
Bid Rigging

The Scenario

The Hotline office at an agency received allegations that three vendors misrepresented that they were competing against each other when, in fact, they agreed to participate collaboratively in a bid rigging scheme for a transportation contract. The complainant further alleged that the conspiracy included subcontracting arrangements where the competitors who agreed to submit a losing bid received lucrative subcontracts.

To determine whether the allegations could be substantiated, the Hotline office requested that an audit office conduct a review of the transportation office's procedures for the contract in question. In addition to the Hotline complaint, stakeholders wanted the review to undertake a more in-depth examination to ensure that the bidding process for all contracts was open and competitive.

In their efforts to collect potential evidence, the auditors developed objectives and procedures that could lead them to uncover the alleged bid-rigging and other forms of anti-competitive practices. The audit objectives developed for the review included:

- Determine the extent to which contractors have acted in an open and competitive manner when submitting bids for transportation projects.
- Determine whether the transportation office has adequate internal controls in place to prevent and detect anti-competitive practices among contractors.

The auditors knew that reviewing the contract documentation alone would not prove a bid rigging conspiracy, so they also conducted well-planned interviews to obtain information and considered circumstantial evidence, such as suspicious bid patterns. Also, since collusion was suspected, it was necessary for the auditors to review the procurement history of the transportation contract to determine whether a pattern of bid allocation or rotation was present.

During their review of the procurement records (e.g. bid lists, abstracts, and awards), auditors found that the losing bids did not comply with bid specifications and were poorly prepared. For example, there were narrow specifications used to exclude the otherwise qualified bidders; bids intentionally failed to meet all of the bid requirements in order not to be selected. Also, the proposals or bid forms submitted by different vendors contained irregularities, such as identical calculations and spelling errors, and similar handwriting and stationery. This was an indication that one of the designated low bidders may have prepared some or all of the losing vendors' bid. Furthermore, during one of the interviews with a vendor, a statement was made indicating advance (non-public) knowledge of competitors' pricing.

When questioned about how the vendor knew of other competitors' pricing, he could not provide a reasonable explanation. As a result of the auditors' consistent interrogation, the

vendor confessed that non-conforming bids, where vendors deliberately included terms and conditions that they knew would not be acceptable, were submitted. The vendor went on to state that meetings with two other vendors that also submitted bids occurred on several occasions in an effort to work out their strategy and agree in advance who will submit the winning bid. It was agreed that the losing bidders would be hired as subcontractors and the profits from the contract were to be divided among the three.

Additionally, during their review of other transportation contracts, the auditors determined that contractors acted in an open and competitive manner when submitting bids. However, the auditors determined that the transportation office's internal controls were not adequate and needed improvement to prevent and detect bid rigging. The auditors found that the transportation office does not gather sufficient information to identify fraud risks, perform analytical procedures to assess risks, or evaluate contracting programs and controls on a periodic basis to ensure the controls are suitably designed and operating effectively in practice.

The auditors made several recommendations for the transportation office to improve internal controls. Specifically, the auditors recommended that the office create checklists to assist them in identifying and evaluating signs which may suggest that bid rigging may have occurred during the procurement process. In addition, the auditors recommended that the office begin conducting periodic comparative analyses of bidding and purchasing data and vendor information. These analyses will allow the transportation office to determine whether bid rigging is currently ongoing or has occurred in the past. To make this determination, an adequate number of projects awarded over a sufficient period of time must be evaluated. Also, the auditors recommended that the contracting officials take bid rigging awareness training and recognize it as an effective way of deterring improper collusion. Lastly, the auditors recommended that the transportation office report any evidence of bid rigging or other forms of anti-competitive behavior to the appropriate law enforcement agencies.

General Comments / Lessons Learned: Bid rigging encompasses collusive price-fixing behavior in which competitors coordinate their bids on procurement contracts to guarantee the selection of a particular vendor. These type of conspiracies give the appearance of competitive bidding when in fact, none exists. The competitive process for contracts only works when competitors set prices honestly and independently. Bid rigging, and other forms of collusion are illegal and are subject to criminal prosecution.

FRAUD INDICATORS

- Vendors/bidders appear to deliberately include unacceptable terms/specifications in their bids.
- Vendors/bidders meet before the selection of a contract; advance knowledge of competitors' bid/pricing.
- Different vendors/bidders make identical errors (e.g. calculations, spelling) in contract bids.
- Bids from different vendors contain similar handwriting or typeface or use identical forms or stationary.