

**IF YOU BUILD IT,
THEY WILL COME**
*FRAUD IN THE
PROCUREMENT PROCESS*

**NYC AGA AND NYSICA
"FRAUD, INTEGRITY AND
CONTROLS" CONFERENCE**

- Some of the most damaging corruption impacting the stability of a nation manifests itself in the form of procurement fraud.
- When government sets out to build its procurement systems, it must be understood that corrupt individuals and fraudsters will come and work to take dishonest advantage of what has and is being built.

WHAT IS THE ROLE OF GOVERNMENT

- When conducting fraud investigations, an investigator or auditor will encounter a host of crimes, such as false filings, larceny and falsification of records.
- Success in procurement investigations rests on a clear understanding of the basic elements that constitute the different types of fraud facing an auditor/investigator.

IF YOU BUILD IT, THEY WILL COME

- Concealment of a material fact or a false representation.
- Knowledge on the part of the person making the false representation that it is, in fact, false, or gross negligence.
- Intent to deceive.
- Reliance on the false representation.
- Injury to the party relying on the false representation.

RECIPE FOR FRAUD

- **Program fraud:** In this type of fraud, there will be an effort made to misappropriate funds and/or resources from a government program.
- In almost every case, the harm extends much further than the “undefined government”. In fact, the injury almost always reaches ordinary people, families, and children, people who are legitimately in need.
- Program fraud is not just about stealing money; it is also about stealing lives.

TYPES OF FRAUD

- **Contract fraud:** Contract fraud can be separated into four categories. Generally, we find that a dishonest vendor who is involved in one aspect of contract fraud is most likely involved in others, if not all:
 1. **Bid-rigging:** Bid-rigging schemes have the potential to do significant harm to the contracting process. A successful bid-rigging scheme can increase project cost and compromise the procurement process on multiple levels.

TYPES OF FRAUD

- Corrupt individuals can work independent of procurement officials when attempting to execute bid-rigging schemes. However, in these schemes, there is a heavy reliance on the cooperation of co-conspirators to do their part in controlling which conspiring vendor will get the contract.
- Bid rigging is a difficult scheme to prove. It requires detailed document review and, in most cases, the cooperation of a participating conspirator.

TYPES OF FRAUD

- In almost all cases involving kickback schemes, the conspirator making the illegal payment will pass this expense onto the government and, ultimately, the people.

KICKBACKS

- Inferior goods are not just a matter of getting brand- X instead of a name-brand product without any further consequences.
- There are times that inferior speaks to the fact that the structure built is not what was agreed to in the contract.
- The medication administered does not cure as claimed.

INTENTIONAL DELIVERY OF INFERIOR GOODS

- The protective equipment issued cannot protect as advertised.
- It is not unreasonable to conclude that there may be times when the use of inferior goods can literally mean the difference between life and death.

INTENTIONAL DELIVERY OF INFERIOR GOODS

- A vendor who cuts corners in the production of ballistic-resistant vests for law enforcement officers or military personnel is not just engaging in corruption. He is also placing an officer's or soldier's life in jeopardy.
- A vendor who knowingly sells expired products to the government is again placing the health and safety of the end user in jeopardy.
- A contractor who uses low-quality materials in constructing a bridge or highway to save money or reward a supplier, can also end up with blood on his or her hands.

INTENTIONAL DELIVERY OF INFERIOR GOODS

- **IG: Afghan contractor fraud killing American soldiers**

Construction systems used to prevent deadly IED explosions in Afghanistan that cost taxpayers \$32 million don't work or were never installed, possibly resulting in the deaths of unsuspecting American troops, according to a damaging new inspector general's report.

This case demonstrates the potential that fraud has to kill.

DEATH BY FRAUD

- Change orders are formal changes or amendments to a contract.
- Change-order fraud occurs when a contractor is paid based on an approved change order, but the work was not actually performed.
- Or when work on the approved change order was provided for in the original contract, and the contractor colludes with a procurement official to approve the unjustified request for a change order.

CHANGE-ORDER FRAUD

- Change-order fraud can occur in a multitude of disguises.
- The success of many change-order fraud schemes is based on the confidence of the corrupt contractor or procurement official that a fraudulent change order could be processed without detection, resulting in substantial profit for the conspiracy team.

CHANGE-ORDER FRAUD

- In many cases, contractors will bid low on a project to ensure that they win the contract.
- It is their reliance on the established relationship with a procurement official to process questionable change orders that allows these vendors to be assured of making a profit at the conclusion of the contract.
- Change-order fraud is not just a matter of fraudulent cost increase. It can also involve uninspected work, inferior goods and unsafe products.

CHANGE-ORDER FRAUD

- **Bribery:** Offering a bribe involves an attempt to influence a public servant to compromise the public trust bestowed upon him.
- The individual offering the bribe will make the offer in an effort to persuade the public servant to betray that public trust.
- It does not matter who takes the first steps in bringing the inducement to life; either participant can be charged with the crime, whether soliciting, accepting, or offering the bribe.

BRIBES AND GRATUITIES

- **Gratuities:** Individuals laying a foundation intended to influence government employees view unlawful gratuities as an investment.
- Sometimes it is a short-term investment, and other times it is intended to be a long-term investment.
- Recognize that it is an investment, and it is not intended to benefit the people.

BRIBES AND GRATUITIES

- When it is decided that a procurement investigation will be undertaken, investigators must recognize that there are a myriad of ways in which individuals will commit fraud.
- We must be mindful of procurement officials charging personal expenses to government contracts, P-Cards or petty cash.
- In looking for procurement fraud we must be sensitive to the falsification of documents, such as checks, purchase orders, or bidding documents.
- This can include entirely false claims, such as invoices for services not performed.

EXAMPLES OF FRAUD

- In the largest heating oil fraud schemes in NYC history, vendors defrauded the city of millions of dollars by billing for heating oil never delivered to residential buildings.
- The drivers, often with the consent of the company owners, turned a profit by going to nearby private buildings and selling the oil to conspiring property owners or return to the depot with the oil for the owner to resell at a profit, shared with the drivers.
- At the end of the day of stealing oil these drivers returned to their warm homes, giving no thought to the frigid conditions their conspiratorial acts left families to endure.

EXAMPLES OF FRAUD

- Conspiracies can occur in a multitude of forms as they penetrate the procurement process.
- They can take place among employees, contractors, vendors, and politicians.

EXAMPLES OF FRAUD

- Auditors/Investigators must be mindful of the endless paths that fraud can journey down and, from time to time, become proactive in uncovering these types of frauds.
- Proactive thinking is critical to the process.

EXAMPLES OF FRAUD

- As part of a proactive investigation, I directed that a covert office supply company be set up.
- The company was staffed with undercover operatives who had successfully completed the undercover training program that I designed and implemented at the agency.

EXAMPLES OF FRAUD

- This investigation was an example of the importance of understanding how different government agencies operate.
- In this case, we were required to be fully aware of the procurement procedures for the agency where the proactive approach was taking place.

EXAMPLES OF FRAUD

- The undercover company began submitting bids to provide office supplies.
- Keep in mind that when you set up a covert company, unless you are doing a quick one-time operation, you need to be able to provide the services that your company is advertising.
- Shortly after forming the company, the undercover operatives were approached by two government employees who invited the operatives to enter into a scheme to bill the government for supplies not received and to share in the profits.

EXAMPLES OF FRAUD

- The government employees devised a plan in which they prepared fraudulent purchase orders and sent them to the undercover company. They then instructed the undercover company to submit twelve fraudulent invoices for office supplies, totaling approximately \$18,000.
- For eight of the twelve invoices billed to the agency, totaling \$15,000, the undercover company was instructed not to deliver any items.

EXAMPLES OF FRAUD

- Subsequently, the undercover company received payment from the government for products that were never delivered.
- The proceeds were split among the two government employees and the covert operative posing as the president of the undercover company, with the employees' unlawful share amounting to approximately \$8,000.

EXAMPLES OF FRAUD

- The corrupt employees also required the covert company to provide, for their personal use, a videocassette recorder, a nineteen-inch color television, and various pieces of furniture.
- The proactive investigation resulted in the arrests of the two government employees. They were charged with violating federal conspiracy acts, mail fraud, and embezzlement statutes in connection with their scheme to embezzle government funds and using the US Postal Service to further the scheme.

EXAMPLES OF FRAUD

- The fraudulent invoicing in this circumstance was able to take place because of the contracting agency's failure to set up a system where there was a separation of duties or a rotation of staff.
- On this occasion, the individuals who ordered the supplies were the same ones receiving them and approving payments.
- The victimized agency was presented with recommendations focused on putting policies and procedures in place that established a separation of duties, staff rotation, and a requirement for regular internal audits.

EXAMPLES OF FRAUD

- The success of most procurement-fraud schemes rests on a lack of communication among the honorable players involved in the procurement process.
- In most cases, as the scheme is being executed, someone in the procurement process gets a sense that something is not right.
- Rather than responding to that inner sense that something has gone amiss, many employees will simply clear their throat and say nothing about what their expertise and experience are telling them.
- The corrupt individual relies on the inaction of the honest man wearing blinders.

REMOVE THE BLINDERS
