content
of the discussion. He further stated that Mr. Soraparu had samples from
Lenox and Robbins with him, and that they discussed the relative quality
of Tanner's product as opposed to that of its competitors. Mr. Wisneski also
indicated that the Tanner samples he already had in his possession were
those he acquired from a Mr. Mahoney of the Department of Civil Service,
which were purchased by the State from Tanner under one of its prior
contracts.

Mr. Wisneski advised Miss Breen on April 24, 1979, that he had
examined both Lenox's and Tanner's samples. He again implied the Tanner
samples were those which he had in the lab., i.e., from Civil Service.
Because the samples from Lenox did not have the State seal and were not
the same as Tanner's (i.e., of two-piece construction with fine detail) he
claimed to be unable to make a true comparison. He expressed a need for
a sample from Lenox which was the same as Tanner's. Miss Breen advised
that the RFP did not require a sample to be that of a State service award.

On April 24, 1979, Mr. DeMille, vice president of Customer Services
for Tanner, wrote to Mr. Wisneski in reference to a telephone conversa-
tion of the previous day. Mr. DeMille included certain written material
regarding the testing of diamonds, which Mr. Wisneski acknowledged he
had requested.

Mr. Soraparu also met with Mr. Wisneski, on or about April 24, 1979,
to discuss the subject contract. He again had in his possession samples of
Tanner's product. In the discussion, he alluded to the lack of quality and
poor service of both Lenox and Robbins.

Mr. Soraparu, in a letter to Miss Breen, dated April 26, 1979, referred
to a meeting between them on April 24, 1979. He actively criticized Lenox's
lack of quality and poor service in the letter. He also provided the names
and addresses of companies with which Lenox apparently had contracts.
Mr. Soraparu stated that these companies would provide negative references
of Lenox. Interestingly, he made reference to a letter he wrote to Thomas
Bush, Deputy Director of Purchasing, dated March 17, 1978, wherein he
criticized the Robbins bid concerning the contract for the previous year,
ultimately awarded to Robbins. Mr. Soraparu advised Miss Breen that the Division would encounter the same difficulties with Lenox as it had with Robbins. He also showed her samples of Lenox products which he contended were inferior to those of Tanner.

Miss Breen acknowledged the meeting of April 24, 1979, and the letter from Mr. Soraparu. However, she stated they had no effect upon her recommendation. Nevertheless, she did investigate Lenox's performance with Atlantic City Electric Company, which had been identified by Mr. Soraparu. She was advised that Lenox's performance was improving. Miss Breen determined Lenox's performance history to be satisfactory and made no further inquiries. She did not make any in-depth analysis or other investigation to determine the bidders' service records. She was already of the opinion that Robbins's performance was unsatisfactory under its existing contract.

At a point subsequent to the opening of the bids, Miss Breen made an analysis of the three proposals. She determined that Robbins had submitted low unit price bids on 57 items out of a total of 132. However, Robbins's prices were not firm on four of the five gift items. Lenox had submitted low unit price bids on 52 items and Tanner on 12 items. Since there were no estimates of quantities contained in the RFP, she did not make a determination or an estimate of the total cost of the contract. She determined that Lenox was the low bidder based on the number of low unit price bids, Robbins being out of consideration due to the lack of firm prices on the gift items. Tanner was the high bidder, above both Lenox and Robbins. None of the bidders were out of consideration for the award at this point.

On April 30, 1979, Miss Breen recommended the contract be awarded to Tanner. This recommendation was based upon the number of low unit price bids, her opinion of each bidder's service capabilities, Mr. Wisneski's analysis and a verbal inspection report from Mr. Bell of Hamilton Jewelers concerning the diamonds contained in the samples. She considered Robbins's service under the previous contract to be poor. Although Robbins had not submitted samples, current production items were inspected. The analysis of Lenox's samples varied, some acceptable, some not. Tanner's prior products were determined to be satisfactory. Miss Breen considered Tanner's prior service record to be the determinative factor in her recommendation that it be awarded the contract.

On May 9, 1979, Mr. Lickfelt made a written request to Miss Breen for an actual sample of a New Jersey service award in order that Lenox could begin preliminary tooling for production.

Mr. Soraparu again wrote to Miss Breen on May 10, 1979, referring to a May 8 telephone conversation, and included copies of both Tanner and
Lenox samples. His written discussion attempted to illustrate the superior quality of Tanner’s product as opposed to Lenox’s.

On May 22, 1979, Miss Breen, in a memorandum to Giulio Mazzone, supervisor of the Purchase Bureau, restated her recommendation that the contract be awarded to Tanner, based primarily upon its prior service record.

Mr. Lickfelt testified that he had been in frequent telephone contact with Miss Breen during April and May 1979. At this time he had been advised the Division was having difficulty in evaluating the three proposals in terms of price. In an attempt to “assist” the Division, Thomas H. Brasher, president of Lenox, wrote to Miss Breen on May 29, 1979. He included a breakdown according to the year level of an award, of the percent of savings according to both Lenox’s and Robbins’s bids. In essence, this analysis was based upon estimates of quantities of use of each individual service award. The comparison showed there would be greater savings with Lenox as opposed to Robbins, Mr. Brasher being of the opinion that Tanner was out of the running for the contract due to its high bid. No estimate of quantities was contained in the RFP.

On May 30, 1979, Mr. Mazzone rejected the recommendation to award the contract to Tanner. The three bidders each agreed to hold their proposal prices pending award of the contract.

Also on May 30, 1979, Mr. Brasher met with Fred Crocker (Miss Breen’s immediate supervisor) and other members of the Purchase Bureau concerning the subject contract. Thereafter, he provided an estimate, prepared by Lenox, illustrating the percentage of total awards according to year level. This illustrated that the greatest number of service awards are generally required for the lower year levels. The purpose of this analysis was to show that had estimated quantities been developed and applied to the proposals, Lenox would have been the low bidder on the basis of total cost.

Mr. Soraparu wrote to Mr. Bush on June 8, 1979, making reference to his letter of the previous year. He restated his opinion of Lenox’s poor service and lack of quality, and again included the names and addresses of purchasing agencies he believed would provide negative references.

On June 14, 1979, the Division received a written report from Mr. Bell of Hamilton Jewelers concerning the samples he had examined. The written analysis indicated that some of Tanner’s diamond samples were not within State tolerance, all of Robbins’s diamond samples were not acceptable and some of Lenox’s diamond samples were not within State tolerance. Also noted was that Lenox’s die work was not as good as that of the other bidders. The samples from Tanner and Robbins which he examined were previously
produced State service awards.

The recommendation was again made on June 15, 1979, to award the contract to Tanner "as the only bidder who comes closest to meeting our specifications" (emphasis added). The recommendation did not contain a determination of total price, but referred only to the number of low unit price bids. Reference was also made to Mr. Bell's report. However, none of the bidders was disqualified at that point. Additional justification for the award to Tanner was provided on June 27, 1979, by Fred Crocker. However, it is clear that none of the bidders had provided completely acceptable samples.

During the latter part of June and most of July 1979, the Division was attempting to determine what course of action to pursue. It chose to request new samples, including diamonds, from each of the bidders. There is some doubt whether the intent was to examine the jewelry and diamonds, or just the diamonds. Mr. Lickfelt testified that he was under the impression the Division only wished to examine diamonds. Also, this was the first occasion he knew there was a problem with the quality of the sample submitted by Lenox.

Mr. Bell was again requested to evaluate the quality of the diamonds and settings of the additional samples. On October 16, 1979, regarding the second general submission of samples, he issued a favorable opinion of both Tanner's and Robbins's samples, but indicated some problems with Lenox's. On August 30, 1979, apparently after additional samples were provided, Mr. Bell was of the opinion that both Tanner and Lenox had supplied service awards of acceptable quality, however, Robbins's samples were not acceptable.

Mr. Crocker recommended the contract be awarded to Tanner on September 7, 1979. Robbins's bid was rejected because the prices of the gift items were not firm and because of Mr. Bell's most recent negative evaluation. Lenox's proposal was rejected due to an analysis prepared by Mr. Wisneski in September 1979, wherein he stated its samples did not meet the requirements of the RFP (specifically, the specifications for finished product).

Mr. Soraparu wrote to Mr. Crocker on September 8, 1979. In addition to referring to the negative criteria he cited in prior correspondence, he argued that were Lenox to receive the contract, it would be unable to meet the delivery dates required in the RFP.

On September 21, 1979, Mr. Mazzone advised the Director that Lenox was being bypassed "because of the poor quality of engraving, and also because this firm submitted the wrong sample." The Notice of Intent to award the contract to Tanner was issued on September 28, 1979.
Lenox challenges the determination that its samples did not meet the requirements of the RFP. The pertinent portion of the RFP states:

All bidders must submit with their quote a sample of a current production-run service award being produced for another company to be compared for quality and workmanship.

However, this section is not related, directly or by inference, to the specifications for the finished product. Nor is there any reference to the samples in the remainder of the specifications. The RFP did not require the samples to conform to the specifications for a finished award. Miss Breen advised Mr. Wisneski of this fact following his initial inspection of the samples. However, he continued to operate under his mistaken premise. His opinion that no comparison could be made between the final set of Tanner’s and Lenox’s samples was the sole reason for the bypass. Further, there was no determination made that any of the bidders’ samples were properly submitted, pursuant to the RFP. Miss Breen only received the samples and transmitted them to Mr. Wisneski for analysis. Mr. Wisneski did not examine the samples for compliance with the samples section of the RFP, he merely compared them and used the specifications for the finished product as the appropriate standard. This was erroneous, therefore, it was improper to bypass Lenox on the basis of Mr. Wisneski’s opinion.

Lenox also challenges the contract price analysis, arguing that the Division failed to establish the total cost of the contract and failed to consider price. However, the Division correctly contends that Lenox has no standing to make this argument.

The courts have consistently held that an unsuccessful bidder has no standing to challenge the specifications of an RFP. Waszen v. Atlantic City, 1 N.J. 272, 276 (1949); Blondell Vending v. State, 169 N.J. Super. 1, 9, 10 (App. Div. 1979); James Petrozello Co., Inc. v. Chatham Tp., 75 N.J. Super. 173, 179 (App. Div. 1962). In Blondell, supra, the Appellate Division, although it found standing, reaffirmed this principle. Essentially, an unsuccessful bidder is prohibited from seeking to nullify an award of a contract to another party by attacking a specification when it was silent prior to announcement of the award. Id. Here, the RFP contained no method for evaluating the bid prices. This was the same situation, however, faced by all bidders. Lenox made its attack only after the bid opening and when, the award appeared in doubt. Without comment at this point on the merits of Lenox’s position, it has no standing to make this argument. In addition, Lenox proposed an evaluation system which would require the use of estimates of quantities for each separate award and, ultimately, a determination of the total cost of the contract. In James Petrozello Co., supra at 179, the court held that bid proposals could not be evaluated on
such a system, unless they were included in the specifications.

The purpose of the competitive bidding system is to secure the benefits of competition and protect the public interest from "favoritism, improvidence, extravagance, and corruption." Hillside Tp. v. Sternin, 25 N.J. 317, 322 (1957); Commercial Clean. Corp. v. Sullivan, 47 N.J. 539, 552 (1966); Pucillo v. Mayor and Council of Borough of New Milford, 73 N.J. 349, 356 (1977); Terminal Const. Corp. v. Atlantic Cty. Sewerage Auth., 67 N.J. 403, 409, 410 (1975); James Petrozello Co., supra at 180. One of the primary concerns is the avoidance of factors which would render the competitive balance or equal footing of the bidders a nullity. A & S Transp. v. Bergen Cty. Sewer Auth., 133 N.J. Super. 266, 276 (App. Div. 1975); Hillside Tp. v. Sternin, supra at 326. The Supreme Court in Terminal Const. Corp., Cty. Sewerage Auth., supra at 410, ruled that such bidding practices, even when only the opportunity for impairing the bidding process exists, must be set aside:

To achieve these purposes all bidding practices which are capable of being used to further corrupt ends or which are likely to affect adversely the bidding process are prohibited, and all awards made or contracts entered into where any such practice may have played a part, will be set aside. This is so even though it is evident that in fact there was no corruption or any actual adverse effect upon the bidding process. Id.

The one single factor which is most evident in this matter is that Mr. Soraparu of Tanner and the various employees of Lenox involved, attempted, even prior to the opening of the bids, to tilt the competitive balance in their respective directions. It was well shown that Mr. Soraparu, via his frequent meetings and correspondence with Miss Breen and Mr. Wisneski, even while the latter was inspecting the very samples for the subject contract, crossed the boundaries of all propriety. He used every means available (improper communication with the contracting agency, providing unauthorized samples of his competitor’s product, providing sources for unfavorable recommendations, etc.) to subvert the bidding system to Tanner’s advantage. Nor can Lenox claim to be the innocent victim of this heinous conduct. Its employees likewise attempted to sway the opinion of Miss Breen and her superiors. Constant efforts were made to have the Division evaluate the proposals according to a system advocated by Lenox, by which it would be the lowest bidder. That Lenox’s conduct may have been less offensive by a matter of degrees does not make it less reprehensible. There is no doubt the voluntary actions of both parties were designed to eliminate competition in the award of this contract, and must not be tolerated.
In *James Petrozello Co.*, *supra* at 181, the Appellate Division held that:

Where such possibility is present, that is enough to set aside the . . . action. There is no need to prove actual fraud or favoritism or collusion. The absence of proof of corrupt motives does not preclude the judicial remedy. The . . . action will be vacated where it amounts to a fraud on the bidding statute, even in the presence of good faith.

(Citations omitted)

There can be no doubt the actions of Tanner and Lenox, individually as well as collectively, so contaminated the bidding process in this matter that a fraud on the statute, *N.J.S.A.* 52:34-12(d), has been committed. Any action to award the contract at this time would contravene the statutory purposes.

There were no proofs that any of the Division's employees were active participants in the wrongful conduct, nor that they were influenced by the bidders. However, they were, unfortunately, readily available to and did meet with the bidders' representatives. They were party to discussions concerning the very determination they were responsible to make. The bidders made extremely prejudicial statements and produced information and samples, the sole purpose of which was to secure the contract by denigrating their competitors. Such conduct is contrary to the competitive bidding system. Had the Division's employees properly isolated themselves, or at the very least disclosed all communications to each of the other bidders, the potential for harm would not now exist.

The relevant portion of *N.J.S.A.* 52:34-12 states:

(d) award shall be made with reasonable promptness by written notice to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State, price and other factors considered. *Any or all bids may be rejected when the State Treasurer or the Director of the Division of Purchase and Property determines that it is in the public interest to do so.* (Emphasis added)

There is no doubt that the Director of the Division has broad discretion in making an award and need not accept the lowest bid. *Commercial Clean. Corp.*, *supra* at 548 (1966); *In re Honeywell Information Systems, Inc.*, 145 *N.J. Super.* 187, 199-200 (App. Div. 1976) certif. den. 73 *N.J.* 53 (1977). To award the contract in the aftermath of the efforts of both Tanner and Lenox would be contrary to the statutory purposes and the public interest. The only reasonable action is to invoke the powers of *N.J.S.A.* 52:34-12(d) and reject all bids. The contract must be bid anew with vigilant efforts to scrutinize the conduct of the bidders.

I am compelled to comment upon the Division's inability to determine which bidder, in fact, submitted the lowest bid. I am mindful the Director need not accept the lowest bid and is directed to consider other factors. *See, N.J.S.A.* 52:34-12(d); *Commercial Clean. Corp.*, *supra* at 548. However,
the argument made by Lenox recommending use of estimated quantities, in spite of my reluctance to acknowledge it due to Lenox's lack of standing on the issue concerning the determination of price, has the appearance of merit. A review of the method used to determine the low bidder, by the aggregate of low unit price bids, appears to be inconclusive and potentially misleading. The use of estimated quantities would, as the court proffered in James Petrozello Co., Inc., supra, provide a firm standard upon which to evaluate the bid proposals and avoid the potential for challenge. Of course, the Division must determine if such a system is appropriate for this contract.

After consideration of the entire record in this matter, I FIND that:
1. The facts set forth in the above discussion were not disputed and are included herein as though set forth at length.
2. The RFP did not require the samples to adhere to the specifications for the finished product.
3. Lenox submitted proper samples of its product line, pursuant to the RFP.

I CONCLUDE that Lenox's bid proposal was erroneously bypassed.

I FIND further that:
4. Lenox raised no objection to the method of evaluation of the price of the bid proposals prior to the opening thereof.

I CONCLUDE that Lenox has no standing to challenge the price analysis made by the Division.

I FIND further that:
5. Tanner's conduct during the pendency of the award of the contract was a conscious effort designed to subvert the competitive bidding system to its benefit.
6. Lenox's conduct during the pendency of the award of the contract was a conscious effort designed to subvert the competitive bidding system to its benefit.
7. The contacts between the Division's employees and the representatives of Tanner and Lenox were too numerous and deviated from that which is acceptable. They unreasonably contaminated the competitive bidding system regarding this contract.
8. There was no proof of fraud, favoritism or collusion by the Division's employees.
9. These improper communications between the representatives of Tanner and Lenox and the employees of the Division are contrary to the provisions of N.J.S.A. 52:34-12(d).

I CONCLUDE that the actions of Tanner and Lenox constitute a fraud against N.J.S.A. 52:34-12(d), are contrary to the public interest, and that
all bids should be rejected.

Therefore, I ORDER that all bid proposals submitted for the contract for the provision of service awards to the State of New Jersey be rejected and that the Division issue another Request for Proposal.

After reviewing this Initial Decision, the Division of Purchase and Property on February 29, 1980 issued the following Final Decision:

The administrative law judge’s findings and conclusions are modified as to part I, although they are moot. I agree that the RFP did not require the samples to adhere to the specifications for the finished product, and that Lenox submitted "proper samples," if that means "a current production-run service award being produced for another company to be compared for quality and workmanship."

However, I disagree with the conclusion that the Lenox bid proposal was erroneously bypassed: I would agree if the grounds were limited to submitting a sample which could not be compared. But there were other grounds—irregular beads, when the specifications requested "finely chiseled beads." In this respect, the State had the right under the specifications to evaluate the "quality and workmanship" of the vendor’s representative sample. If was found wanting.

Thus, in addition to the grounds for a rejection cited by the administrative law judge, there were the additional grounds that (a) Lenox did not submit a sample which met the "quality and workmanship" standards in the specification and (b) O.C. Tanner failed to submit a new sample in the first instance. O.C. Tanner was non-responsive at the outset for failing to submit the sample within the bid; it was a mandatory requirement.

"To permit one bidder to ignore these requirements would give him an advantage over the others, and to permit him to supply the deficiency later, and after the bids were opened, would open the door to fraud and favoritism, and defeat the statutory purpose of protection to the taxpayer." Tufano v. Cliffside Park, 110 N.J.L. 373 (1932). Moreover, there are still other grounds for rejecting the bids, quite apart from the extraordinary vendor communication, and the non-compliance with the specifications.

1. The specifications failed to meet the judicial standard ("definite, precise and full as practicable in view of the character of the work, the quality and quantity of the materials to be furnished"). (Waszen v. Atlantic City, 1 N.J. 272 (1949).

Quite clearly, there is some confusion as to how we should define "representative" in requesting a representative sample.
For future reference, we should ask vendors to submit prototype samples, but we cannot demand that after bids are received, as here. It should be required in the specifications.


Petrozello stops short of demanding that a purchase agency notify vendors, when unit prices are used, of estimated purchase quantities. The thrust is directed against applying those estimates "depending upon sheer judgment in the use of the divining rod" after the bids are opened.

However, we cannot ignore the advice of the court that "where the unit price method is employed, fair estimates of the quantities to be ordered should, whenever possible, be specified in advance of the bidding to avoid any possible juggling of the figures in aid of a favorite bidder." (Emphasis supplied)

The position of the administrative law judge and Lenox in this regard is well taken, although I could not agree with the Lenox use of typical data on the mix of service records. We should determine, in advance, what the State's own mix will be in any given period.

I had been advised that this would be difficult, but as the court said in Wasson, "difficult situations of and by themselves do not always form the legal basis for an exception to controlling legal principles."

(I would note parenthetically that this Division will never be able to comply with the spirit of Petrozello until it installs a computerized purchase information system which produces accurate consumption data. Such a system is in its development stage.)

I am lately advised that the State's personnel offices will be able to estimate the State service mix for the purposes of purchasing awards. We will use that data to develop estimates.

In addition, it becomes clear that this type of procurement would be more effective if it were a fixed quantity purchase, based on those estimates, rather than an open ended term contract. This will eliminate the need to escalate the price of gold. If the estimates are reasonable, the State will be in no danger of over-purchasing.

For future reference, we should strengthen the specifications in other respects:

1. Only the samples submitted with the bid (properly defined prototypes) should be considered. The vendors should get one shot.

2. The evaluation should be conducted by an outside panel of jewelers, each of whom would inspect the same sample. We should retain that panel now to help us revise the specifications to assure consistency with the realities of the industry.
3. The reports of the panel should be submitted to an evaluation committee, with one Purchase Bureau representative, the appropriate representative of the Department of Civil Service and a representative designated by the State Personnel Council.