

Attorney General

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**ELEVEN SCHOOL CUSTODIANS ARRESTED FOR KICKBACK AND
BID RIGGING SCHEME**

Spitzer, Stancik Release Recommendations to Reform School Procurements

State Attorney General Eliot Spitzer and Special Commissioner of Investigation for the New York City School District Edward F. Stancik today announced the arrests of eleven New York City public school custodians for receiving bribes and violating New York State's Donnelly Act.

A joint investigation between the Attorney General's and the Special Commissioner's offices uncovered that the eleven school custodians repeatedly received kickbacks and rigged bids for window cleaning services in schools throughout the City between June 2000 and November 2001.

According to the felony complaints filed today, the custodians would arrange to have the windows cleaned at the schools where they were assigned by the Board of Education ("BOE"). The custodians entered agreements with cleaning services whereby, in exchange for being selected, the contractor would have to pay a kickback to the custodian of approximately 10% of the contract price, ranging from \$300 to \$2,000 in cash. Additionally, to circumvent the BOE's requirement that at least three bids are received for services costing in excess of \$250, the custodian would ask the contractor to supply additional phony bids. Sometimes these contractors provided "bids" from firms that did not exist.

"These Board of Education employees put personal gain before the well-being of our school children," Spitzer said. "Not only did they break the law by making contracts in violation of this state's Antitrust provisions, but they undermined the public's trust by accepting bribes for their duties as public servants."

Commissioner Stancik said: "These crimes resulted from a fundamentally flawed system that distorts supply and demand in favor of corrupt custodians and vendors to the detriment of schoolchildren and their parents. The best way to fight these corrupt practices and ensure that precious dollars get where they are needed is to reform the system for awarding custodial contracts for services and supplies."

Spitzer and Stancik noted that the current procurement system for the BOE custodians encourages corruption and impedes oversight largely because custodians have immense latitude in

spending money earmarked for the maintenance of schools, and because oversight of bidding procedures conducted by nearly 850 individuals is extremely difficult. Attached are findings of the joint investigation and recommendations to ensure that funds are properly spent.

The eleven custodians are employed at schools throughout New York City. They were arrested this morning and should be arraigned today in Manhattan, the Bronx, Brooklyn, Queens and Staten Island.

The following individuals were arrested:

- **Mario Arena** of 161-11 99th Street in Howard Beach, assigned to Midwood High School in Brooklyn;
- **John Barden** of 15 Talcott Place in Middletown, assigned to High School for the Humanities in Manhattan;
- **Herbert Bradley** of 143 Norway Lane in South Plainfield, New Jersey, assigned to Tottenville High School in Staten Island;
- **Kurt G. Brunkhorst and Marilyn Brunkhorst** of 52 Pine Brook Road in Monsey, assigned to P.S. 192 and P.S. 53, respectively, in Manhattan;
- **Daniel Donovan** of Daniel Road RD1 in North Salem, assigned to DeWitt Clinton High School in the Bronx;
- **Anthony Franze** of 41 Otsego Avenue in New Rochelle, assigned to Jacqueline Kennedy Onasis International High School in Manhattan;
- **John Kovelski** of 219 Stonhenge Lane in Carle Place, assigned to Springfield Gardens High School in Queens;
- **Rodney Lopez** of 15 Colonial Drive in Smithtown, assigned to Flushing High School in Queens;
- **John Nolan** of 156-39 102nd Street in Jamaica, assigned to Newtown High School in Queens; and
- **John Reid** of 130-28 223rd Street in Laurelton, assigned to P.S. 914 in Brooklyn.

The charges included in the complaints are: Bribe Receiving in the Third Degree, a Class D felony; Receiving Reward for Official Misconduct in the Second Degree, a Class E felony; Contracts in Restraint of Trade (the Donnelly Act), a Class E felony; and Official Misconduct, a Class A misdemeanor.

If convicted of the felony offenses, each defendant faces up to seven years in prison and/or \$100,000 in fines. The charges are mere accusations and the defendants are presumed innocent until proven otherwise in a court of law.

The case is being handled by Assistant Attorney General Viola I. Abbitt and Special Assistant Attorney General and Deputy Commissioner of the Office of the Special Commissioner Gerald P. Conroy. Also assisting in the investigation were Assistant Attorney General David Weinstein and Director of Economics Hampton Finer of the AG's Antitrust Bureau. Investigator Ed Elie of the AG's office worked along with Investigators Joseph Piwowarski and Richard Werdann of the Office of the

Special Commissioner on the case.

REPORT AND RECOMMENDATIONS FOR REFORMING THE SYSTEM FOR PROCUREMENT BY SCHOOL CUSTODIANS

The joint investigation of the Attorney General's Office and the Special Commissioner of Investigation for the New York City School District ("The Special Commissioner") exposed major structural deficiencies in the present system by which custodians purchase goods and services. A description of the problems, and a roadmap for reform, are set forth below.

The Present System

The system that entrusts custodians with the care of New York City public school facilities is, in the words of a report by the Special Commissioner, "a system like no other." Custodians have enormous latitude in spending school money. Each custodian is given an annual budget to purchase goods and services – such as window-washing. A custodian who does not spend the entire annual budget can keep a small percentage of the savings as salary up to a pre-set maximum.

The amount of money custodians spend on goods and services is substantial. Every year, custodians spend nearly \$40 million on goods and services. In 1999, the 81 custodians whose purchasing orders were available for review during the joint investigation (from June 2000 to November 2001) spent \$ 632,000 for window washing alone. There are 838 BOE custodians overall.

The procedures by which a custodian must ostensibly secure a vendor are outlined in the 1992 BOE's Standard Operating Procedures Manual ("SOPM"), and repeated in the custodian's 1994 labor contract with the BOE. The SOPM set forth different requirements depending on the size of the purchase. For purchases between \$250 and \$5,000, custodians must solicit three telephone bids, and receive bids from at least two vendors. For purchases between \$5,000 and \$10,000, the custodian must solicit three written bids, and receive at least two. Before a custodian may purchase goods and services that will cost over \$10,000, he or she must seek the approval of a plant manager, and purchase in accordance with existing BOE contracts.

Defects in the Current Bidding Process

The BOE's bidding rules are designed to encourage competition. The investigation, however, highlights significant corrupting vulnerabilities within the current system.

– Ease of Avoidance. The requirement that each custodian solicit three bids before awarding a contract fails to foster genuine competition. The rule routinely was ignored, with no apparent consequence to the custodian. In some cases, the custodian asked the predetermined winner to provide fictitious bids for file. Frequently, where there was pretextual compliance, custodians did not even seek out these bids until an auditor requested paperwork. Similarly, the rule requiring supervisor approval for jobs in excess of \$10,000 was routinely eluded by staggering payments or dividing work over time. Indeed, the investigation found only a single instance where a custodian requested supervisory approval for a window washing contract in excess of \$10,000.

– Incentives for Corrupt Conduct. Virtually all custodians have been able to obtain the maximum salary provided for under the current contract, and thus their incentives for further cost savings are extremely limited. While custodians receive little benefit from cutting costs, they can gain quite a bit in kickbacks from favored contractors. Many custodians appear to award contracts in return for such kickbacks, and thereby ignore the competitive bidding process completely.

– Difficulty of Oversight. At present, individual custodians constitute nearly 850 separate procurement agencies. There are few restrictions governing the vendors the custodians use and little oversight of the quality of their work. This disbursed and scantily monitored environment is an open invitation to no-show jobs, and poorly performed work. Moreover, when audits are done, the auditors merely review the submitted paperwork, but do not determine whether the goods or services were actually provided. As noted, those custodians who wish to evade the auditors' oversight have proved remarkably adept at creating the paper trail needed to cover up improper conduct. Finally, there is no database which records purchases, and thus no easy way for auditors to get a complete picture of systemwide misconduct.

Recommendations to Reform the Current Bidding Process

Some of the problems described above are the inevitable result of New York's peculiar regime for public school custodial care. Nonetheless, three common-sense reforms would improve the bidding process, and limit opportunities for corruption.

The Attorney General and Special Commissioner recommend:

- Centralization. So long as each individual custodian is allowed to conduct bidding for every good and service below \$10,000, the system will continue to present numerous incentives and opportunities for corruption. Instead, goods and services should be purchased through citywide competitive bidding. This could be done by either geographic zones or by "requirements contracts" where bidders who meet strict quality standards are placed on public lists. Custodians would then be required to select a

vendor from the list, and pay according to a pre-set schedule.

- Openness. The bidding process must be open to public scrutiny. Requests for bids should be posted on the Internet to potential bidders and members of the public. The bids, as well as relevant information about the bidders, should likewise be open. Violations of bidding procedures would, consequently, be policed by potential competitors as well as government auditors.
- Oversight. A centralized bidding process would facilitate far more intensive monitoring than is presently possible. Once there is a defined set of authorized vendors the progress of those vendors can, and should, be efficiently monitored for quality. The BOE should assign personnel to the task of spot-checking goods and services for quality, establish specific quality and cost standards, and review bid submissions and awards to determine if they are fictitious, or collusive.

This problem is not new. It cannot be solved by making marginal adjustments to the present system. Only by rationalizing the purchasing process, subjecting it to public scrutiny, and putting in place a systematic oversight regime can its defects be corrected. In that way, we can make sure that the money allocated to schools goes to its intended and appropriate purpose: providing our school children with a healthy and safe environment in which to learn.

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