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Buyer Beware

How to prevent contract fraud

By Colin May

It can happen anywhere. Any school district -- large, small, rich, poor -- can fall victim to the preying schemes of those whose greed supersedes all else. It can also be anyone.

Take Thomas Ryan, the former superintendent of the Saulk Village School District in Illinois, who pleaded guilty in November 2005 to stealing more than \$400,000 from the district. Ryan received kickbacks in exchange for sending school dollars to a front company allegedly operated by the district's buildings manager, according to the Chicago Tribune.

Whether it's embezzling from program funds or rigging the contract for a new building, the theft of honest services from taxpayers, voters, and most importantly, students, is deplorable.

Millions of dollars annually are awarded by school boards to private contractors, companies and non-profit agencies to construct buildings, conduct after-school programs, and other educational endeavors. Contract fraud is costly to all involved, especially when people go to jail.

In a fiduciary capacity, the "buck" literally stops with board members, who must understand the problems that may arise from contracts and their application. The school board is (or should be) the ultimate watchdog for the spending of school appropriations.

What is contract fraud?

Fraud, defined in the Merriam-Webster Dictionary, is the "intentional perversion of truth in order to induce another to part with something of value or to surrender a legal right [or] an act of deceiving or misrepresenting."

Thus, fraud involving contracts and procurement is the act of devising a scheme to exploit one or more phases of the government contracting or purchasing process to gain illicit financial reward or material gain through the misrepresentation of abilities, product, or reputation; or the corruption of contracting officials for the aforementioned purpose.

That's a mouthful, but contracts come about because of a typical problem: a school district needs something. Whether it's a new building, pencils, program development, or other necessity, someone foresees the desire for a particular product or service. The process should then proceed like such:

Generally, all contracts approved by a public body (or any transparent government organization, for that matter), should be put out for bid. This means that a list of specifications is drawn up (called a request for proposal or RFP), detailing the needs of the project, and is sent out to all possible contractors.

Interested contractors draw up plans for the design, construction, product, or service sought by the district. These are submitted to the district in the form of a "sealed bid," meaning all bids will not be opened until the deadline (put on the RFP) passes. After all bids are opened (usually in

public), the committee or selection official evaluates each bid and decides which company or organization will receive the contract. Bids are evaluated for both cost and quality, as well as value-added provided. Just because a bid is the lowest does not mean it will be the one selected.

Final negotiations occur with the selected company on the technical matters of the contract. Finally, after the final contract is signed, the product or service is delivered.

Problems or illegal actions can be found at any stage of the contracting process. Anyone, from board members to the janitor to teachers, can be guilty of undermining the competitive bid process.

Some examples include:

An elected board member pressures the district to award a construction contract to her neighbor's business in secret exchange for a Hawaiian vacation

The business manager overbills a contractor and pockets the difference when the refund is returned to the district

A request for proposal is written by the school's contracting specialist in language that only one contractor can meet (again in exchange for an item of value)

A school employee in charge of snowplowing submits a RFP (and approves it) for a snowplowing contract under the guise of a business that is in his wife's name

The key to dealing with contract fraud is to have a game plan to deal with it when it happens, but more importantly, to prevent it before it begins.

How to effectively prevent problems

To prevent a major catastrophe involving criminal investigations, civil litigation, years of bad reputation, and other associated problems evolving from a scandal, the board can be proactive in two areas.

First, ensure full and open public disclosure of contracts, their processes, and their outcomes. Second, the board must provide the atmosphere of civility, professionalism, and integrity that is a model to the rest of the community and to prospective vendors.

The board must understand its oversight role. Ensure that all laws, rules, regulations, and processes are in place and are followed. Disclosure and fairness are vital to the process and this oversight can often be directly delegated to both the district's internal and external audit function. Both of these groups can help determine whether the money is being spent properly and legally.

Ensuring that staff duties are segregated, especially in the areas of business management, accounting, reconciliation, contracting, and auditing. No one person should solicit bids and approve contracts or sign checks alone or reconcile the bank accounts.

Do not be afraid to politely confront individuals. Ask what terms mean or how amounts have been calculated. Don't accept "don't worry about it" or "it's complicated" as an answer.

Any “no-bid” contracts awarded must be fully vetted in public session by the full board, with full and accurate disclosures from all parties involved. Finally, full accountability for all contracts must be demanded from the contractors, the staff and the school leadership.

Leadership, guidance, and stewardship must be modeled for the entire community by the school board. One of the most important ways this can be accomplished is through a district code of ethics. While some pay lip service to these, a public servant must live them. An interesting example is the Code of Ethics for all employees of the Philadelphia School District (www.phila.k12.pa.us)

Continuous training, reinforcement, effective enforcement and ethics presentations are a vital part of this entire effort. It may be difficult to advocate for open government and transparent bidding and procurement processes, especially in a small town where politics and business often mix (and disagreements are the stuff of local legend for decades), but these safeguards help students and save the taxpayers valuable dollars. Anyone who puts greed over those two groups of people does not deserve our business or our vote.

With ever-tightening fiscal belts and the need to conform to unfunded mandates, deliver more services with fewer dollars, and the prospect of future budget cuts, no school board can afford to throw away even a penny on contract or procurement fraud schemes.

How does your school district measure up?

At your next board meeting, ask the leadership, especially the business management manager and legal counsel to provide input on the status of the following issues:

1. Find out what your state & local rules for contracting are
2. Is there an anti-fraud policy in place?
3. How would an employee who suspected fraud anonymously report a contractor or fellow employee engaged in fraud?
4. What measures have been undertaken to address the possibility of fraud in the contracting process?
5. When was the last contract audited (either externally or internally)? Did the board receive a summary of the report?
6. What is the dollar threshold that does not require board approval for purchases via district credit cards?
7. Finally, consult the ACFE’s Fraud Prevention Checklist at www.acfe.com.

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