



GOVERNMENT
ACCOUNTABILITY
PROJECT

1612 K Street, NW, Suite #1100
Washington, DC 20006
(202) 457-0034 | info@whistleblower.org

By Email

United States House of Representatives
Committee on Foreign Affairs
Committee on Appropriations
Washington, DC 20515

United States Senate
Committee on Foreign Relations
Committee on Appropriations
Washington, DC 201510

U.S. Office of Special Counsel
1730 M Street NW # 218
Washington, DC 20036

Office of Inspector General
U.S. Department of State
State Annex 39
1700 N. Moore Street
Arlington, VA 22209

June 1, 2021

Re: Third Supplement to Protected Whistleblower Disclosures of Gross
Misuse of Taxpayer Dollars in 2020 to Pay Legal Fees

To Whom It May Concern,

On behalf of whistleblowers who wish to remain anonymous, we are writing to provide this third supplement to our whistleblower complaint dated January 19, 2021.¹ It concerns payments of over \$1.8 million in fees to two law firms and a company specializing in electronic discovery by the U.S. Agency for Global Media (USAGM or the agency), the overseer of the Voice of America (VOA).

This letter provides additional information about how **Michael Pack**, USAGM's former CEO, abused his authority by disregarding competitive bidding requirements and signing no-bid contracts with these companies. It also identifies two political appointees who played active

¹ The January 19, 2021 complaint is available at <https://whistleblower.org/wp-content/uploads/2021/01/Government-Accountability-Project-Whistleblower-Disclosure-Regarding-Gross-Waste-by-USAGM-1-19-2021..pdf>; the first supplement, dated March 4, 2021, is available at <https://whistleblower.org/wp-content/uploads/2021/03/2021-03-04-Govt-Accountability-Project-Disclosure.pdf>; the second supplement, dated March 18, 2021, is available at <https://whistleblower.org/wp-content/uploads/2021/03/2021-03-18-Govt-Accountability-Project-Disclosure.pdf>.

roles: Acting General Counsel **Morvared Namdarkhan (a/k/a Mora Namdar)** and Counsel **Samuel Everett Dewey**.

The evidence shows Mr. Pack and these individuals kept the contracts secret. None of the career USAGM executives responsible for contracting and budgeting were ever consulted -- likely because the contracts were prohibited under established agency policy and the Federal Acquisition Regulations (FAR).

Background

On August 12, 2020, CEO Pack suspended indefinitely six senior civil service USAGM executives -- whom he deemed insufficiently loyal -- with the aim of removing them from federal service. The same day, the McGuireWoods law firm sent CEO Pack an engagement letter retaining the firm to investigate the executives. Mr. Pack signed a revised draft of the letter on August 26, 2020.

From September through November 2020, USAGM paid or contractually agreed to pay over \$1.8 million to McGuireWoods, the Caplin & Drysdale law firm and Consilio, a company specializing in e-discovery, document review and legal consulting services.² Approximately 50 McGuireWoods attorneys, staff and contractors billed over 5,000 hours at an average rate of over \$300 per hour. Most of their work involved reviewing hundreds of thousands of archived USAGM emails to compile dossiers on the six suspended executives.

USAGM used the dossiers to start formal termination proceedings against the executives in December 2020. However, two hours after President Biden's inauguration, CEO Pack resigned (at the President's request). The termination proceedings were dismissed and the executives were restored to their posts within days.

New Information

CEO Pack lacked the authority under law and USAGM policy to sign sole source contracts in this case; that he did so constitutes, among other violations, a violation of law, rule and regulation, and abuse of authority.

² USAGM paid \$1.625 million to McGuireWoods, \$66,000 to Caplin & Drysdale. From September 2020 through March 2021, Consilio has billed USAGM over \$139,000.

Relevant Law, Policy and Practice

Consistent with FAR requirements, contracts between the federal government and private parties typically require competitive bidding. By law, the USAGM CEO can bypass that process and enter into no-bid contracts “[t]o the extent considered necessary to carry out the functions of the Chief Executive Officer.” 22 U.S.C. § 6204(10). But the law does not give the CEO unlimited bypass authority. It specifically limits bypasses to contracts involving day-to-day operational matters -- procuring, renting or leasing “supplies, services, and other property for journalism, media, production, and broadcasting, and related support services.” *Id.*

USAGM internal policy is consistent. The agency, in a Directive Memo issued by the Senior Procurement Executive (SPE) on August 6, 2019, states that no-bid contracts can only be used in eight situations, all narrowly defined and integral to the day-to-day operations of USAGM, VOA and its sibling broadcasting networks.³ The Directive includes a ninth, catchall situation covering any other contract but in order to use that authority the SPE -- a career civil servant -- must determine that, under the circumstances, the contract should be exempt from FAR bidding requirements.

USAGM’s public position is also consistent. Its website states that the agency “voluntarily follows the FAR in the conduct of most of its procurements, but reserves its right to exercise its authorities in those instances when competition poses severe challenges”⁴

Based on this plain language, the no-bid contracts were contrary to law, policy and practice. Plainly, hiring a law firm to investigate “disloyal” agency employees is not necessary to carry out the CEO’s functions, has nothing to do with day-to-day agency operations and does not involve a situation where competition poses severe challenges. Moreover, CEO Pack further violated internal agency policy by not consulting with USAGM’s SPE before signing the no-bid contracts.

³ The eight categories are: (i) frequency license agreements; (ii) operation and maintenance contracts with foreign commercial entities; (iii) affiliate agreements with foreign media platforms to carry USAGM content; (iv) agreements with individual broadcasters; (v) agreements to acquire pre-existing programming content; (vi) leases on foreign real property; (vii) agreements with foreign states; and (viii) agreements dealing with sensitive or security concerns.

⁴ USAGM Website, *Our Procurement Authority*, available at <https://www.usagm.gov/work-with-us/contract-opportunities/our-procurement-authority/>.

What Happened Here

The evidence shows that CEO Pack sought and obtained written justification for hiring McGuireWoods and Caplin & Drysdale from Mr. Dewey. In an unsigned, two-page memorandum from Mr. Dewey to Ms. Namdar dated August 18, 2020 (six days after McGuireWoods sent its engagement letter to CEO Pack), Mr. Dewey recommended using no-bid contracts to hire both law firms because there was low legal risk and considerable upside.⁵ For legal authority, Mr. Dewey relied only on 22 U.S.C. § 6204(10) -- the ninth, catch-all situation. But that provision did not apply for the reasons discussed.

Mr. Dewey wrote about practicalities. He suggested it would be impracticable to competitively bid for these services because the bidding process would take time, would involve paperwork and major law firms normally deem such requirements to be unacceptable to major law firms. In other words, the no-bid contracts made sense because there would be delay, “burdensome” paperwork would need to be prepared and filed, transparent disclosures about the contracts would make them subject to oversight and review, and major law firms find such arrangements unacceptable.

All of that is absurd. Law firms, even major ones, engage in competitive bidding all the time. They are intimately familiar with paperwork and the need for transparent disclosures -- particularly when federal government agencies are involved.

Why Did It Happen?

Based on what we have disclosed to date, it is obvious why CEO Pack, as enabled by Ms. Namdar and Mr. Dewey, used this arrangement. First, they wanted to move quickly. Bidding contracts would take time that they likely believed they did not have (which turned out to be the case following the election).

Second, they wanted to keep the arrangement secret. Contrary to agency policy, neither the responsible career civil servant -- the SPE -- nor any other USAGM civil servant was consulted. CEO Pack and his political appointees made all the decisions. Why? More than likely because career staff would have rejected the contracts. CEO Pack wanted to skip the paperwork and disclosures to avoid the prying eyes of auditors and investigators who might reasonably raise questions.

⁵ Mr. Dewey has been more definitive in statements to the media. For instance he is quoted saying: “CEO Pack's decision to engage McGuireWoods was lawful as were all subsequent matters of which I am aware related to McGuireWoods' work for USAGM ... I cannot comment further as USAGM has not authorized me to speak on this issue.” NPR, *Trump Appointee at VOA Parent Paid Law Firm Millions to Investigate His Own Staff* (March 4, 2021), available at <https://www.npr.org/2021/03/04/973765185/trump-appointee-at-voa-parent-paid-law-firm-millions-to-investigate-his-own-staf>.

Third Supplemental Whistleblower Disclosure
Re: Gross Misuse of Taxpayer Dollars in 2020 to Pay Legal Fees
June 1, 2021
Page 5

Third, they manufactured pretextual, after-the-fact “paperwork” to justify the arrangement. Why? Because they knew they needed something for the files. It would not be surprising to see CEO Pack argue at some future time that he relied on the advice of his counsel. We that defense is likely unavailable here and, in any event, it is of no help to Ms. Namdar and Mr. Dewey who crafted the justification and who should have known better.

* * *

In sum, the new evidence shows that by relying on a pretextual justification CEO Pack, Mora Namdar and Sam Dewey -- all Trump political appointees -- knew what they were doing was wrong; they acted with bad intent.

Very truly yours,

/s/

DAVID Z. SEIDE

Government Accountability Project
davids@whistleblower.org