

05

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

09CR 376

UNITED STATES OF AMERICA)
)
 v.)
)
 STEVEN FENZL, and)
 DOUGLAS E. RITTER)
)
 Defendants.)

Criminal No.:

Violations: 18 U.S.C. §§ 1341, 1343, 1349

Filed:

JUDGE CASTILLO

MAGISTRATE JUDGE COLE

FILED

APR 21, 2009
APR 21 2009

INDICTMENT

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

The SPECIAL FEBRUARY 2008-1 GRAND JURY charges that:

COUNT I: CONSPIRACY TO COMMIT MAIL AND WIRE FRAUD

1. STEVEN FENZL and DOUGLAS E. RITTER ("the Defendants") are hereby indicted and made defendants on the charges contained in this Indictment.

Relevant Persons and Entities

During the period covered by this Indictment:

2. Company U was a corporation organized and existing under the laws of the State of Illinois with its principal place of business first in Chicago, Illinois and later in Schaumburg, Illinois. Company U was engaged in the business of refurbishment and repair of refuse disposal containers in the states of Illinois, California and elsewhere.

3. Defendant STEVEN FENZL ("FENZL") resided in the State of California and was engaged in the business of refurbishment and repair of refuse disposal containers as vice-president and part-owner of Company U.

4. Defendant DOUGLAS E. RITTER ("RITTER") resided in the State of Illinois and

was engaged in the business of refurbishment and repair of refuse disposal containers as president and part-owner of Company U.

5. Employee U1 was employed by Company U and worked in its Illinois office.

Employee U1 reported to Defendant RITTER.

6. Company A was a corporation organized and existing under the laws of the State of Illinois and was owned by Defendants RITTER and FENZL. Company A did not have any assets and did not engage in any business activities.

7. Company B was a corporation organized and existing under the laws of the State of California. Company B was engaged in the manufacture and supply of refuse disposal containers in California and elsewhere.

8. Employee B1 was the president and part-owner of Company B.

9. Employee B2 was the vice president of sales and marketing for Company B.

10. Company C was a corporation organized and existing under the laws of the State of Illinois and was certified by the City of Chicago as a Minority Business Enterprise ("MBE").

11. Employee C1 was the president and part-owner of Company C.

12. Employee C2 was an employee of Company C.

13. Company D was a corporation organized and existing under the laws of the State of Illinois and was certified by the City of Chicago as a Women Business Enterprise ("WBE").

14. Employee D1 was the president and owner of company D.

15. The City of Chicago was a municipal corporation and a political subdivision of the State of Illinois. The functions and services provided by the City of Chicago on behalf of its residents were coordinated through various agencies and departments. One of the largest of these

departments was the Department of Streets and Sanitation ("Streets and Sanitation"), which was responsible for, among other things, garbage collection.

16. Wherever in this Indictment reference is made to any act, deed, or transaction of any corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, employees, agents, or other representatives while they were actively engaged in the management, direction, control or transaction of its business or affairs.

**The City of Chicago's Program for Maintenance and Repair
(Refurbishing) of Refuse Carts**

During the period covered by this Indictment:

17. To facilitate garbage collection, Streets and Sanitation arranged for the distribution of plastic "roll-out" refuse carts to City of Chicago residents, in which residents were to place their garbage and recycling for collection. Over time, these carts routinely became worn-out or damaged.

18. The City of Chicago regularly solicited competitive bids from private companies to maintain and repair the refuse carts. Among other things, the City of Chicago required each bidder to:

- a. Certify that there was no agreement with any other bidder relating to the price named in any other proposal; and
- b. Identify a minority business enterprise (MBE) company and a women business enterprise (WBE) company with which it would enter into subcontracts to purchase goods or services for specified percentages of the total contract amount, if awarded the contract.

19. The City of Chicago required:

a. the winning bidder to execute formal contracts or purchase orders with the MBE and WBE companies identified in its bid within 30 days of the award of a contract;

b. that the winning bidder submit a utilization report on a quarterly basis certifying that the identified MBE and WBE companies had been contracted with and detailing the work performed and the amounts paid to those companies; and

c. that the MBE and WBE companies identified in the bid were used in the performance of the contract unless a substitute MBE or WBE was necessary to fulfill the MBE/WBE requirements. In order to make such substitution, the winning bidder was required to immediately notify the Chief Procurement Officer of the City of Chicago in writing of the necessity to reduce or terminate the MBE and/or WBE companies identified in its bid and identify the substitute MBE and/or WBE.

20. The City of Chicago could terminate the contract if the winning bidder failed to satisfy the MBE and WBE percentages required by the contract.

Description of the Offense

21. Beginning at least as early as November 2004 and continuing until as late as September 2008, the exact dates being unknown to the Grand Jury, in the Northern District of Illinois, Eastern Division, and elsewhere, Defendants:

STEVEN FENZL and

DOUGLAS E. RITTER

and others known and unknown to the Grand Jury did knowingly, willfully and unlawfully combine, conspire, confederate, and agree with each other to violate Title 18, United States

Code, Sections 1341 and 1343, to wit, to devise and attempt to devise a scheme and artifice to defraud the City of Chicago by obtaining money and property from the City of Chicago by means of materially false and fraudulent pretenses, representations, and promises, and concealment of material facts, which scheme is described more fully below, and, for the purpose of executing and attempting to execute such scheme and artifice:

(a) used or caused to be used the United States Postal Service and a private or commercial interstate carrier in violation of Title 18, United States Code, Section 1341; and

(b) transmitted or caused to be transmitted by means of wire communication in interstate commerce writings, signs, signals, or pictures in violation of Title 18, United States Code Section 1343.

22. It was a part and object of the conspiracy that the Defendants would fraudulently cause the City of Chicago to award the contract for Specification No. 17390A to Company U.

23. It was also a part and object of the conspiracy that the Defendants would fraudulently cause the City of Chicago to pay Company U for services that Company U had committed to obtain on behalf of the City of Chicago from minority- and women-owned business enterprises, but which Company U did not actually obtain from minority- and women-owned business enterprises.

24. It was also a part and object of the conspiracy that, if the City of Chicago did not award the contract for Specification No. 17390A to Company U, Defendants would fraudulently cause the City of Chicago to award the contract to a company under the control or influence of Defendants RITTER and FENZL so that Defendants would obtain a financial benefit from the

award of the contract for Specification No. 17390A.

Manner and Means of the Conspiracy

The manner and means by which the conspiracy was sought to be accomplished include, among others, the following:

25. It was a part and object of the conspiracy that Defendants combined and conspired to deceive City of Chicago officials about the number of legitimate, competitive bids submitted for Specification No. 17390A. Specifically, Defendants combined and conspired by means of materially false and fraudulent pretenses to fraudulently induce Company B to submit a bid for Specification No. 17390A at a price that was determined by Defendants and was higher than Company U's bid price based on the materially false and fraudulent assertion that Company U would not submit a bid for Specification No. 17390A. Defendants further combined and conspired by means of materially false and fraudulent pretenses to fraudulently submit a sham bid for Specification No. 17390A in the name of Company D at a price higher than the bid price submitted by Company U. Defendants further combined and conspired to submit a bid for Specification No. 17390A in the name of Company A containing a materially false and fraudulent document.

26. It was also a part and object of the conspiracy that Defendants combined and conspired to deceive the City of Chicago by knowingly falsely and fraudulently certifying in Company U's bid for Specification 17390A that Defendants had not entered an agreement with any other bidder relating to the price named in any other proposal submitted to the City of Chicago for Specification No. 17390A when Defendants had in fact entered into an agreement with Company B in relation to Company B's bid.

27. It was also a part and object of the conspiracy that Defendants combined and conspired to deceive the City of Chicago by knowingly falsely and fraudulently certifying in Company U's bid for Specification No. 17390A that Company U intended to purchase goods or services from:

(a) Company C, a certified Minority Business Enterprise, in the amount of \$343,746.00; and

(b) Company D, a certified Women Business Enterprise, in the amount of \$91,530.00.

A. Defendants Fraudulently Induced Company B to Submit a Bid for Specification No. 17390A Based on a Materially False and Fraudulent Assertion

28. In approximately November or December of 2004, Defendant FENZL approached Employee B2 at Company B and suggested that Company B submit a bid for Specification No. 17390A. Defendant FENZL falsely represented to Employee B2 that Company U did not plan to submit a bid for Specification No. 17390A.

29. Defendant FENZL provided price information to Employee B2 for Specification No. 17390A.

30. To enable Company B to complete its bid for Specification No. 17390A, Defendant FENZL offered the use of Company U's Chicago facilities for the repair and refurbishment of refuse carts if Company B won the contract.

31. On or about January 7, 2005, Employee B1 signed Company B's bid for Specification No. 17390A and sent those bid forms from California to Employee U1 in Chicago, Illinois via commercial interstate carrier, FedEx Corporation.

32. To insure that Company B would be in compliance with the City of Chicago's women-owned business enterprises requirement, Employee U1, at the direction of Defendant RITTER, included in the Company B bid a signed commitment form (Schedule C-1) from Company D, a certified WBE. This form was required by the City of Chicago to be submitted as part of Company B's bid for Specification No. 17390A.

33. To further insure that Company B would comply with the City of Chicago's minority-owned business enterprises requirements, Defendants provided a letter that was submitted with Company B's bid for Specification No. 17390A explaining that Company B was still seeking a certified MBE subcontractor.

34. Defendant RITTER provided Employee U1 with the price for Company B's bid for Specification 17390A which was higher than the price Company U bid.

35. At the direction of Defendant RITTER, Employee U1 completed Company B's bid for Specification No. 17390A using the price, the commitment form from the certified WBE, the letter regarding the MBE subcontractor, and repair facility location provided by Defendants RITTER and FENZL, and the bid documents signed by Employee B1 of Company B.

36. On or about January 10, 2005, Company B's bid for Specification No. 17390A was submitted to the City of Chicago.

37. Contrary to Defendant FENZL's false and fraudulent representations to Employee B2, Defendants RITTER and FENZL were preparing to submit and did submit a bid on behalf of Company U to the City of Chicago for Specification 17390A at a lower price than the price Defendants provided to Company B to submit.

B. Defendants Fraudulently Submitted or Caused to be Submitted to the City of Chicago a Sham Bid for Specification No. 17390A

38. Defendants RITTER and FENZL agreed to submit and did submit a sham bid for Specification 17390A in the name Company D, a City of Chicago certified WBE.

39. Defendant RITTER provided Employee U1 with the price for Company D's bid, which was higher than the price Company U bid.

40. To further insure that Company D would be in compliance with the City of Chicago's minority-owned business enterprises requirement, when Defendants submitted the sham bid for Company D, Defendants included in the bid a letter explaining that Company D was still seeking a certified MBE subcontractor.

41. In the sham bid for Company D, Defendants identified Company U's Chicago facilities for the repair and refurbishment of refuse carts as the location where the work would be performed if the contract were awarded to Company D.

42. On or about January 7, 2005, Defendant FENZL sent from the State of California to Employee D1 at Company D in the State of Illinois via facsimile, an interstate wire communication, certain blank forms for the bid for Specification 17390A.

43. On or about January 7, 2005, Employee D1 of Company D completed the blank bid forms that Defendant FENZL had sent to Employee D1. On or about January 7, 2005, Employee D1 forwarded the completed bid forms to Defendant RITTER.

44. At the direction of Defendant RITTER, Employee U1 completed Company D's bid for Specification No. 17390A using the prices provided by Defendant RITTER, the letter regarding the MBE subcontractor provided by Defendants, the repair facility location provided by

Defendants, and the bid forms completed by Employee D1 of Company D.

45. On or about January 10, 2005, Defendants submitted, or caused to be submitted, a bid for Specification No 17390A in the name of Company D.

C. **Defendants Fraudulently Submitted or Caused to be Submitted to the City of Chicago a Bid for Specification No. 17390A Containing a Materially False and Fraudulent Document**

46. Defendants RITTER and FENZL agreed to submit and did submit a bid for Specification 17390A in the name of Company A, a company without assets or employees, which was owned and controlled by Defendants RITTER and FENZL.

47. On or about December 29, 2004, and January 4, 2005, Defendant RITTER, who was located in the State of Illinois, and Defendant FENZL, who was located in the State of California, discussed via e-mail, an interstate wire communication, whether Defendants should submit additional bids for Specification No. 17390A in the names of other companies, including Company A.

48. To insure that Company A would be in compliance with the City of Chicago's women-owned business enterprises requirement, Employee U1, at the direction of Defendant RITTER, without the consent of Employee D1, included in Company A's bid a signed commitment form (Schedule C-1) from Company D, a certified WBE. This form was required by the City of Chicago to be submitted as part of the bid for Specification No. 17390A.

49. On or about January 10, 2005, Defendants submitted, or caused to be submitted, a bid for Specification No. 17390A to the City of Chicago in the name of Company A.

D. Defendants Falsely and Fraudulently Certified that Defendants Had Not Entered An Agreement With Another Bidder Relating to Any Price Quoted By That Bidder

50. On or about December 17, 2004, Defendant RITTER signed the certification in Company U's bid stating that Defendant RITTER had not entered an agreement with any other bidder relating to the price named in any other proposal submitted to the City of Chicago for Specification No. 17390A.

51. On or about January 10, 2005, Defendants submitted Company U's bid for Specification 17390A falsely and fraudulently certifying to the City of Chicago that they had not entered an agreement with any other bidder relating to the price named in any other proposal submitted to the City of Chicago for Specification No. 17390A despite the agreement of Employee B1 and Employee B2 to submit Company B's bid for Specification No. 17390A to the City of Chicago at the request of the Defendants and at the price determined by Defendants RITTER and FENZL.

E. Defendants Falsely and Fraudulently Certified Their Intent to Subcontract for Services from Minority- and Women- Owned Businesses

52. The City of Chicago required each bidder seeking to do business with the City of Chicago to identify a certified MBE company and a certified WBE company with which it would enter into subcontracts for the provision of goods or services for specified percentages of the total contract amount, if awarded the contract.

53. At the direction of Defendant RITTER, Employee U obtained commitment forms (Schedule C-1) from Company C, a certified MBE company, and Company D, a certified WBE company, and included these forms in Company U's bid for Specification No. 17390A. These

commitment forms identified the certified WBE and MBE companies that Company U would subcontract with if Company U was awarded the contract. The commitment forms also identified the goods or services the WBE and MBE companies would provide and the dollar value of those goods or services.

54. On or about December 17, 2004, Defendant RITTER signed and Employee U1 notarized an Affidavit (Schedule D-1), a required part of the bid documents for Specification No. 17390A, falsely certifying Company U's intention, if awarded the contract, to subcontract with the certified MBE and WBE companies identified in the commitment forms submitted as part of Company U's bid for Specification No. 17390A. Defendant RITTER falsely and fraudulently certified Company U's intent to purchase \$343,746.00 in goods and services from Company C, a certified MBE company, and \$91,530.00 in services from Company D, a certified WBE company.

55. On January 10, 2005, Defendants submitted Company U's bid for Specification No. 17390A to the City of Chicago.

56. On or about July 5, 2005, the City of Chicago awarded Contract No. 8826, the contract for Specification No. 17390A, to Company U.

57. Company U failed to execute formal contracts or purchase orders with Company C, the MBE company identified in Company U's bid, or Company D, the WBE company identified in Company U's bid, within 30 days as required by City of Chicago contracting regulations.

58. Company U did not purchase any goods or services from Company C, the MBE company, related to Contract No. 8826. Company U purchased approximately \$15,000.00 of services from Company D, the WBE company, related to Contract No. 8826.

59. From July 2005 until May 21, 2007, Company U did not notify the Chief Procurement Officer of the City of Chicago in writing of a necessity to reduce or terminate Company C, the MBE company identified in Company U's bid, or Company D, the WBE company identified in Company U's bid, as required by City of Chicago contracting regulations, even though Company U never purchased any goods or services related to Contract No. 8826 from Company C, the MBE company, and only purchased approximately \$15,000.00 of services related to Contract No. 8826 from Company D, the WBE company.

60. Company U did not notify the Chief Procurement Officer of the City of Chicago of the identity of any substitute MBE or WBE companies as required by City of Chicago contracting regulations.

61. From July 2005 until April 2007, Company U did not submit the quarterly utilization report as required by City of Chicago contracting regulations certifying that Company U had entered into a contract with Company C, the MBE company identified in Company U's bid, and Company D, the WBE company identified in Company U's bid, and detailing the work performed and the amounts paid to those companies.

62. On April 3, 2007, the City of Chicago sent a letter to Defendant RITTER requesting that Company U complete an enclosed utilization report.

63. On April 16, 2007, Defendant RITTER, as president of Company U, completed the utilization report and signed an affidavit attesting, under penalty of perjury, that the information provided in the utilization report was true and correct. In the utilization report, Defendant RITTER falsely and fraudulently stated that Company U had contracted with Company C, an MBE company, and paid Company C \$76,303.99 for work done on the contract

for Specification 17390A.

64. The Defendants, by their actions, fraudulently caused the City of Chicago to pay Company U for services that Company U had falsely committed to obtain on behalf of the City of Chicago from certified MBE and WBE companies, but which Company U did not actually obtain. Company U received payment of approximately \$1,708,695.60 from the City of Chicago on Contract No. 8826.

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1349.

COUNT II: MAIL FRAUD

65. Paragraphs 1 through 20 and 22 through 64 are realleged as if set forth in full herein.

66. On or about January 8, 2005, in the Northern District of Illinois, Eastern Division, and elsewhere, Defendants,

STEVEN FENZL AND

DOUGLAS E. RITTER

having devised and intending to devise the scheme and artifice, more fully described above, to defraud the City of Chicago of money and property by means of materially false and fraudulent pretenses, representations, and promises, and concealment of material facts, and for the purpose of executing, and attempting to execute, the scheme and artifice, did cause to be delivered by a commercial interstate carrier, namely the FedEx Corporation, a package, addressed to Employee U1 from Employee B1, containing the portions of Company B's bid for Specification 17390A.

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1341.

COUNT III: WIRE FRAUD

67. Paragraphs 1 through 20 and 22 through 64 are realleged as if set forth in full herein.

68. On or about January 7, 2005, in the Northern District of Illinois, Eastern Division, and elsewhere, Defendants,

STEVEN FENZL AND

DOUGLAS E. RITTER

having devised and intending to devise the scheme and artifice, more fully described above, to defraud the City of Chicago of money and property by means of materially false and fraudulent pretenses, representations, and promises, and concealment of material facts, and for the purpose of executing, and attempting to execute, the scheme and artifice, did transmit and cause to be transmitted in interstate commerce by means of a wire communication, certain writings, signs, signals, or pictures, that is, a facsimile of certain blank forms for the bid for Specification 17390A, sent by Defendant FENZL in the State of California to Employee D1 of Company D in the State of Illinois.

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1343.

COUNT IV: MAIL FRAUD

69. Paragraphs 1 through 20 and 22 through 64 are realleged as if set forth in full herein.

70. From on or about September 1, 2005, to on or about June 7, 2007, in the Northern District of Illinois, Defendants did cause to be placed in the post office or an authorized depository for mail, approximately 75 envelopes addressed to Company U, each containing a check for a total amount of approximately \$1,525,567.80 from the City of Chicago for payment for goods and services provided by Company U on Contract No. 8826, including goods and services that Company U had committed to obtain from Company C, a certified MBE company, and from Company D, a certified WBE company, but which Company U did not obtain from these companies.

71. On or about February 28, 2007, in the Northern District of Illinois, Eastern Division, Defendants,

STEVEN FENZL AND

DOUGLAS E. RITTER

having devised and intending to devise the scheme and artifice, more fully described above, to defraud the City of Chicago of money and property by means of materially false and fraudulent pretenses, representations, and promises, and concealment of material facts, and for the purpose of executing, and attempting to execute, the scheme and artifice, did cause to be placed in the post office or an authorized depository for mail, an envelope addressed to Company U, containing a check in the amount of approximately \$61,647.15 from the City of Chicago for

payment for goods and services on Contract No. 8826

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1341.

JURISDICTION AND VENUE

72. The offenses charged Counts I, II, III, and IV of this Indictment were carried out, in part, in the Northern District of Illinois, Eastern Division, within the five years preceding the return of this Indictment.

Dated: _____, 2009

A TRUE BILL

FOREPERSON

PATRICK J. FITZGERALD
United States Attorney for the
Northern District of Illinois