



2014 Purchasing Forum & Trade Show

May 14 & 15

Contract Monitoring



Andrew M. Cuomo
Governor
State of New York

RoAnn M. Destito
Commissioner
Office of General Services

In cooperation with the Office of the State Comptroller:

Thomas P. DiNapoli
New York State Comptroller





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Why are we here?



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Roadmap

- Monitoring necessity
- Challenges and concerns
- Seven-step process
 - Specifications
 - Fraud

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Why Monitoring is Necessary

- Agency missions
- Billions in State spending
- Risks
 - Health & Safety
 - Goal Achievement
 - Dollars
 - Reputation
- Fraud
- Errors

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Risks

- Health & Safety
- Goal Achievement
- Dollars
- Reputation

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Impact – Reputation

The New York Times

City Payroll Project Was Riddled With Fraud

By DAVID W. CHEN and WILLIAM K. RASHBAUM
Published: June 20, 2011

Nearly all of the \$600 million that New York City hired as its main contractor for its troubled automated payroll system was tainted by fraud, prosecutors said Monday in an announcement that charged two technology executives with their roles in what a United States attorney called an elaborate scheme.”

Contractor Strikes \$500 Million Deal in City Payroll Scandal

By MICHAEL M. GRYNBAUM
Published: March 14, 2012

A major government contractor agreed on Wednesday to pay a record \$500 million to avoid federal prosecution for its role in the scandal-tarred [CityTime](#) project, an effort at modernizing New York’s payroll system. The project was plagued by widespread fraud and weak oversight and became a lingering embarrassment for Mayor [Michael R. Bloomberg](#)’s administration.

Fraud Charges in New York’s Payroll Overhaul

By JOHN ELIGON
Published: December 15, 2010

Of all the city programs that have ever gone wrong in New York, few could compare to CityTime, [an automated system](#) meant to streamline employee timekeeping.

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Step 1.

Identify Risky Contracts

- What data do you have available?
- How can it help you identify risky



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Identify Risky Contracts

- Sort contracts by:
 - Contract Types
 - Contract Amount
 - Vendor Name & Contract Count
 - Vendor Name & Spending to Date

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Identify Risky Contracts

- Sort contracts by:
 - Contract Start Date
 - Contract Description & Contract Count
 - Contract Description & Contract Amount
 - % Expended - % Life of the contract

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Analysis

- Other factors
 - Quality of products and services
 - Problems with vendors
 - Current events
 - Locations
 - Etc.

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Monitoring

- You've selected a contract
- Now what?
- Monitor!

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Monitoring

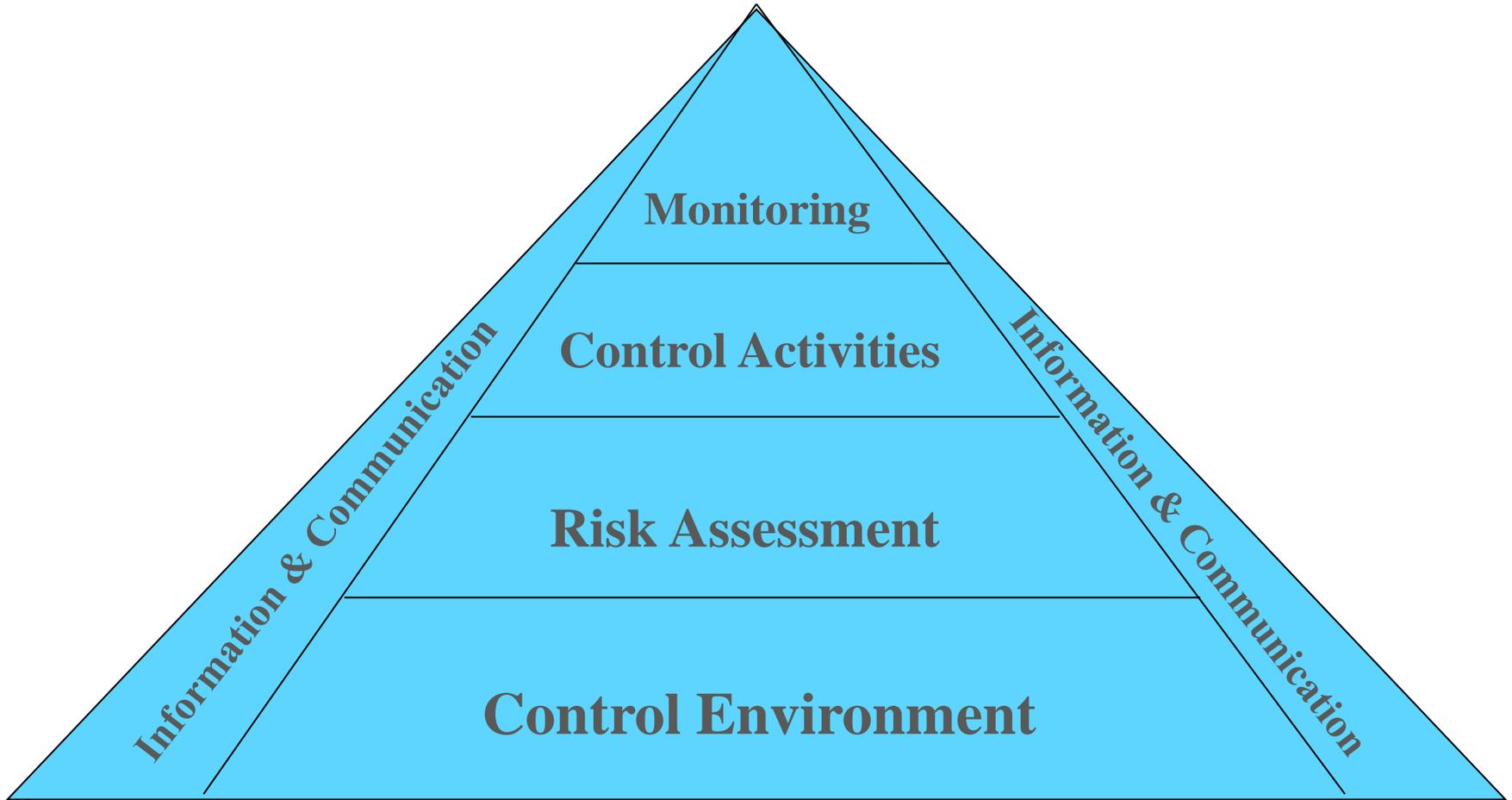
- Ongoing activities, special evaluations or a combination of both used to ensure that controls are operating as intended.

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Internal Controls Pyramid



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Monitoring

- Ongoing activities, special evaluations or a combination of both used to ensure that contractors are operating as intended.
- How do you and your contractors know what's intended?

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Step 2.

Understand Contract Terms and Other Requirements

- Intuition
- Conversation
- Purchase order details
- Contract specifications
- Laws, rules & regulations
- Guidelines

Put it in writing!

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Requirements

- The foundation of effective monitoring is well-defined contract terms
- Understand
- Assess quality

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Requirements

- Ask this:
 - Would I know how to verify whether something has occurred based on how the contract specification is written?



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Specification Example

- The vendor shall submit a properly executed application for payment, together with appropriate backup supporting the amount billed.

Specification Example

- The vendor shall submit a properly executed application for payment, together with appropriate backup supporting the amount billed.
- Improved Specification

Specifications

- **S**pecific
- **M**easurable
- **A**chievable
- **R**elevant
- **T**ime-Bound

SMART

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Specific

- Well-defined, focused, explicit
 - Scope and purpose of the contract
 - Services/Commodities
 - Specific individuals to perform work
 - Location(s)
 - Consequences for non-compliance
 - Right to audit
 - Specify monitoring in contract language

Measurable

- Performance measures
 - Quantities
 - Unit or Fixed Prices
 - Timing
 - Expertise
 - Licenses
 - Degrees
 - Certifications

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Achievable

- Realistic deliverables from the contractor
- Specific circumstances in which the contractor may subcontract for commodities and services outside the contractor's area of expertise

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Relevant

- Essential to contract deliverables
- Payment provisions
 - Payment triggers
 - Invoice formats
 - Description of deliverables
 - Services
 - Names of workers
 - Hours for each worker
 - Client names (SSN and/or address)
 - Dates of service

Relevant

- Essential to contract deliverables
- Reporting
 - Requirements
 - What
 - Electronic/paper
 - When
 - Records retention
- Method for submitting invoices
- Required signatures/authorization

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Time-bound

- Specific dates or deadlines for delivery of goods and services
- Time frames for billing

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Requirements

- What is the contractor expected to do?
- When is the contractor to provide the deliverables?
- Where is the contractor to perform required activities?
- How will the contractor communicate to the agency that contract terms have been satisfied?
- How is the contractor to bill the agency for goods or services?

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Requirements

- How much money is the contractor allowed to bill the agency for goods or services?
- What information must be included on the invoice?
- How and to whom should the contractor send the invoice?
- What's at risk if the contractor fails to perform as required?

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Requirements

- How will the agency verify that the contract did exactly what was expected for the contract term?
- What is the agency's recourse if the contractor does not perform as expected?

Specification	What can go wrong?	How agency can monitor
<p>Pages 27 to 54 of the contract include specific preventive maintenance activities for each type of equipment (hydraulic elevators, traction elevators, escalators, dumbwaiters) and the frequency for each activity (e.g., weekly, bimonthly, quarterly, semi-annually, annually).</p>		

Step 3.

Identify Risks:

- Programmatic
 - What can prevent goal accomplishment?

- Fiscal
 - How can the contractor get money they didn't earn?

Step 3.

What can go wrong?



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Risk

- Susceptibility
 - Understand fraud, waste, abuse schemes
 - <http://www.google.com/alerts>
 - <http://www.wccfighter.com/subscribe.htm>
 - <http://www.acfe.com/home.asp>
 - <http://www.nycfe.org/>

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FRAUD



What is Fraud?

✍ Misstatement

- Mistake v Fraud

✍ Knowledge of falsehood/intent

✍ Reliance by victim

✍ Damage

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What is Fraud?

Fraud is any intentional act or omission designed to deceive others, resulting in the victim suffering a loss and/or the perpetrator achieving a gain.

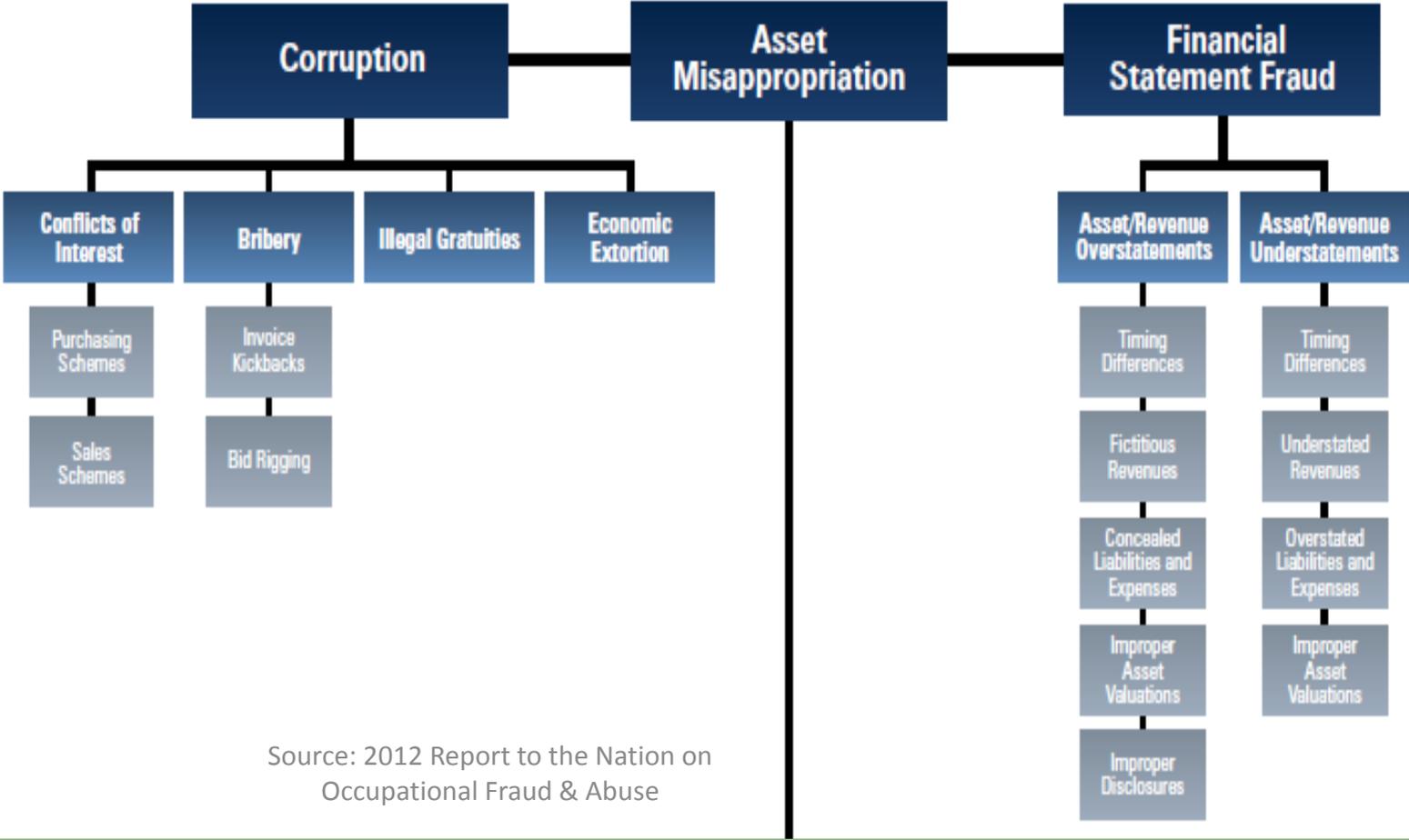
Source: Institute of Internal Auditors

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Occupational Fraud and Abuse Classification System



Source: 2012 Report to the Nation on Occupational Fraud & Abuse

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Where does it happen?

More than 75% of the frauds in the study were committed by individuals in 1 of 6 departments, including:

- ✍ **Purchasing** – corruption, billing schemes
- ✍ Accounting – check tampering, billing
- ✍ Executive/upper management – corruption, billing, expense reimbursement

Source: 2012 Report to the Nations on Occupational Fraud & Abuse

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Fraud

- How does it happen?
- How is it detected?
- What is the source?

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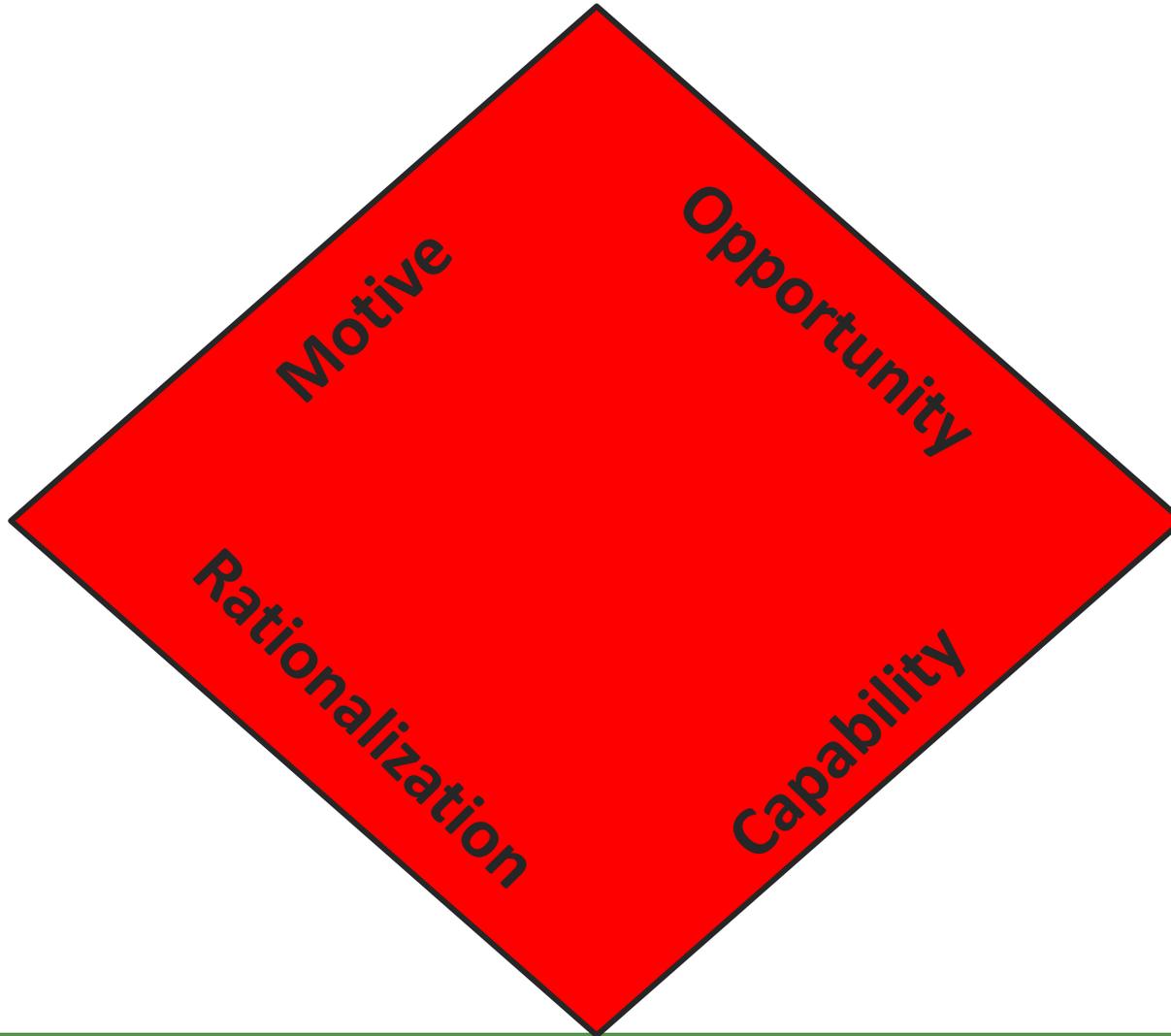
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Personal Flags

- ✍ Weak ethics
- ✍ Wheeler-dealer personality
- ✍ Lack of stability
- ✍ Strong desire to beat the system
- ✍ Significant behavior changes
- ✍ Inadequate income for lifestyle

How Does Fraud Happen?



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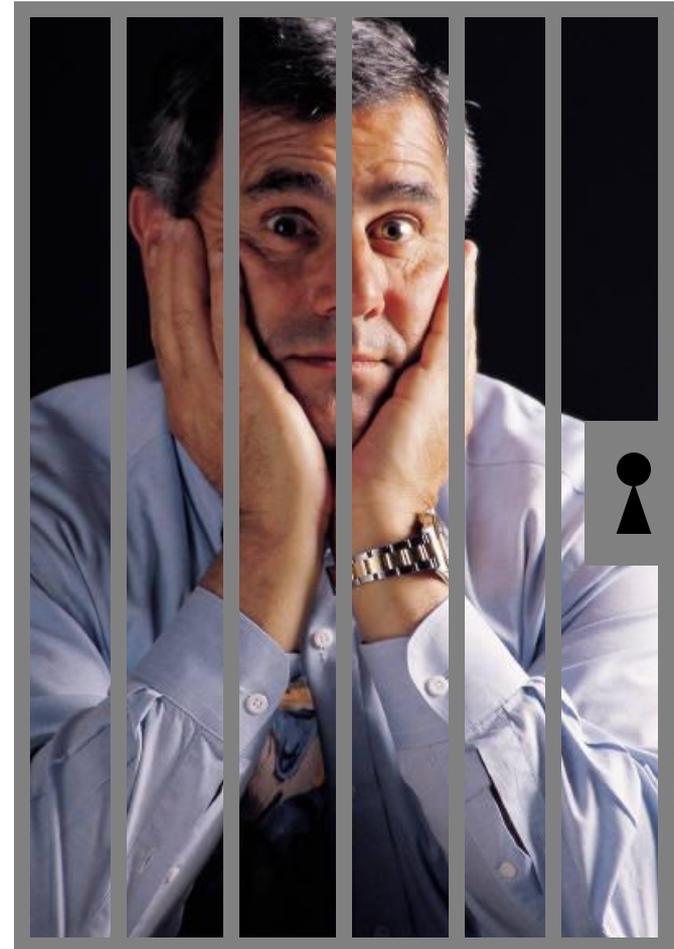
Profile of the Worst Occupational Fraudster

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- R Race
- R Gender
- R Age
- R Education
- R Criminal History
- R Occupation
- R Tenure
- R Salary



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Document Flags

- ✍ Checks made out to “CASH” or a company employee
- ✍ Hand written endorsement
- ✍ Vendor address is not local, but check is cashed locally
- ✍ Check feels or looks different from other checks
- ✍ Check is written out of order

Contracting Flags

- ↪ Restrictive or vague specifications
- ↪ Low number of bidders
- ↪ Regular bidders do not bid
- ↪ Same vendor(s) repeatedly winning bids

Contracting Flags

- ↳ Unreasonable bid amounts (prev. wage)
- ↳ Bid amounts slightly below approval levels
- ↳ Unable to confirm bids with losing vendors

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Shell Company Flags

- ✎ You have never heard of this company
- ✎ Company receives many small dollar payments
- ✎ Company name includes initials or personal name
- ✎ Company sells intangible services difficult to confirm

Conflict of Interest Flags

☞ Relationships among awardees

☞ Grantees or vendor

☞ Relationships between awardee and agency staff

☞ Awardee's address or identification number matches employee's personal information

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Bribes and Kickbacks Flags

- ✍ Unjustified favoritism of a certain vendor
- ✍ Unexplained increase in wealth of employee
- ✍ Close socialization with or acceptance of inappropriate gifts from a vendor

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DAILY NEWS

Queens State Sen. Shirley Huntley is charged with helping to cover up theft of taxpayer cash she directed to a nonprofit she founded

Newsday

**State Sen. Shirley Huntley
indicted in pork probe**

NEW YORK POST

**State Sen. Huntley
hailed off in 30G 'scam'**

Cuffed in charity cover-up

4 NEW YORK

**NY Senator Shirley Huntley Arrested,
Charged with Tampering and
Conspiracy**

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Result

Charge	Counts
Grand Larceny	10
Offering a False Instrument for Filing	4
Conspiracy	3
Tampering with Physical Evidence	6
Falsifying Business Records	6
Total Charges	29

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Finding Relationships

- Check the Voucher
- 990 – Schedule A
- <http://seethroughny.net/>
- Other Search Tools (Google Maps, White Pages, Openbook etc.)

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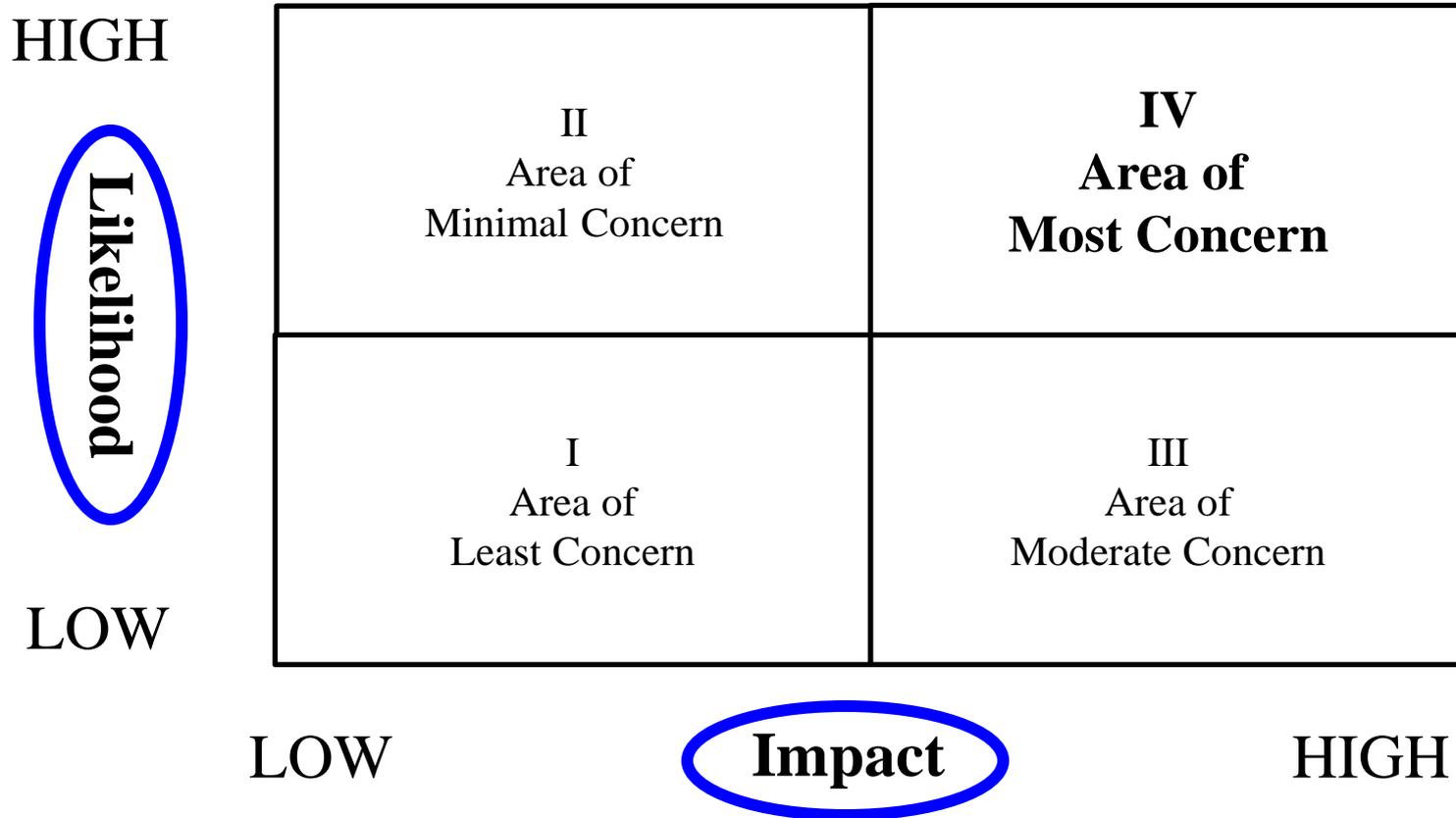
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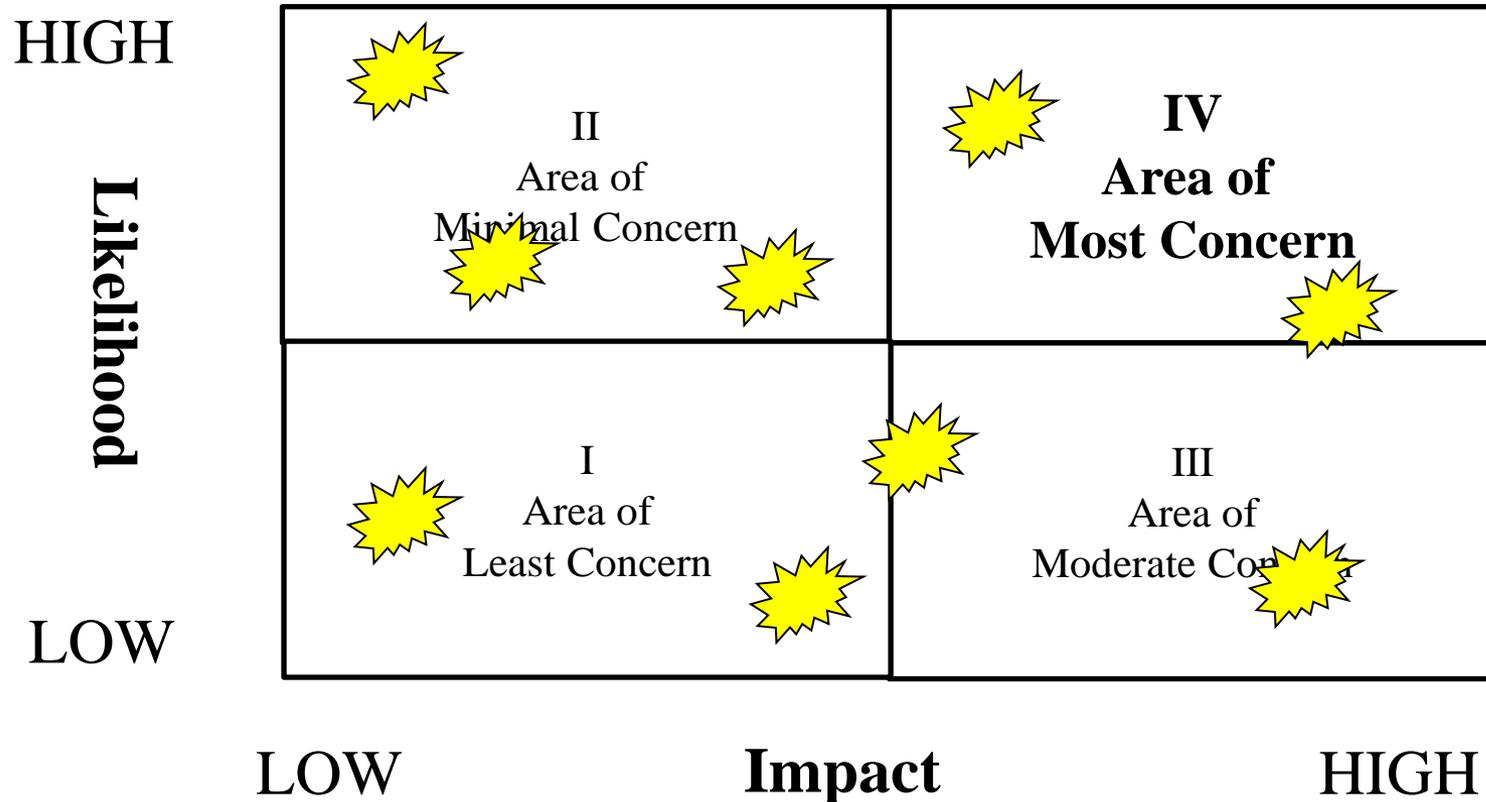
Specification	What can go wrong?	How agency can monitor
<p>Pages 27 to 54 of the contract include specific preventive maintenance activities for each type of equipment (hydraulic elevators, traction elevators, escalators, dumbwaiters) and the frequency for each activity (e.g., weekly, bimonthly, quarterly, semi-annually, annually).</p>	<p>CONTRACTOR does not perform all required preventive service maintenance and equipment breaks down or needs replacement more frequently. Health and safety of passengers.</p>	
<p>Page 24 of the contract lists (1) the elevators, escalators and dumbwaiters covered by the contract; (2) monthly and annual prices; (3) labor titles and rates; (4) estimated hours; and (5) mark-up on materials.</p>	<p>AGENCY pays CONTRACTOR for services on equipment not covered under the contract.</p>	
	<p>CONTRACTOR overcharges AGENCY on hourly rates, monthly or annual prices (higher rate, or charges for services not performed), or mark-up on materials.</p>	

Step 4. Prioritize Risks

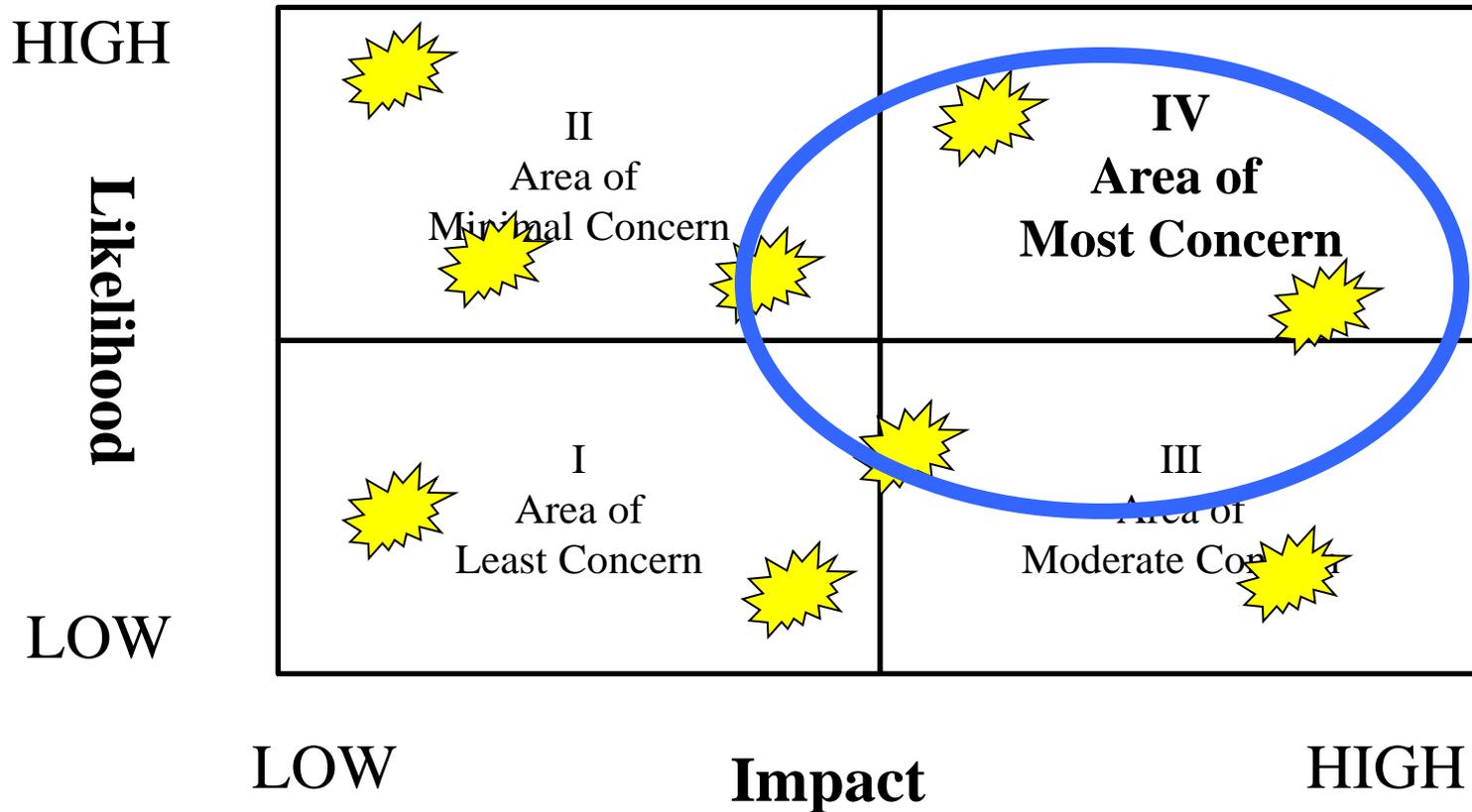
So what's the big deal?



Step 4. Prioritize Risks: So what's the big deal?



Step 4. Prioritize Risks: So what's the big deal?



Step 5. Determine Agency's Response to the Risks

- Mitigate
 - Revise administrative procedures
 - Improve control systems
 - Increase auditing
 - Other
- Accept

Step 6. Design and Implement Monitoring Activities

- Design steps to mitigate risks
 - Who's going to do it?
 - How are they going to document it?
 - Who are they going to give the documentation to?

Specification	What can go wrong?	How agency can monitor
<p>Page 24 of the contract lists (1) the elevators, escalators and dumbwaiters covered by the contract; (2) monthly and annual prices; (3) labor titles and rates; (4) estimated hours; and (5) mark-up on materials.</p>	<p>AGENCY pays CONTRACTOR for services on equipment not covered under the contract.</p>	<p>The Contract Manager should prepare a pricing schedule for monthly fees by elevator, the two labor titles (mechanic and helper), hourly rates, and the percentage at which the CONTRACTOR is allowed to mark up materials charges.</p> <p>The Contract Manager should give this schedule to the Clerk 2 in the Accounts Payable office.</p>
	<p>CONTRACTOR overcharges AGENCY on hourly rates, monthly or annual prices (higher rate, or charges for services not performed), or mark-up on materials.</p>	<p>The Clerk 2 should refer to the pricing schedule when reviewing the CONTRACTOR invoice to determine whether the CONTRACTOR is charging the AGENCY the correct prices on equipment covered by the contract.</p>

Who Should Monitor?

- Program staff
- Finance staff
- Consultants
- Internal Auditors
- External Auditors?

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Monitoring Process

- Timing
- Extent

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Evidence

- Enough information (Sufficient)
- The “right” information (Appropriate)
- Types:
 - **T**estimonial
 - **P**hysical
 - **D**ocumentary

At the Contractor

- Professional Skepticism - An attitude that includes a questioning mind and critical assessment of information.
- Why? Show me.
- Does this make sense?
- How can I verify it?

What did you learn?

- Was everything “O.K.”?
- Were there any red flags?
- Who needs to know?

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Step 7. Follow Up

- Corrective action
- Withhold payment
- Terminate contract
- Other?

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The Process in Review

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Future Reference

- Guide to Financial Operations
- XI.11.F Contract Monitoring
<http://www.osc.state.ny.us/Agencies/guide/MyWebHelp/Content/XI/11/F.htm>
- OSC Training

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