

First Friday Fraud Facts

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The Oregon State Controller's Office created this newsletter. With their permission, the Idaho State Controller's Office edits and distributes this newsletter as a cost-effective method of increasing awareness about ways to detect and prevent fraud, waste, and abuse in government.



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This edition of the First Friday Fraud Facts (F⁴) will continue with the topic of the American Recovery and Reinvestment Act of 2009 (ARRA) that was covered in the last issue. More specifically, it will cover some of the provisions regarding the whistleblower protections. This edition also introduces the topic of antitrust violations.

[THE AMERICAN RECOVERY & REINVESTMENT ACT \(ARRA\)](#)

In addition to extraordinary levels of transparency, the ARRA also includes unprecedented whistleblower protections to help combat the potential for fraud, waste, and abuse in conjunction with ARRA spending.

A whistleblower is an employee or former employee who reports alleged misconduct to someone who has the power to take action. The Sarbanes-Oxley Act of 2002 established many whistleblower protections. The provisions provided for whistleblowers as part of the ARRA are unlike many of the previous whistleblower provisions that have been enacted with legislation over the years.

The ARRA provides that a claimant need only demonstrate a reasonable belief, they do not have to be correct. The provisions also extend to contractors, subcontractors, grantees, and recipients. This not only includes those working directly with ARRA funds, but also those working indirectly. When faced with the decision of whether or not an individual is covered, the decisions will likely err on the side of coverage.

Some important aspects to consider regarding enforcement are described below. When retaliation occurs against a whistleblower, the individual only needs to prove that their disclosure was a "contributing factor" in the decision to take action against them.



They do not have to prove or provide a preponderance of evidence. In addition, the employer must demonstrate “clear and convincing” evidence that they would have taken the same action regardless of the whistleblower disclosure. Therefore the burden of proof is also on the employer.

Several other important components of the whistleblower provisions are included in the ARRA. No express cap on damages exists. No waiver of rights is required, with the exception of collective bargaining agreements. An agreement for arbitration can only be entered into after a complaint has been filed. In addition, the whistleblower provisions of the ARRA are not exclusive; in other words, a claimant can proceed simultaneously under the provisions of the ARRA as well as other state or local laws.

WHAT YOU CAN DO

Consider designating an individual to assist with any agency-based internal investigations of allegations to determine if sufficient credible evidence exists. Inform program administrators and sub-grantees of the whistleblower protections offered in section 1553 of the ARRA.

ANTITRUST VIOLATIONS—BID RIGGING

Spending of the ARRA funds has often resulted in the utilization of contractor services. As such this provides a good opportunity to review some of the antitrust violations that can occur in the contracting process. One such violation is a form of collusion known as bid rigging. This occurs when two or more parties, seemingly competitors, come together and effectively raise their prices through what is intended to be a competitive bidding process. In this scheme, competitors agree in advance who will submit the winning bid in a competitive bidding process. Bid rigging is typically found in the form of bid suppression, complementary bidding, or bid rotation. Bid suppression is when one or more competitors agree to refrain from bidding or withdraw a bid in order to allow the designated winning competitor to “win” the bid. Complementary bidding is when one competitor submits a bid that is either significantly higher or has special conditions that would ultimately enable the designated party to “win” the bid. Bid rotation is when all competitors submit bids, while taking turns being the low bidder.

FRAUD CASE OVERVIEW

This case outlines a bid rigging scheme involving highway construction projects. In this case two competing companies (involving one owner and one officer from each company) collaborated, with the help of an employee of a third company, to split up \$100 million in projects between the two competitors. The competitors discussed privately among themselves their prospective bid submissions and designated who would submit the low bid and high bid for each project (complementary bidding).

The scheme was discovered when an individual at a non-conspiring company began to suspect bid rigging among the competitors. Federal investigators were alerted to the scheme and the employee from the third company that was involved in the scheme cooperated with investigators to break up the operation.

Over a six year period the two conspiring organizations defrauded the state highway department of an estimated \$1.7 million in overcharges. As a result, three of the four conspirators were sentenced to between 12 and 17 months in prison. Over \$3.1 million in fines and restitution charges were ordered to be paid by the individuals involved and their respective companies. The collaborating employee, turned informant, was sentenced to 120 days of home confinement, one year of probation, and a \$10,000 fine for his role in the scheme. In addition, the two conspiring companies were barred from bidding on state projects for five years.



ANNOUNCEMENTS FROM THE IDAHO STATE CONTROLLER'S OFFICE

- 1) STARS FYE Comprehensive Training will be on Wednesday, March 16, from 9:00 a.m. – 11:00 a.m. To register, please contact Patti by email at peverill@sco.idaho.gov, or by phone at 332-8799.

- 2) Mark your calendars to attend one of the following annual internal control training sessions:
 - a) Wednesday, May 4, from 8:15 a.m. – 10:15 a.m.

 - OR

 - b) Tuesday, May 10, from 2:30 p.m. – 4:30 p.m.

More details and registration information coming soon...
