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Will \$13M Scandal Lead USPS To Better Procurement Regs?



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Did the U.S. Postal Service's lack of procurement regulations inadvertently help USPS officials carry out a \$13 million bribery scheme over several years? Five Postal Service employees were indicted in May 2011 by a Detroit, Mich., grand jury for taking bribes and steering as much as \$13 million in vehicle maintenance work to a private contractor. Could this scheme have been prevented, or caught earlier, if USPS had not abolished its procurement regulations in 2006?

The Alleged Bribes

The alleged bribes were given to officials in various positions ranging from automotive technician to Vehicle Maintenance Facility (VMF) manager.

At the low end of the totem pole, one employee received between \$200 and \$300 in cash per week. Another official received \$500 in gift cards per month; cash; tickets to Detroit Pistons, Detroit Lions and University of Michigan football games; a minivan; and thousands of dollars in free vehicle repair work.

Two VMF supervisors allegedly received between \$1,500 to \$2,300 per month, free vehicle repair work and free used vehicles. One of the supervisors also obtained a \$40,000 loan to purchase a condominium.

But the topper is the acting manager. He was allegedly supplied prostitutes, Levitra pills and a motel room on a weekly basis. He also received drinks and lap dances at the Toy Chest strip club, a \$3,000 brick patio at his home and free vehicle repair work.

The press release issued by the United States Attorneys Office for the Eastern District of Michigan is available [here](#).

The Penalties Defendants Face

If convicted of these criminal charges, the defendants face severe penalties and substantial prison time.

Each of the defendants faces up to a maximum of five years in prison for conspiracy to commit

bribery. In addition, most of defendants face a maximum of 15 years in prison for each of the bribery charges, and others face up to two years in prison for accepting illegal gratuities. In addition, the indictment seeks forfeiture of the illegal payments and benefits the defendants allegedly received.

An indictment is only a charge and is not itself evidence of guilt. Each defendant is entitled to a fair trial and the government will have the burden of proving guilt beyond a reasonable doubt.

The indictment does not state how this bribery ring was eventually discovered, but there is a hint. The contractor who allegedly paid these bribes is not identified, and only referred to in the indictment as "Private Contractor A." Since the contractor is not named, perhaps it was the contractor, or one of its employees, who provided the information that led to the indictment.

Not Really That Surprising

While the alleged conduct is outrageous, can we really say it is surprising? This type of conduct was inadvertently facilitated by the Postal Service's revocation of its purchasing regulations in 2006.

The former regulations, which had the force and effect of law, were replaced with essentially the same rules issued as nonbinding policy guidance. Over time, the Postal Service issued substantially revised purchasing policies, but continued to issue them as policy guidance and not as binding regulations. In addition, the Postal Service proclaimed that contractors had no right to challenge a procurement action based on the agency's breach of its purchasing policies.

At the same time, the Postal Service replaced its internal bid protest process (overseen by the Law Department) with a "disagreement" process overseen by an official who reported directly to the agency's procurement office. Initially, there was hope that the disagreement process would be an improvement, but time has shown it is not.

While the Postal Service spends \$12 billion a year on outside contracts, there were no reported

disagreement decisions in all of 2009, only two in 2010, and only two so far in 2011. Either the Postal Service has a remarkable record of perfectly conducting over 13,000 procurement actions per year or the disagreement process is not working as intended.

By deflating its purchasing rules from legally binding regulations to nonbinding policy guidance, and weakening the bid protest process, the Postal Service has made it easier for procurement errors and outright misconduct to develop, and harder to detect.

Here's why: A company that loses a contract award because of a suspected procurement error is the party most likely to bring that matter to light if there is an effective method for doing so. But when such entities are told that purchasing rules do not have to be followed and they cannot challenge the Postal Service's failure to comply with its policies, the single most effective mechanism for enforcing procurement accountability is eliminated. Similarly, when postal officials learn that the agency's purchasing policies are nonbinding and there is no effective method for challenging errors or misconduct, another vital check on the integrity of the procurement system is lost.

So it's not all that surprising that five VMF postal officials could steer as much as \$13 million in repair contracts over several years without it coming to light. Other companies who were capable of performing the same work would have had little ability to effectively challenge the decisions that were made by the bribed postal employees. What could they say? That the Postal Service was not following its purchasing rules? Those rules do not exist as regulations and they can't be enforced by contractors, the Postal Service would say. Who could they complain to? The same internal department that awarded the contract?

The time has now come — the Postal Service needs to upgrade its purchasing policies into binding procurement regulations and create an independent and effective internal bid protest process.

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