Bids Gone Bad

{ How to Spot and Prevent Wrong-doing in the Contracting Process }
Man charged with overbilling city for computer work

By Bob Fisher

A 61-year-old Philadelphia businessman, Penny Jones, was charged, Monday at district court for overbilling the city for computer-related work. The defendant, Jones, principal owner of a Malcolm Madsen Co., Information Technology firm, Madsen Madsen Co., is accused of overbilling the city for computer-related work. The charges include grand theft of over $100,000.

Jones is accused of overbilling the city for computer-related work. The city is charging Jones with overbilling the city for computer-related work. The charges include grand theft of over $100,000.

2 companies penalized in sham minority contract scheme, another will pay city

Jan Ransom

Posted: Thursday, January 12, 2012, 4:08 PM
A story with consequences...

- Discipline or termination of City Employees
- Civil Lawsuits
- Criminal Charges
- Suspension or Debarment of City Vendors
- Ethics Board Fines
- Millions of Dollars Lost
Prevention is the key to ending the headlines.
Agenda

- Purpose & Background
- Rules of the Contracting Road
- Who’s Who
- BREAK!
- Issues in the Contracting Process
- BREAK!
- What Would You Do?
- Recommendations
- Closing Points
Purpose & Background
Today’s Goals....

1. **Understand**: basic rules governing contracting process
2. **Spot**: fraud and misconduct within the contracting process
3. **Safeguard**: against potential issues during the contracting process
Our Goal is Not to…

- Provide a step-by-step overview of the contracting process
- Train you on the relevant procurement and contracting systems
If you are involved in the contracting process

It is your responsibility to get trained on the rules, regulations, and relevant systems governing these processes.
What is Contract Fraud?

A false representation of the truth within the contracting process, involving deception or trickery, in order to illegally enrich the fraudster

- Involves some type of loss, public health/safety risks
- Fraudster typically with deep knowledge of contracting process
- Indicators often dismissed as administrative oversights
  - What initiates investigation may lead to totally different fraud scheme
- Hurts morale, destroys trust, shatters public’s confidence

Why Should this Matter to Me?

- **As a public employee involved in the contracting process, you are:**
  - A steward of tax-payer dollars
  - Obligated to report wrong-doing immediately

- **Unethical behavior:**
  - Creates suspicion
  - Destroys trust
  - Hurts morale
  - Shatters public confidence
Ask Yourself...

- want to be charged for something that you did not purchase?
- pay for something that you never received or for a price that was not agreed upon?
- pay for work without confirming it had been done and done properly?
- allow a plumber to paint your house even though they never painted before?
Framing the Problem

Six in Ten
Government employees saw at least one form of misconduct in the past twelve months

$2.1 billion
Total amount of awarded contracts in Fiscal Year 2013 by the City of Philadelphia

30%
Percentage of misconduct that goes unreported to management in the government sector

$4 million
Amount saved or recovered from vendors in 2013 by the Inspector General’s Contract Compliance Unit

100
Approximate number of complaints about contract misconduct received by the Inspector General in the last 2 years

Sources:
Rules of the Contracting Road
Rules of the Contracting Road

- Contracting process mainly governed by:
  - **Section 8-200, Home Rule Charter**
  - **Chapter 17-1400, Philadelphia Code**
- Other laws, executive orders, and regulations regulate behavior during process
- Together, ensure competitive and transparent process, free of influence and favoritism, for all City contracts
# Rules of the Contracting Road

City public integrity laws govern the actions of City employees and vendors during the contracting process. They can be broken down into three main categories:

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Ethics</th>
<th>Criminal/Enforcement</th>
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<tbody>
<tr>
<td>Rules that lay out contracting process</td>
<td>Rules that prohibit certain behavior during the process</td>
<td>Rules that detail criminal behavior. Give agencies power to investigate and enforce</td>
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<td>Examples:</td>
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<td>- Bid and RFP process</td>
<td>- Conflicts of Interest</td>
<td>- Kickbacks</td>
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<td>- Award</td>
<td>- Post-employment</td>
<td>- Bribery</td>
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<tr>
<td>- Contract</td>
<td>- Gifts, gratuities</td>
<td>- Investigatory and enforcement powers</td>
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<td>- Payment</td>
<td>- Confidentiality</td>
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<td>- Debarment</td>
<td>- Disclosures (campaign finance, lobbyist, financial)</td>
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<td></td>
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<td>- Transparency</td>
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<td>- Representation</td>
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Procurement in the Public Eye

What Other People See

Our Goal

Ethical

Legal

Source: Eileen Yoens, “Public Procurement and Ethics: Part 1”
Who’s Who
## Who’s Who

<table>
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<th>Internal</th>
<th>External</th>
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<td>- Several agencies work to ensure fairness and transparency in the contracting process</td>
<td>- We are held accountable by the public at-large</td>
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Together, City has a strong network of watchdogs.
**Who’s Who**

- **Procurement or Finance, Contract Legislation Unit**: 
  - Bid/RFP requirements
  - Award questions
  - Disqualification of bidder/applicant
  - Contract approval process

- **Law Department**: 
  - Bid/RFP drafting
  - Negotiation/approval of contract
  - Vendor protests
  - Termination, suspension, debarment

- **Board of Ethics**: 
  - Conflicts of Interest
  - Political Activity
  - Post-employment restrictions

- **Inspector General or Integrity Officer**: 
  - Misuse/abuse of City resources
  - Fraud
  - Theft of time or resources

- **Office of the Chief Integrity Officer**: 
  - Mayor’s Executive Order on Gifts
  - “Grey areas” – may be legal but looks bad
  - Transparency or impropriety within the contracting process

- **City Controller**: 
  - Purchase order approval
  - Disbursement of vendor payments
  - Audits
Your Role in the Process

- **Serve:** as 1st line of defense to spot and report fraud
- **Understand:** contracting rules, regulations, and processes
Issues in the Contracting Process
Overview: Contracting Process

Planning & Selection
- RFP/Bid Development
- RFP/Bid Process
- Evaluation
- Award

Performance
- Contract management
- Monitor deliverables
- Regularly evaluate scope

Payment
- Invoice review and approval
- Evaluate invoice against contract
The PA Turnpike

A Case Study in Bad Behavior
Some Questions....

- What are the main issues raised by AG Kathleen Kane in her description of this case?
- What do you think is the most problematic aspect of this case?
Woo Hoo!

Break
Issues: Planning & Selection

{ Inappropriate Vendor Interactions }
Red Flags:
Inappropriate Vendor Interactions

- Provide advance notice to potential applicants/bidders of contracting opportunities
- Disclose confidential information to certain vendors
- Overly friendly interactions/relationships with some vendors but not all
Things to Remember: Inappropriate Vendor Interactions

- **Maintain:**
  - “arms length” distance from vendors
  - professional relationships with contractors

- **Avoid:**
  - phone calls/other one-on-one verbal interactions with bidders/applicants

- **Require:** all pre-award interactions to occur in writing
Issues: Planning & Selection

{ Rigged Specifications }
Two former Pa. Turnpike officials plead guilty to conflict of interest

November 21, 2014 12:49 AM

“Last year, prosecutors charged numerous former turnpike officials, a contractor and former state senator with being involved in what they alleged was a wide-ranging bid-rigging scheme.”

Contractor helped write the RFP for contract they were ultimately awarded—despite being highest bidder.
Red Flags: Rigged Specifications

- Specifications and winning contractor’s product/services identical
- Winning contractor helps draft specifications
- Unreasonable/unusual specification for item/services being procured
- Multiple awards to one supplier in a competitive field
- Use of name and brand terms instead of generic terms to define request
Things to Remember: Rigged Specifications

- **No involvement:** by potential bidders/applicants in drafting process
- **Review:** specification with an eye towards competition and inclusion
  - For example, review brand specificity (where possible)
Issues:
Planning & Selection

{ Unbalanced Bidding }
An Example: Unbalanced Bidding

- Longo Mechanical – had contract with City to repair electric motors
  - Reality = Motors needed replacement, not repairs
    - As a result, Longo placed a low price on repairs and high price on equipment
  - City learned that Longo was manipulating the bidding process by appearing to be the low bidder on paper
    - Longo deemed “unresponsive”
      - Decision confirmed by Court of Common Pleas
Things to Remember: Unbalanced Bidding

- **May Indicate:**
  - Bidder’s non-compliance with other contract requirements (ex: prevailing wages)
  - A mistake, miscalculation, or misunderstanding of bid specifications - could lead to disqualification
  - Disclosure of confidential information
  - Vendor taking advantage of the City
- **Could lead to excessive change orders or over-charging**
Issues:
Planning & Selection

Split Purchases
City department is seeking training services and has preferred training vendor.

Total cost of training services = $50,000.

$50,000 > $32,000 (City threshold for formal RFP)

Department “splits” purchase into two contracts @ $25,000 each to avoid formal RFP.

Contract 1: training devo/Contract 2: training facilitation

Preferred vendor is awarded both contracts without formal RFP.
Red Flags:
Split Purchases

- Multiple small contracts with same vendor for similar items just below bidding thresholds (typically in same department)
- Unnecessary or unjustified separation of services for single contract
- Small contracts under bidding thresholds followed by amendments that increase the amount
Things to Remember: Split Purchases

- May be indicator of other fraudulent schemes (ex: kickback)
- Decreases competition and transparency
- Small contract may have less stringent bonding/insurance requirements = increase risk to the City
Issues: Performance

{ Change Order Abuse }
More About: Change Order Abuse

- Look out for dishonest contractor submitting unjustified or inflated change order requests to increase profits
  - Change Order Abuse is also an indicator that another issue is at play
    - Mischarging costs – Vendor passing on equipment rental fee to City for equipment that it needs to perform the contract
    - Misrepresentation of Work – Vendor hired to preform emergency maintenance, but also doing routine maintenance and going over the contract value
    - Bribery/Kickback/Inappropriate Vendor Interactions – Colluding with City employee to increase price and profits by bidding low and submitting change order requests after the contract is awarded
Red Flags:
Change Order Abuse

- Numerous change orders
- Pattern of change orders
- Poorly justified or documented change order requests
- After contract awarded, contractor argues that the bid specifications lack detail and are clarified by change order
- Period of agreement is extended by change order instead of re-bidding
Things to Remember: Change Order Abuse

- Review all proposed change orders to ensure that the additional costs are necessary
- Procurement does not see all change orders
- Reach out to Procurement or Finance for more assistance
  - Can determine whether bid is actually responsive and whether this is a City-wide issue
Issues: Payment

{ Mischarging Costs }
Main Line Company Bilks Philly out of $500,000

May 19, 2014 7:02 PM

“In one instance, Airmatic falsely invoiced the City for a bearing assembly, an expensive industrial product and approved contract item, when, in fact, Airmatic delivered 12 asphalt rakes, items for which the defendant had no contract.”

Contractor submitted false and fraudulent invoices that listed products unapproved by the City at higher costs.
Red Flags: Mischarging Costs

- Costs billed greatly exceed estimates
- Duplicate billing for same products or services
- Proposed costs do not seem directly related to the contract or are not on contract at all
Things to Remember: Mischarging Costs

- **Know:**
  - The rates established in your contract
  - What are acceptable charges under contract and City’s standard Cost Principles and Guidelines

- **Invoice:**
  - Compare against contract
  - Don’t approve if service or good was defective, not delivered on-time or in a manner not acceptable to the City
Issues: All Phases

False Statements and Claims
“They (Hart’s firm) did not disclose that there was a prior conviction, that there were negative judgments, that there were outstanding liens, and that their company owed back taxes.”

In addition to misrepresenting prior experience, the contractor also submitted fraudulent bonds to the City.
Minority Contracting Scam
Busted by City’s Inspector General

July 26, 2012

“Prison Health Services (PHS) — which has received $196 million from the city since 1995 — told the city that JHK Inc. was getting 40 percent of the contract. But in fact PHS paid JHK only for the use of its name.”

Contractor paid a $1.85 million penalty for misrepresenting the amount of work performed by a M/W/DSBE.
Red Flags:
False Statements and Claims

- Inability/refusal to provide supporting documentation
- Discrepancies between reported facts, observed data, and:
  - Documentation provided by contractor
- Submitted documents appear fraudulent or do not follow standard or requested form
Things to Remember: False Statement and Claims

- You are the best line of defense to catch false statements
Issues: All Phases

{ Bribery & Kickbacks }
Bribery vs. Kickbacks

**Bribery**
- Offering, giving, receiving, or soliciting any thing of value to influence action as official or in discharge of legal public duty

**Kickbacks**
- Providing something of value in exchange for preferential treatment
  - Negotiated bribery
  - More cooperation involved by all parties
Is a Tip a Bribe?

- Gratuity = A “tip” in the form of money or otherwise provided to a City employee in the course of their public work
  - Different than a Bribe or Kickback
    - No request for improper action in exchange for what is given

DISCLAIMER:
Gratuities are not permissible under the Home Rule Charter.
Red Flags: Bribery & Kickbacks

- City employees interested in award to particular contractor
- Unexplained increase in wealth
- Contracting employee has undisclosed business
- Contracting employee declines a promotion
- Maintaining excessively high inventory levels from a particular vendor
Spotlight On...

{ Pay-to-Play }
Issues: All Phases

{ Conflicts of Interest }
School official faces charge of steering $900,000 contract

Thursday, May 28, 2015 1:08 AM

“When the Philadelphia School District was trying to save money two years ago by closing schools, the manager in charge of small business development steered a $900,000 contract to businesses owned by her friends or her family.”

Employee urged family and friends to bid on contracts and subcontracts - and made sure they won those bids.
Examples of Potential Conflicts of Interest

- Close familial relationship between vendor working in the Department and City employee
  - Parent and Child
  - Spouses
  - Mother-In-Law and Son-In-Law
- Contracting employee has a second job with a vendor who submits a bid/RFP
  - Employee must be in a position to take action or execute authority
- City employee interviews for a job with contractor that they are involved with as a City employee
Conflicts of Interest: Avoiding Appearance Issues

- **Employee Issues**
  - Employee steering contracts towards a company with which they are affiliated
    - Whether or not there is a financial interest
      - Member of the Board of Directors at Non-profit
      - Company of Friend, Neighbor, Cousin, etc
      - Former employer or close relationship with vendor
  
- **Vendor Issues**
  - Same/affiliated companies performing production function and testing/evaluation functions
Things to Remember: Conflicts of Interest

- **Disclose and Disqualify:**
  - Employee’s responsibility to disclose conflict and disqualify him/herself from action
  - Get guidance from the Board of Ethics
  - Provide members of selection committee an opportunity to disclose conflicts prior to review process
Issues: All Phases

{ Post-Employment Restrictions }
Post-Employment Restrictions & Contracting

- City and State rules prohibit certain post-employment activities with those who do business with or seek official action from the City
  - **State Law:** One-year restriction
  - **City Law:** Two-year and permanent restrictions

Well, thanks for the info...
What does this have to do with contracting?
Red Flags: Post-Employment Restrictions

Some Examples:

- Former City employee representing a City contractor in front of the City
- Hiring a former City employee as a consultant
Things to Remember: Post-Employment Restrictions

- Seek Advice:
  - From Ethics Board
  - Restrictions depend on situation
  - Could lead to fines and misdemeanor charge
Woo Hoo!

Break
What Would You Do?

An Exercise in Spotting the Issues
Scenario #1

Mike Leaks, owner of Leaks Plumbing Supply, has a supply contract with the Water Department. On one delivery to Water, Mike accompanies his delivery men and makes friends with the Water employees while Mike’s employees are unloading the supplies. Among other things, they discuss their mutual love for the Eagles. Mike tells the Water Department employees that he can make it “worth their while” if they need more supplies by offering to buy Eagles tickets for the employees. The Water Department orders more supplies from Leaks Plumbing Supply and included with the next shipment of supplies are Eagles tickets.
You are responsible for processing invoices on a HVAC maintenance contract with your department. You’ve begun to receive invoices from the Project Manager overseeing the contractor’s work that are for landscaping services. When you inquire about the work, you are informed that, while this work wasn’t in the original contract, it was included as part several change orders. While it seems strange, you do know that the vendor is a very large company with a diverse product offering so it is possible that they are qualified to perform landscaping services. Plus, the Project Manager tells you that “the landscaping work has been completed, anyway” so you should just approve the invoices. Otherwise, it’s likely the contractor is going to complain to your Department Head if they don’t get paid for the work that they’ve done. You noticed, when processing the invoices, that the additional landscaping work has now increased the contract from $200,000 to $800,000.
Scenario #3

Your supervisor orders you to obtain widgets for a high-profile and very important City project. The widgets are needed to meet a key deadline for the project. You know that if your department does not meet certain project deadlines, the City is in jeopardy of losing the federal funding for the project, which makes up about 75% of the total funding for the project. When you talk with Procurement about purchasing the widgets, you are informed that there is no contract in place for widgets. They tell you it will take at least 3 months to get a vendor to supply widgets for your department.

When talking with another vendor, you learn that they can easily provide you with widgets through their City contract even though their contract is for thing-a-ma-bobs and not widgets. They will guarantee you get the widgets within 48 hours.

You are feeling pressure by your supervisor to get those widgets as soon as possible.
You are a Project Manager and will be participating in a selection committee for a RFP that was recently issued by your department. You’ve worked with many of the firms that plan to submit proposals to this new RFP, including managing their performance on other contracts with your department and even working next to some of the consultants from these firms, including Sam. Sam asks you to lunch and you accept since you and Sam regularly grab lunch together. While at lunch, you vent to Sam about how much you dislike working with a particular subcontractor, Subs R Us, because their work is consistently subpar and not completed on time. Despite this, though, they are frequently used by many of the firms that work with your department because they are a Minority-owned Business. A few weeks later, after proposals have been submitted to the RFP, you attend the first selection committee meeting. You notice that one of the proposals was submitted by Sam’s firm and they are the only respondent to propose not using Subs R Us as their subcontractor.
Paul is a Deputy Commissioner at Public Property, which has a contract with Clean Consulting. As a congratulations on his retirement, Carol, an employee of Clean Consulting, takes Paul out to dinner. During dinner, Carol mentions to Paul that she is also retiring soon but is hoping to do some part-time work after she retires. She asks Paul if he knows of any job opportunities. Paul recommends that Carol reach out to his wife, who is starting a new woman-owned business. With his new spare time upon retirement, Paul plans to run most of the business. Also, with Carol’s expertise, Paul is convinced that the new business could secure lucrative City contracts. In fact, Paul is going to recommend to his wife that she submit proposals for two upcoming projects with his department. Once he retires, Paul plans to manage any City contracts awarded to his wife’s business.
Scenario #6

John Doe is a project manager at Public Property. He is in charge of the City’s efforts to improve security in all City-owned buildings. John used to work at Safety R Us several years ago according to John’s LinkedIn page. John is still in contact with several of his former Safety R Us colleagues, though. He often meets them for lunch and attends the annual holiday party Safety R Us hosts at Dave & Busters. Recently, several companies bid on one of John’s projects, including Safety R Us which didn’t have the lowest bid but clearly had the best qualifications. After the bid opening, one of John’s former Safety R Us colleagues informs him that they believe the apparent low-bidder miscalculated their prices when developing their bid. John alerts the Procurement Department of this alleged miscalculation. Upon Procurement’s review of the bids, it turns out that the apparent low-bidder did, in fact, miscalculate their bid and their bid is thrown out, thus making Safety R Us the low-bidder and they are ultimately awarded the contract. During the term of the contract, Safety R Us completes the work on time and exceeds the City’s expectations. As a thank you for his continued help throughout the project and helping them secure the bid, Safety R Us gives a Safety R Us North Face Fleece Jacket to John, which they present to John at their annual holiday party.
Recommendations

Some Tips to Prevent Bad Behavior
Recommendations

- Overlap responsibilities
- Checks and balances
- Know your contract
- Ask for originals and verify documents
- More than one person involved in selection decisions
- Disclose conflicts of interest
- Document everything
As a Smart Person Once Said...

“The only thing necessary for the triumph of evil is for good men to do nothing.”

That smart person was Edmund Burke.
Or in Our Case...

“The only thing necessary for the triumph of contract fraud is for good people to do nothing.”

SO SAY SOMETHING!
PA Whistleblower Law: What You Should Know

- **Protects:**
  - City employees reporting wrongdoing/waste or participate in an investigation, court action, etc.

- **Prohibits:**
  - Employer retaliation against whistleblower

- **Good-faith Effort:**
  - By whistleblower to report wrongdoing/waste to appropriate authority (ex: Inspector General)
Closing Points

- Issues rarely black and white
- Use the 6 o’clock news test
- Not knowing rules not an excuse – it’s your responsibility to get trained and ask questions
- Multiple avenues to report wrong-doing

WHEN IN DOUBT, ASK FOR ADVICE
Workshop materials available online.

www.phila.gov/integrityworks/resources/Pages/employees.aspx
Open Discussion

Questions?