
Illegal Gratuities

The Scenario

Auditors were investigating allegations that a senior official at an agency accepted financial and other incentives from a contractor because the contractor received satisfactory performance evaluations and continuously received contract extensions even though the work performed was substandard. The senior official was responsible for overseeing the contractor's activities and played an influential role in deciding whether or not the contractor was satisfactorily meeting the performance terms and conditions stated in the contract.

As part of their effort to determine whether the allegations could be substantiated, the auditors conducted interviews with senior level officials, employees and contracting personnel. The auditors also reviewed contractor performance evaluations that were completed each year. During their efforts, the auditors learned the contractor was being investigated for improper use of a work-issued credit card.

During the interviews, the employees at the agency voiced legitimate concerns about the contractor's performance and stated they did not understand why the contractor was selected to provide services for 3 consecutive years. Their concerns included:

- The contractor did not meet the contract schedule or the schedule as revised by approved change orders.
- The contractor did not submit required paperwork promptly and in the proper form.
- Communication with the contractor was often not effective.
- Requests for schedule extensions were often frivolous and without proper justification.

Prior to interviewing the senior official in question, the auditors reviewed the purchases made by the contractor and receipts, and they noticed charges for basketball games, vacations and airline tickets. The airline receipt contained the name of the senior official as one the passengers. Also, the dates of the contractor's purchases coincided with the approval dates for the contract extensions. With evidence of possible illegal gratuities, the auditors confronted the senior official.

As the auditors interviewed the senior official, they presented the concerns of the other employees. The senior official stated the employees were overreacting and validated the contractor's performance by what was stated in the performance evaluations. During the interview, the auditors presented the evidence of the contractor's improper use of a work-issued credit card and question the senior official as to why the dates of the contractor's purchases coincided with contract extension approval dates.

The senior official could not explain the circumstances the auditors presented and admitted that illegal gratuities were accepted because of the actions taken to secure the extension of the contract. In addition, the auditors determined that the senior official used

personal influence and position to persuade other senior officials that the contractor's performance could improve. As a result, the favored contractor was able to continue to perform services for the agency.

General Comments / Lessons Learned. Illegal gratuities are similar to bribery, except that there is no intent to influence a particular business decision, but rather to reward someone for making a favorable decision. In proving illegal gratuity, there is no need to show that the party intended to influence the person's actions; it is enough to show that the person accepted an illegal gratuity based on their performance.

FRAUD INDICATORS

- **Complaints about substandard performance by a contractor.**
- **Frequent use of contractor despite quality, cost or performance problems.**
- **Excessive use of a particular contractor in a competitive field.**
- **Apparent favoritism of a contractor by agency personnel.**