

# OSBORN

## **Making Integrity Pay**

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On October 21, 1999, The Manhattan District Attorney's Office announced that 31 architects, real estate brokers and managers, and 24 companies, had pleaded guilty to bribery charges relating to bid rigging on construction projects ranging from Bertelsmann skyscraper in Times Square to a bank on Wall Street. (Editor's note: Please see "The REBNY Report" on page 76.)

The announcement marked the latest round in the five-year investigation of the \$6 billion interior construction business. The New York Times, on October 22, 1999, reported that the inquiry is far from over and that investigators and executives in the case say that up to a dozen other construction executives and architects will be indicated on bid-rigging charges by the end of the year.

The risks for companies undertaking major renovations are made obvious by the findings of the District Attorney's investigation. Many owners or major tenants face the added complication of having chosen architects or contractors on the list of plea bargains or who may be on the anticipated list of indictments. The question is what to do: simply ignore it and proceed with the contract, void the contract and choose a new contractor or go ahead while implementing safeguards to protect against improprieties as the progresses.

Those owners and tenants most at peril are those without in-house design, construction and audit capabilities. In recent years, outsourcing has placed many companies in this position. There was a time when major corporations in publishing, pharmaceuticals or technology would have in-house staffs to manage architecture, renovation and facilities management.

Hungry for space and without safeguards to protect themselves, new companies coming into New York City are at risk to be part of the next wave of victims. In particular, new media companies, along with large corporations in Manhattan's hot office market, are not focused on safeguards or cost-savings, but rather on quickly occupying their space.

However valuable ongoing investigations by the District Attorney have been to expose systemic industry corruption, investigations and prosecutions alone cannot prevent victimization. To assure they do not become tomorrow's victims, owners should be familiar with and consider implementing contractual and loss prevention innovations now available.

Basic reforms go a long way toward protecting the collective integrity of the industry:

1. Choose your in-house staff and managing agents very carefully. Measure them by integrity standards and assess their knowledge and leadership in promoting integrity in previous placements. Educational programs, such as the one offered nationally by the Building Owners and Managers Institute, require integrity training as part of their certificate programs.
2. Implement an in-house integrity and ethics program. It needs to be well-designed, adopted, endorsed and supported by management and must feature a program under which those who fail to

- report known infractions suffer the same consequences as those who commit them. Easily accessible reporting through a hot line and other "user friendly" means are imperative.
3. Implement a thorough and professional program for pre-qualifying contractors, design professionals and vendors.
  4. Adopt a well thought out bid process featuring pre-award interviews that allow for elimination of inappropriate or erroneous bids.
  5. Use contracts that best protect the owner's interests, and allow the owner to terminate and assess damages against contractors and design professionals who are later discovered to have had integrity problems.
  6. Require accurate and detailed records to be consistently maintained and made accessible for audit by the owner at all points in the project.
  7. Implement a strong independent audit process that employs professionals who know the construction and renovation process and how to measure value.
  8. Use a strong budget analysis from the outset that is able to evaluate changes in scope, cost and value as the project progresses and evolves.
  9. Implement a well-developed, precise, but streamlined change order process that allows for prompt yet thorough decision making.
  10. Emphasize the importance of paying attention to details while being able to see the bigger picture. For example, delaying execution on a small dollar item (to research it further) may cost the project larger dollars when the overall project is delayed by indecision on the small item.

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