



Letter from the President
- Erin Hager, CFE

Don't miss the June 28, 2012 training event in Tucson. We have three great speakers who will offer training on computer forensics and interviewing techniques. Details are available on the chapter website.

Elections are happening now! Members, log in to see candidate biographies and vote by July 6.

The 2011 Annual Report is now available and is attached to this email. It is also available for download from our website. Check out the excellent article by Patty Huling about the January 2012 procurement seminar! You'll feel like you were there yourself.

I invite you to complete surveys about past trainings and events you have attended. We are excited to use our new website tools to get timely feedback from our members!

Finally, we are seeking speakers for the remainder of 2012 and also for our 2013 training calendar. Check out our new Speaker Recommendation form, where you can recommend a speaker, or volunteer yourself!

Scholarship Corner



The scholarship committee continues to look for potential candidates of which currently, there are none. Please, if you know of any students who could use an extra \$1,000, are enrolled full-time in an undergraduate or graduate program in an accredited college or university in Arizona please pass this on. They must have a declared major in Accounting, Criminology or Criminal Justice. The deadline to submit applications is June 30, 2012 so please encourage our students to apply today!



Tracing the Numbers **By Treasurer Nancy Stryker**

Your ACFE-Arizona Chapter has had another very busy year in a down economy striving to bring exciting CPE events for your anti-fraud training and education. Membership revenue for 2011 was \$5,610.00. This is a 25% membership decrease from 2010.

The revenue from our Spring and Fall Seminars was \$9,675.00. This revenue allowed us to contribute to the ASU student Chapter event as well as issue three \$1,000 scholarship awards to qualified recipients.

For 2011 your AZ Chapter had total revenue of \$22,506.20 and expenses of \$22,090.42 resulting in net income of \$415.78.

Encourage your co-workers to attend the monthly training meetings with you!

Passing on Education!

If you missed this year's annual ACFE seminar held in January of 2012, you missed a great event! This year, the AZ ACFE hosted a two day presentation led by Mr. Eric Feldman, CFE, CIG on Procurement Fraud at the Scottsdale Hilton Resort.

There were 55 attendees at this event, some hailing from as far away as the East coast, Canada and Alaska, although the majority travelled in from the Southwestern states including 15 attendees from our own home state. Our attendee backgrounds were also very diverse and included: corporate investigators, attorneys, internal auditors, management and those employed in the fuel and energy or gaming industries. As you could guess, this mix led to some lively classroom discussions on many different procurement fraud issues!

Report on the January 2012 Contract and Procurement Fraud Seminar Provided by Patty Huling, CFE, CLEA, CPPB

In support of the AZ ACFE's Membership Grant Program, an overview of the materials covered during the National ACFE's seminar on **Contract and Procurement Fraud, as led by Mr. Eric Feldman, CFE, CIG** is being provided. The seminar was held on January 23-24, 2012 at the Scottsdale Hilton Resort and included a copy of the ACFE publication "Contract and Procurement Fraud" as published by the ACFE (copyright 2012).

Mr. Feldman, a former Senior Intelligence Service Officer with the Central Intelligence Agency (CIA) shared insight and expertise gained through 32 years of experience in Inspector General oversight and Federal auditing in both the Executive and Legislative branches of government. His previous experience with the National Reconnaissance Office (NRO) also included leadership of the highly successful procurement fraud prevention and detection program, widely recognized by the Department of Justice as a model throughout the federal government and served as Senior Advisor to the Director of the NRO for Procurement Integrity. Mr. Feldman is a graduate of the Federal Executive Institute and is both a Certified Fraud Examiner and Certified Inspector General.

Did you know that:

"An estimated 5% of annual revenues are lost to fraud.... applied to the estimated 2009 Gross World Product, this figure translates to a potential total fraud loss of more than \$2.9 trillion"



“The vast majority of frauds in the purchasing involve corruption, which is not surprising because the purchasing function often lends itself to bribery, overbilling and bid rigging schemes, which are among the most costly forms of occupational fraud”.

In fact, the ACFE’s annual Report to the Nations identified that 72% of the procurement fraud cases in the study involved corruption schemes, while billing schemes came in second with 43% of the cases (Reference: 2010 Report to the Nations on Occupational Fraud and Abuse, pages 4 and 68).

“According to the Department of Justice (DOJ) statistics reported for the fiscal year ending on September 30, 2007, the United States recovered \$2 billion in settlements and judgments in cases involving allegations of fraud against the federal government.

In response to the increase in contracting activity for government programs, the DOJ formed the National Procurement Fraud Task Force to promote the early detection, prevention, and prosecution of procurement fraud in 2006. Since its creation, more than 300 procurement fraud cases have resulted in criminal convictions and the recovery of hundreds of millions of dollars in civil settlements and judgments” (Reference Textbook). As a result of the DOJ’s National Procurement Fraud Task Force, vendors must now make mandatory disclosure of any previous fraud violations.

Mr. Feldman succinctly points out that it is critical to start all investigations knowing what you are trying to prove, so that you can structure your investigation to identify those issues. Will your investigation lead to the prosecution, administration or debarment of a contractor? You need to know the statutes and those things which your investigation could lead to.

There are many legal remedies which can be used to address and prosecute fraudulent conduct wherever it occurs. As a result, the defining criteria are dependent on the laws which govern your particular procurement process. For example:

- The Federal Government is legally bound to procure all goods and services in compliance with Federal Acquisition Regulations (FAR) which is found in Chapter 1 of Title 48 of the Code of Federal Regulations, while
- State and local government is legally bound to procure all goods and services in compliance with American Bar Association’s Model Procurement Code which is defined by AZ State Statute under Title 41, Chapter 23, Articles 1-13, and
- In the private sector, the purchase of all goods (services are excluded) are governed by the Uniform Commercial Code, which has been adopted by all 50 states. The Uniform Commercial Code for Arizona can be found under AZ Revised State Statute, Title 47.

Fraudulent activity can be combated both criminally and/or civilly, depending on the burden of proof:

- Criminal Claims- The elements of proof for most State statutes are similar to Federal counterparts.... A Criminal claim requires providing evidence which proves “beyond a reasonable doubt”, whereas a civil claim only requires “a preponderance of evidence”.
- Civil Claims- Civil claims can be based on common law, statutory law, or administrative regulation. The purpose of a civil claim is to compensate the plaintiff for the defendant having violated a duty owed to the plaintiff. Thus a civil claim for damages might provide the best opportunity to recover fraud losses.

Administrative Law Remedies to Fraud: In addition to filing criminal and civil fraud claims against a contractor, there are four administrative remedies used to govern procurement fraud:

1. Suspension and Debarment of Contractors
2. Termination for Default of Contract
3. Voiding the Contract



4. Suspending Payments

For “An Overview of Fraud Laws: Federal, Local and the Private Sector”, see attached chart.

As previously noted in the ACFE’s 2010 Report to the Nation, 72% of the procurement fraud schemes involved corruption. In fact, the number one corruption scheme is currently bribery, followed by bid rigging schemes. Corruption schemes involve collusive relationships which can develop in multiple combinations, such as:

- Between competing contractors
- Between contractors and procurement officials
- Between employees and contractors
- Between employees and procurement officials
- Or may include employees, contractors and procurement officials

Because collusive relationships can manifest themselves at any time they can also appear at any point within the procurement process and may result in long-term corruption, bribery, kickbacks, illegal gratuities and even extortion. However, specific fraud schemes typically correlate with specific phases in the procurement process. For example, consider the following:

Procurement Processes and Potential Fraud Schemes

<u>Procurement Phase:</u>	<u>1. Pre-Solicitation Phase</u>	<u>2. Solicitation Phase</u>	<u>3. Bid Evaluation & Award Phase</u>	<u>4. Post Award / Performance Phase</u>
<u>Potential Fraud Schemes:</u>	1. <i>Rigged specifications</i> (i.e., deliberately narrow scope of work) to enable <i>False Sole Sourcing</i> or future <i>Change Order</i> scheme and <i>Kickbacks</i> . 2. <i>False Requirements</i> to enable <i>Larceny/Theft of Assets</i>	1. <i>False Statements</i> (i.e., insufficient experience or credentials) to win award. 2. <i>Complimentary Bidding</i> or <i>Market Sharing</i> by vendors	1. <i>Conflicts of Interest/Bribery</i> and <i>Illegal Gratuities</i> to influence award process. 2. <i>Breach of Confidentiality</i> in procurement process	1. <i>False Claims</i> made to accomplish any of the following <i>Billing Schemes: Overstated Expenses, Mischaracterized Expenses, Fictitious Expenses, False Refunds.</i> 2. <i>False system “upgrades”</i>

Seven Interesting “Take Away Facts” from this Seminar:



1. **False Statements-** The False Statements Statute prohibits a person from lying to or concealing information from a federal official. It was designed to “punish those who render positive false statements designed to pervert or undermine the functions of governmental departments and agencies. As a result, these crimes are more applicable to government contractors. This law is the most frequently cited law in all fraud prosecutions.
2. **The Major Fraud Act of 1988** – The Major Fraud Act specifies that the contract’s value is the critically defining feature (i.e., it does not refer to the amount of the fraud itself!). As a result, any U.S. government contract valued over \$1M falls under the Major Fraud Act. To establish a Major Fraud claim, the Government must show the following legal elements:

1. The perpetrator acted knowingly (i.e., acted with knowledge), as well as with deliberate ignorance or willful disregard
2. The perpetrator had the intent to defraud
3. On a contract valued over \$1M

It is of particular interest that *the prosecution does not have to prove that the fraud scheme was successful or that the government even suffered a loss to win the case.* Furthermore, a vendor may be considered to have shown willful disregard for the Government by failing to have their own internal controls in place (such as their own Internal Audit division, for example).

3. **Mail / Wire Fraud** – This law applies to any false claims made by means of the internet, United States mail or by wire. As a result, medical claims which are filed and submitted online fall into this category, as are many contracts which are now being submitted in an electronic format.
4. **Procurement Integrity Act-** This act prohibits federal employees involved in the procurement process from disclosing confidential information (i.e., offers of employment, post-employment restrictions, and bid, proposal or other source selection information). Mr. Feldman put the requirements of this Act into perspective by advising that if a vendor were to receive bid data by accident (i.e., wrong fax number, etc.), it would be a mandatory that the vendor immediately contact the Procurement Office to disclose receipt of the confidential data to clear their name of any wrong doing. On the other hand, if the vendor were to shred the document -without even looking at the contents - they would still be held culpable under this regulation.
5. **Truth in Negotiations Act (TINA)-** Congress enacted Tina to protect the Government from unscrupulous contractors who intentionally use inaccurate cost or pricing data to inflate costs. For example: A Change Order might be submitted by a contractor with defective cost or pricing data when more current, complete or accurate data existed and that information was not disclosed to the Government.
6. **Fraudulent Claims: Contract Dispute Act-** The Contract Disputes Act contains provisions under which the Government is not authorized to settle, compromise, pay or otherwise adjust any claim involving fraud.... Whenever fraud is detected in a claim, contracting officials should not take any further action on any portion of the claim without coordination with the Department of Justice.
7. **Forfeiture of Fraudulent Claims-** The Forfeiture Statute penalizes any “person who corruptly practices... any fraud against the United States” by ruling that “once fraud under a Government contract has been committed and proved, *all claims under the contract are forfeited, even ones not related to the fraud*”.

Mr. Feldman pointed out that the most effective means of fraud prevention and deterrence within any agency is to provide your employees with on-going education and training on various fraud issues. Providing your employees with fraud awareness – what it is, what to look for, what to report, is your first line of defense against fraud. He also pointed out that selling an effective anti-fraud program to upper management is almost a full time job in itself. Management is often reluctant to believe that fraud risks are real, particularly within their own organization. It is up



to us, as Certified Fraud Examiners, to help management understand the risk environment and to develop a proactive plan to protect our organizations.

Mr. Feldman's Advice:

1. Follow the money! When auditing contracts, start with the procurement process and follow the paper trail all the way through to each payment. Verify all approvals and sample at every control point of the contract. Check that the bid amount recorded matches the amount bid by vendor was the same amount considered during the solicitation. In particular, scrutinize all sole source awards carefully – make sure that sole award was justified and did not limit competition unfairly.
2. Contact unsuccessful bidders... find out why they feel they didn't win an award? Interviewing unsuccessful and/or complaining bidders yields great information and should be implemented as part of a standard procurement auditing process.
3. Pay attention to red flags! Be proactive in looking at red flags– don't rely solely on tips – red flags are important! And remember: even though sometimes you might not be able to prosecute a violator on a fraud charge, you can still more than likely prosecute them on a destruction of evidence charge!

This seminar also included in depth-discussion on topics ranging from various fraud schemes and violations, red flag indicators, procurement processes, internal controls, ethics programs, fraud prevention and deterrence, sample Policies and Procedures and over 12 pages of practical problems.

While some of the main points from this excellent educational opportunity are summarized for you here, it is not possible to do justice to this fascinating topic in this short report. Truly, there is no suitable substitution for classroom discussion and the sharing of hands-on procurement experience and interaction with your peers. To learn more about the many faces of procurement fraud, enroll in this outstanding seminar and see for yourself!

This article reflects my opinion and can serve only as a brief overview of the ACFE's "Contract and Procurement Fraud" text book, notes and references covered during this two-day seminar.

Respectfully submitted by: Patty Huling, CFE, CLEA, CPPB Date: 4/10/12