

WHO RIGGED THE BIDS?



NEW YORK STATE INTERNAL CONTROL ASSOCIATION
NYSICA

2016 INTERNAL CONTROL CONFERENCE
ALBANY, NY APRIL 28, 2016

G-SQUARE INTERNATIONAL TRAINING ACADEMY
A DIVISION OF G-SQUARE CONSULTING SERVICES LLC
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BID RIGGING BASICS



- Bid rigging is a violation of the US federal Sherman Antitrust Act.
- Several countries and states also have bid rigging/antitrust laws.
- What this really means is that corruption is global.

BID RIGGING BASICS



- There are generally two sources from which bid rigging schemes come to life.
- In one instances an employee assists a vendor or bidders in fraudulently winning contracts through the competitive bidding process.
- In the other source, bidders agree among themselves to control competition and give the impression that competition is taking place.

BID RIGGING BASICS



- Bid rigging is a scheme that has the potential to generate significant harm to the government fisc and to compromise the procurement process in ways that result in increased contract cost through larceny.

BID RIGGING BASICS



- It is an incestuous scheme, usually requiring close relationships among the participants.
- Because of its incestuous nature, it is difficult to gain the cooperation of participants and prove the crime.

BID RIGGING BASICS



- Collusion among competitors and government employees in these schemes often result in violations of US mail or wire fraud statutes, false statements statute, and other federal and state felony statutes.

BID RIGGING BASICS



- In the area of corruption, bid rigging is very active and unfortunately, very successful.
- While going through the procurement process, there is ample opportunity to introduce bid rigging schemes.
- This can be done in the pre-solicitation, solicitation or submission phase of the bidding process.

PRE-SOLICITATION PHASE



- During the pre-solicitation phase, the procurement officer might accept a bribe in exchange for initiating a project or purchase of materials that are not necessarily in the best interest of the organization or that favors a particular vendor.
- Once doing this, the procurement officer will prepare a specification which favors the vendor who has agreed to pay the bribe.

SOLICITATION PHASE



- During the solicitation phase, the procurement officer will try and limit the number of vendors given notice that the opportunity to bid exist. This increases the chances of the bribe paying vendor to win the bid.
- The chances of success in this scheme is increased by the bribe paying vendor submitting multiple bids. One in his company name and several others in the names of fictitious vendors or other companies that he has affiliations with.

SOLICITATION PHASE



- Procurement officers can also successfully control who wins bids during this phase by giving advance notice of the solicitation to vendors willing to pay a bribe.
- Once providing the advanced notice, the procurement office can then limit the amount of time provided for vendors to submit their bids.

THERE ARE SEVERAL SCHEMES COMMON TO BID RIGGING



- Market allocation
- Bid rotation
- Complementary bidding
- Subcontract bid rigging
- Bid suppression
- Price-fixing
- No competition Bid Schemes
- Telephone Bid Schemes
- Political Influence schemes

MARKET ALLOCATION



- This scheme occurs when competitors remove competition from the process by agreeing to divide markets among themselves.
- In place of competition, the participants allocate markets by predetermining which company will be assigned a customer or geographical area in which to operate.

MARKET ALLOCATION



- The success of market allocation, as well as some other types of bid-rigging schemes, relies on the participants' willingness to submit *complementary* bids to give the false impression that competition exists.

BID ROTATION



- This is a conspiracy that is similar to market allocation in that participants conspire to ensure that they each receive a piece of the procurement pie.
- However, in bid rotation, companies that conspire take turns winning the available contracts.

BID ROTATION



- It does not require an allocation of the market. It only requires that participants be patient and wait their turn.
- Beyond patience, the success of this scheme requires the submission of complementary bids by the participants not scheduled to win the bid.

COMPLEMENTARY BIDDING



- This is a part of most bid-rigging schemes.
- It is also known as cover, courtesy, token, or symbolic bids.
- These bids are submitted above the price bid by the collusively predetermined low bidder.

COMPLEMENTARY BIDDING



- Oftentimes, complementary bids will include conditions that the submitting company knows will be unacceptable to the purchasing agency, resulting in the bidder being found nonresponsive.
- Also, with these types of bids, it will be found that specific companies consistently submit bids but rarely win.
- The purpose of complementary bidding is to paint a misleading picture that competition is alive and well when, in fact, it has been placed in a coma.

SUBCONTRACT BID RIGGING



- This method to rig bids is common and often happens in conjunction with complementary bidding.
- It occurs when contractors agree not to submit bids, or preferably, to submit complementary bids with the understanding that parts of the contract will be subcontracted to the participants that did not win.
- This can be in the form of providing materials or equipment.

BID SUPPRESSION



- In bid-suppression schemes, one or more of the competitors expected to bid agrees among the conspirators not to bid so that the vendor chosen by the conspirators will be able to submit the winning bid.

PRICE-FIXING



- Price-fixing is an agreement among conspirators to control the price at which products or services are sold.
- Price-fixing also takes place when suppliers quote higher prices for material to a vendor not participating in the scheme and in turn provides a lower price to the vendor participating in the scheme to rig the bid.

TELEPHONE BID SCHEMES



- Phantom and Loose lip bid schemes are the two I found most active in government programs.
- These schemes only require an agreement between a single contractor and the government procurement official.
- They are the easiest to detect of the bid rigging schemes.

TELEPHONE BID SCHEMES



- Loose lips occur in low dollar procurements, usually \$5000 or less.
- In many jurisdictions these types of procurements require the procurement official to contact three potential bidders over the phone and obtain a bid amount once the procurement official describes what commodities are needed.
- When rigging the bid, the procurement official already has an agreement in place with the contractor to contact him last.

TELEPHONE BID SCHEMES



- On that last call the procurement official will advise the co-conspirator what bids were made by the previous two bidders and then ask for the conspirator's bid.
- If the conspiring contractor wants to win the bid, he offers a bid price slightly lower than the individual that had the low bid before the conspiring call was made.

PHANTOM COMPETITION BIDS



- Phantom bid schemes are similar to the loose lip scheme except that the procurement official is more daring in his actions.
- In this case, the procurement official only makes one phone call and that is to the contractor that he already has devised the scheme with.
- As for the other two bids, the procurement official will not make those calls. Instead he will enter a bid amount of his choosing and falsely record on the bid documents that the bids were made by legitimate contractors.

POLITICAL INFLUENCE



- One area that has sadly kept many agencies particularly busy over the years rest within the rigging of bids by politicians and members of their staff.
- In most instances of politicians rigging bids, it is done by flexing their political muscle and calling in favors.

You get rewarded and I get rewarded



DETECTING BID RIGGING



- Most bid rigging schemes are complicated and difficult to prove.
- Without the cooperation of someone with specific knowledge of the conspiracy, it will require a review of bids and bidding activity over a period of time.
- It is unlikely, but not impossible, that the review and analysis of one contract will uncover provable bid rigging.

DETECTING BID RIGGING



- An investigator should be sensitive to bids that are:
 - higher than published price lists or previous bids submitted by a company
 - bids that are significantly higher than estimates without explanation. (construction)
- There will also be instances where a company will withdraw its successful bid for no apparent reason and later be found to have been granted subcontracting work by the new winning contractor.

DETECTING BID RIGGING



- When reviewing documents for potential bid rigging, be sensitive to instances of identical prices in the submissions.
- Be especially mindful if prices remain identical for long periods of time.
- Similarly, be wary of unexplained or unexpected price increases, especially if the increases are not supported by increased cost.

DETECTING BID RIGGING



- Be mindful of instances where companies that do not have the resources or skill set submit bids.
- Another behavior to watch out for is instances where the winning bidder repeatedly subcontracts work to unsuccessful bidders.

DETECTING BID RIGGING



- Signs of a bid-rigging conspiracy can be found in the various documents that companies submit.
- Take the time to compare the documents submitted for any indication that the bids were not prepared independently.
- Be sensitive to similar errors made in documents submitted.
- Also, be mindful of bids from different companies containing similar handwriting or use of identical forms or stationery.

BID-RIGGING INVESTIGATION BASICS



- There are several steps to take once the available information suggests that a bid-rigging investigation be undertaken.
- The opening course of action should be to determine who is actually bidding.
- Remember, bid-rigging investigations take shape after investigative research comes together and paints a picture over time of what is taking place.

BID-RIGGING INVESTIGATION BASICS



- Information on who is bidding is essential.
- Such information provides intelligence on:
 - who is bidding as it relates to location
 - frequency of bids
 - ability to complete the project
 - as well as who is not bidding
- Some participants in the scheme will not bid as part of the bid-rigging plan.
- When the time is right, consider bringing those contractors in for an interview and question them as to why they are not bidding.

BID-RIGGING INVESTIGATION BASICS



- Many honest contractors will cease bidding when they become aware of the fact that a bid-rigging scheme is operational in an area.
- Make an effort to find out who these contractors are and seek input from them.

BID-RIGGING INVESTIGATION BASICS



- You should also consider creating a policy where any company on an established bidder's lists that fails to bid on more than three consecutive jobs for which it is clearly qualified, be reevaluated for continued participation on the list.
- In a number of instances, being placed on an agency's bidder list places a conspiring company in a position to submit complementary bids.

BID-RIGGING INVESTIGATION BASICS



- Once the initial step of determining who is bidding is underway, it would be useful to focus on who is actually doing the work.
- As you go through this process, you must also seek to know how many names a company may be bidding under.
- Many companies operate under more than one name.

BID-RIGGING INVESTIGATION BASICS



- Bid-rigging investigations require an investigator to get up from his desk, get into the field, and see what is actually going on.
- He must get out to the site and see what vendors are doing the work and how it relates to those who bid on the project.
- There will be instances where the winning bidder will provide parts of the contract to competitors in return for submitting complementary bids or no bid at all.

BID-RIGGING INVESTIGATION BASICS



- As you go through this process, you need to identify the prime contractors and the principals of those companies.
- Check to see if any of the principals have a connection to any of the other companies that may have bid on the project.
- It is possible that companies with affiliates and companies operating under different names will bid against themselves.

BID-RIGGING INVESTIGATION BASICS



- It is advantageous to know who the reported subcontractors are.
- Once this has been determined, conduct an analysis to determine what role these companies may have played in the bidding process.
- It is possible that they may have submitted complementary bids or taken some other measure to ensure the success of a rigged bid.

BID-RIGGING INVESTIGATION BASICS



- It is also valuable to know who the actual, sometimes unreported, subcontractors are.
- Most agencies have rules in place that require that they approve subcontractors on projects.

BID-RIGGING INVESTIGATION BASICS



- Pay attention to the companies actually on-site doing the subcontractor work.
- There can be times that it is a subcontractor that is being paid back for not bidding or for submitting a complementary bid.
- There will also be times when you will find an unapproved contractor on-site.

BID-RIGGING INVESTIGATION BASICS



- It is just as important to know if any of these companies have relationships to each other, such as common owners.
- Knowing the principals of the subcontractors can alert an investigative team to possible collusion between common owners, relatives or business partners.

BID-RIGGING INVESTIGATION BASICS



- All participants in bid-rigging conspiracies are in it for the money or power.
- A lucrative part of any contract is connected to the company supplying the materials and equipment for the project.
- Often in bid-rigging schemes, there are agreements made with vendors not to bid, with the understanding that they will supply certain materials and equipment for the project.

BID-RIGGING INVESTIGATION BASICS



- Again, verify that the suppliers were not also bidders who may have submitted complementary bids.
- Take time to ensure that the supplier is not getting paid for his complementary bid by providing inferior materials or for his role in a subcontractor bid-rigging scheme.

BID-RIGGING INVESTIGATION BASICS



- When trying to determine if a scheme involves market allocation or some other geographic assignment of contracts as part of the conspiracy, it is helpful to know the location of bidders and non-bidders in relation to the job.
- Make an effort to determine where the bidders and suppliers have their base of operation.

BID-RIGGING INVESTIGATION BASICS



- Did all the potential bidders bid?
- Did the supplier bid as a prime or a sub?
- A lot of conspiracies work toward ensuring that each conspirator gets the jobs closest to his place of business, which reduces expenses, thereby raising profit.

BID-RIGGING INVESTIGATION BASICS



- In detecting market-allocation schemes, it is necessary to know who wins what, where, and when.
- Understanding who wins the contract, where, and when, will alert investigators to geographic bid-rigging schemes and bid-rotation schemes.

BID-RIGGING INVESTIGATION BASICS



- As in all aspects of investigations, you always want to know why something is happening.
- Bid rigging is no different.
- For every piece of information and intelligence obtained, ask yourself the question, “Why?”
- If the “whys” do not make sense, this tells you that there are more rocks to overturn.

BID-RIGGING INVESTIGATION BASICS



- The issues discussed today have been invaluable in conducting bid-rigging investigations.
- They provide the background information that enables investigators to conduct the detailed interviews required to move the investigation in a successful direction.
- Successful prosecutions have resulted principally from the testimony of individuals who were involved in the schemes.
- This analysis can lead to those individuals.