

Contractors Pay Penalties for Kickbacks

Written by Administrator
Tuesday, 10 August 2010 00:00

We've written about kickbacks before. We did a quick search of the site's news archive, and found eight articles dealing with kickbacks, including [this article](#) that discusses (in some depth) the FAR prohibition on accepting kickbacks (found at § 3.502), in the context of allegations that employees of KBR accepted "unlawful kickbacks in the form of meals, drinks, tickets to sports events and golf outings" as well as [this one](#), discussing EMC's \$87.5 million False Claims Act settlement, related to inaccurate disclosure of commercial pricing practices and an "illegal kickback scheme" related to its contract with the General Services Administration (GSA). We've got kickbacks covered.

Another large, well-known company was recently in the news, related to a settlement with the Department of Justice over practices related to its GSA schedule contracts. That company was Hewlett-Packard, one of the largest (if not in fact the single largest) technology company in the America. HP, who coincidentally saw its CEO resign for inappropriate conduct in the same week, reportedly settled with DOJ for a figure in the \$47 - \$50 million range.

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Details of the allegations and settlement are sketchy. Perhaps the best report we have been able to find is [here](#) , at the Financial Times. According to the FT story—

The justice department eventually intervened in a False Claims Act case brought by Normal Rille and Neal Roberts in federal court in Arkansas. Their suit said that HP paid a list of systems integrators millions of dollars in ‘influencer fees’ if they successfully put HP products forward in government deals. The integrators had an obligation to act in the government’s best interest but did not, the suit said.

The number one computer maker also gave ‘New Business Opportunity’ payments when it was included as a subcontractor on government contracts. Those payments were not intended to be passed on to the government agency,

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and the same products could have been obtained with volume pricing deals that would have reduced the payments, according to the suit.

Both types of payments met the definition of kickbacks in federal laws designed to stop overcharging, the suit said.

A dozen other technology companies were implicated in the case as well.

According to the FT story, HP denies the allegations, but believed that settling with the DOJ was in the best interests of its shareholders. (It often is.) Nonetheless, HP took a \$0.02/share hit to earnings in its Q3 results.

In completely unrelated news, here's [an article](#) from the Tri-Cities area near Hanford, Washington—home of one of the nation's largest active nuclear waste clean-up efforts. According to the article, Greg Detloff has been charged with 27 counts of wire fraud, one count of conspiracy, and one count of witness tampering. The article states that the wire fraud counts are related to “federal credit card fraud.” Each of the 29 charges is punishable by 20 years in prison and a \$250,000 fine. So we're talking about 580 years in prison and \$5 million in fines, should Mr. Detloff be found guilty. That could set one's vacation plans back quite a bit.

Mr. Detloff has pleaded not guilty to the charges. But what did he do to merit such attention from the Feds?

The article states that, while employed as a material coordinator by two Hanford contractors (Fluor Hanford and CH2M Hill Hanford Group), Mr. Detloff is alleged to have conspired with Martin Perez, who was employed as a salesman by Kennewick Industrial and Electrical Supply (KIE). They (allegedly) agreed that

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Detloff, acting for the contractor(s), would purchase “supplies and materials” from KIE—if KIE agreed to order those supplies from Detloff Industries—which was a company owned by his wife and operated out of the family home.

The article reports that “Perez received a 3.5 percent commission on orders placed by Detloff, and the Detloffs received their net profit from all materials and supplies sold by Detloff Industries through KIE.” Even though Detloff Industries was an approved Hanford supplier, and even though there have been no allegations that prices paid by the contractors (and ultimately the Department of Energy) were higher than they otherwise would have been, the relationship (allegedly) created a clear conflict of interest.

According to the article, “The case against Detloff and Perez was one of three cases alleging fraud in Hanford purchases filed this spring in federal court. Defendants have pleaded innocent and the first case could go to trial as soon as September.”

[This article](#) from May, 2010, provides some details on the other alleged fraudsters. First, it notes that Detloff (allegedly) used a corporate credit card to make the purchases from KIE, so that's where the federal credit card fraud charges come from. The article also reports that—

In a second indictment, federal prosecutors filed wire fraud charges against Suzie Zuniga, who held a job similar to Detloff's while working for Fluor Hanford. The same indictment includes charges against Tommy L. Honeycutt Jr., a former pipe fitter for a Hanford company; and Pedro Alvarado Jr., a former driver. The indictment said that between 2004 and 2008, Zuniga used a company card issued to her by Fluor Hanford to authorize purchases that totaled almost \$560,000. It alleges Zuniga, Honeycutt and Alvarado prepared phony invoices for purchases of supplies or materials from a number of vendors approved for Hanford's Plutonium Finishing Plant.

In addition, the article reports that—

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... federal prosecutors filed fraud charges against ... Paul F. Kempf and his wife, Anita M. Gust, alleging the couple bilked two Hanford contractors out of roughly \$500,000 through unauthorized purchases. The charges allege Kempf, a former manager at Fluor Hanford and then at CH2M Hill Hanford, and Gust used phony product orders to obtain personal items or cover personal expenses from 2001 to 2005.

These stories are not necessarily related in an obvious way. HP allegedly paid kickbacks in order to have its products recommended for Government purchase, and the Hanford miscreants allegedly participated in more prosaic, blue-collar types of purchasing fraud. Yet all the stories point to a need to establish internal controls over the acquisition function—whether it be sell-side “business development” or buy-side “purchasing/supply chain management”. And once those controls are in place, an independent compliance function needs to periodically probe for violations.

Post-Script

After we sent our article to press (well, to the webmaster) details emerged regarding the transgressions that led to the resignation of Hewlett-Packard's CEO, Mr. Mark Hurd. Although we noted Mr. Hurd's resignation in passing—saying “*HP, who coincidentally saw its CEO resign for inappropriate conduct in the same week, reportedly settled with DOJ for a figure in the \$47 - \$50 million range*”—it turns out that the transgressions may not have been so coincidental after all. We were writing about (alleged) procurement fraud at the Hanford nuclear waste site, which involved (among other things) fraudulent purchase orders, expense reports, and credit card activities. Turns out Mr. Hurd would fit right in with our “blue-collar” (alleged) miscreants.

According to [this article](#) (one of many we could have linked to), Mr. Hurd was exonerated of the sexual harassment charges of which he was accused. But the investigation revealed several instances of falsified expense reports regarding his “management consultant.” We'll let the Wall Street Journal take it from here—

Mr. Hurd was forced to resign last week, ostensibly for filing false expense reports amounting to about \$20,000. H-P deemed this sum 'not material,' which is beside the point. Anything related to Mr. Hurd's departure is plainly material, since on Monday the news shaved \$8.7 billion off H-P's market value. ... Apart from the expense-report issues, exactly what services was Ms. Fisher performing for H-P? The company said she was an outside marketing consultant, and its general counsel indicated she may not have provided all the services she contracted for. But what were those services, and what were Ms. Fisher's qualifications? Her resume doesn't include an M.B.A., to put it mildly, although it appears she did work in real estate and in sales for Xerox in addition to her movie work and appearance on NBC's 'Age of Love.' Supposedly she was a glorified hostess at H-P sales events, making sure big clients got face time with Mr. Hurd. Who hired her and why, based on what qualifications?

Nice. Notice that what's not said by the WSJ author in the foregoing speaks volumes about what may have really been going on. Just to remind readers, we've covered the use (and misuse) of consultants [before](#). And we've discussed "tone at the top" before, as well.

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