

Whistleblowers enforce procurement ethics

by Kristin M. Atwater

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Two procurement professionals, Janet A. Garrison and Herb F. Hyman, share similar stories. During the course of their employment with public entities in Florida, they uncovered unethical procurement practices. They then became “whistleblowers,” by which an individual reveals wrongdoing within an organization to those in positions of authority or to the public, with hopes of rectifying the situation.

In their jobs as government purchasers [in the US], both Garrison and Hyman believe that they are entrusted by the public to spend taxpayer dollars wisely and fairly. Each individual also notes that codes of ethics govern their membership in professional procurement associations, as well as their certifications: Garrison is a CPPO, FCPM (Florida Certified Purchasing Manager), FCPA (Florida Certified Purchasing Agent), and FCN (Florida Certified Negotiator), while Hyman is a CPPB, FCPM, and FCPA.

Thus, Garrison and Hyman felt it was their public and professional duty to report ethics breaches that clearly violated [US] laws or specific procurement statutes. However, their efforts to “do the right thing” met with unanticipated outcomes, ranging from the mixed reactions of others to a complex maze of ongoing legal proceedings.

Both Garrison and Hyman offer insights to other purchasing professionals faced with similar situations.

Case 1

Reporting on practices at the [Florida] Board of Education

Janet A. Garrison's whistle-blowing experience occurred when she worked as a purchasing analyst for the Florida Department of Education (DOE). Back in 2003, she was asked to help develop a solicitation for privatizing about 174 jobs in DOE's Office of Student Financial Assistance.

“One of my major concerns from the beginning was that I was directed to put the invitation to negotiate (ITN) out on an in-

credibly fast track, with no pre-proposal conference to be held,” Garrison says.

The ITN was advertised through the State of Florida's electronic bidding network on March 12, 2003, and the deadline for questions from prospective vendors was March 17, 2003 – just five days later. Garrison notes that a time frame for vendor questions should have been closer to several weeks, due to the volume of information in the ITN document.

Other parts of the solicitation process, such as dates for sealed bid responses, departmental reviews, and contract negotiations, were assigned similar deadlines just days or a week apart. The anticipated contract start date was April 21, 2003 – roughly 5 and 1/2 weeks after announcing the ITN to vendors.

“For the magnitude of this outsourcing project and the money involved (over a billion dollars in the business portfolio), the time line for the solicitation was unheard of,” Garrison remarks. “My estimate was that it should have taken 90 to 120 days for the total process, which would have included a pre-proposal conference.”

Although Garrison initially submitted a customary time line for the solicitation, her dates were changed to the fast-paced schedule by two in-house DOE attorneys who also

worked on the project. When Garrison voiced her concerns to a departmental head, the division's Purchasing and Contracts Director, she was told not to change the attorneys' time frame. In addition, this departmental head swore Garrison and her immediate supervisor to secrecy about the project.

Meanwhile, during the course of developing specifications for the project, Garrison learned that DOE officials were meeting with representatives from Sallie Mae, Inc., a large, nationwide provider of federally-guaranteed loans to college students. Florida law prohibits public agencies from discussing bid specifications with prospective vendors during preliminary phases of the bidding process.

In addition, the same DOE officials who held initial meetings with Sallie Mae were to be part of the evaluation team that selected the vendor. In conjunction with the project's expedited time frame, Garrison believed that the scales were tipped in favor of Sallie Mae, in violation of promoting fair and open competition among vendors.

To further confirm her suspicions, Garrison learned that Sallie Mae had placed advertisements in a local newspaper to recruit 24 new customer-service representatives and 25 data-entry workers. Hire dates of the new employees were very close to the contract award date of DOE's outsourcing project.

Documented problems

In efforts to protect herself from any legal issues surrounding the solicitation, Garrison took action. She asked and received permission from her departmental head to withdraw her name from the original solicitation and substitute the name of DOE's legal counsel representative.

Then, soon after the ITN was announced to vendors, DOE received a protest from an ex-State Attorney General and a public records request from the *Tallahassee Democrat*, the city's local newspaper. Additionally, written questions and concerns were received from vendors located in Indiana, Massachu-



setts and Wisconsin, as well as from Sallie Mae.

Immediately after receiving the protests and inquiries about the project, the head of DOE's General Counsel required an addendum to the solicitation, by which a purchaser's name would be reinstated as the contact person, rather than listing DOE's legal counsel.

"Since I was the [primary] purchasing person handling ITN solicitations, I knew what that meant," Garrison says. "Now that there were difficulties with the solicitation, I was being pulled back into it."

After receiving an email from DOE's legal representative, informing her about the contact change, Garrison e-mailed her reply back to DOE officials.

In Garrison's written response, she documented how the solicitation was handled. "I outlined my concerns in asking for a pre-bid conference, expressed concern over DOE officials meeting with the vendor, cited Florida statutes regarding vendor participation in bid development, and [stated] my findings of job advertisements from Sallie Mae that coincided with the award."

Garrison's response also noted that she asked for an impartial evaluation committee to provide final approval of the award, independent of any conflicts of interest.

The day after Garrison sent the email, DOE's Chief Operating Officer told her, "You've made a public record now. You've blown the whole deal." Because Garrison had sent a written document about how the solicitation was handled, losing bidders could cite this documentation, if they filed a protest.

Just 1 and 1/2 days after sending the email, Garrison's computer password was disabled, and she was notified by the DOE that her "services were no longer needed."

Truth and consequences

Was Garrison surprised that she was fired by the DOE?

"When I sent the email [documenting solicitation problems], I knew there was a chance my job was at stake," Garrison says. "The DOE had fired 60 employees a couple of months before. It was very political there and, obviously, I was not supporting the actions of the existing DOE administration."

In addition, Garrison's immediate supervisor, who also had knowledge about the solicitation's problems, was demoted after Garrison's termination, in direct correlation

to the events. This supervisor eventually resigned from the DOE, due to a hostile work environment.

Garrison did not anticipate subsequent events, however. For starters, soon after she was fired, DOE's head of public relations, who once worked for the *Tallahassee Democrat*, asked the newspaper to publish an article about the solicitation, as a personal favour. According to Garrison, the article "was misleading about the whole project and was incorrect in its account of the events leading up to the solicitation."

In turn, Garrison contacted the newspaper's political editor, who agreed to print a rebuttal article that chronicled her account of the solicitation.

At the same time that the newspaper articles appeared in print, Garrison contacted an attorney to initiate legal action against the DOE. She also filed for protection under Florida's whistle-blower laws. Most [US] states have whistle-blower laws to protect employees, but conditions may vary from state to state.

Ramifications to Garrison hit her hard. "I was unemployed for eight months after my termination," she says, noting that the DOE blacklisted her from positions with other state agencies.

"I could not get interviews with any state agencies, even though I am in a special group holding a Certified Public Purchasing Officer (CPPO) certification, with a Bachelor of Science degree and many years of management and purchasing experience," Garrison explains. During her unemployment, "I did not have insurance, almost lost my house, and ruined my credit."

Garrison's legal action included a law suit against the DOE, in which she requested compensation for the eight months she was out of work. DOE attorneys tried to file fraudulent documents to end the case on a technicality, but a judge ruled in Garrison's favour. In May 2005, her case went to a jury trial in Florida's Leon County Circuit Court.

To support her defence, Garrison presented documents about the solicitation, as well as personnel records that cited her exemplary job performance. For instance, she was praised for "saving the agency \$400,000 on a food and nutrition bid" just six days before she was fired.

"The trial lasted three excruciating days," Garrison says. However, the jury deliberated only 45 minutes to reach a decision that Garrison should be awarded \$34,000 for the eight months she was out of work. "The only question asked was if they could give me more money," she adds.

Although the jury ruled in Garrison's favour, she has yet to receive any money from the \$34,000 award. The DOE immediately appealed the ruling, and the agency has launched ongoing appeals to reverse the verdict. Currently, the DOE has filed proceedings for Florida's Supreme Court of Appeals to review the case.

Although Garrison was fired, blacklisted to other state agencies, and is still harassed [over 3 years later] after her whistleblowing, "nothing happened to the people who broke the Florida law," she states. "I was the only person who was penalized for doing the job I was hired to do."

Garrison adds, "Eventually, the upper structure of DOE did begin to crack under the continued pursuit of the case. The head of DOE, the chief operating officer who fired me, and others were forced out, but [no legal action was taken against them]."

In reflecting about the chain of events, "it has been apparent for quite some time that the State of Florida is trying very hard to send a message to all state purchasing officials in regards to my case," Garrison says. As such, she believes that state employees are encouraged to "keep quiet and look the other way" if they see unethical practices.

Although some co-workers were supportive of Garrison's actions and provided depositions on her behalf, "there was a time," she notes, "when I was pretty untouchable, as many feared the same thing would happen to them."

"The State of Florida, from the top down, wanted to make an example out of me," Garrison adds. "The sad part of this is that to some degree, it has been effective. I have had people come to me and say they would never go through what I have experienced, no matter what. I hate that kind of fear."

Eight months after her firing by the DOE, Garrison was hired for her current position – Purchasing Agent and Contract Specialist for the City of Tallahassee, Florida.

Although DOE tried to continue the outsourcing project, the agency eventually cancelled the solicitation. To Garrison's knowledge, no other attempts have been made to privatize the state's student-loan program.

Case 2

Purchaser takes stand against town leader

For Herb Hyman, procurement manager with the Town of Davie, Florida, his whistleblowing experience related to the purchasing practices of the Town Administrator, Christopher J. Kovanes. Hired by the town council as a contract employee, Kovanes was the town's top leader. Thus, Kovanes was Hyman's boss.

Starting in 2003, Kovanes would issue purchase requisitions to Hyman's department, and each requisition was below the town's \$25,000 threshold for formal bids. Thus, Kovanes would submit three written, informal bids to Hyman, who would then review the information and process the purchase order.

All of the purchase requisitions covered computer mapping projects involving GIS (geographic information systems). In most cases, a company called GEO, Inc., was the lowest bidder, and this company would be awarded the bid.

In the Town of Davie, purchases of \$1,000 to \$15,000 required written, informal bids by the user department. For purchases between \$15,000 and \$25,000, Hyman's department would obtain the informal bids from vendors.

"Each one of these projects was in fact under the \$15,000 threshold," Hyman explains. "If you looked at each individual purchase in a vacuum, it was fine, onto itself. But if you took the cumulative amount of all these purchase orders, they far exceeded our formal bid threshold of \$25,000."

Thus, Hyman requested Kovanes to group the projects together so the purchasing department could initiate formal bidding procedures. *Florida Statute 838* requires that bids cannot be subdivided into smaller amounts to circumvent bidding procedures, and Hyman wanted to abide by the law.

After Kovanes kept making excuses of why he couldn't find time to group the projects together, Hyman conferred with his supervisor and gained approval to reject the individual GIS purchase requisitions.

"I was going to force the situation," Hyman states. "Either Kovanes was going to fire me, or I was going to get him to do the formal bid that needed to be done."

When Kovanes finally agreed to group the projects and issue a formal bid, 12 vendors responded to the solicitation. At Kovanes' request, the process of selecting a vendor then departed from the usual course of using a selection committee to evaluate each vendor's qualifications.

Customarily, proposals would be opened and distributed to a selection committee, and committee members would review the proposals over a one- to two-week period. The group would then reconvene to discuss which vendors to select.

Instead, on June 9, 2005, immediately after Hyman and his purchasing assistant opened the bids in council chambers, Kovanes directed that they themselves narrow down the choice of vendors, that same day. Together, they then selected six companies as potential vendors for the town's GIS projects, and GEO, Inc., was one of these.

In turn, Kovanes advised that a multiple contract award should be issued, based on spreading the abundance of GIS work among all six vendors. He instructed Hyman to prepare a resolution that authorized multiple awards for projects over \$25,000. The total cost of contracts awarded was open-ended, as long as the total did not surpass the esti-

mated \$400,000 allotted in the town's budget for GIS services.

Kovanes then used his authority to expedite filing deadlines with the town clerk, thus ensuring that the resolution was placed on the next council agenda, scheduled for June 15, 2005. The drafted resolution was then presented at the next council meeting and approved by council members.

Suspicions surface

"Between June 15 and October 17, 2005, all purchase orders we received for GIS services were issued to GEO, Inc.," Hyman says, "with the exception of one that was issued to a company called GTG in North Carolina." He notes that specialized services provided by GTG were required by the town's IT (information technology) department.

The fact that GEO, Inc., was the recipient of every other purchase order aroused Hyman's suspicions, especially because Kovanes mentioned that he wanted to spread the GIS work among different vendors.

When Hyman's department received a \$51,890 purchase order from Kovanes, likewise directed to GEO, Inc., the purchasing staff questioned the amount. An internal procurement authorization form required that projects not exceed \$40,000. However, the town attorney assured Hyman's staff that they could process the \$51,890 amount. "We processed the purchase order, and about a week later, we received an invoice for \$51,890," Hyman says. "That really raised some eyebrows."

The invoice puzzled Hyman because of information Kovanes had divulged about GEO, Inc., during the process of evaluating proposals and selecting qualified vendors. According to Hyman, Kovanes recommended GEO because it was "a very small company, which had very little overhead, and therefore could do projects for a lesser amount than some of the bigger companies."

Hyman then scrutinized facts behind the invoice. "I started thinking, we've issued a purchase order for \$51,890, which is based on hourly rates that are set up in our contract," he says. "Now, it's a week later, and we receive a bill for \$51,890. I thought to myself, 'how is it that a company that is reported to be a small firm, with few employees, would be able to have enough hours [of work performed] to be able to bill \$51,890 for one week?'"

Hyman's suspicions propelled him to investigate GEO, Inc. He accessed the Sunbiz website, by which the Florida Division of Corporations posts information about incorporated companies that conduct business within the state. Although Hyman searched for GEO, Inc. on the website, no company matched this name.

On a hunch, Hyman used Sunbiz's search capabilities to locate a company, based on the name of its principal officer. He entered the name of Christopher J. Kovanes. Immediately, onscreen information listed Kovanes as being an officer of "Geographic Environ-

mental Origins, Inc." Hyman instantly recognized that GEO, Inc., could be an abbreviation for this company.

Hyman then learned that Kovanes was listed as the sole owner and officer of the suspected company. In turn, he presented these findings to his superiors, the finance director and deputy finance director, to determine the next course of action.

First, Hyman was asked to consult other cities that GEO, Inc., had claimed to have done business with, based on information contained in the company's proposal for the formal bid. When contacted, none of these

cities had actually conducted business with GEO.

Then, together with the two finance directors, Hyman reviewed bank records of checks issued to GEO, Inc. "What we found out was shocking," Hyman says. "When you flipped over the check, which shows the signature of the person who endorsed the check, we found Chris Kovanes' signature. All of us recognized Kovanes' signature because we've seen it on thousands of documents that he's signed, in his capacity as Town Administrator."

Based on documents and other information collected, "we thought there was wrongdoing going on," Hyman states. "The finance

director then turned over all these documents to our police department, who in turn, turned them over to the Florida Department of Law Enforcement (FDLE)."

After conducting an investigation, the FDLE arrested Kovanes in November [2005] on three criminal counts – grand theft, money laundering, and fraud – stemming from his involvement with GEO, Inc. He was released on bond from these charges, but additional indictments followed.

Related charges mount

Along with Kovanes' fabrication of GEO, Inc., the FDLE uncovered his involvement



with two other firms, found to be "shell" companies. Although these two companies – Grover and Associates and PSSC – were real companies, they were both managed by friends of Kovanes, who was funneling purchase orders to them.

Hyman explains that "we would pay that company, and then that company, in turn, would cut a check back to Kovanes, keeping a portion for themselves as the handling fee. No work was actually being done by the two companies, although [these facts] are now under contention."

When FDLE and the State Attorney's office became involved, authorities accessed Kovanes' bank records and were able to trace the chain of funds between the two companies and Kovanes.

As a result, the FDLE again arrested Kovanes on the same three counts of grand theft, money laundering, and fraud – three counts for his dealings with Grover and Associates, and three counts for his involvement with PSSC. Along with his GEO indictments, Kovanes is facing nine criminal charges.

Kovanes was fired as town administrator in January 2006. He is currently free on bond and awaiting trial. In all, Kovanes is accused of embezzling an estimated \$500,000 from the Town of Davie. If convicted of all nine charges, investigators say he could receive a sentence of 10 to 20 years in prison.

Reactions and results

When Hyman and the town's finance directors reported Kovanes to law-enforcement authorities, "I thought that we were doing a good thing," Hyman says. "We found

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that there was criminal activity going on, and we turned the criminal over to law enforcement. I thought we would be viewed as heroes.”

Although many co-workers applauded their efforts, “I was very surprised about the negative reaction that we got from elected officials,” Hyman adds.

When articles about Kovanes’ arrest hit the local newspapers, some elected officials printed rebuttal articles, in which they “did not believe that the case was factual,” Hyman states. These officials “thought that this was maybe a political vendetta, or that there was somebody within the organization who didn’t like Kovanes and was looking for a way to take him down.”

Hyman further explains that before his arrest, Kovanes was very popular among elected officials and the public. “Kovanes was 34 years old at the time that he was town administrator here. He was [often] titled, ‘the Golden Boy,’ because he was a young, ambitious, charismatic leader who was going to take the Town of Davie to great [heights].”

Thus, when allegations against Kovanes surfaced, some officials became angry at Hyman and the finance directors for turning

information over to the FDLE. “They thought it was a personal thing,” Hyman says, “rather than the fact that we had uncovered a crime.”

As a result, Hyman became concerned that his job was in jeopardy. “I did go to see an attorney to see if I had any sort of legal protection for my job,” he states.

“I also went through a period of deep depression over the fact that maybe I should have had my eyes wider open,” Hyman adds, “and maybe I should have uncovered [the criminal activity] sooner.” However, Hyman believes that he made the right decision in insisting that Kovanes issue formal bids for the GIS projects. This action may have fueled Kovanes’ greed to embezzle higher amounts and eventually be indicted.

After Kovanes’ indictments, the Town of Davie instituted safeguards to prevent fraudulent activities from recurring. For instance, the town hired two auditors to review and recommend improvements in procurement procedures. In addition, each company that conducts business with the town must submit a federal W-9 form, as well as a Vendor Bidder Disclosure Form, to prove the company’s authenticity.

In the aftermath, Hyman is bearing the brunt of an increased workload. Now, Hyman and his purchasing assistant must obtain bids for any purchase over \$1,000, rather than relying on the user department to submit informal bids.



In retrospect

Both Garrison and Hyman believe they had a duty to report unethical purchasing practices, and they do not regret their decisions to expose the wrongdoing.

"I am a strong believer in the public trust and handling this country's procurement activities in an open and honest fashion," Garrison states. She also points to lessons learned from her whistle-blowing experience.

"One thing that I have learned," she says, "is that you must protect yourself, as no one else will. If you get a sense like I did that something is amiss, document everything, keep it away from the office, keep a diary of events, and seek counsel to guide you on what decisions you may need to make."

Hyman's situation was complex because Kovanes was his boss, who had the authority to order and bypass certain procurement procedures.

"That's the whole key here," Hyman says. "If your boss tells you to do something, I think you are probably going to do it, unless what he or she is asking you to do is [clearly] an illegal activity. If it's not, whether you think it's right or it's wrong, you're still going to do it because you've been directed by your boss to do so. That was my situation, and that's what makes it toughest of all."

Hyman adds, "If you're responsible for the proper spending of public dollars, and then you uncover somebody embezzling funds, I think you are duty bound to turn that over to law enforcement, regardless of whether or not it causes you to lose your job. At least I can look myself in the mirror and say, 'I did the right thing.'"

Professional association offers ethical advice

Although some employees may believe that "blowing the whistle" on unethical activities may involve a personal choice, based on each individual's perception of right and wrong, the National Institute of Governmental Purchasing (NIGP) emphasizes that its members are bound to enforce ethics in their jobs. "Ethical practice and behavior is a core value held by NIGP," says Brent Maas, NIGP's marketing director. "NIGP's *Code of Ethics* does not explicitly advocate 'whistle-blowing.' However, two of the code's tenets prescribe that public procurement professionals: a) identify and eliminate participation of any individual in operational situations where a conflict of interest may be



involved; and b) keep the governmental organization informed, through appropriate channels, on the problems and progress of applicable operations."

Maas adds that "CPPO and CPPB certified professionals are required to adhere to the ethical code prescribed by the Universal Public Purchasing Certification Council. Failure to do so is considered just cause for revocation of an individual's certification."

To help members confront ethics challenges, NIGP offers various resources, such as multi-day courses that include ethics discussions; 90-minute webinars and seminars, held during national and chapter conferences; and ethics-related articles in NIGP's biweekly newsletter.

NIGP does not currently offer legal support for whistleblowers. However, according to Maas, "in early 2006, NIGP formally established an Advocacy Committee that will, as one of its many charges, investigate the nuances of pursuing development of such a legal aid or legal insurance program. ❧❧❧"

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Editor's Note: In Canada, most government or public sector organizations and procurement certifying bodies have developed, or formalized, a code of ethics to provide guidance to their public procurement professionals. Just as these vary, so can the treatment of whistleblowers.