

## **BRIBERY INVESTIGATIONS**

A federal bribery investigation usually begins when a whistle blower reports that some state or local governmental agency has been awarding contracts on the basis of favoritism or in exchange for kickbacks. The U.S. Department of Justice (“DOJ”) and the FBI currently have numerous ongoing investigations regarding bribery occurring in the southeast. Many of those investigations are focused on bribery schemes and the payment of kickbacks to officials from the City of Atlanta, Fulton County, and DeKalb County, Georgia. Other recent bribery investigations covered the Hartsfield-Jackson Airport and nearby Jefferson County in Alabama.

Often, these cases arise in situations where a state or local official has been soliciting “things of value” from a construction contractor, engineer, or design firm that regularly does business with the governmental entity. It may be that the contractor started taking the governmental official out to dinner or to football games but eventually the official began requesting gift cards or groups of tickets from the contractor. After a while, the government official may have demanded cash, in increasing amounts. This sort of pattern often develops where the governmental entity is offering numerous bids in a series of projects.

Both the bribe recipient and bribe payor can be prosecuted under federal law. Title 18 U.S.C. § 666, prohibits theft or bribery concerning programs receiving federal funds. If a state or local governmental entity receives any significant federal funds and a member of that entity requests or accepts anything of value greater than \$5,000 – then both the payor and the recipient can be prosecuted for bribery or conspiracy to commit bribery. Bribery investigations are often conducted by the Fraud Section of the U.S. DOJ, in Washington D.C. The DOJ may seek search warrants and execute them at several locations on the same day. Both bribe payors and recipients are potential targets of the investigation. The DOJ will often “flip” a witness and then use that witness to record a series of calls or meetings with his alleged co-conspirators. Taped conversations by participants in the scheme can be devastating evidence at trial. Once an investigation has started, anyone with knowledge about the matter, or who played a minor role in the matter, should consult an experienced attorney before speaking to an investigator. The Dillon Law Group has decades of experience and have handled some of the biggest bribery cases in the country.

Bribery and public corruption cases are some of the most far-reaching and serious of white collar matters. Payments to public officials and foreign officials often result in some of the strongest sanctions in the white collar arena. Often, officials seek to act as “consultants” on contracts under the direction of governmental departments where they work. Another common scenario is for the government official to require payments to a charity that he

controls, in order to conceal the nature of the payments. If the government determines that the official is a consultant in name only or that the charity is a sham, and only used to conceal the payment of a bribe or kickback, then a protracted investigation will likely ensue.

It is important to have experienced and knowledgeable counsel when responding to an investigation regarding suspicious payments to governmental officials. If corporate agents make incriminating statements to the investigators, then they may be exposing themselves, and the company, to criminal and civil liability. The investigating agents can put tremendous pressure on employees and officers for early cooperation. Often, it is a mistake to talk to the investigators without counsel present because anything that is said can be held against the individual and the company. The better course of action is to review the issues, assess which personnel are involved (including former and current employees), and decide upon a fact-based strategy where exposure is minimized and contact with the Government is controlled by counsel.

In order to successfully respond to a federal investigation, able counsel should be consulted immediately. Counsel and the client need to work to determine the breadth of the investigation and who the potential targets might be. Our goal is to develop the best defense and to avoid liability wherever possible. We will aggressively represent you against the Government and seek to end the investigation without charges, if at all possible. We have substantial experience in avoiding prosecutions, either through having the cases dismissed outright or cooperating against more serious targets.

Successful conclusion of a bribery investigation in a given client matter requires prompt and effective decision-making by the corporation and its agents. Cooperative efforts on all sides often lead to better outcomes, particularly in closely-held entities. At the Dillon Law Group, we represent executives and individuals in a wide array of investigations and stand ready to assist you in addressing the matter that concerns you now.

## **FOREIGN CORRUPTION PRACTICES ACT (“FCPA”) VIOLATIONS**

The FCPA (15 U.S.C. §§ 78dd-1, et seq.) makes it unlawful for certain persons and corporate entities to make payments to foreign government officials in an effort to assist in obtaining business. The types of transactions addressed by the FCPA include mail or wire transfers in furtherance of any offer, payment, promise to pay, or authorization of payment (or any “thing of value”) to any person. The anti-bribery provisions of the FCPA prohibit the use of these types of transactions when that thing of value will be tendered to a foreign official in an effort to influence the official to secure an improper advantage in

obtaining or retaining business. In addition, the FCPA accounting provisions require any company listed on a U.S. stock exchange to accurately account for any such illicit payments to foreign officials.

As a practical matter, the FCPA makes criminal any substantial payment made for the purpose of delivery to a foreign official with the intent that the payment will result in new business for the payor or to assure that it keeps business that it has. Common violations are the result of executives paying consultants to deliver money to foreign officials on their behalf. Another common scenario is for the government official to require payments to a charity that he controls, in order to conceal the true nature of the payments. The “foreign officials” include any foreign national who performs a governmental function, even if they are actually employed in private industry.

The anti-bribery provisions of the FCPA apply to “issuers” of securities (corporations subject to the jurisdiction of the SEC), domestic concerns, and foreign nationals who take action in furtherance of the scheme within the jurisdiction of the U.S. – that is, have an “effect on interstate commerce.” The transmittal of a payment through a U.S. bank or an email that originates here could be enough to trigger a criminal case against a person or entity that is giving “things of value” to a foreign official. Guidance on FCPA enforcement matters can be found here:

<https://www.justice.gov/iso/opa/resources/29520121114101438198031.pdf>

Prohibited payments are those made “corruptly,” that is with the intent that they influence an official to misuse his position, to either direct business to the payor or to benefit the interests of the party paying the money. It is also sufficient, under the statute, if the payment is made “willfully” for a bad purpose. As a practical matter, this means any substantial payment to a foreign official can be considered offense conduct unless the payor can show its legitimate purpose. Furthermore, the provision of lavish travel expenses, automobiles, luxurious entertainment, country club dues, and other luxury items have provided the basis for cases historically. Additionally, donations made to charities that are controlled by foreign officials or their agents can form the basis for a criminal prosecution.

The “false books and accounting records” provisions of the FCPA make it illegal for an issuer to falsify its accounting records for the purpose of understating its covered payments or to conceal payments prohibited by the FCPA. The following schemes typify prohibited conduct:

- Concealing the underpayments of customs duties
- Offshore payments to customs brokers to minimize the fees
- Under invoicing schemes to understate declared values
- Gifts and “hospitality” paid to foreign customs and regulatory officials
- Improper payments to expedite importation of goods

- Payments to lower assessments on drilling contracts
- False documentation for drilling permits or the release of drilling equipment
- Concealment of any of the above in books and accounting records of an issuer

Our goal is to assist you in strategic decision making – based on the facts, the evidence as it relates to the relevant facts, and the realistic exposure in the case. It's also important to recognize that exposure in an FCPA case can be either civil or criminal. The Dillon Law Group has decades of experience in conducting international white collar investigations on behalf of the DOJ and similar experience in defending clients who have been targeted by the feds in bribery and FCPA cases.

It is important to have experienced and knowledgeable counsel when responding to an investigation regarding suspicious payments to foreign officials. If corporate agents make incriminating statements to the investigators, then they may be exposing themselves, and the company, to criminal and civil liability. The investigating agents can put tremendous pressure on employees and officers for early cooperation. Often, it is a mistake to talk to the investigators without counsel present because anything that is said can be held against the individual and the company. The better course of action is to review the issues, assess which personnel are involved (including former and current employees), and decide upon a fact-based strategy where exposure is minimized and contact with the Government is controlled by counsel.

In order to successfully respond to a federal investigation, able counsel should be consulted immediately. Counsel and the client need to work to determine the breadth of the investigation and who the potential targets might be. Our goal is to develop the best defense and to avoid liability wherever possible. We will aggressively represent you against the Government and seek to end the investigation without charges, if at all possible. We have substantial experience in avoiding prosecutions, either through having the cases dismissed outright or cooperating against more serious targets. Examples of our experience include:

- Represented alleged bribe payor in construction kickback case, no charges filed by DOJ
- Represented pharmaceuticals national sales exec. in criminal investigation, no charges filed
- Represented Division President of a paper company in Latin America, no charges filed
- Represented investor in SEC and DOJ fraud investigations, no charges or fines filed
- Represented CFO in FCPA investigation for foreign bribery, no DOJ charges filed
- Represented CEO in travel and entertainment industry, no charges filed
- Represented domestic target in wire fraud investigation, no charges filed

Successful conclusion of an FCPA or bribery investigation in a given client matter requires prompt and effective decision-making by the corporation and its agents. Cooperative efforts on all sides often lead to better outcomes, particularly in closely-held entities. At the Dillon Law Group, we represent executives and individuals in a wide array of investigations and stand ready to assist you in addressing the matter that concerns you now.

Discuss your case with the Dillon Law Group by calling our office at **404.713.3283**. We are glad to discuss your situation, in a free consultation, to see if we can be of assistance. Contact us at [william@dillonlawgroup.com](mailto:william@dillonlawgroup.com)