Description of document:	Closing documents for 25 Department of Commerce Office of Inspector General (OIG) investigations, 2012-2013
Request date:	04-August-2014
Released date:	07-October-2014
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Source of document:	FOIA Officer Office of Inspector General U.S. Department of Commerce 1401 Constitution Avenue, N.W., Room 7892 Washington, DC 20230 Fax: 202.501.7335 Email: FOIA@oig.doc.gov Online FOIA Request Form

UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

October 7, 2014

VIA U.S. Mail

Re: FOIA Request No. DOC-OIG-2014-001425

This letter is in response to your Freedom of Information Act (FOIA) request, tracking number DOC-OIG-2014-001425, dated August 4, 2014 and received by the Department of Commerce, Office of Inspector General (OIG) on August 5, 2014, in which you seek, as modified August 25, 2014 and September 25, 2014, copies of "the final report, report of investigation, closing letter, closing memo, referral memo, and referral letter" for various OIG investigations.

A search of records maintained by the OIG has located 147 pages that are responsive to your request. We have reviewed these pages under the terms of FOIA and have determined that they may be released as follows:

- Eleven (11) pages may be released to you in full.
- Four (4) pages relating to OIG investigation #13-0686-I must be fully withheld under FOIA exemption (b)(7)(A), 5 U.S.C. § 552(b)(7)(A), which protects records or information compiled for law enforcement purposes to the extent that production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.
- 128 pages must be partially withheld under FOIA exemption (b)(7)(C), 5 U.S.C. § 552(b)(7)(C), which protects law enforcement information, the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.
- One (1) page must be partially withheld under FOIA exemption (b)(3)(A), 5 U.S.C. § 552(b)(3)(A), which protects information that has been specifically exempted from disclosure by a statute that requires matters to be withheld from the public in such a manner as to leave no discretion on the issue, and FOIA exemption (b)(7)(C). Specifically, with respect to the use of FOIA exemption (b)(3)(A), Rule 6(e) of the Federal Rules of Criminal Procedure restricts disclosure of matters occurring before grand juries.
- One (1) page must be partially withheld under FOIA exemption (b)(5), 5 U.S.C. § 552(b)(5), which protects inter-agency and intra-agency records that would not be available by law to a party other than an agency in litigation with the agency, including documents that are predecisional and deliberative in nature, and FOIA exemption (b)(7)(C).

- Two (2) pages must be partially withheld under FOIA exemption (b)(7)(C) and FOIA exemption (b)(7)(E), which protects law enforcement information the disclosure of which would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

Copies of the 143 releasable pages are enclosed with the relevant withholdings noted.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of FOIA. This is a standard notification to all OIG requesters and should not be taken as an indication that excluded records do, or do not, exist.

You have the right to appeal this partial denial of your request. An appeal must be received within 30 calendar days of the date of this response letter by the Assistant General Counsel for Administration (Office), Room 5898-C, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Your appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to 202-482-2552, or by FOIAonline, if you have an account in FOIAonline, at https://foiaonline.regulations.gov/foia/action/public/home#.

The appeal must include a copy of the original request, this response to the request, and a statement of the reason why the partially withheld records should be made available and why partial denial of the records was in error. The submission (including e-mail, fax, and FOIAonline submissions) is not complete without the required attachments. The appeal letter, the envelope, the e-mail subject line, and the fax cover sheet should be clearly marked "Freedom of Information Act Appeal." The e-mail, fax machine, FOIAonline, and Office are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next normal business day.

If you have any questions, please contact me via email at FOIA@oig.doc.gov, or by phone at (202) 482-5992.

Sincerely,

Raman Santra
FOIA Officer

Enclosures

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
Alaska Eskimo Whaling Commission (AEWC) **Ahmaogak, Maggie (Former Executive Director)** **Judkins, Teresa (Former Controller)** Barrow, Alaska NOAA Grant Fraud	FOP-DF-10-0103-I TYPE OF REPORT ☐ Interim ☒ Final GRAND JURY MATERIAL

BASIS FOR INVESTIGATION

On December 21, 2008, the Office of Investigations (OI) received information from (b) (7)(C) (b) (7)(C) an (b) (7)(C) representing the Alaska Eskimo Whaling Commission (AEWC), concerning misuse of grant funds received from the National Oceanic and Atmospheric Administration (NOAA). (b) (7)(C) explained that the AEWC receives funding from NOAA to promote the whaling industry in Alaska. The AEWC had recently hired a (b) (7)(C) who discovered embezzlement on the part of the previous administration, which had been in place for the previous 17 years. Their review revealed the AEWC lacked both sufficient financial controls and a reliable accounting system, resulting in questionable expenditures exceeding $250,000. (Attachment 1)

RESULTS/ SUMMARY OF INVESTIGATION

Our investigation, conducted in collaboration with the FBI and IRS-CID, confirmed multiple instances of fraud and false statements resulting in the theft of $575,339 from AEWC, an organization that received more than $2.3 million in NOAA grants between 2004 and 2007. In the summer of 2011, two former Executive Directors, Maggie Ahmaogak and Teresa Judkins, were indicted in Federal District Court. Ahmaogak was indicted on four counts of wire fraud, theft and misapplication of funds from an organization receiving federal grant funds and money laundering. Judkins was indicted in a two-count indictment for theft and misapplication of funds from an organization receiving federal grant funds. Both subsequently entered guilty pleas and

Distribution: OIG x Bureau/Organization/Agency Management __ DOJ: ____ Other (specify):			
(b) (7)(C)	Date: 12/12/12	(b) (7)(C)	Date: 12/12/12
Name/Title: (b) (7)(C) (b) (7)(C) (b) (7)(C)		Name/Title: (b) (7)(C) OSI	

were sentenced; Ahmaogak was sentenced to 41 months and restitution of $393,193.90 while Judkins was sentenced to 6 months and restitution of $100,339.

The defendants were able to commit their crimes in part because of their position, where they could override what few internal controls were in place. In Northern Alaska, the lack of qualified personnel, familial relationships, and a Board of Directors made up of a dispersed group of men with no business experience contributed to an environment that was ill-equipped to identify fraud.

METHODOLOGY

This case was conducted through interviews and document review, including electronic mail, public domain documentation, Internet sources, correspondence from witnesses and the subject, and documents from NOAA. We also conducted an analysis of financial and business records provided over the course of the investigation. This included detailed financial analysis of grant records and claims; financial, bank and accounting records; statements and records from vendors and other government entities; and other records obtained via grand jury subpoena.

DETAILS OF INVESTIGATION

The Alaska Eskimo Whaling Commission (AEWC) is a non-profit organization formed in 1976. Their purpose was to protect Eskimo subsistence whaling of bowhead whales; to protect and enhance the Eskimo culture, traditions, and activities associated with bowhead whales and subsistence bowhead whaling; and to undertake research and education related to bowhead whales. AEWC receives funding from several sources, with the majority coming from grants issued by the National Oceanic and Atmospheric Administration (NOAA). (Attachments 1-9)

The grants in question fall under Catalog for Domestic Assistance (CFDA) #11.439, known as the Marine Mammal Data Program. The grants were authorized under the Marine Mammal Rescue Assistance Act of 2000 (16 U.S.C 1421f-1; Marine Mammal Act of 1972, 16 U.S.C 1361). The objective of this grant, which has been awarded approximately every two years since at least 1992 to AEWC, was to collect and analyze information on the bowhead whale. (Attachments 2-3)

Between 2004 and April 2007, the time period of the intentional misapplication of funds, the AEWC received federal grant funds from NOAA totaling approximately $2.3 million. (Attachments 8, 10)

Maggie Ahmaogak was the Executive Director of the Alaska Eskimo Whaling Commission ("AEWC") from 1990 to April 2007. As Executive Director, Ahmaogak was responsible for managing federal grants received by AEWC. Ahmaogak was also responsible for oversight of AEWC employees and implementing financial procedures in accordance with the by-laws of AEWC, as well as advising the Board on financial matters and maintaining accurate records and

financial accounts for AEWC, and for preparation of AEWC's annual budget. (Attachments 1, 11-14)

Our investigation found that at least in 2006 and 2007, Ahmaogak stole, obtained by fraud and misapplied approximately $475,000 of AEWC funds for her personal use. Ahmaogak did so by using the AEWC credit card for personal expenses and cash advances; writing checks to herself on AEWC accounts; taking payroll advances that were never repaid; withdrawing cash from AEWC accounts; and making a wire transfer to her personal account from an AEWC account. Our investigation found this money was used to purchase luxury items like a Hummer SUV, a $3,000 refrigerator, and snow machines (snowmobiles) for herself, and for gambling at Muckleshoots casino in Washington, and Harrah's casinos in St. Kitts, New Orleans, and Las Vegas. (Attachments 14-29)

Specifically, in June of 2006, Ahmaogak intentionally used NOAA grant funds to cover travel expenses to the island destination of St. Kitts. Prior to leaving on an AEWC trip to St. Kitts, she paid herself $15,000 for one pay period by creating false time sheets indicating an impossible amount of overtime worked. She also wrote herself three checks on an AEWC account for $10,000 each for "Incidentals" in St. Kitts, intentionally avoiding the AEWC requirement that there be a second signature on expenditures over $10,000. While in St. Kitts Ahmaogak charged over $10,000 in miscellaneous expenses on the AEWC credit card and took over $1,000 in cash advances on the AEWC credit card. This was in addition to $10,000 in AEWC funds she gave to herself and her husband for food and hotel costs. While in St. Kitts Ahmaogak and her husband gambled with approximately $120,000 on slot machines. Upon returning from St. Kitts, she wrote a check to her husband for "loss of wages" for over $2,000, despite his receiving his regular paycheck from Shell Oil during this trip. (Attachments 16-22, 27-30)

While in New Orleans, Louisiana, on February 12, 2007, Ahmaogak withdrew $12,300 from an AEWC bank account in Barrow, Alaska that contained federal grant funds from NOAA. This withdrawal was not approved by the grant budget. Ahmaogak deposited the $12,300 into a personal account that she had opened the same day in New Orleans. On February 13, 2007, Ahmaogak withdrew $12,300 from her personal account. Investigation indicates Ahmaogak initiated some of the theft of grant proceeds contemporaneous with gambling trips in New Orleans. (Attachments 16-22, 27-30)

Teresa Judkins, who initially was the Controller during the time Ahmaogak was the Executive Director, later became the Executive Director of the AEWC from approximately April 2007 to September 2008. During her time as Executive Director, Judkins obtained by theft, fraud, and misapplication approximately $100,339 of funds belonging to AEWC. Specifically, in 2007, Judkins obtained approximately $40,693, and in 2008, prior to her termination, Judkins obtained approximately $59,646. Judkins obtained these AEWC funds by taking advances, paying for airline tickets, hotels, and rental cars for herself and relatives unrelated to AEWC business, making a partial payment on a snowmobile for her husband, and issuing and cashing AEWC checks for her personal use. These funds were obtained by Judkins for the personal benefit of

herself and her family members and the expenditure of these funds was not for allowable grant expenses, nor were they approved by the Board of Directors. (Attachments 15-26, 28, 31, 34-35)

In September 2011, Ahmaogak was indicted on one count of violating 18 U.S.C. §1343 (Wire Fraud); two counts of violating 18 U.S.C. §666 (Theft or Bribery Concerning Programs Receiving Federal Funds); and one count of violating 18 U.S.C. §1957 (Money Laundering) in the U.S. District Court for the District of Alaska. A joint investigation with the Federal Bureau of Investigation (FBI) and the Internal Revenue Service's (IRS) Criminal Investigation Division (CID) disclosed that the former executive director fraudulently obtained and misapplied approximately $475,000 in AEWC funds for her personal use. On November 28, 2012, the judge found Ahmaogak's testimony not credible in sentencing her, ordering imprisonment for a period of 41 months on each of Counts 2, 3, 4 (the 666 and 1957 counts) of the Indictment, such terms to be served concurrently. She also must serve a 3 year supervised release following her imprisonment. She was ordered to pay a Special Assessment of $300.00, due immediately, and restitution of $393,193.90. On motion of the U.S. Attorney, count 1 of the indictment (wire fraud) was dismissed. The Court also advised the defendant her appeal rights have been waived. (Attachments 27, 29, 30, 32, 33)

In June 2011, Judkins was indicted on two counts of violating 18 U.S.C. §666 (Theft or Bribery Concerning Programs Receiving Federal Funds) in the U.S. District Court for the District of Alaska. On December 10, 2012 she was sentenced after pleading guilty to both counts of her indictment. She was sentenced to six months in prison and ordered to pay a Special Assessment of $200.00, due immediately, and restitution of $100,339. (Attachments 26, 28, 31, 34-35)

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UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, DC 20230

May 16, 2013

MEMORANDUM FOR: Thomas Guevara
Deputy Assistant Secretary for Regional Affairs
Economic Development Administration

FROM: Rick Beitel
Principal Assistant Inspector General
for Investigations & Whistleblower Protection

SUBJECT: OIG Investigation, Re: Digital Workforce Academy
(OIG Case # 10-0283-I)

Attached is our Report of Investigation (ROI) in the above-captioned matter. The EDA office in Austin requested assistance concerning a grantee who allegedly did not pay [redacted] subcontractors. Our investigation found [redacted] contracted with multiple companies for various phases of the grant project, but we did not discover sufficient evidence to demonstrate [redacted] improperly retained EDA grant funds for [redacted] self. The dispute between [redacted] and the subcontractor is a matter of civil litigation between those two entities; neither EDA nor the Department are involved in the litigation. During the course of this investigation, we learned of allegations of forgery of [redacted]'s signature. The alleged forgeries were done by [redacted]'s [redacted] with [redacted]'s standing permission, thus it could legally be argued the employee was acting with apparent authority as an agent on behalf of the employer.

We discovered that an EDA employee, [redacted] permitted grantees to submit pre-signed payment requests, leaving the amounts blank, which [redacted] would later fill in after the grantee submitted invoices with amounts. [redacted] stated [redacted] did this to facilitate grant management, and subsequently stopped the practice after realizing the risk it entailed.

One area of concern we discovered is the Austin [redacted], instructing [redacted] not to report [redacted] concerns about Digital Workforce Academy to the OIG. During the course of our investigation, [redacted] stated it was "possible" [redacted] instructed [redacted] not to contact our office, but it was due to a belief that grant matters can usually be resolved internally to EDA. Further, [redacted] stated [redacted] does not typically raise any issues to [redacted] EDA – Austin Regional Office, "because it is pretty bad if I can't handle it on my level[.]" and did not notify [redacted] of the potential issues with DWA. [redacted] stated [redacted] did not intend to prevent [redacted] from contacting our office, nor does [redacted] require employees to notify [redacted] before contacting our office. Nonetheless, such instruction or communication this tends to have a chilling effect on the mandatory reporting of fraud, waste and abuse to the OIG. We appreciate [redacted]'s diligence in disclosing these issues.

We recommend you remind EDA managers of the mandate for employees to cooperate with the OIG and report potential violations – DAO 207-10, Section 3.04 states knowing failure of a Department officer or employee to comply with reporting requirements may result in disciplinary action. The Standards of Ethical Conduct require employees to disclose fraud, waste and abuse (5 C.F.R. 2635.101(b)(11)), and requires impartiality and protection of Federal property, to include federal funds. (5 C.F.R. 2635.101(b)(8) and (9)). Furthermore, EDA employees have an obligation to avoid any actions creating the appearance that s/he is violating the law or the ethical standards set forth in the *Standards of Ethical Conduct for Employees of the Executive Branch*. (5 C.F.R. 2635.101(b)(14)).

In accordance with DAO 207-10, paragraph 4, your written response of any action proposed or taken is requested within 60 days of receipt of this referral.

In your official capacity, you have responsibilities concerning this matter, the individuals identified in this memorandum, and the attached documents. Accordingly, you are an officer of the Department with an official need to know the information provided herein in the performance of your duties. These documents are being provided to you in accordance with 5 U.S.C. §552a(b)(l) of the Privacy Act and as an intra-agency transfer outside of the provisions of the Freedom of Information Act.

Please be advised that these documents remain in a Privacy Act system of records and that the use, dissemination or reproduction of these documents or their contents beyond the purposes necessary for official duties is unlawful. The OIG requests that your office safeguard the information contained in the documents and refrain from releasing them without the express written consent of the Counsel to the Inspector General.

If you have any questions please do not hesitate to contact me at (202) 482[redacted], or [redacted] at (202) 482-[redacted].

Attachment
ROI (with exhibits)

cc: [redacted], Ethics and Law Program Division, Office of General Counsel

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
DIGITAL WORKFORCE Austin, TX EDA Grant Fraud	FOP-WF-10-0283-I
	TYPE OF REPORT ☐ Interim ☒ **Final**

BASIS FOR INVESTIGATION

On February 3, 2010 (b) (7)(C) a (b) (7)(C) with the Austin Region of the Economic Development Administration (EDA), requested OIG assistance in assessing the possibility of misconduct by an EDA grantee. Specifically, (b) (7)(C) had information from a subcontractor asserting (b) (7)(C) (b) (7)(C) of Digital Workforce Academy (DWA), the recipient of two EDA grants worth approximately $2.5 million, was retaining EDA grant funds for (b) (7)(C) self rather than compensating subcontractors for work completed.

RESULTS/SUMMARY OF INVESTIGATION

Our investigation found (b) (7)(C) had contracted with multiple companies for various phases of the grant project, but we did not discover sufficient evidence to demonstrate (b) (7)(C) improperly retained EDA grant funds for (b) (7)(C) self. The dispute between (b) (7)(C) and the subcontractor is a matter of civil litigation between those two entities; neither EDA nor the Department are named or involved in the litigation. While two witnesses, a (b) (7)(C) and (b) (7)(C) both from the subcontractor who claims non-payment, make serious allegations of fraud and non-compliance with grant procedures, we found no corroborating evidence. We did corroborate one allegation of forgery of (b) (7)(C) s signature, which (b) (7)(C) confirmed happened in (b) (7)(C) presence; however, the alleged forgery was done with (b) (7)(C) s standing permission by (b) (7)(C) thus it could legally be argued the employee was acting as an agent on behalf of (b) (7)(C) employer. On September 18, 2012, the United States Attorney's Office for the Western District of Texas

Distribution: OIG _x_ Bureau/Organization/Agency Management _x_ DOJ: ____ Other (specify):			
Signature of Case Agent: (b) (7)(C)	Date: 5/16/13	(b) (7)(C)	Date: 5/16/13
Name/Title: (b) (7)(C) Investigator		Name/Title: (b) (7)(C) (b) (7)(C) Office of Special Investigations	

declined criminal prosecution. As of October 16, 2012, (b) (7)(C) stated was only awaiting the conclusion of our investigation to close out the grant.

METHODOLOGY

This investigation was conducted through interviews and document review, including electronic mail, public domain documentation, Internet sources, and grant documents from EDA.

DETAILS OF INVESTIGATION

Predication

On February 3, 2010, (b) (7)(C) stated had been contacted by (b) (7)(C), the (b) (7)(C) of (b) (7)(C) (), a subcontractor on the grant project in question, who stated had not been paid for work by (b) (7)(C), of Digital Workforce Academy (DWA), the grantee. (b) (7)(C) stated was concerned (b) (7)(C) was invoicing EDA for the subcontractors' work, but retaining the funds for self.[1] (b) (7)(C) stated had not received complaints from any other subcontractors, and construction of the project was complete, with close-out of the grant pending receipt of several administrative documents from (Attachments 1 – 3)

Background

DWA is a non-profit corporation incorporated in the State of Texas on September 11, 2002. (b) (7)(C) the (b) (7)(C) and (b) (7)(C) was the signatory on the Articles of Incorporation. DWA is a recipient of two EDA grants: (1) 08-01-04250 and (2) 08-79-04408. The grants were issued to DWA, with (b) (7)(C) as DWA's (b) (7)(C) both grants were construction grants with all funds being used to renovate 617 Procter St., Port Arthur, Texas 77640. (Attachments 2 – 3)

Grant 08-01-04250 was issued on March 14, 2008, in the amount of $1,250,000; $1,000,000 was the Federal share of the grant, and $250,000 was the recipient's share. Grant 08-01-04250 was awarded to renovate the first floor of the building, which was to become the "Golden Triangle Empowerment Center" (GTEC), a skills training center. (Attachment 3)

Grant 08-79-04408 was issued on July 22, 2009, in the amount of $1,400,000, with no recipient share. Grant 08-79-04408 was awarded to renovate the second floor of the same building associated with 08-01-04250. (Attachment 3)

Investigation

[1] During the course of our investigation, we were presented with emails wherein (b) (7)(C) notes provided information of these allegations to (b) (7)(C) Austin Region, EDA, who specifically instructed (b) (7)(C) not to contact OIG. Subsequently, (b) (7)(C) retracted this statement, instructing (b) (7)(C) to contact OIG if felt it necessary. (Attachments 23 and 25)

We interviewed (b) (7)(C) who stated was a (b) (7)(C) subcontractor on the project from March – July 2009. (b) (7)(C) stated was awarded two contracts by DWA on this grant, one for approximately $(b) (7)(C) and the second for approximately $(b) (7)(C). (b) (7)(C) made several additional allegations, including (b) (7)(C)'s insistence on awarding contracts below $100,000 and willingness to engage in bribery. (b) (7)(C) subsequently provided a copy of a demand letter, dated December 7, 2010, issued by (b) (7)(C)'s attorney to (b) (7)(C), stating an outstanding debt of $25,371.14, and citing the OIG investigation. As of October 15, 2012, (b) (7)(C) had not settled dispute with (b) (7)(C) and intends to pursue litigation. (Attachments 4 – 6)

We obtained and reviewed the grant documents, determining that as of January 2011, both grants had been completely drawn down by DWA. Further, we obtained and compared the payments from EDA against existing invoices, and found indications of potential improprieties, including the appearance of a failure by DWA to fully compensate subcontractors, as well as use of funds from one grant to pay for work done under the other grant. (Attachments 3, 7)

We interviewed (b) (7)(C) the (b) (7)(C) on the project, who stated was hired by (b) (7)(C) to (b) (7)(C) the project.[2] (b) (7)(C) stated would collect invoices from the subcontractors on the project and submit them to (b) (7)(C) who would send a check to company each month for those costs. (b) (7)(C) stated would then issue checks from own company to the subcontractors. (b) (7)(C) stated did not make any contracts self, and served only to pay the invoices from the subcontractors. (b) (7)(C) stated BAC ultimately had to be removed from the project, following several occasions of belligerence by (b) (7)(C), as well as many notifications from vendors stating BAC's failure to pay various costs and fees. (Attachment 8)

We interviewed (b) (7)(C) an employee of (b) (7)(C)'s from (b) (7)(C) and of (b) (7)(C).[3] (b) (7)(C) stated was familiar with the process of obtaining grant funds from EDA, and regularly processed communications, including invoices from (b) (7)(C) related to the grant project. (b) (7)(C) stated observed several improprieties during (b) (7)(C) employment with DWA, including (1) (b) (7)(C) using funds from DWA's accounts, including EDA grant funds, to fund for-profit business, MRSW, an Austin-based consulting firm which trains IT personnel, (2) using EDA grant funds for purchasing items such as conference room furniture, (3) being instructed by (b) (7)(C) on many occasions to transfer funds from the bank account containing EDA grant funds to (b) (7)(C)'s bank account used for operating expenses, such as utilities and teacher salaries for other business, and (4) falsifying invoices and other

[2] (b) (7)(C)'s company, R&R Construction, was also a subcontractor on the project, having provided services such as sheetrock and framing. (Attachment 8)

[3] (b) (7)(C) began employment with (b) (7)(C) at or-profit company, Managing Resources and Services in the Workplace (MRSW), eventually progressing to managing the accounts for both DWA and MRSW. (Attachment 11)

paperwork submitted to both EDA and the City of Port Arthur.[4] (b) (7)(C) further stated (b) (7)(C) had met with (b) (7)(C) on several occasions to submit DWA's invoices, and on one occasion, (b) (7)(C) in order to facilitate payment to DWA, permitted (b) (7)(C) to sign (b) (7)(C)'s signature on an invoice by leaving the room after noting a lack of (b) (7)(C)'s signature. (b) (7)(C) stated (b) (7)(C) was terminated after (b) (7)(C) sent a demand letter to DWA in December 2010 for payment owed. (b) (7)(C) stated (b) (7)(C) often signed (b) (7)(C)'s signature on documents related to the EDA grant project, and (b) (7)(C) did not mind any improprieties so long as the necessary tasks to maintain the businesses were accomplished. (b) (7)(C) did not provide any documentation or other support evidencing any of the aforementioned fraudulent activities. (Attachments 9 – 13)

We interviewed multiple DWA subcontractors including (b) (7)(C), American Air Systems (AAS), Electrical Specialties Incorporated (ESI), and Tri-Star Glass; only (b) (7)(C) raised any issues of fraud within the project. (Attachments 14 – 19)

We interviewed (b) (7)(C), (b) (7)(C) for the City of Port Arthur, where the building being renovated is located, who stated (b) (7)(C) had not received any complaints regarding (b) (7)(C) or DWA. (Attachment 20)

During the course of our investigation, we learned MRSW was investigated in 2010 by the Austin Police Department (APD) for alleged time card fraud in the course of their contract with the City of Austin.[5] We interviewed Detective (b) (7)(C), the (b) (7)(C) detective from APD on the investigation, who stated MRSW was alleged to have submitted falsified time sheets to account for paying contractors overtime, which was not allowed under the terms of the contract. (b) (7)(C) stated both (b) (7)(C) and (b) (7)(C) were investigated, but ultimately no charges were pursued as the City of Austin recouped the approximately $5,000 in funds inappropriately paid to MRSW prior to the commencement of APD's investigation. (Attachments 21 – 22)

We interviewed (b) (7)(C) regarding the practices for processing payment requests to DWA; (b) (7)(C) stated (b) (7)(C) did not always ask for supporting documentation with the submitted invoices, and that it would be possible for a subcontractor to be paid twice for the same work without his knowledge. (b) (7)(C) stated (b) (7)(C) previously permitted (b) (7)(C) to submit pre-signed payment requests, leaving the amounts blank, which (b) (7)(C) would fill in after (b) (7)(C) submitted invoices; (b) (7)(C) stated (b) (7)(C) no longer allowed grantees to pre-sign their payment requests as of March 30, 2011. (b) (7)(C) stated (b) (7)(C) was aware of the requirement for EDA approval of line item changes on every grant, but stated (b) (7)(C) realistically could not accomplish all of (b) (7)(C) required work if (b) (7)(C) were

[4] Though (b) (7)(C) made these allegations, (b) (7)(C) provided no support and our investigation has found no corroborating evidence to show any of these allegations are true.

[5] (b) (7)(C) stated in (b) (7)(C) March 29, 2011 interview DWA had been audited four times in 2010 as a result of the allegations against MRSW for falsified time cards; further, (b) (7)(C) stated DWA was audited in related to a grant with the State of Texas for work with the Texas Workforce Commission. (Attachment 11)

required to abide by this requirement. [redacted] confirmed [redacted]'s account of the instance wherein [redacted] left [redacted] in [redacted] office to sign [redacted]'s signature on a payment request. (Attachments 23 – 24)

We interviewed [redacted], EDA – Austin Regional Office, regarding [redacted] instruction to [redacted] to not contact our office with [redacted] concerns about DWA. [redacted] stated it was "possible" [redacted] instructed [redacted] not to contact our office, but it was due to a belief that grant matters can usually be resolved internally to EDA. Further, [redacted] stated [redacted] does not typically raise any issues to [redacted] EDA – Austin Regional Office, "because it is pretty bad if I can't handle it on my level[.]" and did not notify [redacted] of the potential issues with DWA. [redacted] stated [redacted] did not intend to prevent [redacted] from contacting our office, nor does [redacted] require employees to notify [redacted] before contacting our office. (Attachments 23 and 25)

On September 18, 2012 we received a declination for prosecution due to lack of evidence of a criminal offense from [redacted] Assistant United States Attorney for the Western District of Texas. (Attachment 26)

We interviewed [redacted] on October 10, 2012, with the assistance of the FBI; [redacted] denied ever purposely taking, or instructing employees to take, action to purposely evade federal grant rules and regulations. [redacted] acknowledged [redacted] may have made administrative missteps in managing the grant project, and admitted [redacted] was not fully apprised of [redacted] responsibilities under the grant rules and regulations. [redacted] demonstrated a lack of knowledge regarding maintenance of EDA grant funds, particularly in differentiating one stream of funding from the other, but denied all of [redacted]'s allegations, stating [redacted] was simply an [redacted] who collected the invoices submitted by fax, and performed basic data entry tasks. [redacted] denied being complicit in any type of intentional misrepresentation to EDA, and repeatedly noted the project was completed under budget. (Attachment 13)

[redacted] stated, as of October 16, 2012, the grant project was completed, and had been for a long time. [redacted] stated [redacted] was awaiting the closure of OIG's investigation before formally closing the grant. Currently, [redacted] is not the recipient of any EDA grant funds, though [redacted] is party to an in-kind arrangement on an EDA project for a planning project in Port Arthur, Texas. [redacted] receives payment for costs incurred in providing his services, such as travel. According to [redacted] a grant officer out of EDA's Austin office, [redacted] is providing in-kind services for the life of the grant, as needed; the grant project is expected to be completed by April 19, 2013. According to [redacted] as of August 2012, [redacted] had been reimbursed $25,692 for travel and other expenses. (Attachments 27 – 29)

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OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
NOAA/AFF Foreign Travel – Norway and Malaysia National Oceanic and Atmospheric Administration (NOAA) Office of Law Enforcement - National Marine Fisheries Service Office of General Counsel for Enforcement and Litigation Silver Spring, Maryland	FOP-WF-10-1195-I TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

In July 2010, during the course of our Review of NOAA Fisheries Enforcement Programs and Operations, we found several Office of Law Enforcement (OLE), National Marine Fisheries Service (NMFS) and Office of General Counsel for Enforcement and Litigation (GCEL) employees had claimed questionable per diem expenses. The expenses were paid from the NOAA Asset Forfeiture Fund (AFF) and were for foreign travel to Trondheim, Norway, in August 2008 for the Second Global Fisheries Enforcement Training Workshop (SGFETW). We found similar concerns for travel to the Global Fisheries Enforcement Training Workshop (GFETW) held in Kuala Lumpur, Malaysia during July 2005. In addition, we sought to determine if (b) (7)(C) a NOAA contract employee who provided (b) (7)(C) services for fisheries enforcement cases, and (b) (7)(C) a U.S. Coast Guard (USCG) Administrative Law Judge (ALJ) who presided over some fisheries enforcement cases, had attended these conferences at NOAA AFF expense.

SUMMARY OF INVESTIGATION

We found two OLE employees - Special Agent (b) (7)(C) and Special Agent (b) (7)(C) - were reimbursed per diem expenses, $1,178 and $651 respectively; they were not entitled to receive following the SGFETW in Norway during August 2008. SA (b) (7)(C) was reimbursed $864.50 for unauthorized meals and incidental expenses (M&IE), the majority of which while (b) (7)(C) was on

Distribution: OIG ___ Bureau/Organization/Agency Management X DOJ: ___ Other (specify):			
Signature of Case Agent: (b) (7)(C)	Date: 4/1/13	Sig (b) (7)(C) proving Official: (b) (7)(C) (b) (7)(C)	Date: 4/1/13
Name/Title: (b) (7)(C) / Special Agent		N (b) (7)(C) (b) (7)(C)	

annual leave before the conference, and $313.50 for unwarranted lodging expenses, i.e., a double room rate that [redacted] had charged for [redacted] and [redacted] family who joined [redacted] on the trip. SA [redacted] was improperly reimbursed for three days M&IE ($217/per day) when [redacted] was no longer in a travel status. However, the same OLE (b) (7)(C) who prepared the electronic vouchers for both SA [redacted] and SA [redacted] acknowledged that both agents properly reported their expenses and provided all the necessary information to complete the electronic travel vouchers accurately but [redacted] mistakenly did not include these details on the vouchers. Further, the OLE approving official for both vouchers was not involved in any aspect of the trip. We note that when SA [redacted] and SA [redacted] reviewed and signed their final travel vouchers for reimbursement, they both failed to recognize the inaccuracies.

We found that while some employees variably combined these trips with annual leave before or after the conference, none claimed improper reimbursement. Fifteen NOAA employees, along with (only) (b) (7)(C), traveled to Norway in 2008 at a total cost of nearly $120,000, all paid from the NOAA AFF. For the GFETW conference held in Malaysia in 2005, we found no unauthorized expenses charged to or paid from the AFF. The AFF paid almost $60,000 for authorized travel expenses. We found no evidence that (b) (7)(C) or (b) (7)(C) received reimbursement from NOAA for travel expenses. Four NOAA employees who went to Malaysia charged their travel expenses (approximately $22,000) to NOAA General Fund accounts rather than the AFF.

METHODOLOGY

This investigation was conducted through review and analysis of information and data obtained from NOAA, a NOAA contractor and the public domain, and interviews of NOAA employees.[1]

DETAILS OF INVESTIGATION

On July 30, 2010, as part of our Review of NOAA Fisheries Enforcement Programs and Operations, we identified questionable expenses paid with the AFF for foreign travel to the SGFETW conference held in Norway during August 2008; specifically, several NOAA employees arrived days before the conference began and/or stayed after the conference was completed. Subsequently, we also reviewed the GFETW conference held in Malaysia during July 2005 and found similar issues. In addition, we reviewed travel claims from NOAA contractor (b) (7)(C) We determined USCG ALJ (b) (7)(C) s trip to Malaysia did not result in any claim to NOAA. (Attachment 1)

[1] Review of the Third GFETW conference held in Maputo, Mozambique, during September 2010 was not included as part of this investigation.

SGFETW: Trondheim, Norway

Review of the SGFETW Agenda disclosed the conference was held August 7-11, 2008 with registration and a Facilitator's Meeting held on August 6, 2008. NOAA/OLE took a lead role in the conference since then OLE (b) (7)(C) served as the (b) (7)(C) of the International MCS Network[2], which co-sponsored the event. (b) (7)(C) also held meetings with members of the working group in Trondheim, Norway, on August 4-5, 2008. As a result, other OLE employees accompanied (b) (7)(C) to the conference early to assist (b) (7)(C) with these duties and responsibilities. (Attachments 2 and 3)

The 22nd International Fishing Exhibition, also known as Nor-Fishing 2008, was held in Trondheim, Norway, from August 12-15, 2008. This conference was scheduled to be held immediately following the SGFETW and included over 440 exhibitors from 22 countries who represented various aspects of the fishing industry, such as suppliers of equipment and machinery, packaging and transportation companies, and environmental protection officials. Four NOAA employees had approved travel orders to attend this function, staying after the SGFETW conference was completed. (Attachment 4)

Fifteen NOAA employees attended the SGFETW, along with NOAA contract employee (b) (7)(C) The total travel costs for the conference - $119,535.61 - were paid with the NOAA AFF. The following are specific categories of expenses:

• Airfare	$ 48,890.53	
• Lodging	$ 34,461.45	
• M&IE	$ 33,158.25	
• Other Expenses	$ 3,025.38	
Total	$119,535.61	(Attachment 5)

Our investigation found SA (b) (7)(C) received payment of $864.50 for M&IE while (b) (7)(C) was on annual leave and in a non-duty status, i.e. the weekend before the conference began, along with .75 M&IE for a travel day that was canceled due to poor weather conditions before (b) (7)(C) left on the trip. (b) (7)(C) had documented this information on the travel voucher form (b) (7)(C) completed and submitted to (b) (7)(C) OLE (b) (7)(C) for processing and reimbursement

[2] The goal of the International MCS Network is to improve the efficiency and effectiveness of fisheries-related monitoring, control and surveillance activities through enhanced cooperation, coordination, and information collection and exchange among the responsible national and international organizations and institutions. Some of the primary objectives include recognizing the dangers of illegal, unregulated and unreported fishing and developing information sharing capabilities among the member nations to work both regionally and globally to prevent, deter and eliminate IUU fishing. Providing support for this function is considered ancillary to his job duties. NOAA took the lead and has worked with a number of other countries to address fisheries enforcement issues and concerns on an international level. Both (b) (7)(C) and (b) (7)(C) were (b) (7)(C) of this organization.

payment after the conference was completed. SA (b) (7)(C) requested and received approval for annual leave approximately one month before the conference in July 2008 and (b) (7)(C) included information about (b) (7)(C) annual leave on the travel authorization worksheet, pre-international travel authorization form and State Department County Clearance Cables. (Attachments 6 and 7)

SA (b) (7)(C) was also reimbursed $313.50 for lodging expenses (b) (7)(C) was not entitled to receive. (b) (7)(C) claimed a double-room rate instead of the less expensive single-room rate, which ranged from (approximately) $40 to $60 more per night. SA (b) (7)(C) had indicated in (b) (7)(C) paperwork for the trip that (b) (7)(C) family would be accompanying (b) (7)(C) and when (b) (7)(C) registered for the conference (b) (7)(C) provided the names of (b) (7)(C) and (b) (7)(C) as individuals who would be staying with (b) (7)(C) at the hotel; as a result, (b) (7)(C) obtained a double room. SA (b) (7)(C) was not entitled to reimbursement for the additional cost of the double room. (Attachment 8)

SA (b) (7)(C) attributed the overpayment to (b) (7)(C) as a clerical error. (b) (7)(C) acknowledged (b) (7)(C) did not sufficiently review the final voucher before signing it and trusted (b) (7)(C) to accurately complete the voucher. SA (b) (7)(C) pointed out that there had been an advance to pay up-front for hotel expenses, and the final voucher was very confusing since it was backdated to coincide with the advance voucher used for the prepaid hotel expenses). (b) (7)(C) also noted that the NOAA/Office of Finance had reviewed the claim and did not identify any concerns or discrepancies. (Attachment 7)

SA (b) (7)(C) improperly received reimbursement of $651 for three days M&IE – at $217 per day – because (b) (7)(C) had already returned home from Norway. (b) (7)(C) stated that he attended the first two days of the Nor-Fishing 2008 conference and decided to return home early since this event seemed to be geared more towards the commercial fishing industry rather than enforcement related issues. SA (b) (7)(C) also explained that when (b) (7)(C) had submitted (b) (7)(C) travel request (b) (7)(C) included the dates for the second conference "along with a day of cushion in the event of weather related flight delays." These dates of travel were approved on his travel orders. (Attachment 9)

SA (b) (7)(C) reported that a few days after (b) (7)(C) had returned from the trip (b) (7)(C) submitted a travel voucher information worksheet to (b) (7)(C) for (b) (7)(C) to complete (b) (7)(C) voucher. (b) (7)(C) said (b) (7)(C) specifically listed (b) (7)(C) actual return date rather than the one listed on (b) (7)(C) travel orders. In addition, SA (b) (7)(C) provided (b) (7)(C) with copies of (b) (7)(C) receipts, which included one from the airport noting the day (b) (7)(C) returned from Norway. (b) (7)(C) said (b) (7)(C) could not recall either reviewing or signing the final voucher for his reimbursement payment. (Attachment 9)

(b) (7)(C) reported (b) (7)(C) completed the travel vouchers for SA (b) (7)(C) based upon the receipts provided to (b) (7)(C) along with the information contained in the travel orders. We also noted that (b) (7)(C) was responsible for completing the time and attendance reports for SA (b) (7)(C) (b) (7)(C) explained (b) (7)(C) "overlooked" the annual leave and was "careless" when (b) (7)(C) completed SA

(b) (7)(C)'s travel voucher. (b) (7)(C) added "it was an honest mistake" and also stated, "I feel stupid, it's right there." (Attachment 10)

(b) (7)(C) explained that (b) (7)(C) used the amounts and figures provided by SA (b) (7)(C), along with the information contained in (b) (7)(C) travel orders, to complete the travel voucher for (b) (7)(C) (b) (7)(C) said (b) (7)(C) would have also checked the receipts to ensure they added up to the actual or correct amount(s). According to (b) (7)(C), (b) (7)(C) never reviewed (b) (7)(C) actual travel itinerary or flight information, and admitted that perhaps (b) (7)(C) should have done so, and did not recall having any discussions with (b) (7)(C) while (b) (7)(C) processed this voucher for (b) (7)(C) trip. (Attachment 11)

(b) (7)(C), (b) (7)(C), OLE Northeast Division, said (b) (7)(C) had no firsthand knowledge of any aspect of the trip to Norway and, as a result, could not have realized there were overpayments of per diem expenses. (b) (7)(C) explained as part of (b) (7)(C) review and approval of the vouchers for SA (b) (7)(C) and SA (b) (7)(C) (b) (7)(C) would have checked the figures and total amounts and asked (b) (7)(C) if all the information was correct and included in the package. (b) (7)(C) said (b) (7)(C) did not recall seeing any information regarding annual leave for SA (b) (7)(C) and was not aware of any issues or concerns with the voucher for SA (b) (7)(C) (Attachments 12 and 13)

We determined that along with SA (b) (7)(C) two other NOAA employees took annual leave before the conference, one of which was (b) (7)(C) who had also conducted official meetings prior to the SGFETW. In addition, we found one GCEL employee took annual leave after the conference. In each of these instances there were no additional or unauthorized costs charged to the government or the AFF. (Attachment 5)

We established that the nine employees who arrived early either assisted with preparations for the SGFETW and/or also gave presentations during the conference. There were also nine employees (some of the same individuals who had arrived early) who stayed after the conference was completed. However, in each of these instances there was no consistency with either the arrival or departure dates among the employees. Regardless, the travel dates listed on their travel orders and vouchers corresponded to each of the individual's itineraries. (Attachments 2, 3 and 5)

(b) (7)(C) stated that (b) (7)(C) could not recall if everybody who attended the SGFETW had also attended, or was authorized to attend, Nor-Fishing 2008. (b) (7)(C) noted the length of stay(s) would have been approved on the travel orders for each employee. (b) (7)(C) was not sure why details about the second conference were only included on some of the travel orders. (Attachment 14)

During August 2008, (b) (7)(C) submitted an invoice to NOAA for $6,137.16 for (b) (7)(C) travel expenses for this trip as part of (b) (7)(C) contract with GCEL to perform services as a (b) (7)(C) (b) (7)(C) in fisheries enforcement cases. (b) (7)(C) was reimbursed this amount later that same month.

(b) (7)(C)'s dates of travel were August 3-12, 2008, including a "stop-over" in Amsterdam, which was not charged to the government. (Attachment 15)

GFETW: Kuala Lumpur, Malaysia

The GFETW was held July 18-22, 2005 with registration and a Facilitator's Meeting conducted on July 17, 2005. We noted that NOAA/GCEL took a lead role in this conference since then (b) (7)(C) for Enforcement and Litigation (AGCEL) (b) (7)(C) served as the (b) (7)(C) of the International MCS Network, which was one of the co-sponsors of the event. (Attachment 16)

We found no improper or unauthorized expenses charged to NOAA for this conference. Three employees claimed annual leave after the event, but no additional cost to the government was incurred. In addition, two other employees stayed over the weekend in Malaysia after the conference was completed, but they did not claim any per diem expenses. One employee arrived three days before the conference, and stayed three days after the conference was completed, but did not claim any per diem expenses during these periods. We did note that there were no references to annual leave in either the travel orders or voucher for this particular employee. (Attachment 17)

We found seven employees had arrived before the conference began and eight stayed after the conference was completed. We also found there was no consistency with the dates for arrival or departure for the conference. Regardless, the travel dates listed on the approved orders and vouchers corresponded with the itineraries of each of the individuals, which included one employee who returned home through Tokyo over a weekend and another individual who returned via Singapore and who left Malaysia two days after the conference was completed. (Attachment 17)

We determined fifteen NOAA employees traveled to Malaysia and attended the GFETW conference. Eleven of these individuals were reimbursed a total of $56,316.83 from the NOAA AFF for their travel costs. Travel costs of $22,031.65 for four NOAA employees were paid with NOAA General Fund accounts instead of the AFF. (Attachment 17)

We also determined (b) (7)(C) and (b) (7)(C) traveled to Malaysia for this conference. However, we did not develop any evidence that (b) (7)(C) received reimbursement for the travel expenses charged on an invoice submitted in August 2005 as part of a separate contract in which he had provided services as a (b) (7)(C). We found no evidence (b) (7)(C) received reimbursement of the $3,594.24 travel expenses to Malaysia. . NOAA also reported they did not have any record for any travel expenses claimed by (b) (7)(C) for any trips at any time. (Attachments 15 and 18)

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OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
(b) (7)(C) (GS (b) (7)(C)) GS (b) (7)(C)) NOAA Office of Acquisitions and Grants Silver Spring, MD 20910	FOP-WF-10-1254-I **TYPE OF REPORT** ☐ Interim ☒ **Final**

BASIS FOR INVESTIGATION

On August 17, 2010, we received an anonymous telephonic complaint that National Oceanographic and Atmospheric Administration (NOAA), National Weather Service (NWS) employees (b) (7)(C) and (b) (7)(C) illegally redirected NOAA contracts to (b) (7)(C) (b) (7)(C) through (b) (7)(C) employees (b) (7)(C) and (b) (7)(C) The complaint also alleged (b) (7)(C) and (b) (7)(C) sent government materials from their NOAA email account to (b) (7)(C) personal email account in an attempt to help facilitate the alleged contract fraud. (Attachment 1)

RESULTS/SUMMARY OF INVESTIGATION

We found (b) (7)(C) s contracts with NOAA were General Services Administration (GSA) blanket purchase agreement[1] (BPA) contracts. We found all standard procurement, pre-solicitation, and competition procedures were followed. We also acquired and reviewed the government email files assigned to (b) (7)(C) and (b) (7)(C) but found no evidence to support the allegation that (b) (7)(C) and (b) (7)(C) sent government materials from their NOAA email account to (b) (7)(C) personal email account in an attempt to help facilitate the alleged contract fraud.

[1] A blanket purchase agreement (BPA) is a simplified acquisition method that government agencies use to fill anticipated repetitive needs for supplies or services. Essentially, BPAs are like "charge accounts" set up with trusted suppliers. BPAs help trim the red tape associated with repetitive purchasing.

Distribution: OIG _x_ Bureau/Organization/Agency Management __ DOJ: ____ Other (specify):

(b) (7)(C)	Date: 5/22/13	Signa (b) (7)(C) (b) (7)(C)	Date: 5/21/13
(b) (7)(C), Special Agent		Na (b) (7)(C)	

FOR OFFICIAL USE ONLY

METHODOLOGY

This case was conducted through interviews, review of contract files, investigative research, and review of electronic evidence.

DETAILS OF INVESTIGATION

We reviewed email records from the National Weather Service (NWS) for the period January 1, 2010 to December 31, 2010 for NWS employees (b) (7)(C) and (b) (7)(C) Forensic analysis found no evidence to support the allegation that (b) (7)(C) or (b) (7)(C) sent NOAA contracts data via personal email accounts. (Attachment 2 & 3)

We interviewed (b) (7)(C) who stated in 2010 was the (b) (7)(C) (b) (7)(C) for NOAA Link, which is a firm fixed price contract vehicle for NOAA IT projects. (b) (7)(C) said one of the companies NOAA utilized in building NOAA Link was called eKohs, and that eKohs had a working relationship with which is how (b) (7)(C) met (b) (7)(C), the (b) (7)(C) of (b) (7)(C) said NOAA had a bridge contract called Landing Zone which was put in place because there were IT support contracts in place that were ending that would not transition to NOAA Link, and in order to facilitate a timely transition from Landing Zone to NOAA Link, a company needed to be chosen quickly so that NOAA would have an IT contractor already in place for the transition. (b) (7)(C) said began to bid the contracts for Landing Zone and, ultimately NOAA Link, but realized that utilizing normal contracting procedures would not allow NOAA to award an IT support contract in a timely manner. Therefore, was chosen from a pool of 8a companies that bid on the Landing Zone contract, and utilizing a BPA allowed NOAA to award the contract to without further competition. (Attachment 4)

(b) (7)(C) went on to explain that NOAA had a BPA, which was an existing GSA contract vehicle with USDA. That BPA allowed them to award the contract to without competition. (b) (7)(C) further stated was directed by then (b) (7)(C) (b) (7)(C) (b) (7)(C) to reduce costs associated with selecting companies to fulfill IT work requirements. (b) (7)(C) said did not know (b) (7)(C) before the Landing Zone contract, nor did have a personal relationship with (b) (7)(C). (Attachment 4)

We also interviewed (b) (7)(C), and (b) (7)(C) ( ) of (b) (7)(C) (b) (7)(C) (b) (7)(C) stated that fulfills IT contracts for federal government entities. (b) (7)(C) said company learned of the NOAA IT contracting opportunity through Federal Business Opportunity (FedBizOps), and that followed normal processes based on the requirements of the contract and submitted a proposal. (b) (7)(C) stated a former employee named (b) (7)(C) was responsible for handling the NOAA account, including submitting the proposal. According to (b) (7)(C) (b) (7)(C) has returned to native (b) (7)(C) to (b) (7)(C) (b) (7)(C) said did not get personally involved in the NOAA contract, nor does

[redacted] become involved in negotiating any contracts. Rather, [redacted] relies on his employees to carry out these tasks. [redacted] said he knew [redacted] and [redacted] through the work [redacted] did on the NOAA contract but [redacted] did not know them on a personal level. (Attachment 5)

On December 19, 2012, we received four NOAA contract files related to [redacted]. Our review looked at the type of contract, any pre-solicitation requirements, and competition requirements for the contracts awarded to [redacted]. The work contracted by NOAA to [redacted] was done under an existing GSA contract, GS[redacted], and United States Department of Agriculture Blanket Purchase Agreement (BPA), [redacted] between USDA and [redacted] in order for USDA to award orders to Service Disabled Veteran Owned Small Business (SDVOSBC). A review of the contract file indicates all standard procurement, pre-solicitation, and competition procedures were followed according to the terms and conditions of the competed GSA BPA contract awarded to [redacted] Specifically, Federal Acquisitions Regulation (FAR) §6.302-1(a)(2)(ii/iii) states supplies or services may be considered to be available from only one source in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment when it is likely that award to any other source would result in substantial duplication of cost to the Government that is not expected to be recovered through competition. (Attachment 6 & 7)

Our review of the contract files indicates NOAA's actions were consistent with the rules set forth in the FAR. Furthermore, use of preapproved 8a contractors as part of a GSA BPA award make competition concerns moot since GSA has already completed the competitive process in establishing the BPA. (Attachment 6 & 7)

TABLE OF ATTACHMENTS

Attachment	Description	Serial
1	Request for Email Dated March 9, 2011	5
2	IRF Digital Data Analysis	8
3	Redirecting NOAA Contracts Action Memo	1
4	Interview of (b) (7)(C)	14
5	Interview of (b) (7)(C)	19
6	Contract Files Received from NOAA	21
7	Contract File Review	22

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
Alleged Whistleblower Reprisal by National Institute of Standards and Technology (NIST), Gaithersburg, MD, Officials Against NIST Employee (b) (7)(C)	HQ-HQ-11-0072-I
	TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On October 29, 2010, (b) (7)(C) NIST (b) (7)(C) (b) (7)(C), alleged to us that (b) (7)(C) was subjected to reprisal actions by NIST officials, (b) (7)(C), NIST (b) (7)(C) for Management Resources, and (b) (7)(C), NIST (b) (7)(C) (b) (7)(C) (b) (7)(C), because (b) (7)(C) had previously reported to the us that MacArthur & Baker International, Inc. (MBI), a government contractor, had engaged in alleged contract fraudulent activities. In addition to being a (b) (7)(C), (b) (7)(C) NIST's internal audit group in the Office of Financial Resource Management. (b) (7)(C) served as the (b) (7)(C) for the NIST-MBI contract from (b) (7)(C)

Based on deficiencies and suspected fraud (b) (7)(C) identified against MBI, an oral stop-work order was issued by NIST's (b) (7)(C) (b) (7)(C) on May 11, 2010, followed by the NIST (b) (7)(C) submitting an OIG hotline fraud complaint on May 19 (OIG case 10-0705), a written stop-work order on June 2 and a termination for cause notice to MBI on July 15. Specifically, (b) (7)(C) reported the following reprisal actions to us that (b) (7)(C) alleged were done because of (b) (7)(C) assistance in the submission of the OIG hotline complaint on May 19:

1. (b) (7)(C) and (b) (7)(C) staff were forced to move out of their NIST office spaces and had to move into a remote trailer;
2. (b) (7)(C) threatened to outsource her NIST position; and

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[1] (b) (7)(C) left NIST in (b) (7)(C) and is currently the (b) (7)(C) (b) (7)(C) (b) (7)(C).
[2] (b) (7)(C) left NIST in (b) (7)(C) and is currently the (b) (7)(C) (b) (7)(C)

Distribution: OIG X Bureau/Organization/Agency Management ____ DOJ: ____ Other (specify):			
Signature of Case Agent: (b) (7)(C) (b) (7)(C)	Date: 5/15/13	(b) (7)(C)	Date: 5/15/13
N		Name/Title: (b) (7)(C) Office of Special Investigations and Analysis	

3. (b) (7)(C) directed an internal investigation that targeted (b) (7)(C)'s actions with respect to (b) (7)(C) OIG disclosure against MBI.

Subsequent to (b) (7)(C) October 29, 2010, disclosure to OIG, (b) (7)(C) reported an additional allegation to us that on (b) (7)(C) 2010, (b) (7)(C) was given a poor Annual Performance Appraisal by (b) (7)(C) which did not reflect (b) (7)(C) true performance and (b) (7)(C) believed was as a result of (b) (7)(C) disclosure regarding MBI.

Prohibited Personnel Practices, 5 U.S.C. § 2302(b)(8), discusses whistleblower protection and states, in part, that a federal employee with personnel authority may not "take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant because of any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences a violation of any law, rule, or regulation."

RESULTS/SUMMARY OF INVESTIGATION

The investigation into (b) (7)(C)'s allegations was commenced on October 29, 2010, but was placed on indefinite hold at the request of (b) (7)(C) on June 28, 2011, when (b) (7)(C) notified us that (b) (7)(C) whistleblower reprisal complaint was being reviewed by the U.S. Office of Special Counsel (OSC). On July 8, 2011, (b) (7)(C) notified us that OSC had accepted (b) (7)(C) complaint and would conduct an investigation. (b) (7)(C) had previously informed us that, in addition to reporting the whistleblower reprisal allegations to us, (b) (7)(C) had also reported the same to OSC. Under the Civil Service Reform Act and the Whistleblower Protection Act, the OSC's primary mission is to safeguard the merit system by protecting federal employees from prohibited personnel practices, especially reprisal for whistleblowing.

We attempted to contact (b) (7)(C) repeatedly in September and October 2012, but these attempts were unsuccessful and (b) (7)(C) did not return our calls and emails. On October 9, 2012, we contacted OSC and attempted to confirm that they had opened an investigation into (b) (7)(C)'s complaint, but the OSC representative with whom we spoke would neither confirm nor deny the existence of an OSC investigation on the matter.

Accordingly, the allegations were not thoroughly investigated by us and subsequent findings of each allegation were not determined. We note, however, that since initiating our investigation, (b) (7)(C) and (b) (7)(C) left NIST and DOC. This report details the investigative work we conducted prior to suspending our efforts.

METHODOLOGY

This case was initiated upon the preliminary interview of (b) (7)(C) on October 29, 2010, prior to the case being assigned to an OIG investigator. Upon an investigator being assigned in February 2011, (b) (7)(C) was also interviewed on April 26 and April 28, 2011. Because the details of all four allegations had not been completely discussed with (b) (7)(C) at the conclusion of the April 28 interview, another interview was needed. Our attempts to schedule this interview with (b) (7)(C) were not successful. We

reviewed the government email accounts of NIST officials. Additionally, we reviewed the investigative documents of the NIST internal inquiry allegedly targeting (b) (7)(C)

DETAILS OF INVESTIGATION

Due to the investigative work not being completed, no findings as to the substantiation of each allegation could be rendered. The following outlines the investigative work conducted by us.

OIG Interviews of (b) (7)(C)

On October 29, 2010, we conducted a preliminary interview with (b) (7)(C) to ascertain the background of (b) (7)(C)'s complaint and to obtain basic information of (b) (7)(C) reprisal allegations for an initial analysis prior to assignment to an OIG investigator. (b) (7)(C) relayed numerous events providing a chronology of the actions of OIG investigators upon receipt of the May 19, 2010, complaint regarding MBI (OIG case 10-0705) and the actions by (b) (7)(C) and (b) (7)(C) which led up to the reprisal actions being taken against (b) (7)(C) With respect to (b) (7)(C) allegations of reprisal, (b) (7)(C) provided the following:

- According to (b) (7)(C) on June 28, 2010, (b) (7)(C) and (b) (7)(C) staff were moved out of their regular building offices and into an outside trailer. (b) (7)(C) recalled that (b) (7)(C) made this decision.

- On September 16, 2010, during a meeting with (b) (7)(C) told (b) (7)(C) that (b) (7)(C) was gaining a reputation of being combative and having an "OIG style" when dealing with customers. (b) (7)(C) attempted to discuss this assertion, whereupon, (b) (7)(C) stated, "You know, we could just outsource your office..." (b) (7)(C) took this as a threat to terminate (b) (7)(C) employment because (b) (7)(C) had disclosed information to the OIG and cooperated with the OIG investigation.

- On October 15, 2010, (b) (7)(C) told (b) (7)(C) that the OIG investigation had been closed with no findings.

    - Thereafter, sometime between October 15 and October 21, (b) (7)(C) told (b) (7)(C) that (b) (7)(C) had been informed, in writing, that OIG's investigation found no wrongdoing on the part of MBI. (b) (7)(C) subsequently told (b) (7)(C) that (b) (7)(C) had misspoken in that the OIG's case had not substantiated any fraud being committed by MBI.

    - (b) (7)(C) stated that on October 19, 2010, (b) (7)(C) of NIST's Office of Information Systems, contacted (b) (7)(C) and stated that (b) (7)(C) (b) (7)(C) needed all of the details about the MBI contract issue, the allegations sent to the OIG, and some information regarding the stop-work order.

    - Later, (b) (7)(C), who works for (b) (7)(C) informed (b) (7)(C) that (b) (7)(C) had sent (b) (7)(C) an email on October 18, asking (b) (7)(C) to do an internal inquiry about MBI and actions by (b) (7)(C) and others. (b) (7)(C) told (b) (7)(C) that (b) (7)(C) was attempting to find out if OIG or (b) (7)(C) "messed up" regarding the handling of the MBI matter. (Attachment 1)

On April 26, 2011, we interviewed (b) (7)(C) The following information was provided by [redacted] regarding the four allegations:

- ***Move to Trailer:***
  - (b) (7)(C) stated that [redacted] office was located on the [redacted] floor of building 101 at NIST when [redacted] first started working there in (b) (7)(C)
  - In March 2010, plans were in place to hire [redacted] staff members to work for (b) (7)(C) and the new employees were to be moved into empty office spaces also on the [redacted] floor, building 101. [redacted] already had [redacted] employees located on the [redacted] floor of the building. The plan was to consolidate [redacted] entire office on the [redacted] floor.
  - (b) (7)(C) recalled that in April 2010, [redacted] was informed by (b) (7)(C) that [redacted] had changed [redacted] mind and was planning on relocating (b) (7)(C) and [redacted] staff of [redacted] persons to a conference room on the [redacted] floor. The conference room was to be reconfigured into an office with cubicles.
    - In (b) (7)(C) opinion, the space was large enough for only [redacted] people; therefore, [redacted] people could not effectively fit into the space.
    - Furthermore, the type of sensitive work to be conducted by [redacted] office would require more privacy than would be available in this office space.
    - (b) (7)(C) voiced [redacted] displeasure to the (b) (7)(C) regarding [redacted] decision.
    - (b) (7)(C) stated that [redacted] asked [redacted] why [redacted] had changed [redacted] mind and [redacted] told [redacted] that [redacted] planned on hiring additional finance division staff for the accounts receivable department and [redacted] wanted to use the office space for them.
  - Later that same month, the (b) (7)(C) told (b) (7)(C) that [redacted] had changed [redacted] mind and decided to move (b) (7)(C) and [redacted] staff to building 411.
    - (b) (7)(C) commented that the new space in building 411 was an identical conference room, maybe even smaller. (b) (7)(C) determined this space was also inadequate.
  - While discussing the situation with [redacted] staff, one of them suggested that they move into building [redacted], which is a trailer located next to building 101.
    - (b) (7)(C) noted that the trailer was private unlike the two conference rooms being proposed.

- (b) (7)(C) approved the move once was informed that the structure was not a temporary structure and the move would be well within budget. The move was accomplished at the end of May 2010.

- (b) (7)(C) commented that having their offices in the trailer, building is not ideal but it is better than the two spaces being proposed.

- (b) (7)(C) stated that, as of the date of this interview, the office spaces on the floor of building 101 have not been occupied since the additional staff has not been hired. informed us that has not asked about moving to the spaces on the floor, building 101, as originally planned because is afraid of

- ***Threat to Outsource (b) (7)(C) Office:***

  - (b) (7)(C) stated that during a weekly meeting in August 2010, criticized (b) (7)(C) and office staff and told that office is supposed to be customer service oriented and to help in implementing controls. stated to that office was not supposed to be a "gotcha office."

    - recalled that a few days prior to this meeting, had looked into a CFO survey that had been funded through the use of a training voucher. Additionally, (b) (7)(C) stated that the amount of the transaction of $38,000, appeared to be an excessive amount for the services rendered. In order to investigate this transaction, (b) (7)(C) had interviewed the NIST officer, who according to (b) (7)(C) stated that (b) (7)(C) had authorized the purchase. (b) (7)(C) was trying to investigate the transaction to determine whether it was an improper payment.

    - (b) (7)(C) believes that it was investigation of this matter combined with previous involvement in the OIG complaint regarding MBI in May 2010, which resulted in making the remark about outsourcing office.

  - On September 16, 2010, during a meeting with (b) (7)(C) told (b) (7)(C) that had received complaints about (b) (7)(C) combative, OIG style of customer service. When confronted for examples, was unable to provide any.

    - (b) (7)(C) told (b) (7)(C) that the only confrontation issue had been involved with lately was interview of the NIST officer in August. According to (b) (7)(C) as was attempting to explain the issue, (b) (7)(C) remarked, "you know, we can just outsource your office."

    - (b) (7)(C) believes that, although has no knowledge of NIST outsourcing any positions, (b) (7)(C) had the authority to outsource an office.

- ***Internal Investigation Against*** [redacted].
  - On October 15, 2010, [redacted] informed [redacted] that MBI had appealed the contract termination and [redacted] directed [redacted] to pay the MBI invoices totaling $180,000. Further, [redacted] told [redacted] that the OIG investigation was closed with no findings.
    - A few days later, [redacted] changed [redacted] statement and told [redacted] that the OIG investigation had been closed with no findings of wrongdoing.
    - When [redacted] directed [redacted] to pay the invoices, [redacted] told [redacted] that even though MBI had appealed, the appeal must go through the Civilian Board of Contract Appeals and be approved for payment. [redacted] recommended that they speak to NIST attorneys before proceeding.
    - [redacted] told [redacted] that [redacted] would put something in writing to [redacted] to which [redacted] believed [redacted] meant that [redacted] would put the direction in writing so that [redacted] would have to do as [redacted] had directed.
  - On October 19, 2010, [redacted] received an email from [redacted]. The email thread had commenced the previous day and had gone through [redacted]
    - [redacted] stated that the subject of the email was, "Getting to the facts of the MBI case."
      - [redacted] told OIG that in the email [redacted] stated that [redacted] directed [redacted] to conduct an independent inquiry on the MBI issue.
      - [redacted] recalled thinking that [redacted] had predetermined the outcome of an inquiry because [redacted] used the term "wrongfully accused" in reference to MBI in the email.
  - Later on October 19, 2010, [redacted] was contacted by [redacted] who requested to meet with [redacted] on that day.
    - [redacted] told [redacted] that the purpose of the inquiry was to develop lessons learned for training initiatives to help other [redacted] and [redacted] to not make the same mistake.
    - [redacted] recalled that during the meeting with [redacted], [redacted] stated that "they" wanted to know whether the OIG or [redacted]'s office messed up. [redacted] believed that [redacted] was referring to [redacted] and [redacted]
  - A few days later, [redacted] interviewed [redacted] again for a couple of hours.

- During this interview, [redacted] requested that [redacted] turn over all of [redacted] MBI files. [redacted] remarked that if the scope of the inquiry was to analyze the contract termination, [redacted] had those records and should not need all of the MBI records.
    - [redacted] informed [redacted] that some of the other records were being used by the OIG for a second investigation and, therefore, [redacted] did not believe that [redacted] could release those records to [redacted].
    - Further, [redacted] told [redacted] that if part of the purpose of the inquiry was to determine if the OIG messed up, it was not a valid purpose. [redacted] informed [redacted] that the NIST [redacted] was not authorized to investigate the OIG.

- During a one-on-one meeting with [redacted] later in the month of October 2010, he directed [redacted] to turn over any records that [redacted] requested. [redacted] informed [redacted] that the records included ones being used by the OIG in an investigation and that [redacted] did not have the authority to investigate an OIG investigation.
    - Further, [redacted] told [redacted] that [redacted] had found out that [redacted] had spoken with [redacted] about conducting the inquiry prior to the time of [redacted]'s email request. This had caused [redacted] to question who and why the inquiry was initiated.
    - Additionally, [redacted] told [redacted] that [redacted] did not have the authority to direct [redacted] to pay the invoices to MBI.

- [redacted] recalled that [redacted] turned over all of [redacted] MBI records on or about Monday, October 25. [redacted] requested [redacted]'s personal notes which [redacted] had taken during [redacted] interviews with the OIG. [redacted] stated to us that [redacted] turned over some of [redacted] notes from the OIG interviews but not all of them. [redacted] kept the ones [redacted] felt were sensitive.

- Later, after [redacted] had the opportunity to review the documents provided by [redacted] came to [redacted] with a draft report. [redacted] told [redacted] that [redacted] had not given MBI a second chance.
    - [redacted] told [redacted] that [redacted] had given MBI a second and even a third chance. [redacted] recommended that [redacted] interview the previous [redacted] for the MBI contract. This [redacted] no longer worked at NIST.
    - [redacted] told [redacted] that if [redacted] only reported on what documents [redacted] provided [redacted] without interviewing the previous [redacted] would not be getting the entire story.

- (b) (7)(C) stated that (b) (7)(C) inquiry final report was toned down and only stated that the (b) (7)(C) should have maintained better notes.
  - (b) (7)(C) stated that (b) (7)(C) heard that (b) (7)(C) did interview the previous (b) (7)(C)
  - (b) (7)(C) remarked that (b) (7)(C) has never seen any training materials produced or training given using anything learned from (b) (7)(C) inquiry. (b) (7)(C) believes that this shows that (b) (7)(C) was the focus of the inquiry and it was a method of retaliation. (Attachment 2)

(b) (7)(C) could not finish the interview of April 26, 2011, therefore, a follow-up interview was scheduled. (b) (7)(C) provided the following information on April 28:

- ***Poor Performance Appraisal:***
  - (b) (7)(C) related that, for this Annual Performance Appraisal for the period ending September 30, 2010, (b) (7)(C) was (b) (7)(C) supervisor and (b) (7)(C) was (b) (7)(C) (b) (7)(C) supervisor. Both, (b) (7)(C) and (b) (7)(C) signed the appraisal. (b) (7)(C) believed that (b) (7)(C) drafted the appraisal.
  - (b) (7)(C) stated that (b) (7)(C) received a mid-year review in April 2010. (b) (7)(C) noted that (b) (7)(C) received the highest marks of "Contributor or Higher" on it. (b) (7)(C) stated that the write-up, which was drafted by (b) (7)(C) listed a list of significant performance accomplishments by (b) (7)(C)
    - (b) (7)(C) stated that (b) (7)(C) documented performance went from "great" on (b) (7)(C) mid-year to "satisfactory" on (b) (7)(C) annual appraisal.
    - (b) (7)(C) recalled that (b) (7)(C) was noted as a valued member of the staff when both (b) (7)(C) and (b) (7)(C) recommended (b) (7)(C) to serve as NIST's representative on the DOC (b) (7)(C) as a show of their confidence in (b) (7)(C) abilities.
  - When (b) (7)(C) received (b) (7)(C) annual appraisal on (b) (7)(C) 2010, (b) (7)(C) asked (b) (7)(C) what (b) (7)(C) had based (b) (7)(C) write-up on. According to (b) (7)(C) (b) (7)(C) stated that (b) (7)(C) used (b) (7)(C) personal knowledge of (b) (7)(C) performance and work products, as well as emails (b) (7)(C) had seen.
  - (b) (7)(C) stressed to us that (b) (7)(C) performance for this period was totally exemplary. (b) (7)(C) recalled that the only adverse occurrence during the reporting period was the aforementioned interview with the NIST (b) (7)(C) officer in August. Other than that, (b) (7)(C) believes that the only activity that could have caused the negative appraisal, resulting in grades of "satisfactory", was (b) (7)(C) role in the MBI whistleblower complaint to OIG.

- (b) (7)(C) received an overall grade of "(b) (7)(C)", which is a mid-level grade. There are (b) (7)(C) overall grades ranked above it – "(b) (7)(C)" and "(b) (7)(C)".

- (b) (7)(C) informed us that (b) (7)(C) had filed an EEO complaint with DOC in February 2011. (b) (7)(C) noted that (b) (7)(C) included this allegation regarding (b) (7)(C) performance appraisal in the EEO complaint.

  - (b) (7)(C) stated that (b) (7)(C) EEO investigation is on hold pending the assignment of an investigator.

- (b) (7)(C) asserted that the performance bonus is tied to the overall grade received on the performance appraisal. (b) (7)(C) stated that the bonus (b) (7)(C) received was lower because of the overall grade (b) (7)(C) received. (b) (7)(C) stated that (b) (7)(C) received $1,800. If (b) (7)(C) overall grade had been "(b) (7)(C)", (b) (7)(C) bonus would have been between $4,000 and $5,000. Likewise, if (b) (7)(C) overall grade had been "(b) (7)(C)", (b) (7)(C) bonus would have been approximately $7,000.

- (b) (7)(C) told us that (b) (7)(C) told (b) (7)(C) that (b) (7)(C) concurred with the appraisal. (b) (7)(C) did not speak with (b) (7)(C) about the appraisal. (Attachment 3)

Results of NIST Internal Investigation

Our investigation found that (b) (7)(C) NIST (b) (7)(C) (b) (7)(C), did conduct an internal inquiry. Because the OIG investigation was placed on hold in June 2011, (b) (7)(C) was not interviewed. Prior to the case being placed on hold, in anticipation of an interview, we contacted (b) (7)(C) and requested that (b) (7)(C) provide any documents pertaining to the inquiry that (b) (7)(C) completed, which (b) (7)(C) did.

We found that on or about October 18, 2010, (b) (7)(C) was assigned to conduct an inquiry into the MBI contract termination issue. The file that (b) (7)(C) provided to us included the report of (b) (7)(C) findings that (b) (7)(C) forwarded to (b) (7)(C) and (b) (7)(C) on October 29, 2010.

An email search of (b) (7)(C)'s government email account showed that on October 18, 2010 (b) (7)(C) sent an email to (b) (7)(C) requesting an inquiry be conducted. (b) (7)(C) stated, in part,

> "Given that the OIG has now determined that there was no wrong doing on the part of MBI, I would now like to gain a better understanding of our own handling of this situation. Please initiate a fact finding inquiry by an independent third party that will examine the following questions:
>
> - What were the circumstances and/or evidence that led us (NIST) to believe that MBI was not performing its contracted obligations?
> - What was the sequence of events that led to the termination of MBI?
> - Where were the decision points and what information did we have in making that decision?
> - What validation of the accusations of wrong doing did we conduct before we terminated the contract?

- What could we have done differently or better to prevent NIST from being in the situation of having to make amends to this company that was apparently wrongly accused?

This whole situation with MBI is at this point water under the bridge but I am hoping that the information gathered through this inquiry will help us develop lessons learned for Contracting Officers and COTRs on dealing with potential problems with contractors." (Attachments 4 and 5)

A review of (b) (7)(C)'s file provided to us, showed that (b) (7)(C) conducted at least seven interviews with both current and former NIST employees, including the former (b) (7)(C). Two of the interviews were conducted with (b) (7)(C). The file also contained many documents related to the MBI contract and its subsequent termination. (Attachment 6)

In (b) (7)(C) report to (b) (7)(C) and (b) (7)(C) dated October 29, 2010, (b) (7)(C) outlined the circumstances that led up to the MBI contract termination. (b) (7)(C) noted that, although the former COTR and CO failed to document all of the issues, there appeared to be numerous instances wherein MBI was late with deliverables and/or provided poor quality deliverables. (b) (7)(C) acknowledged that these frustrations led up to the on-site visit by NIST which yielded evidence that MBI was not satisfying contract obligations and lied to NIST regarding the status of deliverables. In addition to the failure to maintain documentation of MBI's inadequate performance, (b) (7)(C) found that (b) (7)(C) should have made the Small Business Administration aware of the problems with MBI. (b) (7)(C) did not find any discrepancies related to (b) (7)(C)'s involvement in the MBI issue and found merit to (b) (7)(C)'s observations and concerns about MBI. (Attachments 7 & 8)

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

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OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
(b) (7)(C), ES (b) (7)(C) (b) (7)(C) **National Marine Fisheries Service** Tampa, Florida	FOP-WF-11-0075-I TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On November 13, 2010, the OIG received a complaint alleging manipulation of the competitive bid process related to a cooperative agreement for stock assessment program funds from the Science and Technology division at the National Oceanic Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) Headquarters. The complaint alleged (b) (7)(C), the (b) (7)(C) NOAA (b) (7)(C) Fisheries, and present (b) (7)(C) of the (b) (7)(C) (b) (7)(C) at the University of South Florida (USF), and (b) (7)(C) the (b) (7)(C) (b) (7)(C) for NMFS, conspired to improperly direct the award to USF. The award provided funding for a teaching position at USF that was subsequently filled by (b) (7)(C) Based on the allegation, it appeared (b) (7)(C) and (b) (7)(C) may have conspired to create a federal source of funding for a position eventually occupied by (b) (7)(C) and did so by misuse of position and improper post-employment activities in possible violation of 18 USC §§207, 208, 641 and 1001, and 5 CFR §§2635.701-705; §2637, §2641. (Attachment 1)

RESULTS/SUMMARY OF INVESTIGATION

The allegations are unsubstantiated. (b) (7)(C) s post-employment with the University of South Florida (USF) was in an (b) (7)(C) position, not because of any grant awarded by NMFS to USF. We verified that USF hired another person using money from NOAA Financial Assistance Award #NA10NMF4550468.

Distribution: OIG ___ Bureau/Organization/Agency Management ___ DOJ: ___ Other (specify):

(b) (7)(C) (b) (7)(C)	Date: 2/15/13	(b) (7)(C) Name/ Title: (b) (7)(C) OSI	Date: 2/15/2013

METHODOLOGY

This case was conducted through witness interviews and examining the grant file for NOAA Financial Assistance Award #NA10NMF4550468.

DETAILS OF INVESTIGATION

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (P.L. 109-479, §217), enacted on January 12, 2007, directed a study be conducted on assessing the number of individuals with post-baccalaureate degrees who have the ability to conduct high-quality scientific research in fisheries stock assessment and related fields. This study was conducted in 2008, when (b) (7)(C) was the (b) (7)(C) Fisheries, NMFS. The report assessed the type of training in fishery science, the number of species of fish that the fishing industry encounters and the number of personnel properly trained in fishery science. The report concluded that the fishing industry had a shortage of training in the fishing industry and the report called for more faculty dedicated to advanced training in fishery science. (Attachment 2)

On or about June 30, 2010, (b) (7)(C), on behalf of the University of South Florida (USF), submitted an unsolicited proposal for what later became the basis for this cooperative agreement. NMFS officials said the normal procedure for unsolicited proposals was to apply that application for federal assistance to a funding opportunity; in this case, they did so under funding opportunity number NOAA-NMFS-FHQ-2010-2002723 which was opened as a result of receiving the unsolicited proposal. As a result, on or about October 8, 2010, a cooperative agreement was awarded to USF for funding under Catalog for Domestic Assistance (CFDA) #11.455. The period of performance was October 1, 2010 to July 31, 2011 with 100% federal cost of $293,635. There was no matching share. The authority for the funding comes from 16 USC §753a and 15 USC §1540, which grants statutory authority "to provide support through grants and cooperative agreements to support partnerships between the Federal government and institutions of research and higher education for cooperative science and education on marine issues...". The award was made on a non-competitive basis. (Attachment 3)

The Statement of Work (SOW) states USF was to provide guidance and instruction in fish stock assessment and population dynamics by providing professional services to: (a) develop academic training, mentoring and research opportunities in population dynamics and stock assessment science for graduate students seeking to gain fish stock assessment expertise; and (b) analyze actual data sets to develop master and doctoral dissertation projects. NOAA's obligations were to fund a faculty position, team-teach a specific course staffed by NOAA employees at the Southeastern Fisheries Science Center (SEFSC), and fund fellowships of $20,000 each for graduate student research. The SOW requires the person hired for the faculty position to have a Ph.D. in biological science "or field relevant to the population dynamics research conducted by NOAA Fisheries..." and possess "considerable expertise in developing and teaching population dynamics and stock assessment science...". The SOW nearly exactly matches the language used in a legal agreement signed between USF and NMFS in which (b) (7)(C) signed for USF and (b) (7)(C) for NMFS. (Attachment 3)

On July 8, 2011, we interviewed NOAA [redacted] confirmed that both [redacted] and [redacted] had [redacted] from their positions at NOAA. [redacted] said [redacted] in [redacted] and [redacted] in [redacted]. (Attachment 4)

On September 9, 2011, we interviewed [redacted] for the University of South Florida (USF). [redacted] said the University Audit Compliance (UAC) team was reviewing the award for accounting issues, separate from the allegations received by DOC-OIG. [redacted] said [redacted] knew of no problems associated with the award and confirmed that [redacted] heard no allegations related to the misuse of NOAA stock assessment funding. [redacted] said every NOAA grant awarded to the USF, College of Marine Science, was competitively bid. [redacted] added there were no funding earmarks designated for USF. (Attachment 5)

On September 9, 2011, we interviewed [redacted] USF. [redacted] said the University Audit Compliance (UAC) team did not find any discrepancies. According to [redacted] the UAC team was reviewing the award for any accounting issues, not reviewing any allegations related to the misuse of NOAA stock assessment funding. (Attachment 6)

On October 6, 2011, we interviewed [redacted] at the USF-College of Marine Science. In response to the September 2008 report, [redacted] reached agreements with three of four educational institutions to support the Marine Resource Assessment (MRA) area of concentration at the Master's and Ph. D levels at the following institutions: Scripps Institute of Oceanography in LaJolla, California, The University of Hawaii in Honolulu, the University of Washington in Seattle and a location in the southeastern region of the U.S. According to [redacted] the University of South Florida was a logical choice, due to the NOAA facility in St. Petersburg, Florida. The NOAA Southeast Regional Office is located at 2639 13th Avenue South, in St. Petersburg, Florida and the USF-CMS facility is located at 140 7th Avenue South, in St. Petersburg, Florida. According to the website www.randmcnally.com, the distance between the two locations is 2.8 miles. [redacted] also said [redacted] wanted the program to be based out of the Atlantic Ocean and Gulf of Mexico region, since the MRA issue affected these areas. [redacted] added that [redacted] also looked at the following locations in the southeast as possible locations for the MRA program: Louisiana State University, the Mississippi Delta, Southern Alabama and the University of Miami. [redacted] said the University of Miami was not interested in incorporating the MRA program into their curriculum. [redacted] also noted that NMFS had difficulty in recruiting students who were willing to work in Miami, Florida. (Attachment 7)

According to [redacted] spent a lot of time at USF-CMS advising representatives from British Petroleum (BP), Federal and State agencies and politicians regarding the Deepwater Horizon Gulf oil spill that occurred in April 2010. In October 2010, [redacted] said [redacted] met with [redacted] and [redacted] USF at one of the several meetings [redacted] coordinated with agency officials at USF. At this meeting, [redacted] received an offer to work at USF-CMS, as a Fisheries Biologist and Marine Ecologist. [redacted] explained to [redacted] and [redacted] that if [redacted] accepted the position with USF-CMS, [redacted] could have nothing to do with the bidding or award process for the MRA program. [redacted] said [redacted] has a lifetime ban that prohibits [redacted] from being involved with any

NOAA funding involving the MRA program. (b) (7)(C) confirmed that has nothing to do with the MRA program and that (b) (7)(C) NOAA-NMFS and (b) (7)(C) (b) (7)(C) SEFSC, NOAA-NMFS are involved with the MRA program. (b) (7)(C) said has never tried to pressure (b) (7)(C) or (b) (7)(C) into making any decisions regarding the MRA program. (Attachment 7)

(b) (7)(C) said in (b) (7)(C) notified the U.S. Department of Commerce-Office of General Counsel (DOC-OGC) of intention to (b) (7)(C) accept a position with USF-CMS. In (b) (7)(C) (b) (7)(C) (b) (7)(C) at the (b) (7)(C) level, as (b) (7)(C) (b) (7)(C) for NOAA-NMFS. (b) (7)(C) stated that DOC-OGC did not prohibit him from seeking employment with USF-CMS, since did not work on many NOAA grants awarded to USF-CMS. (b) (7)(C) said the decision to implement the MRA program at USF-CMS was not based upon a favor to (b) (7)(C) it was merit based. Prior to being interviewed by the reporting agent, (b) (7)(C) had not heard of any complaints about or (b) (7)(C) being hired by USF-CMS, after they both had retired from NOAA. According to (b) (7)(C) (b) (7)(C) was supervisor at USF-CMS, until (b) (7)(C) accepted a position with the Florida Institute of Oceanography (FIO) in the of . (Attachment 7)

On October 6, 2011, we interviewed (b) (7)(C) at FIO offices in St. Petersburg, Florida. Prior to (b) (7)(C) serving as (b) (7)(C) of the College of Marine Science (CMS), worked at NOAA for years. (b) (7)(C) said started career at NOAA as a biologist working with state governments and received a (b) (7)(C) appointment to the position of (b) (7)(C) Fisheries, for the National Marine Fisheries Service (NMFS), NOAA, under former U.S. President George W. Bush. (b) (7)(C) said (b) (7)(C) from Federal service at the (b) (7)(C) level, on the day of the administration. (b) (7)(C) said has worked at the University of South Florida (USF) and the Florida Institute of Oceanography (FIO) for a period of years. According to (b) (7)(C) FIO is a Host Institute and provides space for USF-CMS personnel. (b) (7)(C) said notified the U.S. Department of Commerce-Office of General Counsel (DOC-OGC) of intention to (b) (7)(C) accept a position with USF-CMS. (b) (7)(C) could not recall the exact date when contacted DOC-OGC. (b) (7)(C) said DOC-OGC did not prohibit from seeking employment with USF-CMS. (b) (7)(C) added that when accepted the position of at USF, did not receive any favors from anyone at NOAA-NMFS. (b) (7)(C) confirmed that did not oversee any grants or research projects, while was at NOAA. (Attachment 8)

In response to the September 2008 report, (b) (7)(C) said agreements were reached with multiple educational institutions to support the Marine Resource Assessment (MRA) area of concentration at the Master's and Ph. D levels at the following institutions: Scripps Institute of Oceanography in LaJolla, California, The University of Hawaii in Honolulu, the University of Washington in Seattle and Virginia Polytechnic Institute and State University. According to (b) (7)(C) was looking for a new approach to a stock assessment program that differed from programs at North Carolina State University and the University of Miami. (b) (7)(C) said wanted a new innovative program that would put the researchers on the street and be able to do the work "real-time." (b) (7)(C) added that never tried to take anything away from existing MRA programs. Instead, wanted to create a different program. (b) (7)(C) stated that needed the program to be located in the State

of Florida. According to (b) (7)(C) 40% of the recreational fishing done in the U.S. is from the State of Florida. (b) (7)(C) said (b) (7)(C) worked with (b) (7)(C) and (b) (7)(C) (b) (7)(C) USF to implement the MRA program at USF. (b) (7)(C) said in selecting the educational institution to implement the MRA program, no competitive bidding was required. (b) (7)(C) said (b) (7)(C) selected a way that was recognized by Congress, to implement the program quickly and save money. Regarding the implementation of the MRA program, (b) (7)(C) stated if (b) (7)(C) could do it all over again, (b) (7)(C) would not do anything different because it was the right thing to do. (Attachment 8)

(b) (7)(C) provided a faculty employment agreement with the University of South Florida dated (b) (7)(C) , from (b) (7)(C) The agreement indicated the following:

> *NOAA Fisheries will provide financial support ($150,000 per year) for a faculty position to assist in MRA course development, graduate teaching and research in population dynamics and stock assessment course work for three years, with the program to be re-evaluated upon completion of the third year and renewed upon mutual agreement;*
>
> *NOAA Fisheries will organize, in conjunction with College of Marine Science (CMS) faculty and team-teach in Fall 2010, a course on Introduction to Population Dynamics and Stock Assessment by Southeast Fisheries Science Center (SEFSC) in Miami and CMS in St. Petersburg at locations jointly agreed upon by CMS and NMFS. Course to be taught either remotely (e.g., by Video Teleconferencing in SEFSC and Southeastern Regional Offices), or online, or by weekly lectures and associated computational labs at St. Petersburg. The purpose of this initial effort is to explore the feasibility of team teaching with internationally recognized population dynamics experts and to fill the gap in program development and teaching until the MRA program at USF/CMS-MRA program matures;*
>
> *NOAA Fisheries will provide opportunities through fellowships ($18,000 - $20,000 each) for graduate student research, research cruise experiences and mentoring of students, up to and including doctoral dissertation projects working with NMFS data sets under the direction of NMFS senior scientists in various locations throughout the Southeast (co-advised by USF/CMS tenured or tenure-earning faculty). Students will be selected by a joint review committee appointed by USF/CMS and NMFS. Initially NMFS will fund 5 such stipends annually.*
>
> *USF/CMS will provide tuition assistance for NMFS non-Fellowship employees who qualify and enroll in course work at CMS. Funds will come from the CMS budget and be administered by CMS Academic Affair;*
>
> *USF/CMS will accept appropriate numbers of qualified NMFS personnel seeking advanced degrees in marine sciences to further on the job advanced training of current FTE employees;*
>
> *USF/CMS will provide opportunities for qualified NMFS scientists to be appointed as Courtesy Faculty at USF/CMS in order to mentor graduate students and, as appropriate, to teach courses.* (Attachment 9)

On May 30, 2012, we interviewed (b) (7)(C) DOC-OGC. (b) (7)(C) stated (b) (7)(C) did not provide post-employment advice to former National Oceanic and Atmospheric Administration (NOAA) employees (b) (7)(C) and (b) (7)(C) (b) (7)(C) recalled that (b) (7)(C) (b) (7)(C), NOAA, asked DOC-OGC for legal advice regarding (b) (7)(C) and (b) (7)(C)'s post-employment with USF. (Attachment 10)

On June 14, 2012, we interviewed (b) (7)(C) (b) (7)(C) NOAA. (b) (7)(C) said (b) (7)(C) worked with (b) (7)(C) and (b) (7)(C) in the past, but stated (b) (7)(C) never submitted a post-employment inquiry to the U.S. Department of Commerce-Office of General Counsel (DOC-OGC) on behalf of (b) (7)(C) or (b) (7)(C). (b) (7)(C) stated that post-employment requests would be a function handled by Human Resources. (b) (7)(C) said (b) (7)(C) has never worked in Human Resources at NOAA. (b) (7)(C) said (b) (7)(C) did contact DOC-OGC after (b) (7)(C) from NOAA, because (b) (7)(C) attended a meeting with NOAA officials and (b) (7)(C) wanted a legal review of topics not to be discussed at the meeting with (b) (7)(C) (b) (7)(C) said (b) (7)(C) never contacted DOC-OGC about (b) (7)(C). (Attachment 11)

On August 10, 2012, we interviewed (b) (7)(C) DOC-OGC. (b) (7)(C) said (b) (7)(C) reviewed OGC's database that contains record of opinions provided to all DOC bureaus. (b) (7)(C) said there was no record of OGC providing any legal advice or counsel to former National Oceanic and Atmospheric Administration (NOAA) employees (b) (7)(C) and (b) (7)(C) (b) (7)(C) stated there are regulations related to the prohibition of former employees who worked for organizations that awarded contracts or were assigned to work on contracts awarded to a specific entity and later accept post employment positions with those same entities. (b) (7)(C) said there is generally not a complete bar for NOAA employees to accept a post employment position. (Attachment 12)

On August 10, 2012, OIG received a voicemail message from (b) (7)(C). After reviewing the case files, documents, correspondence and investigative interviews in this specific case, (b) (7)(C) said (b) (7)(C) did not see any evidence of any ethical problems regarding former NOAA employees (b) (7)(C) (b) (7)(C) and (b) (7)(C) s post-employment with USF. (b) (7)(C) added that there were no restrictions regarding (b) (7)(C) and (b) (7)(C)s positions with USF, since their activities were not directly related to the bidding process for NOAA funded programs. (Attachment 13)

Further inquiry into the grant making process found that USF hired another person, (b) (7)(C) (b) (7)(C), who encumbered the position paid by the cooperative agreement in question. (b) (7)(C) (b) (7)(C), the (b) (7)(C) for NMFS Office of Science & Technology, which is the office that manages the cooperative agreement, said that (b) (7)(C) never was paid under the cooperative agreement. Records from the grant were provided supporting this. (Attachment 14)

This case was presented to the US Attorney's Office in the Middle District of Florida, but after learning (b) (7)(C) was not the person hired under the cooperative agreement, the prosecutor agreed there was no violation and thus declined the case. (Attachment 15)

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OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
David Ector (NOAA/NESDIS Contractor) (b) (7)(C) (b) (7)(C)	FOP-WF-11-0145-I
	TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On December 15, 2010, we received a request for assistance from the Environmental Protection Agency, (EPA) Criminal Investigative Division (CID) in a criminal investigation involving David Ector, a scientist from the University Corporation for Atmospheric Research (UCAR), who was on detail working with the National Oceanographic and Atmospheric Administration (NOAA), National Environmental Satellite, Data, and Information Service (NESDIS). Ector allegedly used his government email and represented himself as a government official to engage in improper activity related to directing individuals to dump backfill from Ector's personal property into the Chesapeake Bay, in violation of the Clean Water Act, 33 U.S.C. §1251. (b) (7)(C) specifically requested the government email records belonging to Ector in order to proceed with the investigation.

RESULTS/SUMMARY OF INVESTIGATION

We provided computer forensic support (CFS), and conducted digital data analysis (DDA) of the email files belonging to Ector, the results of which were provided to EPA/CID and the AUSA. On October 18, 2012, Ector pled guilty to a one-count criminal information charging him with negligent discharge of fill material into a navigable waterway of the United States without a permit, in violation of the Clean Water Act, 33 U.S.C §1319(c)(1)(A).

Distribution: OIG _x_ Bureau/Organization/Agency Management __ DOJ: ____ Other (specify):

S (b) (7)(C)	Date: 4-1-13	(b) (7)(C)	te: 4/1/13
N (b) (7)(C) Special Agent			

METHODOLOGY

This joint case was conducted using computer forensic analysis of email files, digital data analysis, and the use of supporting case documentation.

DETAILS OF INVESTIGATION

On December 28, 2010, we received a request for assistance from the EPA/CID and (b) (7)(C) (b) (7)(C) for support in obtaining the work email files belonging to NOAA employee David Ector, as well as associated CFS and DDA. The request indicated that Ector had dumped backfill into the Chesapeake Bay, which was located at the bottom of a cliff at the rear of Ector's private property, which violated the Clean Water Act. (Attachment 1)

On March 8, 2011, we requested NOAA send us the work email files belonging to Ector, subsequently processing the email files and conducting a DDA. (Attachment 2 & 4) On July 19, 2011, we requested Ector's network backup files from his work computer from NOAA, also conducting a DDA on this data. (Attachments 5-8)

This investigation, primarily conducted by EPA/CID, discovered that Ector and his (b) (7)(C) purchased a cliff-front property that was located along the western edge of the Chesapeake Bay in Calvert County, Maryland. Between April 2008 and May 2010, the cliffs adjoining certain properties in their development suffered soil erosion for several reasons, including a series of storms that affected that area of Calvert County. On or about May 28, 2010, Ector hired a contractor to deliver rocks ("rip rap") to his property. Without obtaining a permit, as required by the Clean Water Act, Mr. Ector caused the contractor to dump these materials over the cliff-face into the Chesapeake Bay. Furthermore, the rip rap dumped over the cliff scraped away soil on the cliff face, interfering with the critical habitat of the Puritan Tiger Beetle, an endangered species within the meaning of the Endangered Species Act, 16 U.S.C. §§ 1531(6) and 1533. This gave rise to a plea offer on October 3, 2012. Our investigation exonerated Mr. Ector of the allegation that he used his NOAA email to represent himself as a government official in order to engage in improper activity related to directing individuals to dump backfill. (Attachment 9 & 10)

On (b) (7)(C) 2012, Ector agreed to plead guilty to one-count criminal information, charging him with negligent discharge of fill material into a navigable waterway of the United States without a permit, in violation of the Clean Water Act, 33 U.S.C §1319(c)(1)(A). On (b) (7)(C) 2013, Ector was sentenced to two years of supervised probation. (Attachments 11-13)

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OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
(b) (7)(C) New Hampshire Commercial Fisherman's Association Portsmouth, New Hampshire	FOP-WF-11-0314-I
	TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On March 23, 2011, the Office of Investigations (OI) received allegations of unethical activity involving (b) (7)(C) of the New Hampshire Commercial Fisherman's Association (NHCFA) in Portsmouth, New Hampshire. Specifically, (b) (7)(C), a (b) (7)(C) from (b) (7)(C) NH, alleged (b) (7)(C) used his position as (b) (7)(C) of the NHCFA to mislead New Hampshire Fish and Game Department (NHFGD) officials in the development of eligibility criteria for distribution of National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) grant funds and purposely disqualified hook-gear fisherman (Handgear A fishing permit holders) from receiving any Federal financial assistance. (Attachment 1)

SUMMARY OF INVESTIGATION

Our investigation did not substantiate the allegations. We found no evidence (b) (7)(C) used (b) (7)(C) position as NHFCA (b) (7)(C) to influence or mislead NHFGD officials in the development of the eligibility criteria for the New Hampshire Commercial Fisherman Sustainability Initiative (NHCFSI) grant. Additionally, we did not develop any information demonstrating misuse or abuse of NOAA/NMFS grant funds.

Distribution: OIG X Bureau/Organization/Agency Management ___ DOJ: ___ Other (specify):			
Signature of Case Agent: (b) (7)(C)	Date: 1/10/13	(b) (7)(C)	Date: 1/10/13
Name/Title: (b) (7)(C) Special Agent		(b) (7)(C)	

METHODOLOGY

This case was conducted through interviews and document review, including public domain documentation, Internet sources, correspondence from witnesses and the subject, and documents obtained from NOAA and NHFGD.

DETAILS OF INVESTIGATION

Background

Framework 42 of the Northeast Multispecies Fishery Management Plan became effective on November 22, 2006. The Plan did not change the actual baseline allocation of the Days at Sea (DAS) distribution, i.e., the annual number of actual fishing days permitted within a specific fishery. However, beginning in the 2009 fishing year, the Category A DAS allocation equaled only 45% of the DAS baseline. In addition, a differential DAS counting system was implemented in which vessels fishing under a Northeast Multispecies Category A permit were charged at a different DAS rate than what was actually fished, i.e. 2 days (DAS) were charged for every one day fished when the fishing was conducted in specific areas. Finally, there were also reductions placed on various Trip Limits, i.e., the amount and type of fish caught on each trip. Each of these new regulations had an adverse economic impact on the commercial groundfish fishing industry in the Northeast. (Attachment 2)

The purpose of the NHCFA is to monitor, participate in and contribute to concerns and issues regarding the New Hampshire commercial fishing industry. In addition, the association also disseminates information to its members and acts in a proactive manner on behalf of the commercial fishing industry, conducts an annual beach clean-up of lobster gear, and assists in the transition of the fishing industry due to the changing regulatory actions. (Attachment 3)

On May 1, 2010 NOAA/NMFS awarded NHFGD a grant in the amount of $824,175 to provide financial and economic assistance for (1) the NH commercial lobster fishing industry for restitution for the replacement of equipment and (2) the NH commercial (small day-boat) groundfish fishing industry to adapt to the recent changes in the federal regulations which caused significant financial hardships for this particular commercial fishing industry. The NH congressional delegation had earmarked the funds to the two primary fishing industries in the state – lobster and groundfish - for financial assistance. The funding specifically included the commercial groundfish fishery for the economic impact experienced under Framework 42 of the Northeast Multispecies Fishery Management Plan as well as the commercial lobster industry for the replacement of equipment under new regulations with the Marine Mammal Protection Act (MMPA). The specific grant criteria and eligibility requirements for receipt of these hardship relief funds were to be determined by NH state officials, particularly the NHFGD, and the ending date of the award was June 30, 2011. The state officials determined the criteria to be used to obtain the funding, i.e. Framework 42 was the basis used to develop eligibility requirements, together with the MMPA, which had adversely affected the two main commercial

fisheries in the state. The state/NHFGD officials also determined the best – and fairest – way to distribute the funds was through a two part process: first decide who was eligible and establish how many there were; and then second develop a formula (calculation) to be used to distribute all the funds based upon an equitable formula to all the eligible recipients - based upon relevant criteria, i.e. the number of qualified vessels and number of allocated fishing days for each vessel. (Attachment 4)

As the principal (b) (7)(C) for the NOAA grant, (b) (7)(C) (b) (7)(C) of Marine Fisheries, NHFGD, was initially involved with drafting the proposal submitted to NOAA and then later designated to direct the project and complete the grant program. [redacted] was responsible to ensure the project was conducted properly and also held accountable for both the performance and all financial aspects of the grant-funded activities. (b) (7)(C) s specific duties included (1) developing and approving the eligibility criteria; (2) collecting and analyzing the data and records required to make these determinations; (3) establishing the allocation formulas for distribution of the funds; (4) conducting meetings and communicating with the commercial fishing industry about the program; (5) providing the necessary administrative support for distributing the funds; (6) completing and monitoring the distribution of the funds; and (7) completing and submitting the final grant report to NOAA upon the conclusion of the program. (Attachment 5)

Complaint

On April 5, 2011, (b) (7)(C) reported that during January 2011 [redacted] was formally advised Framework 42 was part of the eligibility criteria for the NHCFSI grant when [redacted] received a written response from (b) (7)(C) (letter dated January 24, 2011) and learned [redacted] was not eligible to receive any financial assistance from this program. (b) (7)(C) said [redacted] was informed that based upon the specific terms and conditions of the grant, Handgear A permit holders were not eligible to receive any economic relief. (b) (7)(C) said [redacted] understood financial assistance would be available to all eligible permit holders in New Hampshire and was not aware of any specific connection to Framework 42. (Attachments 1 and 6)

According to (b) (7)(C) during the initial open forum meeting held by the NHFGD in June 2010, (b) (7)(C) stated Federal funds should be provided only for the economic impact of Framework 42. In response to (b) (7)(C) s statement, (b) (7)(C) alleged (b) (7)(C) then met with (b) (7)(C) after the meeting behind closed doors. (b) (7)(C) claimed that following this meeting the limitations related to Framework 42 were then used to determine the eligibility requirements for the program. (b) (7)(C) alleged the NHCFSI grant program was not an open or transparent process and complained that there was only a minimum amount of publicity and notification for this grant program even though the entire commercial fishing industry in New Hampshire was experiencing financial difficulty. (Attachments 1 and 6)

On December 22, 2010, (b) (7)(C) submitted correspondence directly to (b) (7)(C) the (b) (7)(C) for NHFGD, concerning [redacted] belief that limited access fishing permits which required fishermen to catch fish by rod and reel or tub trawl (Handgear A permit holders)

should be eligible for assistance under the NHCFSI grant. In addition, (b) (7)(C) noted the program was in the final process of completion and had not received any notification letters about the program. As such, appealed the decision to eliminate Handgear A permit holders from the grant program. (Attachments 1 and 6)

Subsequently, on January 3, 2011 in a response letter from (b) (7)(C), and then later on January 24, 2011 in a response letter from (b) (7)(C) was informed that NHFGD officials had reviewed Framework 42 and also consulted with NOAA/NMFS officials and, based upon this research, determined that Handgear A permits were not adversely affected by Framework 42 management actions. As a result, these particular permit holders were not eligible for grant funding. was officially informed by (b) (7)(C) that appeal to this decision could not be granted. On March 21, 2011, appealed this ruling to the NH Secretary of State's Office – Board of Claims but never received any formal response from that office. (Attachments 1 and 6)

(b) (7)(C) also provided the names of three other (b) (7)(C) who reportedly had information concerning these allegations - (b) (7)(C) and (b) (7)(C) We interviewed all three, finding none of them had information relevant to the question of whether (b) (7)(C) had undue influence in the application for or administration of the grant, nor were they aware of any misuse or abuse of NHCFSI grant funds. (Attachments 7, 8 and 9)

Statement of (b) (7)(C)

(b) (7)(C) stated officially became aware of the award of the grant when was formally notified by NMFS that NHFGD had received the funding. (b) (7)(C) explained (b) (7)(C) had worked and corresponded directly with NH Congressional staffers for many years regarding potential federal financial assistance for the commercial fishing industry. Since approximately 2006, and following the enactment of Framework 42, the NH commercial fishing industry had been adversely impacted by federal regulations. According to (b) (7)(C) wrote a number of letters to highlight these economic conditions to the NH Congressional delegation. (Attachment 10)

(b) (7)(C) said Framework 42 was specifically mentioned in the funding proposal submitted to NMFS because these regulations were a significant factor in the overall financial status of the NH commercial fishing industry. (b) (7)(C) noted state officials developed the proposal for the funds and submitted it to NMFS. (b) (7)(C) added that upon award of the funds, Framework 42 was not identified as a specific stipulation by NMFS for the disbursement of any financial assistance. (Attachment 10)

(b) (7)(C) explained after learned NH would be receiving the federal grant asked (b) (7)(C) to gather a group of fisherman to discuss some of their ideas and suggestions for the program. In response, (b) (7)(C) took the lead as (b) (7)(C) of the NHCFA to represent the interests of the industry and conducted meetings with members of the fishing industry without any

involvement or participation of NHFGD officials. (b) (7)(C) firmly believed this was conducted in a very open and transparent manner and was not aware of any instance in which (b) (7)(C) made demands or inappropriate comments or attempted to apply any pressure or undue influence at any time during those functions. (b) (7)(C) understood the comments, suggestions, and ideas from these meetings were then passed on to NHFGD officials during the two open forum or public meetings held by NHFGD. (b) (7)(C) said (b) (7)(C) attended and actively participated in both meetings and offered suggestions and ideas for comment and discussion. (Attachment 10)

Since (b) (7)(C) was instrumental in obtaining the grant, (b) (7)(C) said went directly to (b) (7)(C) to ensure the information (b) (7)(C) had given to the Congressional delegation was specifically included in the discussion and review process. (b) (7)(C) added that over a number of years has frequently spoke with (b) (7)(C) about a number of issues involving the commercial fishing industry based upon his knowledge, experience and ability to communicate within the community. As a result, (b) (7)(C) considered (b) (7)(C) to be one of the lead representatives for the NH commercial fishing industry. (Attachment 10)

(b) (7)(C) stated office conducted "open door" public information sessions to discuss the grant program. (b) (7)(C) said and members of staff determined that in addition to issuing the public notices and posting details on their website they also sent letters to every licensed fisherman to the addresses in the state database, a notification level that had never been done before. Though the NHFGD did not post notices on the fishing docks, (b) (7)(C) said was comfortable with the amount of notice given. (Attachment 10)

(b) (7)(C) reported office scheduled and conducted two "well attended" public meetings. made presentations about the two different programs and "opened the floor" for ideas and suggestions from the industry and general public in order to hear everyone's comments and suggestions for the program. (b) (7)(C) stated nothing unusual or out of the ordinary occurred during either of the two public meetings. (b) (7)(C) attended both of these public forums and provided comments along with many other individuals. (b) (7)(C) said there were no comments or suggestions made by (b) (7)(C) which caused to have any concern, including no specific comment regarding Framework 42. (Attachment 10)

(b) (7)(C) stated there were no closed door meetings with (b) (7)(C) associated with the NHCFSI grant program, nor did meet privately with (b) (7)(C) to discuss grant criteria. (b) (7)(C) claimed NH state officials established the criteria for the NHCFSI grant as well as the formula to disburse the funds. (b) (7)(C) understood that because Handgear A Permit holders did not have DAS allocations and therefore were not adversely impacted by Framework 42, they thus were not eligible to receive any financial assistance from the NHCFSI grant. noted that at one of the public meetings held by the NHFGD a number of Handgear A Permit holders were present and acknowledged they were not adversely impacted by Framework 42. said since (b) (7)(C) and most of the members of the NH commercial fishing industry would more than likely apply, qualify and receive some financial assistance, wanted to ensure the terms and

conditions of the established criteria could be validated in-house, to include the use of government databases to determine permit and license information and registration, any prior violation history and whether any individual had previously received financial assistance through other grant programs from other states. (b) (7)(C) also recognized that based on the requirements for this grant program and the criteria they had established, some fisherman could qualify for financial assistance under both programs (groundfish and lobster fishery), including (b) (7)(C). (Attachment 10)

(b) (7)(C) claimed no specific permit holders were excluded or singled-out during the discussion phase while they were considering and establishing the criteria. However, once the terms were established there were some who were excluded from the program, such as the Handgear A Permit holders. (b) (7)(C) pointed out that (b) (7)(C) was the only Handgear A permit holder to express concerns about the process or the program. (Attachment 10)

Statement of (b) (7)(C) (b) (7)(C) Marine Programs for NHFGD, recalled that the NHFGD had completed and submitted a proposal to NOAA/NMFS a couple of months before the award of the federal funds was made to the state of NH during May 2010. Following the award, the job of NHFGD was to work with the NH commercial fishing industry to determine how to dispense the funds in a manner consistent with the grant. (b) (7)(C) said (b) (7)(C) worked with the NHFGD (b) (7)(C) to ensure they properly posted notices about the public meetings, addressed the comments and suggestions appropriately and completed that phase of the grant program properly. (b) (7)(C) stated the public notice was sent out through the NHFGD Public Affairs Office which included a press release. (b) (7)(C) said (b) (7)(C) conducted informal meetings prior to public meetings with members of the commercial fishing industry and discussed their ideas about the grant program at that initial stage of the process. (b) (7)(C) attended both of the public information meetings for the NHCFSI grant as part of (b) (7)(C) duties and responsibilities with NHFGD. (Attachments 11 and 12)

(b) (7)(C) is unaware of any incident in which (b) (7)(C) either requested or met in private with any state officials to discuss the NHCFSI grant. (b) (7)(C) said there were no informal meetings or any held "behind closed doors". (b) (7)(C) said (b) (7)(C) never saw (b) (7)(C) act inappropriately or engage in any conduct or behavior during the public information meetings. (b) (7)(C) could not recall if (b) (7)(C) ever mentioned that one particular group of fisherman should be disqualified from the program or if (b) (7)(C) made any specific comments about Framework 42 at any particular time. (b) (7)(C) does not believe (b) (7)(C) used his position as (b) (7)(C) of NHCFA to influence the NHFGD in developing the criteria. (b) (7)(C) explained the NHFGD developed grant criteria with assistance from the NH State Attorney General's Office. The NHFGD sought review and comment to ensure the proper procedures were being following, particularly for disbursement of the funds. (b) (7)(C) asserted the primary objective was to make certain the process was fair to everyone; ultimately, the NHFGD decided the grant funds would be split evenly between the lobster fishery and the groundfish fishery. (Attachment 11)

Grant Reporting to NMFS

The Final Report for the NHCFSI grant was prepared by (b) (7)(C) and signed and approved by (b) (7)(C) on September 30, 2011. The report disclosed NHFGD received $824,175 to support the NHCFSI under the Consolidated Appropriations Act of 2010. The funding was distributed equally between the commercial lobster and groundfish fisheries in the NH area. A total of $409,088 was allocated to each fishery and a small portion of the grant was used by the NHFGD for administrative costs. The report referenced the collaborative effort between the NH commercial groundfish fishing community and the NHFGD in establishing the criteria for eligibility under the grant. It further pointed out the NHFGD staff and the NH Attorney General's Office developed and implemented rules to define the criteria, disbursement, and appeals process for the award of the grant funds. As part of this process, 51 northeast multispecies federally permitted groundfish vessels from NH prequalified to receive funds from the NHCFSI grant. Following the completion of the application and qualification process, 49 of these vessels received compensation funds in January 2011; the other two prequalified vessels did not submit an application. (Attachments 4 and 5)

The amount calculated was determined to be $235.21 per DAS which had been allocated by NMFS for the vessel(s) in 2009. The range of DAS per qualified vessel varied between 8.46 and 54.9, with an average of 35.5 DAS. Thus, the average rate of compensation distributed to qualified federally permitted vessels was $8,348.73. (Attachment 5)

The NHFGD also reported they had received five applications which were not prequalified and proceeded to follow through with the review and appeals process. Four of these applications were denied because they did not meet the outlined criteria and one vessel was determined to be qualified after further review of the qualifications. It was noted that one individual was dissatisfied with the criteria being based on the effects of Framework 42 on the groundfish community and had appealed on the basis of financial effects from frameworks and amendments prior to Framework 42; however, following further review and consideration, that appeal was denied. The Final Report listed (b) (7)(C) as one of the 49 parties who received funding from the NHCFSI grant in the groundfish fishery and one of 99 lobster fishermen who received funds from the NHCFSI grant. The range of compensation, based on the individual's highest number of lobster traps fished in 2009, was from $46.82 to $11,237.14. (Attachment 5)

Statement of (b) (7)(C)

(b) (7)(C)'s statements were consistent with witness statements. [redacted] said [redacted] held a few informal discussions with members of the state commercial fishing industry and discussed their thoughts and ideas about the grant program. [redacted] said they were all well aware that federal funds had been earmarked for NH and they were looking for suggestions and different points of view about the program. As (b) (7)(C) of the NHCFA, (b) (7)(C) said [redacted] helped organize the meetings, which [redacted] described as informal public comment sessions, and during that process they received many suggestions. [redacted] noted [redacted] also discussed the grant program with other individuals throughout

the industry in order to gain a better understanding about how to approach this opportunity and make the most of it. According to (b) (7)(C) this process worked very well and felt that it was appropriate for the NHCFA to hold these types of meetings and generate discussion and, as a result, the overall interests of commercial fishing industry for the state were better served. (Attachment 13)

(b) (7)(C) agreed that there was a need for some basic qualifying criteria to be established and fully supported that position, such as the requirement to have a current license, active participation in the commercial fishing industry and experience of some financial hardship due to the enactment of the federal regulations. (Attachment 13)

(b) (7)(C) reported Framework 42 was the most recent federal regulation which had a significant financial impact on the commercial fishing industry. also believed no other federal regulations were applicable for the groundfish fishery at that time. (b) (7)(C) noted the impact from Framework 42 was a major concern for the local fishing industry and even though there were some discussions about new or proposed regulations and the potential impact those would have, since none of those had passed or been finalized, they could only base their ideas and suggestions on the regulations currently in place. (Attachment 13)

(b) (7)(C) reported attended both of the public forum meetings held by the NHFGD. said sat in the audience with members of the fishing industry and general public, made several comments, participated in the dialogue and offered suggestions and ideas as part of the group discussion. denied meeting with any NHFGD officials after either one of the public meetings, particularly "behind closed doors". (b) (7)(C) asserted had no influence in how the criteria for the program was established or finalized and noted had no direct involvement in any part of that process. (Attachment 13)

(b) (7)(C) confirmed qualified and received payments under both the groundfish and lobster fisheries programs, as did other fishermen. too reported that was not aware of any misuse or abuse of NHCFSI grant funds. (Attachment 13)

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UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, DC 20230

January 14, 2013

MEMORANDUM FOR: (b) (7)(C)
(b) (7)(C)

FROM: (b) (7)(C)
(b) (7)(C)

SUBJECT: OIG Investigation, Re: (b) (7)(C)
(OIG Case # 11-0434-1)

Attached is our Report of Investigation (ROI) in the above-captioned matter. Our office received allegations from a confidential complainant that (b) (7)(C) Office of the Secretary (OS), Office of the Chief Information Officer (OCIO), violated acquisition regulations by writing (1) a Statement of Work (SOW) based on a contractor's technical proposal; and (2) an Independent Government Cost Estimate (IGCE) based on the same contractor's cost proposal. Our investigation determined (b) (7)(C), in drafting a Statement of Work (SOW) for a contract associated with the Department's CommerceConnect project, referenced a contractor by name within the SOW, and demonstrated a failure to appreciate the appearance of impropriety created by referencing contractors within SOWs.

(b) (7)(C)'s actions implicate the Standards of Ethical Conduct for Employees of the Executive Branch:

- 5 CFR § 2635.101(b)(14) – "Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part…", namely:

- 5 CFR § 2635.101(b)(8) – "Employees shall act impartially and not give preferential treatment to any private organization or individual."

Accordingly, we recommend appropriate administrative action be considered for (b) (7)(C) We note that (b) (7)(C) is a former Contracting Officer, and, as such, should have recognized such adverse appearance.

In accordance with DAO 207-10, paragraph 4, your written response of any action proposed or taken is requested within 60 days of receipt of this referral.

In your official capacity, you have responsibilities concerning this matter, the individuals identified in this memorandum, and the attached documents. Accordingly, you are an officer of

the Department with an official need to know the information provided herein in the performance of your duties. These documents are being provided to you in accordance with 5 U.S.C. §552a(b)(l) of the Privacy Act and as an intra-agency transfer outside of the provisions of the Freedom of Information Act.

Please be advised that these documents remain in a Privacy Act system of records and that the use, dissemination or reproduction of these documents or their contents beyond the purposes necessary for official duties is unlawful. The OIG requests that your office safeguard the information contained in the documents and refrain from releasing them without the express written consent of the Counsel to the Inspector General.

If you have any questions please do not hesitate to contact me at (202) 482-(b) (7)(C), or (b) (7)(C) at (202) 482-(b) (7)(C).

Attachment
ROI (with exhibits)

cc: OIG case file

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
(b) (7)(C) GS-(b) (7)(C) Office of the Chief Information Officer U.S. Department of Commerce	FOP-WF-11-0434-I TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On June 13, 2011, our office received allegations from a confidential complainant that (b) (7)(C) (b) (7)(C) a (b) (7)(C) for the Office of the Secretary (OS), Office of the Chief Information Officer (OCIO), violated acquisition regulations by writing (1) a Statement of Work (SOW) based on a contractor's technical proposal; and (2) an Independent Government Cost Estimate (IGCE) based on the same contractor's cost proposal. The Federal Acquisition Regulation (FAR) §9.505-2 generally prohibits, except in certain situations, a contractor from being awarded a contract in a competitive acquisition if it has prepared the specifications or otherwise assisted in preparing the SOW used in that procurement. Beyond the allegations of contract fraud, we also investigated whether (b) (7)(C)'s actions implicate the Standards of Ethical Conduct for Employees of the Executive Branch, namely, 5 CFR § 2635.101(b)(14) – "Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part...", and 5 CFR § 2635.101(b)(8) – "Employees shall act impartially and not give preferential treatment to any private organization or individual."

RESULTS/SUMMARY OF INVESTIGATION

Our investigation found that although the SOW written by (b) (7)(C) did make reference to the contractor throughout, we found no evidence the contractor had a part in drafting the SOW. Rather, (b) (7)(C) held the view that because it was to be a sole-source procurement, it was

Distribution: OIG X Bureau/Organization/Agency Management X DOJ: ____ Other (specify):			
(b) (7)(C)	Date: 1/14/13	(b) (7)(C)	Date: 1/14/13
(b) (7)(C) Special Agent		(b) (7)(C)	

appropriate to cite the contractor by name, and did not recognize the appearance of impropriety created by referencing the contractor within the text. Ultimately, the issue became moot due to the intervention of Departmental contracting officials, who down-scoped the procurement from (b) (7)(C)'s original $9.8 million request to $934,432.30, and structured the procurement as a delivery order, issued on August 4, 2011, for approximately one year, against a General Services Administration (GSA) schedule based on a limited sources justification under FAR § 8.405-6. Because the procurement had become a small-scope, limited-time, "stopgap" procurement, this contract vehicle was appropriate.

METHODOLOGY

This investigation was conducted through interviews and document review, including electronic mail, contract documents, and public domain documentation.

DETAILS OF INVESTIGATION

On June 13, 2011, our office received allegations from a confidential complainant alleging (b) (7)(C) had provided a Statement of Work (SOW) and Independent Government Cost Estimate (IGCE) that appeared to have been written based on a contractor's technical and cost proposals, which the complainant alleged would be in violation of Federal Acquisition Regulation (FAR) §9.505-2. The complainant also alleged that (b) (7)(C) had inflated the prices for licenses in the IGCE up to 25%. (b) (7)(C)'s SOW and IGCE were in support of a request for a sole-source time and materials task order for Customer Relationship Management (CRM) software. (Attachments 1 – 3)

(b) (7)(C) a former contracting officer, has for the last (b) (7)(C) years, been involved in a (b) (7)(C) (b) (7)(C) role related to information techonolgy (IT) issues. (b) (7)(C) was (b) (7)(C) in (b) (7)(C) from the (b) (7)(C) (b) (7)(C)) to the Department's Office of the Chief Information Officer (OCIO), where (b) (7)(C) is now a permanent employee, to work on the Department's CommerceConnect project. CommerceConnect was an initiative to create a single resource where external businesses could learn of each bureau's programs and opportunities for the business community. (b) (7)(C)'s role was to oversee the execution of CommerceConnect's single-source vision. The complainant stated that by reading (b) (7)(C)'s June 9, 2011 SOW, it was readily apparent that it had been authored based on a contractor's proposal because the language was framed from the perspective of what services were being provided, rather than what services the Department required. (Attachments 2 – 4)

We reviewed contract # YA1323-08-RS-002, the original Census contract with Acumen for a Customer Relationship Management Solution, upon which the time and materials task order at

issue is predicated.[1] (b) (7)(C)'s initial IGCE, which accompanied (b) (7)(C) initial draft of the SOW, quoted $9,806,989, including all future options. We reviewed portions of the aforementioned contract alongside (b) (7)(C)'s initial draft of the SOW, finding that the SOW makes mention of Acumen, the contractor, by name 79 times. (Attachments 1, 5 and 6)

We reviewed (b) (7)(C)'s emails, and found only one between (b) (7)(C) and the contractor; the email indicated only that (b) (7)(C) was going to have a call with the contractor, with a subject title of "CommerceConnect Knowledge Base ROM Debrief." There was no evidence in the email to indicate any collaboration or involvement on the part of Acumen towards the SOW. Our investigation revealed no personal relationship between (b) (7)(C) and the contractor. (Attachments 7 – 8)

(b) (7)(C), in (b) (7)(C) interview, stated that (b) (7)(C) compiled the initial draft of the SOW based on various sources, including a Request for Information (RFI) across the Department's operating units for information on their CRM contracts and the General Services Administration (GSA) schedule for prices of licenses. When asked about the references to the contractor in the SOW, (b) (7)(C) stated that because the procurement was a sole-source task order with Acumen, (b) (7)(C) believed it was completely appropriate to name the contractor.[2] Further, (b) (7)(C) specifically stated that though (b) (7)(C) did communicate with Acumen, (b) (7)(C) did not receive a proposal from them. When asked why (b) (7)(C) draft of the IGCE quoted a $9.8 million figure, (b) (7)(C) stated that originally, the vision was to procure CRM software that would be a single solution Department-wide, bringing all the bureaus under one system, which would require a large investment. When asked about whether the prices she quoted in the IGCE for "Enterprise Edition" licenses were inflated by up to 25%, as alleged in the complaint, (b) (7)(C) stated that (b) (7)(C) price quotes were actually discounted. (b) (7)(C) subsequently provided the GSA schedule (b) (7)(C) used in compiling (b) (7)(C) draft of the IGCE, which confirmed (b) (7)(C) account. (Attachments 2, 3, 6 and 9)

Ultimately, the SOW and IGCE were rewritten by (b) (7)(C), the ther(b) (7)(C) (b) (7)(C) with the Department ((b) (7)(C) has since left the Department), and the final procurement was structured as a delivery order against a GSA schedule, held by Acumen, for supplies, in the amount of $934,432.30, awarded by (b) (7)(C) on August 4, 2011. The final order was down-scoped from the original $9.8 million figure after several Departmental contracting officials determined that (b) (7)(C)'s original request was too large, given that the Department was still assessing its CRM needs, and might have to pursue a different solution within a year. As a result, because the procurement became a "stopgap" measure to provide the Department additional time to continue operating while being allowed

[1] Originally, the Department was going to enter into an additional time and materials task order against this existing contract between Acumen and Census, as a part of the single solution idea for CRM. Ultimately, that plan was altered, as later discussed.

[2] In her interview, (b) (7)(C) stated because they were going to order against the Census contract, Acumen was already known to be the vendor.

to determine their CRM solution needs, a procurement against a GSA schedule based on a limited sources justification under FAR §8.405-6[3] was appropriate. (Attachments 10 – 12)

On April 27, 2012, we met again with the complainant, who stated that there was no information or documentation demonstrating a conflict of interest or other potential personal gain by (b) (7)(C). The complainant explained that the original complaint was prompted by a concern that (b) (7)(C) was facilitating a procurement with terms dictated by the contractor's specifications, rather than the government's needs. The complainant further did not know of, or have any documentation indicating (b) (7)(C) had received proposals from the contractor. The complainant attributed the specific references to Acumen in the SOW to (b) (7)(C)'s lack of expertise in contracting, and that (b) (7)(C) had "likely [been] too lazy" to compose a SOW from scratch. (Attachment 4)

[3] FAR §8.405 covers the "Federal Supply Schedules," which provides federal agencies with a simplified process for obtaining supplies and services at prices negotiated by GSA, for volume buying; §8.405-6 provides that agencies may procure supplies under this section where there is an "urgent and compelling need." In this case, they were seeking a "stopgap" contract to continue the functioning of the CRM services, and because Acumen had configured the existing CRM solution, contracting with Acumen would enable the maintenance of the existing CRM services without risks, delays, disruption and duplication. (Attachment 11)

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UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, DC 20230

June 25, 2012

MEMORANDUM FOR: Dr. Patrick Gallagher
Under Secretary of Commerce
for Standards and Technology and Director, NIST

FROM: Rick Beitel
Principal Assistant Inspector General
for Investigations and Whistleblower Protection

SUBJECT: Results of Investigation, Re: Alleged Theft of NIST Copper Wire
(OIG Case # FOP-WF-11-0507-I)

This memorandum presents the results of our investigation into a July 20, 2011, anonymous OIG hotline complaint alleging several National Institute of Standards and Technology (NIST) (b) (7) (C) stole copper wire from NIST's Gaithersburg, MD, facility, including (b) (7)(C) ((b) (7)(C)) and (b) (7)(C) ((b) (7)(C)).

Summary of Results

Our investigation found internal control deficiencies concerning the procurement, inventory, use, and recycling of materials used in the (b) (7)(C) Division that contributed to an environment that made it possible for copper theft to occur. We were unable to prove widespread copper theft, but did identify improper conduct while investigating the allegation. (b) (7) (C) admitted to removing some used, but NIST-owned nonetheless, materials for personal use. As described in detail below, though we could not prove any particular theft on the part of (b) (7)(C), we found (b) (7)(C) committed multiple ethics violations and (b) (7)(C) government email account contained improper content, namely racially offensive material and pornographic images. Such conduct implicates violation of the Department's Internet Use Policy, NIST's Policy on Information Technology Resources Access and Use, and the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR § 2635, et. seq.). Accordingly, we recommend that NIST take appropriate disciplinary action against (b) (7)(C) and (b) (7)(C)

Detailed Findings

(b) (7) (C) has been employed with NIST since (b) (7) (C) and works as a (b) (7) (C) (b) (7)(C) within the (b) (7)(C) at Gaithersburg, MD. (b) (7)(C) entered NIST

employment on (b) (7) (C) and works as an (b) (7)(C) in Gaithersburg, MD. (Attachment 1)

On July 27, 2011, NIST Police Services Group (PSG), Gaithersburg, MD, reported a complaint from a NIST employee who alleged a number of NIST employees were stealing copper wire from NIST work sites or facilities and subsequently turning them into recycling centers for cash. (Attachment 2)

NIST Scrap Materials Control Environment

The allegations in this case concern "scrap" materials left over from primarily electrical jobs on the NIST campus in Gaithersburg. The value of copper has grown markedly over the last several years, creating a demand for copper at recycling centers. The question as to ownership and disposition of scrap material is pertinent to this case. We have verified that NIST's policy concerning scrap material, including high valued supplies like copper, existed only as an unwritten understanding at the time of this investigation. We inquired with (b) (7) (C) (b) (7)(C) of NIST's (b) (7)(C) Division, for policies dictating procedures for ordering of materials for NIST jobs, as well as procedures for disposal, recycling, or reuse of materials left over from NIST jobs. (b) (7)(C) provided us with a one page document titled "(Unwritten Material Policy) JOC Process", and informed us that a written policy regarding procedures for disposal, recycling, or reuse of materials left over from NIST jobs did not exist. (Attachment 3)

Since at least 1997, NIST has contracted to have recyclable scrap metals picked up and recycled by a commercial company. The contract generates revenue for the contractor that offsets the cost of pick-up and hauling and actually generates an income for excess property for the contractor based on the market price per pound of the materials contained within the dumpster, such as brass, copper, aluminum, and steel, in accordance with FMR §102-38.295. The current contract, which began on August 15, 2010, explicitly says the scrap metal remains the property of NIST and payment for the recycling proceeds is required to be paid to the contractor who picks up the dumpster from NIST, by the recycling center that accepts the recycling material. (Attachment 4)

We interviewed NIST (b) (7)(C) and (b) (7)(C) who both said it had been long established common knowledge among the various work groups, including the (b) (7) (C) that scrap materials were the property of NIST and could not be used for personal use. According to the (b) (7)(C) , this had been the unwritten rule for at least the last 10 years, and was verbally communicated as part of the training of new (b) (7) (C) Neither of the (b) (7)(C) could think of any reason why any of their employees would not know that use of scrap materials for their own personal use was prohibited. (Attachment 5)

Specific Findings Concerning (b) (7)(C) and (b) (7)(C)

We inspected (b) (7)(C) and (b) (7)(C)' official NIST-owned computers. (b) (7) (C) official email files contained pornographic images, as well as images depicting racially offensive materials toward African-Americans. (Attachment 6)

We also found digital photographs in (b) (7) (C) deleted email folder taken by another NIST (b) (7)(C). Those photos showed a (b)(7)(C), who was later identified as (b) (7) (C) placing electrical wire into the trunk of a (b)(7)(C) colored vehicle. This vehicle was later identified by (b) (7)(C) as being (b) (7)(C) personally owned vehicle. We determined the photograph was taken on March 4, 2011, using an iPhone, and during an interview with (b) (7)(C), (b) (7)(C) affirmed (b)(7)(C) took the pictures using (b)(7)(C) personal iPhone, and that the incident occurred in Building 206, the high voltage electrical vault located on the NIST campus. (b) (7) (C) said (b) (7) (C) along with (b) (7) (C) was present while (b) (7) (C) was loading the wire into (b) (7)(C) car, and they did not know (b)(7)(C) took the picture at the time. (b) (7) (C) said (b)(7)(C) took the picture to "cover (b)(7)(C) self" because (b)(7)(C) believed (b) (7)(C) was stealing the wire and didn't want anyone to think (b)(7)(C) was part of it. The photo depicted wire that was formed into a large loop and taped at the ends, and appeared to be new material. There was no indication from a computer forensic standpoint that (b) (7) (C) took any action to forward these pictures to (b)(7)(C) superiors; rather, we discovered the photos in (b)(7)(C) deleted emails folder file. However, (b) (7) (C) did tell us in an interview that (b)(7)(C) informed (b) (7)(C), (b) (7) (C) of the incident shortly after it occurred. We also learned that (b) (7) (C) allegedly told (b) (7)(C) that the wire should be taken to the recycling dumpster, however there is no indication whether (b) (7) (C) did as (b)(7)(C) reportedly was directed at the time. (b) (7) (C) told us that (b) (7) (C) informed (b) (7)(C) that it was not permitted for (b) (7)(C) to take the wire, and was directed by (b) (7) (C) to put the wire into the recycling dumpster. (b) (7)(C) went on to indicate that (b)(7)(C) did as (b)(7)(C) was told by (b) (7) (C) and put the wire into the dumpster, however (b) (7) (C) told us that (b)(7)(C) did not follow up to see if (b) (7)(C) actually put the wire into the recycling dumpster because (b)(7)(C) didn't want to make a "big scene" in front of other employees who were present at the time. (Attachments 2, 7, 8, 10)

(b) (7) (C) told us it was common practice for (b) (7) (C) to take scrap wire left over from NIST jobs and that (b)(7)(C) was unaware that it wasn't allowed until (b) (7) (C) informed (b)(7)(C) at the time of this incident that (b)(7)(C) was not allowed to take scrap wire from NIST. (b) (7) (C) admitted to taking used overhead lights from a contractor at NIST and installing them in his garage at (b)(7)(C) home. The lights (b) (7) (C) removed from NIST were reportedly the lights that were removed from the location by the contractor in order to be replaced with new lighting. In general, (b) (7) (C) said (b)(7)(C) was under the impression that scrap materials left over from jobs conducted on the NIST facility were just trash and that taking such materials from the facility for personal gain or use was an acceptable practice. (b)(7)(C) indicated it was common trade practice for (b) (7) (C) to take scrap wire to recycling centers in exchange for cash, and that it often done on (b) (7) (C) jobs (b)(7)(C) has worked on outside of NIST. In an interview with (b)(7)(C), we asked (b)(7)(C) if (b)(7)(C) understood why this practice is unacceptable conduct to be carried out on the NIST facility involving materials from NIST jobs. (b) (7) (C) again cited the common trade practice where

electricians will take scrap wire from a job and cash it in at a recycling center, and that was unaware that was not allowed to take scrap wire from the NIST facility until was told by (b) (7)(C) could not take scrap wire for own benefit.

These circumstances raised the question of the ability for (b) (7) (C) to place an excess order for wire for a job in the attempt to take the excess wire and recycle it for cash. However, this is not possible due to the fact that estimators review the job and make a determination of the amount of wire needed for a job, not the (b) (7) (C) (Attachment 8)

Records received from Reliable Recycling indicate that on February 25, 2011, (b) (7) (C) brought in 232 pounds of insulated #1 copper wire and was paid $719.20. told us that in this case the wire he traded in at Reliable Recycling came from side jobs conducted before employment with NIST and that had brought it with when moved to the area, and that would have conducted the transaction on lunch break, specifically around 12:30 in the afternoon. Records from Reliable Recycling indicate that did conduct this transaction at 12:30 p.m., however it is questionable whether could have driven the 50 miles round trip from NIST in Gaithersburg to Reliable Recycling in Frederick, Maryland as well as conduct a transaction where 232 pounds of copper wire were traded in within allotted one hour lunch break. Reliable Recycling indicated that it could take anywhere from 10-20 minutes to conduct a transaction of this size depending upon the number of customers they are serving at the time. (Attachment 9, 15)

Further investigation into the email files belonging to (b) (7) (C) showed an email communication between (b) (7)(C) and (b) (7)(C). (b) (7)(C) is the (b) (7)(C) of Reliable Recycling in Frederick, Maryland. In this email, (b) (7)(C) inquired about the price per pound for 3,500 pounds of "paper lead cable" along with a photograph of the cable. The picture in question showed several large pieces of wire roughly cut into sections, which appeared damaged and unusable for electrical purposes. This wire contained a large amount of copper and thus was worth several thousand dollars. The photograph was taken and emailed using (b) (7)(C)'s government issued Blackberry device on January 25, 2011, at 1441 hours. Records received from Reliable Recycling shows that on January, 26th and 27th, 2011, (b) (7) (C) traded in 4,004 pounds of lead power cable in exchange for $4,776.45. Certified Time and Attendance records show that (b) (7) (C) was on annual leave when these transactions occurred with Reliable Recycling. (Attachments 6, 9)

(b) (7) (C) claims the cable (b) (7)(C) took to Reliable Recycling as listed above came from a job performed by Dvorak Electrical on the NIST campus in Gaithersburg under NIST contract number SB134110CQ0011. The wire in question was removed by Dvorak and new wire was installed to replace what had been repaired. The old used wire was stored at NIST for later removal by Dvorak, however Dvorak neglected to return to pick up the wire. The contract states in section 1.20 titled "Legal Disposal" that "the contractor shall be responsible for the proper and legal disposal of all refuse and debris generated or related to this work, and the costs of such disposal." The above mentioned contract goes on to dictate disposal of materials left over from this job in Attachment 3, section 18(b), "Store recyclable waste in a separate

clearly marked containers. Arrange and pay for collection by a licensed recycling contractor. Recyclable items include, wood, glass, aluminum, steel, gypsum, paper, cardboard, plastics, etc." (b) (7) (C) noticed the wire had not been removed from NIST after several months, so (b)(7)(C) contacted (b) (7) (C) of Dvorak Electric to inquire about the wire. (b) (7) (C) told us that whenever an electrical contractor had done work on the NIST campus, they have taken the scrap wire with them off of the campus. In this case, Dvorak was contractually obligated to remove the scrap wire from the NIST campus following completion of work, however in this case the scrap wire was left behind. (b) (7) (C) explained that (b)(7)(C) felt it was acceptable to accept the wire from (b) (7) (C) because it belonged to the contractor, not NIST and that they were responsible for removing it from NIST. (b)(7)(C) said (b)(7)(C) informed (b) (7) (C) that (b)(7)(C) could personally have the wire. (b) (7) (C) went on to explain that it was common practice for Dvorak to allow their employees to take excess wire material left over from the jobs Dvorak completed and trade the material in at recycling centers in exchange for currency. (Attachments 8, 10-12)

(b) (7) (C)

NIST, provided us with the contract under which this work was done by Dvorak Electric. In this case, and in violation of the agreement under this contract, (b) (7) (C) of Dvorak Electric took it upon (b)(7)(C) self to gift this material to (b) (7) (C) which when recycled, was worth $4,776.45. The contract for this work says that the contractor, in this case Dvorak, was responsible for removing any debris as well as recyclable materials from the NIST campus following the completion of work. This indicates that the wire in question was the responsibility of Dvorak and thus their property.
(Attachment 12)

We found, based on recycling records from Reliable Recycling, (b) (7) (C) made a total of 21 transactions for a total of $30,161.70 from March 15, 2010, to May 31, 2011. Reliable Recycling indicated that they do not require customers to provide them with a tax identification number in order to complete a recycling transaction. They do however require customers to furnish them with photo identification as a way of documenting the transaction in their computer system. (b) (5) All transactions at Reliable Recycling involved wiring material. When cross-referenced with (b) (7) (C) certified time and attendance records, we found (b)(7)(C) made a total of 8 transactions at Reliable Recycling in Frederick, Maryland while claiming full work days at NIST. (b) (7) (C) indicated that whenever (b)(7)(C) took materials to Reliable, (b)(7)(C) did so on (b)(7)(C) lunch break, however records from Reliable Recycling show times of transactions on the days Lassen claims to have been at work on NIST range from 8:10 a.m. to 12:16 p.m. We found Reliable Recycling is a 50 mile round trip from the NIST campus. (b) (7) (C) used (b) (7)(C) – the license plate number belonging to (b) (7) (C) was recorded by the recycling company as part of the transaction for security reasons and record keeping. (b) (7) (C) claimed (b)(7)(C) not only conducted all transactions with Reliable during lunch hours on work days, but that (b)(7)(C) was able to make a 50 mile round trip in that time and conduct transactions with Reliable where thousands of pounds of materials were redeemed. When questioned about the volume of material traded in and the source of this material, (b) (7) (C) claimed the majority of the wire (b)(7)(C) brought to Reliable was obtained from jobs (b)(7)(C) had

conducted outside of his normal employment at NIST through personal [redacted] work [redacted] was involved in. [redacted] went on to indicate [redacted] would often bring materials in [redacted] personal vehicle onto the NIST campus to later be taken to Reliable Recycling. (Attachments 9-10, 15)

Between March 14, 2011 until the time we took over the investigation from NIST PSG on August 8, 2011, we found only one report of theft of wire reported to NIST PSG. That report was made on March 15, 2011, by [redacted] Division; [redacted] reported the wire was taken from building 233 on the NIST campus. There is no evidence concerning who took this wire or if it was ultimately recycled, however [redacted] has two transactions recorded at Reliable Recycling for March 15th and 19th for a total of 1,208 pounds of wire were traded in exchange for $2,888.10. We have no way to trace this material back to NIST, however, since Reliable Recycling requires the plastic coating to be removed from the wire before they will accept it. [redacted] told us [redacted] would conduct "stripping parties" in [redacted] shed at home where [redacted] would spend time stripping the plastic coating from the wires prior to trading the wire into the recycling center. (Attachment 2, 8, 10)

Other Relevant Findings

Inadequate Materials Control

The fact that electrical wiring has no identifiable markings made it impossible for us to trace wire that may have originated from a NIST source. We recognize it is impractical to try to initiate some way of marking electrical wire, which is why internal controls on materials handling is important to minimize loss due to theft. Internal controls consists of measures that (1) protect the organization's resources against waste, fraud, and inefficiencies; (2) ensure accuracy and reliability in accounting and operating data; (3) secure compliance with policies; and (4) evaluate the level of performance in all organizational units. Our investigation found there were virtually no controls in place concerning materials ordering and storage by NIST [redacted].

As previously noted, [redacted] provided us with an "unwritten" material ordering process, which was a loose list of common practices used at NIST facilities for the ordering of supplies for jobs, however, the presence of an actual NIST approved policy concerning the acquisition and control of materials for jobs done under the [redacted] division did not exist at the time. We were also informed that a policy for the control of recycled materials did not exist. (Attachment 3)

On April 19, 2012, we conducted a meeting with [redacted] at the NIST campus as well as an inspection of the [redacted] division facility, and a review of the materials ordering process now in place. We learned that as a result of this investigation, [redacted] has been correcting deficiencies we discovered when this investigation began, and is working with [redacted] [redacted] Division; [redacted] Division; [redacted] Division; and [redacted]

(b) (7)(C) Division to draft new policies to address materials ordering and recycling of materials left over from jobs conducted by NIST employees of the (b) (7)(C) division. (Attachment 5, 13, 14)

Along with drafting new policies, (b) (7) (C) and (b) (7)(C) team have put physical control measures in place such as installing security cameras in order to keep 24- hour surveillance on the recycling dumpster to prevent personnel from removing materials as well as to keep a record of who placed materials in the dumpster. The recycling dumpster is designated as the repository for all recyclable materials left over from jobs conducted by (b) (7) (C) on the NIST campus. We were also shown the material storage room in building 301 that houses job materials after they are billed to work orders and in the process of being issued to the various work centers in (b) (7) (C). In the past, there were no controls over this storage area and every employee within (b) (7) (C) had access to the materials stored within this space, which included brass and copper pipe and fittings, as well as wiring and other valuable materials. As a (b) (7) (C), (b) (7) (C) is responsible for the (b) (7)(C) of the (b) (7)(C) and previously worked as an (b) (7) (C) in the electrical shop. (b) (7) (C) indicated that one of the security measures put in place to control the materials was to restrict access to the storage room in building 301 to allow only four people to have access to the storage room by locking the room and providing keys to (b) (7)(C) self, and three other (b) (7) (C) within (b) (7)(C) division, and prevent other employees from having uncontrolled access to this storage location. (Attachments 5, 13, 14)

Recommendations

The findings in this case evidence violation of 5 CFR §2635.101, 201-205, 704, and 705, as well as Departmental and NIST policies. Accordingly, based on the results of our investigation, we recommend that NIST:

(1) Take appropriate administrative disciplinary action against (b) (7) (C) for (b) (7)(C) time and attendance infraction and taking lighting from the NIST campus for personal use.

(2) Take appropriate disciplinary action against (b) (7) (C) on the basis of (b) (7)(C) misuse of government property and government email systems, possession of pornography and racially offensive materials on Department-owned computers, time and attendance infractions, and accepting a prohibited gift/gratuity, in this case $4,776.45 in scrap wire from Dvorak Electric. The NIST IT policy covers the misuse of email as well as computers that access the internet. It prohibits the "Unauthorized creation, downloading, viewing, storage, copying, or transmission of sexually explicit or sexually oriented material, as well as "participation in or encouragement of illegal activities or the creation, downloading, viewing, storage, copying, or transmission of materials that are illegal or discriminatory."

(3) Develop and implement internal controls concerning the acquisition, inventory, use and disposition of supplies and equipment used at NIST sites, as well as training for employees on workplace ethics, T&A fraud, and training on the implementation of new policies put in place by NIST management as a direct result of this case. The lack of policy dictating proper procedures for material ordering and recycling leaves the door open for employees to exploit this area and order excess materials for jobs and use that excess as well as leftover refuse from jobs for personal financial gain. Documented strong and consistently applied controls would help prevent future thefts.

(4) Inform contractor Dvorak Electric management of their employee's involvement in this case and the improper gifting of material by [redacted] to [redacted] which occurred in violation of the contract between NIST and Dvorak.

Please apprise our office within 60 days of any actions taken or planned in response to our findings and recommendations. If you have any questions, please contact me at 202-482-[redacted] or [redacted] at 202-482-[redacted]

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OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
NIST Police Gaithersburg, MD	HQ-HQ-11-0544-I
	TYPE OF REPORT ☐ Interim ☒ **Final**

BASIS FOR INVESTIGATION

On August 11, 2011, while conducting an interview in OIG Investigation PPC-CI-11-0507-I into an alleged theft of copper wire from the National Institute of Standards and Technology (NIST) by NIST employees, we learned that NIST's Police Services Group (PSG) had been investigating the alleged theft for approximately four months without notification to OIG. Departmental Administrative Order (DAO) 207-10 mandates that "information indicating the possible existence of . . .theft, conversion, misappropriation, embezzlement or misuse of government funds or property by any person" be reported to the OIG.

RESULTS/SUMMARY OF INVESTIGATION

We found that, in addition to the above mentioned theft allegation, over the course of the past two years NIST PSG failed to report numerous other allegations to OIG as required by DAO 207-10. While PSG has authority to conduct certain inquiries and investigations on the NIST Gaithersburg and Boulder campuses, such authority does not negate or otherwise affect the reporting requirements prescribed in DAO 207-10. Management interaction with the leadership of NIST has resulted in a change of policy and PSG is now reporting appropriate matters to the OIG.

Distribution: OIG x Bureau/Organization/Agency Management ___ DOJ: ____ Other (specify):			
(b) (7)(C)	Date: 3/22/13	(b) (7)(C)	Date: 3/22/2013
Name/Title: (b) (7)(C) Special Agent		(b) (7)(C) Special Investigations	

METHODOLOGY

This investigation was conducted through interviews and document review, including review of NIST Internal PSG documents.

DETAILS OF INVESTIGATION

On August 11, 2011, SA (b) (7)(C) was conducting an interview as a part of OIG Investigation PPC-CI-11-0507-I, into the alleged theft of copper wire from the National Institute of Standards and Technology (NIST) by NIST employees. During the course of this interview, SA (b) (7)(C) was informed that NIST's PSG had been investigating the theft for the previous approximately four months without notification to OIG.

DAO 207-10 specifically states that "information indicating the *possible existence* of any of [the below-listed] activities is to be reported to the OIG..." The DAO states that the Department's operating units have a duty to report any allegations (as listed further in the DAO, Section 3.02) they become aware of, without delay. Nowhere in the DAO is there a requirement of substantiation prior to reporting. Further, the DAO provides a list of categories of reportable matters, which includes theft. (Attachment 1)

When interviewed on September 13, 2011, (b) (7)(C) PSG, NIST, stated that when the theft allegation was first reported to PSG in March 2011, (b) (7)(C) immediately opened an investigation, with the aim of determining whether the allegation had any merit. (b) (7)(C) stated that (b) (7)(C) had concerns that the allegations could be a product of the ongoing tensions within the (b) (7)(C) shop of the NIST Plant Division, wherein several employees were experiencing interpersonal conflicts. (b) (7)(C) stated that without any sort of substantiation, in his view, it would have been pointless to notify OIG. (b) (7)(C) stated that from March 2011 until July 2011, when the allegation was referred to OIG, (b) (7)(C) PSG, was assigned to investigate the matter in order to obtain substantiation of the theft allegation. (Attachment 2)

(b) (7)(C) stated that (b) (7)(C) conducted (b) (7)(C) investigation by making contact with local police offices, as well as conducting surveillance of the alleged theft site, with a goal of getting substantive evidence. (b) (7)(C) stated that in July 2011, (b) (7)(C) contacted a law enforcement colleague at the National Institutes of Health (NIH) and learned that NIH had recently had a similar theft problem. NIH had found that employees were recycling materials at a local Frederick, Maryland recycling shop. (b) (7)(C) and the NIH officer subsequently went to the recycling shop, searched the customer database and found the names of four NIST employees. The database revealed that the four employees had been paid approximately $30,000 for recyclable materials from September 2008 – June 2011. (Attachments 2 – 3)

Throughout the interviews, each NIST official maintained there was no intent to withhold information from OIG. Each person expressed the belief that PSG had the *full* authority to

independently investigate such instances of misconduct, and OIG was only to be notified in the more serious matters or in instances where investigative assistance from OIG was desired by NIST. Although [redacted] acknowledged that [redacted] police officers do not have training in criminal investigations, [redacted] maintained [redacted] officers were adequately equipped to conduct a preliminary investigation of such allegations in order to ascertain their veracity. [redacted] of Emergency Management Services Division, after reading DAO 207-10, expressed again [redacted] belief that the theft allegation was within the authority of PSG to investigate, and absent substantiation of the allegations, did not need to be reported to OIG. (Attachments 2 and 4 – 6)

We subsequently obtained and reviewed a log of complaints made to PSG from January 1, 2011, through mid-September 2011. We determined that six of the eighty-eight complaints involved allegations which are defined as reportable to OIG by DAO 207-10. Additionally, we reviewed a log of "internal affairs investigations"[1] conducted by PSG during this same timeframe, and determined that seven of the thirteen PSG internal investigations involved allegations defined as reportable to OIG by DAO 207-10. (Attachment 7)

In response to our inquiry, [redacted] issued a directive on September 29, 2011, entitled "Crime Investigations – Directive" to his staff, which stated, among other things, that each officer was to notify OIG of any "crime" to OIG's hotline within twenty-four hours of receipt by PSG. As of September 13, 2012, the OIG hotline has received seven such notifications from PSG. (Attachment 8)

[1] [redacted] explained that when [redacted] took over NIST police in 2010, [redacted] instituted an [redacted] category, which encompasses [redacted]. [redacted] stated only [redacted] and [redacted]

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OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
BLUEBIRD MEDIA, LLC (*Qui-Tam*) **BLUEBIRD NETWORK, LLC** Columbia, Missouri BTOP Grant Fraud	FOP-WF-12-0433-I **TYPE OF REPORT** ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On February 7, 2012, the Office of Investigations (OI) received a request from the United States Attorney's Office in the Western District of Missouri. The request sought investigative assistance in a *qui-tam* suit related to a National Telecommunications and Information Administration (NTIA) grant under the Broadband Technology Opportunities Program (BTOP). The *qui-tam* relator alleged two related entities, Bluebird Media, LLC and Bluebird Network, LLC, made false statements and submitted false claims. (Attachment 1)

RESULTS/ SUMMARY OF INVESTIGATION

Our investigation found no evidence sufficient to show false claims or false statements were submitted to NTIA related to the BTOP grant to Bluebird Media, LLC. The United States Attorney's Office and Main Justice/Civil declined to intervene in the relator's *qui-tam* complaint and have closed their case. The Anti-Trust Division for the Department of Justice has also declined further investigative or prosecutive action.

METHODOLOGY

This case was conducted through interviews and document review, including electronic mail, public domain documentation, Internet sources, correspondence from witnesses and the subject, and documents from NTIA. We also conducted an analysis of financial and business

[redacted] /Agency Management		DOI:	Other (specify):
[redacted] ate: 1/4/13	[redacted]		Date: 1/4/2013
	Name/Title: (b) (7)(C) OSI		

records provided over the course of the investigation. This included detailed financial analysis of grant records and claims, as well as records obtained via OIG administrative subpoena.

DETAILS OF INVESTIGATION

The Grant

The American Recovery and Reinvestment Act (ARRA) of 2009 provided the U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) with $4.7 billion to support the deployment of broadband infrastructure, enhance and expand public computer centers, encourage sustainable adoption of broadband service, and develop and maintain a nationwide public map of broadband service capability and availability. This was implemented through what is known as the Broadband Technologies Opportunity Program (BTOP), which is outlined under Catalog for Domestic Assistance (CFDA) #11.557. The general objectives of this grant included accelerating broadband deployment in unserved and underserved areas and ensuring that strategic institutions which are likely to create jobs or provide significant public benefits have broadband connections. The grant was awarded on a competitive basis; this particular grant, numbered NT10BIX5570091, was awarded with a federal share of $45,145,250 and a matching share (grantee amount) of $19,658,100. It's specific objective was to construct a 900 mile fiber optic network in Northern Missouri. (Attachment 2)

Investigative Results

The former (b) (7)(C) for Bluebird Media, (b) (7)(C) (b) (7)(C), filed a *qui-tam* alleging two related entities, Bluebird Media, LLC and Bluebird Network, LLC, made false statements and submitted false claims. Specifically, he alleged defendants lied to NTIA about:

- the area they claimed to serve being "under-served" when in fact it was not;
- matching shares they claimed would come from Boone County National Bank, knowing such funds were not available;
- receiving a $10.5 million in-kind contribution from the State of Missouri that they did not properly receive;
- a business relationship with a bankrupt party;

- the ability to create a viable and sustainable business;
- changing the purpose/client base of the grant without knowledge of NTIA. (Attachment 1)

Armed with knowledge of the relator's complaints, our office worked with NTIA program officials to understand the process of vetting Bluebird Media as a grantee, which subsequently resulted in a grantee site visit. That site visit found minor, correctable issues primarily revolving around incomplete match requirements because the match with the State of Missouri had not yet been finalized. Bluebird Media also had a lack of sufficient financial policies. The site visit report was completed on April 23, 2012. (Attachment 3)

Our review of the due diligence and grant files maintained by NTIA found they were aware and had approved of Bluebird Media's matching share being in the form of $10.5 million worth of rights of way on 37 parcels of land. They also knew there were ongoing negotiations with the State of Missouri about the value; part of what is currently in process is an independent, third-party valuation of the land parcels. NTIA was also aware one source of match early in the process was a loan from Boone County National Bank. However, when Bluebird Media went through a merger, Bluebird Media informed NTIA they were no longer relying on the Boone County National Bank loan, and those matching funds were being replaced by a "combination of financing and cash flow from non-federal assets". NTIA was aware that Bluebird Media was part of a merger in which they and MNA Holdings invested together to create a separate entity known as Bluebird Network. NTIA thought this merger was a good idea because it essentially changed the nature of the project from a wireless network into a fiber network, which long range has a better outcome. Furthermore, independent assessments of whether an area is underserved are done and NTIA verified the need for this project. Lastly, NTIA was aware of a bankruptcy by a party involved with Bluebird Media and they put in place limitations with respect to that person's ability to impact the NTIA project. (Attachments 2-4)

Together with a prosecutor from the United States Attorney's Office, a civil trial attorney from the United States Department of Justice, and a program official representing NTIA, on June 19, 2012 we interviewed the relator to gain a better understanding of his allegations. While [redacted] did clarify issues alleged in the complaint, he provided no further documentation of false claims or false statements. (Attachment 5)

One of (b) (7)(C)'s allegations concerned Bluebird changing the purpose/client base of the grant without knowledge of NTIA. As we have investigated this, we have developed information that suggested an anti-trust violation could be involved. This specifically has to do with local

telephone companies dividing territories and then taking steps to frustrate the BTOP effort in order to limit competition. When they could not stop it, they entered into a merger and then restricted territories where the BTOP project connection could be offered. Specifically, MNA Holdings, LLC, which is a subsidiary of Missouri Network Alliance (MNA), owns 49% of Bluebird Network, LLC, while 51% is owned by Bluebird Media, LLC. MNA is a network of rural Missouri telephone exchange companies that has an anti-trust exemption to allocate telephone service based on certain geographic boundaries, in which other telephone companies agree not to compete. According to (b) (7)(C), MNA aggressively sought to stop Bluebird's attempt to get BTOP funding because it would interfere with MNA's plan to offer broadband service in the same area. After the award of the grant, MNA merged with Bluebird Network. MNA then forced on Bluebird Network the same territory allocation as what the member phone companies had adhered to for years. This resulted in community anchor institutions being removed from a list that Bluebird had already promised NTIA they would serve. (Attachment 5)

On June 19, 2012 we interviewed (b) (7)(C), who from (b) (7)(C) was the (b) (7)(C) for Bluebird Network, LLC (b) (7)(C) said (b) (7)(C) was the (b) (7)(C) mployee of the company and helped apply for the Broadband grant from NTIA, although when (b) (7)(C) was hired in (b) (7)(C) the grant application had been submitted and the grant awarded; (b) (7)(C) never saw the grant application prior to its submission and only worked on providing support letters from community anchor institutions. (Attachment 6)

(b) (7)(C) said (b) (7)(C) knew MNA Holdings was "adamantly opposed" to the NTIA grant in Northern Missouri and "worked vigorously" to ensure the grant did not come to their territory because it was viewed as creating a competitive threat. (b) (7)(C) confirmed MNA Holdings is a coalition of a number of small telecom companies in rural Missouri. (b) (7)(C) said about the "red-lining" allegation that Bluebird had promised as part of their grant proposal they would serve 102 Community Anchor Institutions (CAIs) in 59 counties in Northern Missouri. (b) (7)(C) said (b) (7)(C) was aware that after the merger between Bluebird and MNA, there were many of the 102 CAIs (b) (7)(C) was told they could no longer service. This was because they were located in non-compete rural telecom areas that MNA determined could only be serviced by the respective local rural telecom carrier. (Attachment 6)

On June 20, 2012, (b) (7)(C) the (b) (7)(C) for Boone County National Bank, was interviewed. (b) (7)(C) confirmed (b) (7)(C) did write and sign the letter dated March 25, 2010 offering financing to Bluebird. (b) (7)(C) said it is a letter (b) (7)(C) would provide to good customers in the course of regular business, and while it did not commit the bank to actually

fund the loan, it did indicate Boone County National Bank was interested in entertaining the possibility of doing so. (b) (7)(C) said knew the $9+ million was to be used to support the application for a BTOP grant. also knew the grant was intended to fund a broadband project in which Bluebird Media was to lay fiber optic cable to accomplish the project. said (b) (7)(C) of Bluebird is a well-known and successful businessman in the area that bank has had years of solid banking experience with. (Attachment 7)

On June 25, 2012, (b) (7)(C) was interviewed. (b) (7)(C) confirmed from (b) (7)(C) to (b) (7)(C) was the (b) (7)(C) of Bluebird Media, LLC. From (b) (7)(C) until (b) (7)(C) was the (b) (7)(C) of a new company known as Bluebird Network, LLC, which was the result of a merger of Bluebird Media, LLC and Missouri Network Alliance, LLC (MNA). (b) (7)(C) said Bluebird Media, LLC was owned by (b) (7)(C) who had a 51% stake, with the remaining 49% owned by (b) (7)(C) who is a (b) (7)(C), and and (b) (7)(C) (b) (7)(C) (Attachment 8)

(b) (7)(C) sai had no reason to believe the letter from Boone County National Bank was a hoax or otherwise illegitimate – understood it was done as a favor for (b) (7)(C) to facilitate the grant application process. (b) (7)(C) said by October 2010 it had become obvious they needed to seek different sources of funding so suggested a merger with Missouri Network Alliance (MNA). (Attachment 8)

(b) (7)(C) said CAIs are key components to the NTIA grant. The purpose of providing broadband is primarily to serve CAIs, which are made up of entities such as schools, libraries, hospitals and other key public service type entities. However, many of these CAIs were in the "footprint" of MNA member service areas. (b) (7)(C) said that after the merger, the Board told to produce a list of all the CAIs and where they were. was then given that list back with many of the CAIs "red-lined" and told that they should not approach these CAIs about signing on to Bluebird's broadband service. (b) (7)(C) said was told to stay away from these areas because it infringed on MNA member coverage areas. clarified this represented competition to MNA members, and advised the Board on several occasions that this was a significant issue – in fact, telling them it was an anti-trust violation. (b) (7)(C) said in his mind, the red-lining of CAIs is an anti-trust issue, and in fact, just before was let go had prepared a legal analysis about this subject, but never got to present it because was fired before could do so. (Attachment 8)

We subsequently obtained through OIG subpoena records that (b) (7)(C) maintained, including the legal analysis on the anti-trust issue. However, the legal analysis was done under attorney-

client protections. This created a situation that led to the Office of Professional Responsibility (OPR) for the Department of Justice getting involved and opining that this document could not be used for investigative or prosecutive purposes. (Attachments 9-10)

The investigation to date has not developed evidence consistent with the relator's allegations, nor has it identified specific claims that contain false information. NTIA was in fact aware of most of these issues and took steps to mitigate, representatives from Boone County National Bank confirmed they did make an offer to provide funding, and the State of Missouri has agreed to provide rights-of-way as part of an in-kind contribution. It appears what irregularities did exist and which were identified during the site visit inspection have been adequately dealt with on an administrative level by NTIA program officials. Based on this, on December 21, 2012, the Civil Division filed with the court a notice of their declination to intervene in the *qui-tam* case. Furthermore on January 3, 2013, the Anti-Trust Division for the US Department of Justice also declined to further invest resources in this case and declined prosecution. (Attachments 11-12)

TABLE OF ATTACHMENTS/INDEXES

Attachment	Description	IG-CIRTS Serial Index
1	Opening Complaint documents, including *Qui-Tam* suit	1-6
2	Grant File, BTOP Program Description	8, 11
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6	Interview with (b) (7)(C)	18
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8	Interview with (b) (7)(C)	23
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OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
(b) (7)(C) (b) (7)(C) ES- National Oceanic and Atmospheric Administration Silver Spring, MD	HQ-HQ-12-0705-I **TYPE OF REPORT** ☐ Interim ☒ **Final**

BASIS FOR INVESTIGATION

On April 17, 2012, a confidential complainant contacted the Office of Inspector General (OIG) and alleged that (b) (7)(C) National Environmental Satellite, Data & Information Service (NESDIS) (b) (7)(C) created a hostile work environment for the complainant and hired the life coach of (b) (7)(C) (b) (7)(C) at a cost of $20,000 to organize an unnecessary offsite team-building event for NESDIS Chief Information Division (CID) employees. (Attachment 1)

RESULTS/SUMMARY OF INVESTIGATION

Our investigation did not substantiate the allegations. We determined that (b) (7)(C) did not engage in discriminatory conduct or behavior against the complainant, and that (b) (7)(C)'s life coach has not been hired to facilitate the NESDIS CID employee team-building event.

METHODOLOGY

This investigation was conducted through witness interviews and document review.

Distribution: OIG x Bureau/Organization/Agency Management X DOJ: ____ Other (specify):			
Signatu (b) (7)(C)	Date: 3/22/13	(b) (7)(C) al:	Date: 3/22/13
Name (b) (7)(C) Investigator		Name/Title: (b) (7)(C) Special Investigations	

DETAILS OF INVESTIGATION

On April 17, 2012, OIG received an allegation from a confidential complainant that (b) (7)(C) created a hostile work environment for the complainant and hired (b) (7)(C)s life coach at a cost of $20,000 to organize and facilitate an unnecessary offsite team-building event for NESDIS CID employees. (Attachment 1)

On June 6, 2012, we interviewed the complainant, who claimed (b) (7)(C) creates a hostile work environment for the complainant and the complainant's colleagues by not sharing information with them or by doing so in an unfriendly manner. The complainant also said that (b) (7)(C) makes important business decisions without reading the information provided to (b) (7)(C) by (b) (7)(C) staff. When asked whether (b) (7)(C) mistreats the complainant, the complainant replied that, on the contrary, (b) (7)(C) "sticks up for" (b) (7)(C) staff before NESDIS management and praises them for the work that they do. The complainant also said that after submitting this complaint initially, the complainant learned that the employee team-building event contract will not be given to (b) (7)(C)s life coach. The complainant opined, however, that this team-building event is an unnecessary waste of time and taxpayer money, as the complainant does not expect results. The complainant said that a similar event was held two years ago and nothing ever came out of it. (Attachment 2)

On June 6, 2012, we interviewed (b) (7)(C) Management Operations and Analysis Office, NESDIS, regarding the team-building event contract. (b) (7)(C) (b) (7)(C) said that (b) (7)(C) and (b) (7)(C) (b) (7)(C) suggested that (b) (7)(C) award a sole source contract in favor of Bova International, Inc., the company for which (b) (7)(C)'s life coach works, in order to expedite the procurement process. However, (b) (7)(C) did not believe that a sole source contract was supported, so (b) (7)(C) permitted (b) (7)(C) to award a non-competed contract for $16,686 to (b) (7)(C) (b) (7)(C), a Small Business Association (SBA) 8(a) certified business entity, to organize and facilitate the team building event. (Attachment 3)

On June 12, 2012, we reviewed the contract file, provided by (b) (7)(C) on June 8, 2012, and confirmed the information he provided during his June 6 interview. (Attachment 4)

TABLE OF ATTACHMENTS

Attachment	Description	Serial
1	Complaint Documents	1, 2
2	IRF Confidential Complainant June 6, 2012 Interview	10
3	IRF (b) (7)(C) June 6, 2012 Interview	11
4	IRF Records Review Contract No. EE-133E-12-SE-1124	13

UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, DC 20230

January 15, 2013

MEMORANDUM FOR: [redacted]
National Ocean Service
National Oceanic and Atmospheric Administration

FROM: [redacted]

SUBJECT: OIG Investigation, Re [redacted] et. al
(OIG Case # 12-0868-1)

Attached is our Report of Investigation (ROI) in the above-captioned matter. Our investigation did not substantiate any impropriety on the part of [redacted] or [redacted] (former [redacted]), in arranging [redacted]'s travel to the 2011 World Ocean Week in China. However, during the course of this investigation, we discovered that [redacted] at a staff meeting in late June 2012, inappropriately instructed [redacted] staff of a requirement to immediately report to their supervisors any contact by our office in relation to ongoing OIG investigations, creating a belief among his employees that they were not to speak with OIG without prior consultation with their management. [redacted]'s instruction is in contravention of DAO 207-10 § 4.04, "No employee or official who has authority to take, directs others to take, recommend, or approve any personnel action, shall direct any employee to refrain from making a complaint, reporting information or cooperating with the OIG."

We recommend that you take appropriate steps to ensure [redacted] is trained with respect to the requirements of all DOC employees, particularly those with supervisory authority, during OIG investigations, as dictated under DAO 207-10, as well as to take any disciplinary action you deem appropriate.

In accordance with DAO 207-10, paragraph 4, your written response of any action proposed or taken is requested within 60 days of receipt of this referral.

In your official capacity, you have responsibilities concerning this matter, the individuals identified in this memorandum, and the attached documents. Accordingly, you are an officer of the Department with an official need to know the information provided herein in the performance of your duties. These documents are being provided to you in accordance with 5 U.S.C. §552a(b)(l) of the Privacy Act and as an intra-agency transfer outside of the provisions of the Freedom of Information Act.

Please be advised that these documents remain in a Privacy Act system of records and that the use, dissemination or reproduction of these documents or their contents beyond the purposes necessary for official duties is unlawful. The OIG requests that your office safeguard the information contained in the documents and refrain from releasing them without the express written consent of the Counsel to the Inspector General.

If you have any questions please do not hesitate to contact me at (202) 482-(b) (7)(C), or (b) (7)(C) at (202) 482-(b) (7)(C)

Attachment
ROI (with exhibits)

cc: (b) (7)(C) National Ocean Service
(b) (7)(C) Ethics and Law Program Division, Office of General Counsel
OIG case file

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
(b) (7)(C) (ZA-(b) (7)(C)) (b) (7)(C) (ZA-[redacted] NOS) (b) (7)(C) (ES; (b) (7)(C))	FOP-WF-12-0868-I
	TYPE OF REPORT ☐ Interim ☒ **Final**

BASIS FOR INVESTIGATION

On June 7, 2012, our office received a complaint via our hotline from a confidential complainant alleging (b) (7)(C) Office of Education and Sustainable Development, National Oceanic and Atmospheric Administration (NOAA), and (b) (7)(C) (b) (7)(C) International Programs Office, NOAA, had conspired to "cover up a travel gift to (b) (7)(C) from the Chinese Government." Specifically, the complainant stated they had been provided information specifying that (b) (7)(C) and (b) (7)(C) had worked together to ensure it was not discovered that a trip to China in (b) (7)(C) 2011 by (b) (7)(C) had been paid by the Chinese government, in violation of various ethical and federal regulations.

Further, in the course of our investigation, we learned of an instruction by (b) (7)(C) to [redacted] staff, wherein [redacted] related that (b) (7)(C) was instructing all National Ocean Service (NOS) staff to immediately notify their managers if and when they were contacted by OIG.

RESULTS/SUMMARY OF INVESTIGATION

We determined the trip in question was funded by the United Nations Development Program (UNDP), not a Chinese governmental agency. While investigating the initial allegation, we learned of, and substantiated, (b) (7)(C) gave instruction to subordinate personnel, creating the impression they were not to communicate with OIG without supervisory approval, in contradiction of the IG Act and DAO 207.10 § 4.04 regarding notification to supervisors of OIG contact.

Distribution: OIG x Bureau/Organization/Agency Management x DOJ: ____ Other (specify):

(b) (7)(C)	Date: 1/15/13	(b) (7)(C)	Date: 1/15/13
(b) (7)(C) Special Agent		(b) (7)(C)	

METHODOLOGY

This investigation was conducted through document review, including electronic mail, travel records, and Departmental briefing records.

DETAILS OF INVESTIGATION

On June 7, 2012, our office received the aforementioned complaint alleging (b) (7)(C) (b) (7)(C) and (b) (7)(C) had conspired to "cover up a travel gift to (b) (7)(C) from the Chinese Government." (Attachment 1)

On June 28, 2012, in the course of scheduling an interview with a witness, we learned that (b) (7)(C) during a staff meeting, had related to his staff that (b) (7)(C) (b) (7)(C) had issued a directive that any National Ocean Service (NOS) employee contacted by OIG should immediately notify their management, given the "high number" of OIG investigations ongoing within NOS. (Attachment 2)

We interviewed the confidential complainant, finding that witness' knowledge came from another NOS employee. The complainant stated there is a "longstanding relationship" between NOAA and China, and it was not uncommon for the Chinese government to pay for experts from NOAA to travel to China to consult on various matters. (Attachment 3)

We obtained (b) (7)(C) s travel voucher, (b) (7)(C) showing (b) (7)(C) departed Washington, D.C. for Beijing, China on (b) (7)(C) 2011, and returned from Beijing on (b) (7)(C) 2011. The voucher reflected that NOAA did not pay any travel or lodging costs for (b) (7)(C) providing only the *per diem* costs and one taxi in China, totaling $983.00. (Attachment 4)

Gifts of funds for travel are governed by 31 USC §1353, as well as Departmental Administrative Order (DAO) 203-9. Gifts from a non-Federal source, including payments for travel and subsistence, may be accepted by a Departmental employees where the employee is traveling in relation to their official duties. 31 U.S.C §1353 further requires the Department to file semi-annual reports to Congress documenting all gifts and bequests in that period. Gifts from foreign governments are governed by 5 U.S.C. §7342, as well as DAO 202-739. Employees of the executive branch may *not* accept a gift of travel funds or subsistence from a foreign governmental entity unless the travel takes place *entirely outside* the United States. However, according to (b) (7)(C) Ethics Law and Programs Division, OGC, based on consultation with the Department of State, payments from foreign governments for employees of the executive branch to travel in an official capacity are not considered gifts to individuals, but rather gifts to the agency, and as a result, do not fall under DAO 202-739 or 5 USC §7342, but rather are governed by the Gifts and Bequests regulations, as outlined in 31 USC §1353 and

[1] (b) (7)(C) is currently on detail to the National Weather Service.
[2] (b) (7)(C) was the former (b) (7)(C) who (b) (7)(C) effective (b) (7)(C) 2011.

DAO 203-9. (b) (7)(C) further stated there is a Departmental policy that draws a distinction between political appointees and other federal employees in this regard, thereby making it permissible for non-politically appointed employees of the executive branch to receive a gift of travel funds from a foreign governmental entity. (Attachment 5)

We obtained records showing (b) (7)(C)'s travel and lodging was paid by the United Nations Development Programme (UNDP), including (1) the incoming invitation letter from UNDP to (b) (7)(C); (2) the review and authorization of the payment by the Department's Office of General Counsel (OGC); and (3) a "Record of Gift or Bequest," Form CD-210. The records reflect that UNDP paid $8,995 for (b) (7)(C)'s airfare, and $2,117 for (b) (7)(C) lodging, for a total of $11,112. (Attachments 6 – 8)

We interviewed (b) (7)(C) who accompanied (b) (7)(C) and (b) (7)(C) on this trip to China. (b) (7)(C) stated (b) (7)(C)'s travel was paid by UNDP whereas (b) (7)(C) and (b) (7)(C)'s travel was paid by the State Oceanic Administration (SOA), a Chinese governmental agency.[3] (b) (7)(C) provided documents reflecting an invitation from SOA to pay for (b) (7)(C) and (b) (7)(C)'s travel and lodging, as well as a "Record of Gifts and Decorations from Foreign Governments," Form CD-342, reflecting that SOA paid for both (b) (7)(C) and (b) (7)(C)'s travel and lodging. (b) (7)(C) provided records showing the cost paid for two round-trip flights to Beijing from D.C. was $1,604.40. The CD-342 reflects an estimate of $1,000 for lodging costs. (Attachments 7 and 9)

Further, we obtained the October/November China Travel Reports filed by the Department, submitted to The Honorable Frank R. Wolf, Chairman, Subcommittee on Commerce, Justice, Science and Related Agencies, as required by P.L. 112-55, to reflect all expenditures by the Department on employee travel to China. The travel report reflects three entries for NOAA for travel ending in (b) (7)(C) 2011, with amounts of $983, $1,113, and $1,037. (Attachment 10)

We interviewed (b) (7)(C) who denied any knowledge of, or involvement in, an effort to cover up the source of payment for (b) (7)(C)'s travel. (b) (7)(C) stated (b) (7)(C) involvement in (b) (7)(C)'s travel was receiving the invitation from UNDP, discussing the trip with (b) (7)(C) and providing an affirmative response to the cognizant points of contact within NOAA, UNDP, and SOA. (b) (7)(C) stated (b) (7)(C) only saw one invitation letter, from UNDP, and (b) (7)(C) had no involvement in the creation of, or pressuring others to, falsely create a letter reflecting an invitation from UNDP, but that (b) (7)(C) had reiterated to (b) (7)(C) and others involved in the trip planning that (b) (7)(C) could not have any costs paid for by a foreign governmental entity. (b) (7)(C) stated this was not the first time (b) (7)(C) had traveled to China for World Ocean Week; NOAA had received an invitation for (b) (7)(C) to attend in 2012. (Attachment 11)

We then interviewed (b) (7)(C) who denied any knowledge of, or involvement in, an effort to cover up the source of payment for (b) (7)(C)'s travel. (b) (7)(C) stated (b) (7)(C) had limited interaction

[3] It was explained by various witnesses that the relationship between UNDP and SOA is such that UNDP regularly acts as a facilitator for organizing functions with SOA, and typically the events are jointly sponsored. As a result, individual from both organizations can be the point of contact on a given event.

with (b) (7)(C) in coordinating this trip, and (b) (7)(C) may have exchanged a few emails or phone calls in relation to the trip plans. (b) (7)(C) stated (b) (7)(C) knowledge of (b) (7)(C)'s trip to China was that originally, when the invitation to attend World Ocean Week arrived, (b) (7)(C) initially declined, citing budgetary constraints. (b) (7)(C) stated SOA, because of their desire to have a high-level NOAA official attend, coordinated with UNDP to officially invite and provide funding for (b) (7)(C) to fly and stay at World Ocean Week. (b) (7)(C) stated (b) (7)(C) had no involvement in the execution of the trip planning, and (b) (7)(C) information was obtained from conversations with (b) (7)(C) confirmed (b) (7)(C) and (b) (7)(C)'s travel and lodging costs were paid for by SOA, but (b) (7)(C) has no recollection of specific amounts. (Attachment 12)

Through the course of our investigation, we learned that (b) (7)(C) had related to (b) (7)(C) staff at a meeting in the latter half of June 2012 that (b) (7)(C) had issued a directive for any NOS employee contacted by OIG to immediately notify their management, given the number of ongoing OIG investigations related to NOS. We interviewed five NOS employees who were present at the staff meeting where (b) (7)(C) made this statement; four recalled hearing (b) (7)(C) relate an announcement that (b) (7)(C) wanted notification when any NOS employee was contacted by OIG. Each of the four employees stated the tone of (b) (7)(C)'s delivery was not threatening or otherwise out of the ordinary, but many expressed apprehension when contacted by our office for an interview, and inquired whether they had to obtain approval from (b) (7)(C) or (b) (7)(C) in light of (b) (7)(C)'s instruction. (b) (7)(C) stated (b) (7)(C) had been instructed at a staff meeting by (b) (7)(C) that NOS was aware of OIG inquiries, and that managers were to notify (b) (7)(C) if they became aware of any (b) (7)(C) stated (b) (7)(C) "reiterated the statement at my staff meeting, which was the following morning." (Attachments 2, 9 and 12 – 17)

When interviewed, (b) (7)(C) denied making an instruction for NOS employees to notify management of contact by OIG. (b) (7)(C) stated (b) (7)(C) had made an instruction to all (b) (7)(C) Senior Executive Service (SES) staff members that they should notify (b) (7)(C) if they needed to reassign any of their staff to assist in inquiries of matters referred to NOAA by OIG. (b) (7)(C) stated (b) (7)(C) made this statement at a staff meeting of all (b) (7)(C) direct reports, of which (b) (7)(C) is one, but (b) (7)(C) had made clear the instruction was to (b) (7)(C) SES staff, which (b) (7)(C) is not. (b) (7)(C) stated (b) (7)(C) instruction was predicated on a recent request from (b) (7)(C) National Weather Service (NWS), for (b) (7)(C) to assign one of (b) (7)(C) staff to assist in an OIG referral inquiry. (b) (7)(C) stated (b) (7)(C) was completely in support of this request, and (b) (7)(C) was cognizant that further requests for assistance would be coming due to the "large backlog" of OIG referrals to NOAA. (b) (7)(C) stated this cognizance led (b) (7)(C) to make the announcement so that (b) (7)(C) would be able to ensure that staff members were made available to assist in OIG referral inquiries, while keeping workloads appropriately managed. (b) (7)(C) stated the message was not intended for dissemination to anyone outside (b) (7)(C) SES staff, and (b) (7)(C) does not have any desire to have any knowledge of OIG referrals outside of being aware a staff person is assigned to one. (Attachment 18)

TABLE OF ATTACHMENTS/INDEXES

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1	Initial Complaint	1
2	Interview of (b) (7)(C) June 28, 2012	10
3	Interview of Confidential Complainant, June 28, 2012	9
4	(b) (7)(C) Travel Voucher, (b) (7)(C)	11
5	(b) (7)(C) Email, July 30, 2012	32
6	(b) (7)(C) CD-210	25
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17	IRF Interview (b) (7)(C) July 6, 2012	22
18	Transcript of (b) (7)(C) Interview, July 23, 2012	31

UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, DC 20230

October 5, 2012

MEMORANDUM FOR: David Hinson
National Director
Minority Business Development Agency

FROM: Rick Beitel
Principal Assistant Inspector General
for Investigations and Whistleblower Protection

SUBJECT: Results of Inquiry, Re: MBDA Chicago Regional Office Taxi Fare Expenditures (OIG Case No. FOP-WF-12-1075-P)

This presents our results in the above-captioned inquiry we conducted involving claims for taxi expenditures submitted by employees of MBDA's Chicago Regional Office.

Background

We have reviewed the travel reimbursement documents provided by MBDA's Chicago Regional Office to the Better Government Association (BGA) in response to a Freedom of Information Act (FOIA) request it filed. The FOIA documents were subsequently referenced in a July 2012 media report detailing expenditures for cab rides claimed by employees in MBDA's Chicago office, suggesting possible excessive and wasteful spending.

Summary of Findings

In brief, we confirmed information reported that between October 1, 2008, and May 25, 2011, eight employees of MBDA's Chicago office, including the (b) (7)(C) received reimbursements totaling approximately $25,700 for travel expenditures, claimed in a total of 551 vouchers, which appear to encompass both local cab fares (e.g., in or around Chicago) and cab fares while on agency-approved travel outside the local area. Most of the individually claimed cab fares were under $75 and for such claims no receipts were submitted, in accordance with MBDA policy and the Federal Travel Regulation (41 CFR Ch. 301), which only require a receipt for expenditures over $75. Given this limitation and that the claims were reimbursed after being vouchered and approved within MBDA, we did not attempt to validate the legitimacy of the fares.

We did, however, identify issues warranting your attention regarding how travel vouchers are reviewed and approved within MBDA, primarily at headquarters. Of particular concern, although MBDA's policy prescribes that supervisors approve their subordinates' travel

vouchers, MBDA's practice is for the vouchers of its GS-15 Regional Directors, along with regional GS-14s, to be both reviewed *and* approved by headquarters finance staff, rather than approved by their supervisors. In our view, this is not a best practice, as supervisors—not headquarters finance staff—are in the best position to assess whether their subordinates' travel is legitimate and claimed expenses (e.g., taxi fares) appear necessary and reasonable to carry out the mission of the agency.

Accordingly, foremost among our recommendations below is that you require supervisory approval of travel vouchers for all MBDA staff. While we recognize that the individual employee bears ultimate accountability for filing accurate, honest, and expense-reasonable vouchers, supervisory approval provides an important internal control in promoting transparency and effective oversight.

Detailed Findings

Our review found that MBDA employees reported cab expenditures through one of three methods: (a) "Local Travel Voucher" for those expenditures occurring at the permanent duty station; (b) a paper travel voucher filed for expenditures incurred while at a temporary duty station outside the local area; and (c) an expense report filed through an online travel management system, "FedTraveler," also for expenditures incurred while on travel to a temporary duty station. The records reviewed reflected that from October 1, 2008 – May 25, 2011, eight employees in the Chicago office, including the (b) (7)(C) , were reimbursed up to $25,699.04 in expenditures via 551 vouchers, which appear to encompass both local cab fares and cab fares while on agency travel outside the local area.

There were four expenditure categories found within the three aforementioned methods for claiming travel expenditures, "Taxi"; "Local Travel"; "Miscellaneous Travel"; and "Other", through which employees could claim a reimbursement that would encompass cab fares. Of those, the one explicitly entitled "Taxi", which applied to cab fares while on travel to a temporary duty station, accounted for $20,861. Our review identified seven different individuals who were approving officials on the travel reimbursement documents. Two of these approving officials are located in the Chicago office (the (b) (7)(C) and (b) (7)(C) , while the other five are at headquarters, and range from GS-11 to GS-15. The (b) (7)(C) had all of (b) (7)(C) claims approved by headquarters finance personnel, consistent with MBDA's practice, but not per its formal policy as addressed below.

We interviewed a (b) (7)(C) in your Office of Finance, who stated (b) (7)(C) was one of four approving officers for MBDA's travel-related documents. This (b) (7)(C) referenced MBDA's policy, contained in its internal "Financial Management Guide" (Guide) setting out the various processes for travel approvals, including approval of travel vouchers. The (b) (7)(C) stated (b) (7)(C) and the other three approving officers only review and approve travel vouchers for GS-14s and GS-15s in the regions, and employees located at headquarters. The (b) (7)(C) stated the GS-14s in each regional office approve vouchers for the regional employees below a GS-14. The (b) (7)(C) provided us with a copy of the Guide, which specifies the forms and approvals required for expenditures while on both local and official temporary travel.

The Guide prescribes that the "[voucher] is forwarded electronically to the **employee's supervisor for verification and approval** (according to the appropriate approval chain)." [emphasis added]. However, in a subsequent section, "Approval Chains," it is specified that vouchers submitted by the GS-15 Regional Directors and GS-14 Chiefs are "reviewed" by headquarters staff in MBDA's Office of Financial Management, Performance, and Program Evaluation (OFMPPE), while employees within the regional office have theirs "reviewed" by the regional management, for example, the Regional Director or Chief. The Guide does not explicitly identify approving officials, but, as noted above, MBDA's practice has been for headquarters finance staff to both review *and* approve vouchers filed by regional GS-15 and GS-14 personnel, which is inconsistent with the above provision for supervisory "verification and approval." Also, the Guide specifies that receipts are only required for expenditures over $75, which is in keeping with the Federal Travel Regulation.

41 CFR §301-10.420 specifies that taxis may, when authorized and approved by the agency, be used "in the performance of official travel," and allows reimbursement for "the usual fare plus tip for use of a taxi..." when at your official duty station. 41 CFR §301-71.207 specifies that agencies are responsible for establishing internal policies and procedures detailing the appropriate approval chains, as well as how and within what timeframe employees are to submit travel reimbursements claims, and 41 CFR §301-71.200 states a "travel authority/approving official or his/her designee must review and sign travel claims to confirm the authorized travel." Per 41 CFR §301-71.201, the reviewing official has the responsibility for verifying that the expenditures are authorized and allowable, as well as ensuring that the required documents are present, though under 41 CFR §301-71.203, the traveler still maintains responsibility for ensuring that travel expenses are "prudent and necessary."

Recommendations

1. In keeping with MBDA policy, require supervisory approval of travel vouchers for all MBDA staff. Supervisory approval provides an important internal control in promoting transparency and effective oversight.

2. Revise MBDA's Financial Management Guide to clearly prescribe supervisory review and approval requirements and associated procedures.

3. Review and make appropriate modifications to MBDA's processes and forms for claiming taxi and other travel expenses, in accordance with the Federal Travel Regulation. Utilizing three different forms on which to make a monetary claim and four different categories into which taxi claims may fall appears inefficient, confusing, and prone to waste or abuse. We further recommend consulting with Department officials on best practices associated with such processes.

4. Absent requiring receipts for cab fares of $75 or less, require voucher description of what official duty was performed justifying the use of a taxi, so that approving officials have documentary support to show the claim satisfies 41 CFR §301-10.420.

In accordance with DAO 207-10, please apprise us within 60 days of any action taken or planned in response to our findings and recommendations. If you have any questions, please contact me at 202-482-2558.

cc: Chief Financial Officer and Assistant Secretary for Administration
U.S. Department of Commerce

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
Misuse of Seal (ITA&DOC) Washington, DC	PPC-CI-12-1105-I
	TYPE OF REPORT ☐ Interim ☒ **Final**

BASIS FOR INVESTIGATION

On August 1, 2012, we received information that the official seals of the International Trade Administration (ITA) and the United States Department of Commerce (DOC) were improperly used. We were provided with a notification letter purporting to notify the recipient, the "Iraq Construction & Development Establishment", they had been awarded a contract for a construction project from ITA. ITA determined the notification letter was fraudulent, as the entity, Iraq Construction & Development Establishment, did not exist, nor does ITA offer contracts for construction projects in Iraq or Afghanistan.

RESULTS/SUMMARY OF INVESTIGATION

Our investigation was unable to obtain any identifying information for the point of contact in the fraudulent notification letter or find records for the individual listed on the notification letter. Further, our office subpoenaed Microsoft twice for the subscriber information associated with the Hotmail account listed on the notification letter, and did not obtain any information that would enable us to locate the sender. Based on the lack of viable leads produced by the subpoena to Microsoft, we determined further pursuit of subpoena results on a second email would produce similar results. Further, we passed information on the ITA scheme to one of the chief investigative agencies operating in Iraq – Army CID and the Federal Trade Commission. Cognizant personnel from ITA are aware of the scheme and suffered no financial loss, therefore, this investigation was closed without further action.

Distribution: OIG _x_ Bureau/Organization/Agency Management ___ DOJ: ___ Other (specify):			
(b) (7)(C)	Date: 1/24/13	(b) (7)(C)	Date: 1/24/13
(b) (7)(C) Special Agent		(b) (7)(C)	

METHODOLOGY

This investigation was conducted through interviews and document review, including electronic mail, public domain documentation, Internet sources, and subpoena results from Microsoft.

DETAILS OF INVESTIGATION

On August 1, 2012, a confidential complainant, an (b) (7)(C) with the International Trade Administration (ITA)'s Iraq & Afghanistan Task Force (Task Force), who provided documents ITA received from an individual inquiring whether a contracting offer from the Iraq Construction & Development Establishment of ITA was legitimate. The documents included a letter bearing both the ITA and DOC seals and notifying the recipient, the "Iraq Construction & Development Establishment", they had been awarded a contract for a construction project from ITA. It also listed a "(b) (7)(C)" as a point of contact, who could be reached at "(b) (7)(C)" (Attachments 1 – 3)

On August 14, 2012, our office requested background information on (b) (7)(C) through law enforcement database sources, but found no matches. A name check of the National Finance Center (NFC) database demonstrated (b) (7)(C) was not a federal employee. (Attachment 4)

On August 15, 2012, our office interviewed the confidential complainant, who stated the Task Force regularly receives inquiries from individuals who have received similar, potentially fraudulent offers for work in Iraq and Afghanistan. The confidential complainant further stated the Task Force will conduct a review of any documents provided by the inquiring individual(s), and offer an opinion as to the legitimacy of the offer. The confidential complainant stated the Task Force maintains a database of these types of queries, and typically recommends the inquiring individuals further report the fraudulent offer to other agencies. (Attachment 3)

On September 5, 2012, our office served Microsoft Corporation an Inspector General (IG) Subpoena for all documents "constituting basic subscriber information," to include "...name; address; local and long distance telephone connection records...means and source of payment..." for "(b) (7)(C)" (Attachment 5)

Our office contacted Special Agent (SA) (b) (7)(C), Expeditionary Fraud Resident Agency, U.S. Army Criminal Investigations Command (CID), who regularly conduct fraud investigations in Iraq. We provided SA (b) (7)(C) with the letter from (b) (7)(C) for their review, and to advise whether they had any information on any of the entities involved. SA (b) (7)(C) stated their office did not have any information on either the company or (b) (7)(C) but stated these types of letters with "bogus names and contract numbers" are common in Iraq, provided in an effort to convince military contracting officials of the sending party's legitimacy. (Attachment 6)

On November 9, 2012, our office received Microsoft's response to our IG subpoena; Microsoft stated that per existing court precedent in *Warshak*, they were not able to provide the requested information absent a search warrant. (Attachment 7)

On November 21, 2012, our office served Microsoft a revised IG subpoena, requesting "...Names...Addresses...subscriber numbers or identities..." associated with the email account "(b) (7)(C) " (Attachment 8)

On December 7, 2012, our office received Microsoft's response to our IG subpoena; Microsoft provided several .html files, including one entitled "UserInfo." The UserInfo html file identified the subscriber of "(b) (7)(C) " as "(b) (7)(C) " located in Alabama, Zip Code 11111, an alternate email address of "(b) (7)(C) ", as well as the internet protocol (IP) addresses used for registration and last login. Microsoft did not provide any billing information, or identifying information for the IP addresses. We determined the zip code provided is not a valid US zip code. (Attachment 9)

On January 17, 2013, our office conferred with an attorney at the US Department of Justice (DOJ), who stated "The info [*sic*] provided by MSFT [Microsoft] is <u>all</u> that normally comes when you request subscriber information for a (b) (7)(C) [*sic*] email account." (Attachment 10)

TABLE OF ATTACHMENTS/INDEXES

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5	Microsoft IG Subpoena, September 5, 2012	10
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OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
(b) (7)(C) (WG (b) (7)(C) (b) (7)(C) (b) (7)(C)	FOP-WF-12-1173-I
	TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On August 30, 2012, we received a complaint alleging that (b) (7)(C), a (b) (7)(C) (b) (7)(C) who works for the National Oceanographic and Atmospheric Administration (NOAA), Northwest Fisheries Science Center (NFSC), was using his government assigned purchase card to buy items for personal use, and would max out his purchase card every month.

RESULTS/SUMMARY OF INVESTIGATION

We requested and received the purchase card records for the purchase card assigned to (b) (7)(C) covering a date range from October 3, 2010 to October 3, 2012. A review of the purchase card showed none of the purchases made by (b) (7)(C) were over the micro purchase threshold of $3,000.00, nor were any of the monthly purchase amounts over $10,000.00, which is in compliance with the rules set forth in the Commerce Acquisition Manual (CAM). Nothing contained within the records reviewed indicated (b) (7)(C) misused his assigned card. An interview of the complainant indicated that while he believed (b) (7)(C) was stealing items bought with his purchase card, he had not actually witnessed (b) (7)(C) steal anything.

METHODOLOGY

This investigation was conducted through witness interviews and review of purchase card records.

Distribution: OIG _x_ Bureau/Organization/Agency Management __ DOJ: ____ Other (specify):

(b) (7)(C)	Date: 1/22/13	(b) (7)(C)	e: /22/13
(b) (7)(C) Special Agent			

DETAILS OF INVESTIGATION

On August 23,2012 we received information from complainant (b) (7)(C) NOAA NFSC (b) (7)(C) alleging (b) (7)(C) misused his government assigned purchase card to buy "tens of thousands of dollars" of items for personal use. (Attachment 1)

On October 2, 2012, we requested all purchase card records for the card assigned to (b) (7)(C) (b) (7)(C) for fiscal years 2011 and 2012, to include receipts, approvals, and purchase requests. (Attachments 2 & 3)

On November 19, 2012, we interviewed (b) (7)(C) said he had made numerous complaints to NOAA management related to the alleged thefts by (b) (7)(C) but no one had taken any disciplinary action related to the allegation. (b) (7)(C) alleged (b) (7)(C) "maxes out" his purchase card every month, "steals stuff at an alarming rate", and has a hidden compartment in the back of his vehicle that could be used to hide stolen tools. (b) (7)(C) also claimed (b) (7)(C) steals propane from NOAA to heat his cabin that is "somewhere in (b) (7)(C) " (b) (7)(C) stated there is a general consensus amongst (b) (7)(C) employees that (b) (7)(C) regularly steals government property; however he has not seen (b) (7)(C) actually steal anything. (Attachment 4)

On January 8, 2013, we reviewed the purchase card records provided by (b) (7)(C) s approving official, (b) (7)(C) which spanned a date range from October 3, 2010, to October 3, 2012. (b) (7)(C) also provided copies of delegation of authority letters which were provided in order to allow the purchase card holder, (b) (7)(C) to purchase supplies and services as needed as long as the single purchase micro threshold of $3,000.00 and a monthly purchase amount of $10,000.00 were not exceeded. The delegation of authority letter also allowed the card holder to make purchases without prior approval for each purchase made in order to streamline the purchasing process. All purchases reviewed appeared to be legitimate and were consistent with the position held by the purchase card holder. All purchases were made at legitimate establishments located in the Pasco area and appeared to have been made to fulfill work related tasks. All purchases made were entered into a log sheet, with receipts attached and reviewed by the approving official, (b) (7)(C) (Attachment 5)

(b) (7)(C) also provided the log sheet of purchases made by (b) (7)(C) which included the date, vendor, purchase amount, item purchased, and the accounting code under which the purchases were made. Attached to each monthly transaction file with the purchase card statement, and log sheet, were receipts for all purchases made by (b) (7)(C) None of the single purchases made were over the micro purchase threshold of $3,000.00, nor were any of the monthly purchase amounts over $10,000.00, which were in compliance with the rules set forth in the Commerce Acquisition Manual (CAM). (Attachment 5)

The CAM, Section 3.12.2 indicates that each transaction file should contain the following:

- Request for purchase with available funds, signed and dated by the requestor
- Required pre-approvals
- Copy of online transaction, cash register receipt, itemized receipt, or faxed verification of order
- Delivery receipt or packing slip;
- Copy of CD-509, if accountable property; and
- Memorandum to the file to explain any unique circumstances for the transaction

Each transaction file provided by (b) (7)(C) contained documentation satisfying the standard from the CAM as indicated above. (Attachment 5)

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

TABLE OF ATTACHMENTS

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2	Records Request from (b) (7)(C)	5
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5	Purchase Card Records Review	12

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
Alleged Excessive Expense on Farewell Video for Census Director	FOP-WF-13-0025-I
	TYPE OF REPORT ☐ Interim ☒ **Final**

BASIS FOR INVESTIGATION

On October 4, 2012, our office received, from the Government Accountability Office (GAO)'s FraudNet, a letter alleging the U.S. Census Bureau (Census)'s "communications empire" had spent thousands of dollars in contractor fees to produce a "greatest hits" video for the departing Census Director, Dr. Robert Groves. The complainant alleged this was an excessive "gift," and demonstrated waste by Census. GAO noted the complainant requested confidentiality, and thus, the complainant's contact information was not provided to us.

RESULTS/SUMMARY OF INVESTIGATION

Our investigation found the cost of producing the video segments presented at Dr. Groves' August 9, 2012 farewell event at Census included approximately 279 hours of contractor labor, equating to $17,421 in contractor labor costs. In addition, approximately 38 hours of labor from permanent federal employees, ranging from GS-07 to GS-15 grade levels, were expended in this effort. No travel costs were incurred, and all equipment and software used was already owned by Census. The contractor employees' time was billed to task orders whose scope was audio/visual production, including video editing and post-production.

We interviewed Thomas Mesenbourg, Acting Director, Census Bureau, who confirmed he approved the agenda for the farewell event and the production of the videos. During our interview, he expressed surprise at the cost and said it seemed a bit high, but he noted that the videos were not produced solely for the farewell event but also to highlight the accomplishments of the Census employees and to convey to the employees that the changes

Distribution: OIG x Bureau/Organization/Agency Management x DOJ: ____ Other (specify):

	Date:	Signature of Approving Official:	Date:
(b) (7)(C)	6/27/13		6/27/2013
(b) (7)(C) Special Investigations		Name/Title: Rick Beitel, Principal Assistant Inspector General for Investigations	

started by Dr. Groves would continue. He noted that the video has been shared with the regional offices, played in the lobby of the Census headquarters and posted on the Census website and will continue to be used to highlight Census accomplishments and re-enforce Dr. Groves' message of change. We identified no violation of law, regulation, or policy.

METHODOLOGY

This investigation was conducted through interviews and document review, including review of contract documents and video segments.

DETAILS OF INVESTIGATION

On October 4, 2012, our office received referral correspondence from the Government Accountability Office (GAO)'s FraudNet, alleging the U.S. Census Bureau (Census)'s "communications empire" had spent thousands of dollars in contractor fees to produce a "greatest hits" video for departing Census Director, Dr. Robert Groves. The complainant alleged this was an excessive "gift," and demonstrated waste by Census. GAO noted the complainant had requested confidentiality, and thus, the complainant's contact information was not provided to us. GAO did not ask for a response to their referral, noting they were providing it for our information. (Attachment 1)

We contacted GAO FraudNet to obtain the complainant's information and conduct an interview; the complainant subsequently responded in January 2013, and stated he/she had taken a long time to respond because the email account he/she used to file the complaint had been "forgotten." Further, the complainant stated he/she had no direct knowledge of the complaint, nor any documents to provide, but that a colleague could potentially provide more direct knowledge. The complainant provided the colleague's contact information, who subsequently contacted us, stating he/she had direct observation of the high number of hours incurred in employing the contractors to create the videos, but that "there is no evidence since the Directorate/Division/Branch does not track government nor contractor time per project." The colleague further stated a calculation of hours provided by (b) (7)(C) Digital Media Production Branch, Center for New Media & Promotions (CNMP), whose unit was in charge of creating the video segments, was an inaccurate estimate, particularly given the lack of project tracking, but that their office had, in recent months, transitioned to a project-based system of tracking hours worked. (Attachments 2 – 3)

We reviewed a disc of the video segments presented at the August 9, 2012 farewell event for Dr. Groves, provided by (b) (7)(C) Public Information Office, Census. The disc contained five video segments:

Disc contains:	TRT [Total Runtime in minutes and seconds]
1. Agency Highlights	1. 07:18
2. Travel Data Visualization	2. 01:29

3.	Sec. Blank's Message	3. 04:16
4.	Regional Director's Messages	4. 03:48
5.	Event Intro. Slideshow	5. 10:35

Each section was a video segment which matched the title and times as listed on the DVD label:

- The "Agency Highlights" portion contains video clips and text overlay highlighting Dr. Grove's time and accomplishments with Census, specifically highlighting his work on the 2010 Decennial Census. Clips within this section are video from various public appearances, including press conferences and television appearances by Dr. Groves, with text overlaid to provide the audience with clarification about the event details. The video has a running audio track in the background.

- The "Travel Data Visualization" features an image of a map of the U.S. with lines crisscrossing the map from city to city, representing the trajectory and number of miles flown by Dr. Groves over the years of his tenure. At the top of the image is a running count of the miles accumulated. There is an audio track in the background.

- "Sec. Blank's Message" is a recorded message from then Acting Secretary Blank to Dr. Groves, wherein she shares her perspective on his tenure and departure. Dr. Blank is seated in a chair before a background of a blue sheet and the U.S. flag.

- "Regional Director's Messages" is composed of recorded messages from each Census Regional Director, to Dr. Groves, expressing their well wishes for him, and their gratitude for his work. Each Regional Director appears to have been recorded in their local office.

- The "Event Intro. Slideshow" is a slideshow of photographs from what appear to be various Census events featuring Dr. Groves. There is no audio in the background.

(Attachment 4)

We interviewed (b) (7)(C) Digital Media Production Branch, Center for New Media & Promotions (CNMP), whose unit was in charge of creating the video segments. (b) (7)(C) stated to his knowledge, the video segments were not created for general distribution, and were only provided to a few executive staff members, as well as being used on various digital displays at Census headquarters, such as those in the lobby, after being broadcast at Dr. Groves' August 9, 2012, farewell event.

(b) (7)(C) provided OIG with a spreadsheet specifying the individuals and corresponding hours expended on producing each respective video segment. The spreadsheet identified ten staff employees who were involved in the production of the segments; six were permanent Census employees, and four were government contractors. CNMP management stated the agenda for the event, which included the use of the produced video segments, was approved through

multiple levels of Census management, including then-Deputy Director, current Acting Director Tom Mesenbourg. (Attachments 5 – 6)

(b) (7)(C) calculated the value of the contractor's time on the entire project to total $17,421.40, representing approximately 279 hours of labor. The contractors hold such positions as (b) (7)(C) (b) (7)(C) stated the contractors are employees who report to Census four to five times a week, and are on standby to work on projects as needed. (b) (7)(C) stated the video segments in question are typical assignments that the contractors would have worked on, and if they had not been tasked with working on the video segments, the contractors would have been working on other projects, as they routinely charge forty-hour weeks.

Further, (b) (7)(C) calculated approximately 38 hours of labor from permanent federal employees, ranging from GS-07 to GS-15 grade levels, holding such positions as (b) (7)(C) (b) (7)(C) stated there were no costs aside from labor involved in creating the video segments, as existing equipment and software was utilized and no travel costs were incurred. [2] (b) (7)(C) in a subsequent teleconference with CNMP managers, stated the hours provided were an estimate – calculated based on his review of the contractors' submitted timesheets for the relevant working period, and utilizing his best recollection. (Attachment 5-6)

CNMP staff stated the contractors regularly report to work forty-hours per week, and had they not been working on the Groves videos, would have been working on other, similar projects. CNMP staff further stated the videos, while created for the August 9, 2012, Groves farewell event, were a part of a series of seven to eight events Census was hosting to create a "change in culture," and the videos are being used to show the wide array of work Census conducts. CNMP staff stated the videos were widely disseminated throughout Census, to be used as examples of promotional products for Census initiatives and work accomplished. (b) (7)(C) subsequently provided the list of other events in the series, which reflected a series of events incorporating videos and slideshows. (Attachments 5–6)

We reviewed the time and materials orders for media services, to which the contractors' time was billed. (b) (7)(C) provided the following:

1. Order Number YA132309NC0975, Order Date September 25, 2009, with EFX Company;

[1] (b) (7)(C)'s chart also lists the Census Regional Directors and Acting Secretary Rebecca Blank as contributors; those individuals' contributions to the video segments consisted of providing pre-recorded messages of congratulation and appreciation.

[2] (b) (7)(C) stated the statisticians utilized software to create the travel data visualization of Groves' travels in his tenure; (b) (7)(C) noted the hours were applied towards these employees' professional development and software certification requirements.

2. Order Number YA132310SE0620, Order Date September 22, 2010, with Ventana Productions; and

3. Order Number YA1323-12-BU-0005, Order Date April 29, 2012, with Federal Working Group, Inc.

Order Number YA132309NC0975 is a time and materials contract in which the statement of work stated, "Contractor shall provide all services...for the Census Public Information Office Video Production and Post-Production Support requirement." The technical personnel listed include "researchers/scriptwriters, camera operators, audio engineers, photographers, producers, directors, editors, graphic artists, web design, etc." (Attachment 7)

Order Number YA132310SE0620 is a time and materials contract in which the statement of work stated, "Contractor to Provide Video Production, Web Design & Post-Production Support..." as well as "Support for General AV Services to Cover a Multitude of AV Needs, From Staffing Support to Use of a Remote Facility, to Digital Mastering, Duplication, Web Assistance..." The statement of work specifies there will be a "Full range of technical personnel and services (employee or freelance) such as researchers/scriptwriters, camera operators, audio engineers, photographers, producers, directors, editors, graphic artists, web design, etc." (Attachment 7)

Order Number YA1323-12-BU-0005 is a blanket purchase agreement under GSA Schedule Award Number GS-35F-0604X. The agreement is an administrative correction to a YA1323-10-NC-0446, which was a five-year contract that does not obligate funds, but permits ordering within its terms. The agreement has ten labor categories, including Expert Consultants, a Project Manager, Systems Engineers, and IT Project Administrators. (Attachment 7)

We interviewed Acting Director Mesenbourg who stated he headed up the planning group for Dr. Groves' farewell and approved the agenda for the farewell along with authorizing production of the videos that were played the farewell. Mesenbourg stated there were other purposes for the videos, not just for the farewell. Mesenbourg explained that they wanted to celebrate the accomplishments of not just Dr. Groves, but the entire U.S. Census Bureau from 2008 through 2012. Mesenbourg stated the videos were also provided to the regional offices, played in the Census Bureau headquarters lobby and posted on their website. Mesenbourg advised the videos highlight the accomplishments of the Census Bureau along with communicate to the employees that the changes implemented by Dr. Groves would continue.

Mesenbourg stated he did not monitor the time and effort put into the production of the videos nor did he appoint someone to oversee the production. Mesenbourg stated he was surprised when he was informed how much time the contractors put into the production of the videos, but he suspected some of the contractors' hours reported to be for the production of the farewell videos was actually work on other Census projects. Mesenbourg stated although spending over $17,000 for the production of the videos may seem a bit high, he felt the

purpose and the message of the videos highlighting the accomplishments of the Census Bureau employees was an important message and it was important to communicate to all Census employees that the change agenda would continue, including by use of the video in sharing the accomplishment of Census employees and reinforcing Dr. Groves' message of change.

TABLE OF ATTACHMENTS/INDEXES

Attachment	Description	IG-CIRTS Serial
1	Initial Complaint	1
2	IRF Interview, Complainant, January 25, 2013	11
3	(b) (7)(C) Email, February 21, 2013	12
4	IRF Review, Groves Farewell Disc	6
5	IRF Interview, (b) (7)(C) November 8, 2012	7
6	IRF Teleconference with Census, March 12, 2013	13
7	IRF Review, Media Contracts	9
8	IRF Interview, Thomas Mesenbourg	18

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
(b) (7)(C) (GS (b) (7)(C) NWS) & (b) (7)(C) (UCAR Contractor) National Weather Service Alleged Conflict of Interest – Procurement	FOP-WF-13-0176-I TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On November 14, 2012, we received a conflict of interest complaint from a confidential witness alleging (b) (7)(C) and (b) (7)(C) were close personal friends with the retired (b) (7)(C) of NWS/IAO, (b) (7)(C) and that (b) (7)(C) and (b) (7)(C) are responsible for selecting contractors to conduct work for the IAO. The complaint stated (b) (7)(C) and (b) (7)(C) repeatedly select (b) (7)(C)'s company for contract work. This has resulted in preferentially hiring (b) (7)(C)'s company to work on NOAA contracts worth $300,000 annually. (Attachment 1)

RESULTS/SUMMARY OF INVESTIGATION

Our investigation revealed (b) (7)(C) from federal service at NOAA on (b) (7)(C) 2009. At the time of (b) (7)(C) (b) (7)(C) was working for National Weather Service (NWS), International Activities Office (IAO). (b) (7)(C) was a (b) (7)(C) working on (b) (7)(C) (b) (7)(C) During (b) (7)(C)'s time at NOAA, (b) (7)(C) worked closely with U.S. Agency for International Development (USAID), Office of Foreign Disaster Assistance through an interagency agreement (IA). In 2011, (b) (7)(C) signed a Personal Services Contract (PSC) to work for USAID, Office of Foreign Disaster Assistance. (b) (7)(C)'s employment was not only two years after (b) (7)(C) but was with USAID through a PSC. Our investigation established no evidence of ethics violations on the part of (b) (7)(C) nor any contracting violations concerning (b) (7)(C) and (b) (7)(C) The allegations made were conjecture on the part of the complainant and were not supported in this investigation.

Distribution: OIG _x_ Bureau/Organization/Agency Management __ DOJ: ____ Other (specify):			
Signature of Case Agent: (b) (7)(C)	Date: 7-22-13	S (b) (7)(C)	Date: 7/22/13
Name (b) (7)(C) Special Agent		N (b) (7)(C)	

METHODOLOGY

This case was conducted through witness and subject interviews, as well as the acquisition of computer evidence, computer forensic analysis, and review of electronic data.

DETAILS OF INVESTIGATION

On December 18, 2012, we interviewed the complainant, (b) (7)(C) NWS, Office of the Chief Information Officer (OCIO). From (b) (7)(C) to (b) (7)(C) (b) (7)(C) was the (b) (7)(C) on the "Saudi project," which was a reimbursable agreement between the NWS and the Government of Saudi Arabia to assist the Saudis in improving their weather forecasting and environmental protection. (b) (7)(C) stated that under the terms of the agreement, the Saudi government paid approximately $1.1 million dollars to NWS. (b) (7)(C) stated that with the Saudi money, NWS hired contractors and consultants, and paid for temporary duty travel of U.S. Government experts to Saudi Arabia. Towards the end of (b) (7)(C) tenure in this position, (b) (7)(C) started to have problems with a NWS/IAO supervisor, (b) (7)(C) because (b) (7)(C) explained that (b) (7)(C) is a (b) (7)(C) and (b) (7)(C) believed the Saudis had no use for (b) (7)(C)'s expertise. (b) (7)(C) was told by a former (b) (7)(C) of NWS/IAO, (b) (7)(C) that (b) (7)(C) "wanted" the Saudi money for (b) (7)(C) own projects. At that time, (b) (7)(C) believed that (b) (7)(C) worked with others in the NWS International Program to force (b) (7)(C) from the position into (b) (7)(C) current position with OCIO. (Attachment 2)

Recently, (b) (7)(C) found documents in a NWS copy machine that caused (b) (7)(C) concern. (b) (7)(C) believes the document evidenced that (b) (7)(C) was writing requirements/deliverables for contracts for the International Affairs office. (b) (7)(C) knew that (b) (7)(C) from Government service as the (b) (7)(C) of NWS/IAO, but had some type of contractual relationship with the office. (b) (7)(C) believed that the documents related to the Saudi project. (b) (7)(C) did not make copies of the documents and had no further evidence of what (b) (7)(C) saw. (b) (7)(C) contacted the OIG hotline because (b) (7)(C) believed that (b) (7)(C)'s close relationship with (b) (7)(C) and (b) (7)(C) of NWS/IAO provided (b) (7)(C) an unfair advantage in contracting for the office. (b) (7)(C) believed that such actions were a conflict of interest for the government employees. (b) (7)(C) added that (b) (7)(C) and (b) (7)(C) were close personal friends of (b) (7)(C) (Attachment 2)

On May 9, 2013 we conducted digital data analysis (DDA) of email files for NOAA employees (b) (7)(C) and (b) (7)(C) We reviewed email files covering a date range of August 1, 2009 to January 1, 2012. Analysis of these files revealed communication between (b) (7)(C) and (b) (7)(C), but did not reveal any information in support of the allegations made. Our forensic analysis did find indications that (b) (7)(C) worked for USAID as a consultant on projects (b) (7)(C) was involved with when (b) (7)(C) was a federal employee with NOAA. (Attachments 3 & 4)

On May 29, 2013, we interviewed (b) (7)(C), the current (b) (7)(C) of NWS/IAO. (b) (7)(C) stated (b) (7)(C) involvement with contracts (b) (7)(C) office has with companies is limited to an administrative overview of contracting activities in (b) (7)(C) office but that (b) (7)(C) is not involved in the contracting process. (b) (7)(C) confirmed (b) (7)(C) office has an interagency agreement (IA) with USAID. (Attachment 5)

(b) (7)(C) said (b) (7)(C) worked with (b) (7)(C) when (b) (7)(C) was at NOAA, but that (b) (7)(C) did not work for (b) (7)(C) describe (b) (7)(C) relationship with (b) (7)(C) as friendly but that they were not close personal friends. (b) (7)(C) has known (b) (7)(C) approximately nine years. (b) (7)(C) stated (b) (7)(C) has very little contact with (b) (7)(C) now but that "(b) (7)(C)ll pop up from time to time to say hey." (b) (7)(C) knew that (b) (7)(C) in (b) (7)(C) and believed that (b) (7)(C) worked for USAID as a contractor, but was unsure of (b) (7)(C) exact position with them. (b) (7)(C) did say that (b) (7)(C) utilized (b) (7)(C) as a point of contact (POC) between NOAA and USAID, and that (b) (7)(C) work has to do with disaster recovery and preparation for foreign countries. (b) (7)(C) stated (b) (7)(C) is a grantee who works for the University Corporation for Atmospheric Research (UCAR), and that (b) (7)(C) works on projects building disaster resilience for foreign countries. Regarding the relationship between (b) (7)(C) and (b) (7)(C) (b) (7)(C) said (b) (7)(C) would not describe the relationship as even slightly personal and that their relationship was strictly professional. (b) (7)(C) stated (b) (7)(C) knew (b) (7)(C) and (b) (7)(C) worked together in IAO and that (b) (7)(C) was moved from IAO to the OCIO by their former boss, (b) (7)(C) because "(b) (7)(C) wasn't a very good employee." (Attachment 5)

On June 11, 2013, we contacted (b) (7)(C), an attorney for DOC Office of General Counsel (OGC). (b) (7)(C) stated if (b) (7)(C) was employed as a consultant with USAID under a personal services contract (PSC), then he was able to work with NOAA on behalf of USAID as long as he did not represent a third party company. (b) (7)(C) also said (b) (7)(C) office will counsel retiring employees who desire to work with their former agencies to seek a PSC to avoid any improprieties. (Attachment 6)

On June 11, 2013, we interviewed (b) (7)(C) stated (b) (7)(C) works for UCAR for an office called Joint Office of Science Support through a cooperative agreement with NOAA, and that (b) (7)(C) is involved with setting up communication equipment for IAO projects. (b) (7)(C) also said (b) (7)(C) works with USAID, Office of Foreign Disaster Assistance (OFDA), through a Participating Agency Program Agreement (PAPA). (b) (7)(C) said (b) (7)(C) worked with (b) (7)(C) when (b) (7)(C) was employed by NOAA, but that their interaction was minimal and that it is rare that (b) (7)(C) deals with (b) (7)(C) believes (b) (7)(C) worked under a PSC for USAID OFDA, fulfilling an advisory role on flood related issues. (Attachment 7)

On June 17, 2013, we received a copy of the PSC that (b) (7)(C) was employed under as a consultant for USAID. The contract covered a period from (b) (7)(C) 2011 to (b) (7)(C) 2012, for a total estimated contract cost of $146,774.00. (b) (7)(C)s PSC indicated the need for OFDA to

have a (b) (7)(C) to provide expert technical advice and assistance for the analysis of hazard potential and risks to populations. (Attachment 8)

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

TABLE OF ATTACHMENTS

Attachment Number	Description	IG CIRTS Serial Number
1	Initial Complaint	1
2	Interview of Confidential Complainant	4
3	Emails Analysis	9
4	Additional Email Received	10
5	Interview of (b) (7)(C)	12
6	Contact with OGC	15
7	Interview of (b) (7)(C)	16
8	Contract Received from USAID	14

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
(b) (7)(C) (GS (b) (7)(C)) International Trade Administration (ITA)	FOP-WF-13-0180-I
	TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On November 14, 2012, we received an anonymous complaint alleging (b) (7)(C), an (b) (7)(C) for the International Trade Administration (ITA), provided false information about his dishonorable discharge from the United States (b) (7)(C) to obtain employment with the Department of Commerce (DOC). The allegation also stated (b) (7)(C)s discharge was related to alcohol abuse. The allegation also indicated that (b) (7)(C) assaulted a woman named (b) (7)(C) in (b) (7)(C), and raped an unknown female at a party.

RESULTS/SUMMARY OF INVESTIGATION

Our investigation revealed that (b) (7)(C) was discharged from the United States (b) (7)(C) on (b) (7)(C) for failing to complete alcohol abuse treatment; however, (b) (7)(C) official military Certificate of Release or Discharge from Active Duty (DD214) indicated an honorable discharge. (b) (7)(C)s former girlfriend, (b) (7)(C) admitted that (b) (7)(C) assaulted her, but did not make a police report and refused to go into detail about the incident. Our investigation also revealed that (b) (7)(C) has a record of alcohol-related offenses resulting in his discharge from the U.S. (b) (7)(C) as well as an arrest in (b) (7)(C) 2012 for driving under the influence (DUI). We were unable to substantiate any of the other allegations made in this complaint.

Distribution: OIG _x_ Bureau/Organization/Agency Management __ DOJ: ____ Other (specify):			
Signature of Case Agent: (b) (7)(C)	Date: 4/22/13	(b) (7)(C)	Date: 4/22/13
Name/Title: (b) (7)(C), Special Agent		(b) (7)(C)	

METHODOLOGY

This case was conducted through witness and subject interviews, as well as the acquisition of computer evidence, computer forensic analysis, and review of electronic data.

DETAILS OF INVESTIGATION

On November 14, 2012, we received an anonymous complaint alleging (b) (7)(C) provided false information about his dishonorable discharge from the United States (b) (7)(C) to obtain employment at Department of Commerce (DOC). The allegation also stated (b) (7)(C)s discharge was related to alcohol abuse. The allegation also indicated that (b) (7)(C) assaulted a woman named (b) (7)(C) in (b) (7)(C) and raped an unknown female at a party. (Attachment 1)

On November 26, 2012, we obtained the DD214 (b) (7)(C) submitted when he applied for federal employment to DOC. (Attachment 2)

On November 27, 2012, we received all server-based email, including all messages received, sent, and deleted, for the period January 1, 2010, to present in order to conduct digital data analysis (DDA) on the requested files. This analysis did not produce any relevant information to this inquiry. (Attachment 3)

On November 29, 2012, a Magloclen records request was submitted. In this report was included a records check from the National Crime Information Center (NCIC), which indicated that (b) (7)(C) was arrested on (b) (7)(C) for violation of § 18.2-266 (driving motor vehicle, engine, etc., while intoxicated.) No other criminal violations were found. (Attachment 4)

On November 30, 2012, we interviewed (b) (7)(C) who said she had dated (b) (7)(C) from (b) (7)(C) During their relationship, (b) (7)(C) "drank a lot" and at a point in the relationship she gave him an ultimatum that he should stop drinking if he wished to carry on the dating relationship. (b) (7)(C) went on to describe that "there was an overarching kind of theme of aggression from him throughout our relationship" and that she often felt threatened by (b) (7)(C) stated that (b) (7)(C) had assaulted her, resulting in a minor injury, however she refused to report the incident to police, and refused to go into detail about the incident during the interview. (b) (7)(C) only knew of rumors related to the allegation that (b) (7)(C) had sexually assaulted a woman at a (b) (7)(C) party. (b) (7)(C) went on to state that she heard conflicting stories as to what actually happened, but had no definitive information about the incident as she was not present at the party and did not know (b) (7)(C) at the time. (Attachment 5)

On December 10, 2012, we interviewed (b) (7)(C) who met (b) (7)(C) at a (b) (7)(C) party at a nightclub in (b) (7)(C) He said (b) (7)(C) said he worked for ITA. As a result of this meeting, (b) (7)(C) said the two worked together on a (b) (7)(C) to (b) (7)(C). (b) (7)(C) said (b) (7)(C) told him he was dishonorably discharged from the (b) (7)(C) due to failing to complete an alcohol treatment program, but that (b) (7)(C) had gone through a "laborious internal process" and had his dishonorable discharge expunged from his military record. (b) (7)(C) opined about a physical altercation he had with (b) (7)(C) surrounding the misuse of (b) (7)(C) s vehicle, where an argument ensued and (b) (7)(C) struck (b) (7)(C) on the nose, but he did not sustain an injury, or report the incident to the police. (Attachment 6)

(b) (7)(C) stated (b) (7)(C) told him he conducted a conference call regarding a (b) (7)(C) to (b) (7)(C) where (b) (7)(C) conducted the conference call while intoxicated from his home in bed following a night of heavy alcohol consumption, and that (b) (7)(C) often related instances where he would "black out" from heavy alcohol consumption. (b) (7)(C) stated he and (b) (7)(C) attended a (b) (7)(C) party where (b) (7)(C) invited (b) (7)(C) to the party, and that (b) (7)(C) was very intoxicated at the party. (b) (7)(C) stated that he heard about (b) (7)(C) having sexual intercourse with an unknown female at the party but did not actually see anything related to the encounter between (b) (7)(C) and the unknown female. (Attachment 6)

On December 11, 2012, we received (b) (7)(C) s official military records, which contained (b) (7)(C) s DD214 (Certificate of Release or Discharge from Active Duty), which was identical to the one he used when he applied for federal service with ITA. (b) (7)(C) s DD214 showed he received an honorable discharge from the United States (b) (7)(C). His military records did however indicate he was discharged from active duty for failing to complete an ordered alcohol abuse treatment program. (Attachment 7)

On December 14, 2012, we interviewed (b) (7)(C) (b) (7)(C) stated in (b) (7)(C) he was charged by the U.S. (b) (7)(C) for underage drinking and ordered to attend an alcohol treatment program, but that he failed to fulfill the requirements of the program and his enlistment was terminated and he was ordered to be discharged from the (b) (7)(C) (b) (7)(C) indicated that he was arrested for driving under the influence (DUI), and that during his trial the charges were amended to reckless driving, and that he was ordered to alcohol abuse counseling courses in (b) (7)(C) as well as a six-month driver's license suspension. (b) (7)(C) stated he has stopped drinking as of (b) (7)(C) 2012. He also said he did report the arrest to his supervisor, (b) (7)(C) (b) (7)(C) said he did attend a (b) (7)(C) party at a house in the (b) (7)(C) neighborhood owned by (b) (7)(C) and (b) (7)(C) and that he met an unknown female at the party. (b) (7)(C) said he did not know her name. (b) (7)(C) stated it was "a wild party" and that he was playing "beer pong" with the unknown female, and that they began flirting back and forth. (b) (7)(C) said the female began dancing around and taking off her clothes. (b) (7)(C) said he began dancing with the female and that

he "put his hands on her", danced with her, and kissed her. Soon after, the unknown female told (b) (7)(C) "that's enough" and began to push him away. (b) (7)(C) stated a friend he was at the party with told him he had too much to drink and told (b) (7)(C) that he was "hammered" and convinced him to leave the party, which (b) (7)(C) stated was "probably 2 a.m." (Attachment 8)

(b) (7)(C) said he heard a story that after he left the party, the same girl started to "fool around" with someone else at the party and became intimate with an unknown person at the party, and that the unknown female ran screaming from this alleged encounter at the party. When questioned about drinking at work or working while drunk, (b) (7)(C) stated that he did attend official receptions on (b) (7)(C) but that he never worked while drunk nor did he keep alcohol in his desk at work. (Attachment 8)

On January 9, 2013, we interviewed (b) (7)(C) who stated she attended a (b) (7)(C) party at the home of (b) (7)(C) and (b) (7)(C) located at (b) (7)(C) on (b) (7)(C) 2011. (b) (7)(C) stated she met (b) (7)(C) for the first and last time on that night. (b) (7)(C) said during the party "everyone was drinking" and when she met (b) (7)(C) he did not seem "overly drunk." (b) (7)(C) went on to explain that she went to a room at the front of the house to get some food, and encountered (b) (7)(C) and an unknown white female. (b) (7)(C) said she noticed (b) (7)(C) had the unknown female pinned against a wall and appeared to be holding her there against her will, and that she appeared to have been struggling to get away from (b) (7)(C) (b) (7)(C) went on to state that the interaction between (b) (7)(C) and the unknown female was "animalistic and aggressive" and that it appeared (b) (7)(C) was attempting to subdue the unknown female. She went on to state that it appeared (b) (7)(C) was attacking the woman, and the interaction was "freaky and weird." After witnessing the interaction between (b) (7)(C) and the unknown female, (b) (7)(C) left the room to locate the hosts of the party, (b) (7)(C) and (b) (7)(C) to inform them of what was happening. As far as Ms. (b) (7)(C) could remember, the police had not been called to the party. (b) (7)(C) said she has not seen or heard from (b) (7)(C) since the night of the party on (b) (7)(C) 2011. (Attachment 9)

On January 17, we interviewed (b) (7)(C) elephonically as he was working on the (b) (7)(C) at the time of this interview. (b) (7)(C) explained that he and his roommate, (b) (7)(C) were having a (b) (7)(C) party at their house located on (b) (7)(C) on (b) (7)(C) 2011, and that approximately (b) (7)(C) people attended what (b) (7)(C) described as a (b) (7)(C) party. (b) (7)(C) said a friend, (b) (7)(C) had brought (b) (7)(C) to the party, and explained that it was the first and last time he had met (b) (7)(C) (b) (7)(C) said a female unknown to him was brought to the party and that the unknown female was visiting from out of town for the weekend. (b) (7)(C) explained that his roommate, (b) (7)(C) informed him that the unknown woman was claiming that (b) (7)(C) had attempted to rape her. When (b) (7)(C) pressed the woman for details and threatened to shut the party down and call the local police to investigate the alleged assault, the woman began to recant her claim that she had been

assaulted. (b) (7)(C) said the woman had been drinking and that when he saw her, she appeared to be intoxicated. (b) (7)(C) stated he did not witness the alleged assault and did not know where in the house the assault was alleged to have occurred. (b) (7)(C) said both (b) (7)(C) and the unknown woman left the party separately. (b) (7)(C) went on to explain that (b) (7)(C) 's friend, (b) (7)(C) (b) (7)(C) invited a friend who brought the unknown woman to the party, and that either (b) (7)(C) or (b) (7)(C) would be able to provide the identity of the woman who was allegedly assaulted at their party. (b) (7)(C) provided (b) (7)(C) s contact information. (Attachment 10)

During this interview, (b) (7)(C) stated that his roommate, (b) (7)(C) had direct knowledge related to the alleged assault involving subject (b) (7)(C) which occurred at his residence on (b) (7)(C) 2011. During the interview (b) (7)(C) provided (b) (7)(C) s contact information and indicated that he believed (b) (7)(C) would be willing to cooperate with this investigation. SA (b) (7)(C) made several attempts to contact (b) (7)(C) via the telephone number provided, and left several messages to call SA (b) (7)(C) in related to this investigation. (b) (7)(C) never returned any calls or made any other attempts to contact us. (Attachment 10)

On February 15, 2013, we met with (b) (7)(C) , (b) (7)(C) ITA. (b) (7)(C) said (b) (7)(C) had informed her of the DUI arrest and stated that he identified his alcohol problems and that he has been undergoing alcohol treatment and counseling. (b) (7)(C) said that despite this incident, (b) (7)(C) was an exceptional employee and that he got along well with is coworkers and had no disciplinary or other problems from (b) (7)(C) (Attachment 11)

On February 19, 2013, we received via email from (b) (7)(C) three documents showing his self-initiated alcohol treatment, as well as one court ordered alcohol treatment program called the (b) (7)(C) is an alcohol treatment program mandated through court probation in (b) (7)(C) . (b) (7)(C) was ordered to attend (b) (7)(C) classes from (b) (7)(C) 2013 to (b) (7)(C) 2013 as a condition of probation based on his DUI arrest in (b) (7)(C) (Attachment 12)

TABLE OF ATTACHMENTS

Attachment Number	Description	IG CIRTS Serial Number
1	Initial Complaint	1
2	IRF Records Request DD214	5
3	Email Request Letter ITA	3
4	Magloclen Report	2
5	Interview of (b) (7)(C)	14
6	Interview of (b) (7)(C)	16
7	IRF Military Records (b) (7)(C)	10
8	Interview of (b) (7)(C)	15
9	Interview of (b) (7)(C)	13
10	Interview of (b) (7)(C)	17
11	IRF Meeting with (b) (7)(C)	20
12	IRF (b) (7)(C) Alcohol Treatment Documents	21

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
(b) (7)(C) (GS-[redacted] Patent Examiner) Public Corruption (18 USC §203/205)	FOP-WF-13-0249-I TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On December 3, 2012, the Office of Investigations (OI) received information from the United States Patent and Trademark Office (USPTO) that a patent examiner named (b) (7)(C) was holding himself out as a private patent litigation attorney representing private persons in matters before the USPTO. The undisclosed conflict of interest was brought to the attention of the Office of General Counsel Ethics Division, who opined it could be a criminal violation, and thus it was referred for investigation. (Attachment 1)

RESULTS/ SUMMARY OF INVESTIGATION

Our investigation found Mr. (b) (7)(C) did hold sporadic outside employment working on an as-needed basis for a law firm owned by a friend. The nature of his services for this firm were related to real estate transactions and had nothing to do with patent or trademark issues. Mr. (b) (7)(C) disclosed various sources of income he receives on his OGE-450 annual ethics certification, though nobody in his chain of command was aware or had previously approved of his outside employment. We found no evidence that Mr. (b) (7)(C) engaged in any representational service before the U.S. Patent and Trademark Office for private third parties, either pro-bono or for payment. This case was declined for prosecution by the United States Attorney's Office in (b) (7)(C) because there was no evidence to suggest a violation of federal law occurred.

Distribution: OIG _x_ Bureau/Organization/Agency Management __ DOJ: ____ Other (specify):			
(b) (7)(C)	Date: 11-19-13	Signature of Approving Official: (b) (7)(C)	Date: 11-19-13

METHODOLOGY

This case was conducted through interviews and document review, including electronic mail, public domain documentation, Internet sources, correspondence from witnesses and the subject, and documents from USPTO and the Office of General Counsel. We also conducted an analysis of bank records obtained via subpoena.

DETAILS OF INVESTIGATION

Upon receiving the allegation, on December 11, 2012, we confirmed (b) (7)(C) was currently employed with the USPTO as a GS- Patent Examiner/(b) (7)(C) His employment with USPTO began on (b) (7)(C). (Attachment 2)

Our investigation found a Linked-In account where (b) (7)(C) claimed to be an attorney with (b) (7)(C) a (b) (7)(C) area law firm, since (b) (7)(C). He also indicated he was a managing broker for (b) (7)(C) property management firm since (b) (7)(C) We found a web-site page from (b) (7)(C) identified (b) (7)(C) as one of their attorneys. The web page does not explicitly state patent practice as one of their areas of practice, though it is generic in saying, "provides counseling in a variety of areas, the core of which includes litigation, real estate and government relations." It also shows business counseling as a core practice area. (Attachment 3)

(b) (7)(C) Interview

On December 12, 2012, (b) (7)(C) the second line supervisor for (b) (7)(C) was interviewed, saying he first learned of this issue from (b) (7)(C), the first line supervisor of (b) (7)(C). He confirmed (b) (7)(C) is a patent examiner who works in the (b) (7)(C) division where his primary job is to review patent applications related to patents in the (b) (7)(C) (b) (7)(C) sector. Mr. (b) (7)(C) told him he discovered a "Linked-In" page for (b) (7)(C) that indicated he was presently working for a law firm that deals with intellectual property. (b) (7)(C) indicated the web page seemed to indicate the law firm deals with trade secrets, and of the attorneys listed on the firm's website, only (b) (7)(C) had any meaningful qualifications to actually do that kind of work. Mr. (b) (7)(C) pointed out that intellectual property and trade secrets typically have a direct correlation with the work of USPTO, and therefore he and (b) (7)(C) became concerned that (b) (7)(C) was involved in undisclosed work that could conflict with his work as a patent examiner. (Attachment 4)

Mr. (b) (7)(C) said USPTO employees must have prior supervisory approval before they can engage in outside work. He said all employees, including (b) (7)(C) have had training on ethics in this area, and (b) (7)(C)'s bar license would have provided another layer of knowledge and training about conflicts in this area. (Attachment 4)

Mr. (b) (7)(C) said all of the patent applications (b) (7)(C) works on must be co-signed by a supervisory level above his level, which is true of all patent examiners. He said (b) (7)(C) has had some performance issues, but has not had any past disciplinary problems. He said there was a complaint in (b) (7)(C) about (b) (7)(C) engaging in a political campaign, but their inquiry found the office (b) (7)(C) was running for was a non-partisan office. (Attachment 4)

(b) (7)(C) Interview

On December 13, 2012, (b) (7)(C) was interviewed, saying he has been the first-line supervisor for (b) (7)(C) for about (b) (7)(C) years. He said in November 2012 he learned of a "Linked-In" for (b) (7)(C) that indicated employment with a law firm in (b) (7)(C). Puzzled about this, Mr. (b) (7)(C) "Googled" (b) (7)(C)'s name discovering (b) (7)(C) claimed on Linked-In that he was presently working for a law firm that deals with intellectual property. He also checked the website for the law firm and saw (b) (7)(C)'s picture and short biography displayed. (Attachment 5)

Mr. (b) (7)(C) said Mr. (b) (7)(C) lives in the (b) (7)(C) area and is considered a "hoteler", which is a term to describe those who work on a telework agreement as well as in the TEAPP (Telework Enhancement Act Pilot Program. This program permits employees living farther than 50 miles from the USPTO in Alexandria, Virginia (USPTO Headquarters) to telework without regular trips back to headquarters to fulfill reporting requirements) He said (b) (7)(C) and people in similar positions, report to Alexandria only four times a year for various training. Otherwise, (b) (7)(C) works from home. Mr. (b) (7)(C) said he supervises (b) (7)(C) from Alexandria; he said there have been performance issues. (b) (7)(C) was on an oral performance warning through (b) (7)(C) 2012, and on a written warning from (b) (7)(C) to (b) (7)(C) 2012, just before Mr. (b) (7)(C) learned of the law firm connection. Mr. (b) (7)(C) explained that the performance warning hinged on two main factors – one related to timeliness, the other for productivity. Mr. (b) (7)(C) successfully raised his metrics so he is not currently on any warning. Mr. (b) (7)(C) said USPTO employees must have prior supervisory approval before they can engage in outside work. He does not believe (b) (7)(C) has any such approval. (Attachments 5, 6)

Ethics Reporting

Though neither supervisor claimed to be aware of or approve any outside employment for (b) (7)(C) we found (b) (7)(C) did complete a Confidential Financial Disclosure Report (OGE Form 450) each year and submitted it to the Office of General Counsel. Beginning on (b) (7)(C) 2010, (b) (7)(C) reported he was a manager and owner of (b) (7)(C) a real estate holding company. On (b) (7)(C) 2011, a new OGE-450 was filed by (b) (7)(C) that was essentially a repeat of the 2010 submission. (Attachment 7)

The next year, he submitted an OGE-450 that disclosed no outside positions, but then sent in an amended form dated (b) (7)(C) 2012 that disclosed both being an owner of (b) (7)(C) (b) (7)(C) as well as being a "consultant" for (b) (7)(C) As a result, an attorney from the Department's Ethics Division sent (b) (7)(C) an email informing (b) (7)(C) of his obligations related to potential conflicts of interests. While the OGE-450 has a place for a supervisor signature, none of the forms submitted by (b) (7)(C) were signed by a supervisor. The USPTO does not require a supervisor signature, and the reviewing official who does sign the form is an ethics officer who has no affiliation with USPTO. (Attachment 7)

On (b) (7)(C) 2013, Mr. (b) (7)(C) submitted a new OGE-450 on which he again disclosed reportable income or employment to include investment properties, (b) (7)(C) (b) (7)(C) (b) (7)(C) and (b) (7)(C) (b) (7)(C) is a company out of (b) (7)(C) that handles property inspections for insurance purposes. (Attachment 8)

We confirmed that (b) (7)(C) never applied for or received any kind of waiver to engage in outside legal practice, nor is there any record he sought advice on the subject from the Office of General Counsel (OGC). OGC records do show, however, that (b) (7)(C) attended an ethics training session on (b) (7)(C) 2008, and a new employee orientation ethics briefing on (b) (7)(C) 2007. (Attachment 7)

Forensic Computer Examination

On April 9, 2013, material from a forensic computer analysis retrieved from (b) (7)(C)s USPTO computer found electronic data contained 73 files in four subdirectories named:

- (b) (7)(C) (date stamps on files range from (b) (7)(C) 08 to (b) (7)(C) 12)
- (b) (7)(C) web entries and test email (date stamps on files range from (b) (7)(C) 12 to (b) (7)(C) 2, but two files have a date stamp of (b) (7)(C) 3)
- Misc Property Records (date stamps on files range from (b) (7)(C) 06 to (b) (7)(C) 2)

- (b) (7)(C) Property Management (date stamps on files range from (b) (7)(C) 07 to (b) (7)(C) 08) (Attachment 9)

In reviewing these records, the consistent theme was they had to do with property management. Some of them had personally identifiable information (PII), for instance on rental applications. It includes the articles of incorporation for (b) (7)(C) for which (b) (7)(C) is the registered agent. It includes business related documents, including quotes, receipts, agreements, insurance policies, and legal dispute documents. The documents make it clear (b) (7)(C) owns various properties and rents them to others. No records related to (b) (7)(C) (b) (7)(C) or any outside legal practice, were located in the forensic review. (Attachment 10)

(b) (7)(E) did find evidence that (b) (7)(C) was frequently connecting an external storage device. USPTO Human Resources reported there is no record of (b) (7)(C) being assigned an external storage device by USPTO. USPTO's CyberSecurity Division indicated there is a specific policy prohibiting USPTO employees from connecting to external storage devices. In the IT Security Handbook, at the bottom of page 30, rule AC-19.1 states,

> "Use of writable, removable media must be restricted in USPTO information systems. USPTO shall scan and review removable media devices before granting authorization to connect to USPTO resources." (Attachment 11)

Analysis of Bank Records

Several bank accounts were identified as belonging to Mr. (b) (7)(C) and each one was issued a grand jury subpoena for records. The purpose of the subpoenas was to obtain records to determine if (b) (7)(C) deposited proceeds of work from outside organizations that would demonstrate evidence of being paid for representational services. Because grand jury records are protected by Rule 6e of the Federal Rules of Criminal Procedure, no details can be released in this report. However, in summary, only one bank produced records of any consequence. While initial review of those records raised questions, the answers provided by (b) (7)(C) in the below sections were consistent with the records and resulted in no information from these subpoenas producing records to believe a crime was committed. (Attachment 12)

(b) (7)(C) Interview

On October 24, 2013, (b) (7)(C) was interviewed in person. A transcript was made of the recorded interview. He confirmed working for (b) (7)(C) a law firm, on a sporadic basis.

He claimed this firm does no federal work, and does not engage in patent or trademark issues. His work for them has been strictly related to property management or real estate transactions. He claimed over the past two years to have only done three work projects with (b) (7)(C) Furthermore, his affiliation with (b) (7)(C) is as a [redacted] with his [redacted] The business manages the various residential rental properties he owns and has nothing to do with patent or trademark work. (b) (7)(C) said his work with (b) (7)(C) was for insurance companies and involved going out to clients to take pictures and assess property damage for insurance claim purposes. Mr. (b) (7)(C) provided evidence that some of the money he earned from his rental properties came from routine payments made by the (b) (7)(C) Housing Authority for rent subsidies. (Attachment 13)

Mr. (b) (7)(C) indicated he was unaware he needed to obtain approval from his supervisors for outside work, and thought his submission of the OGE-450 each year on which he disclosed sources of outside employment achieved any notification he needed to do. With respect to documents found on his work computer that were related to his outside employment activities, he relied on a USPTO policy that allowed nominal use of government equipment for personal purposes. In response to a question concerning his use of an external hard drive connection, Mr. (b) (7)(C) said he has two thumb drives that were issued by USPTO that he uses in connection with his work. (Attachment 13)

On October 25, 2013, we made telephonic contact with (b) (7)(C), an attorney with (b) (7)(C) asking if their law firm engaged in the practice of patent and trademark law. The agent did not identify himself, and phoned from a cellular phone that does not identify as a government phone. Mr. (b) (7)(C) said his firm does not practice patent or trademark law. (Attachment 14)

Declination for US Attorney's Office

On October 31, 2013, after reviewing the facts of this case, AUSA (b) (7)(C) declined prosecution in this matter, citing no violation. (Attachment 15)

TABLE OF ATTACHMENTS/INDEXES

Attachment	Description	IG-CIRTS Serial Index
1	Opening Complaint documents; IRF on legal aspects	1-3, 34
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3	IRF Internet Research	5
4	Interview Report with (b) (7)(C)	9
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6	Hoteler Policy Review	37
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OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

TITLE:	**FILE NUMBER:**
Manufacturing Report Allegedly Removed for Political Reasons National Institute of Standards and Technology Gaithersburg, Maryland	HQ-HQ-13-0256-I **TYPE OF REPORT** ☐ Interim ☒ **Final**

BASIS FOR INVESTIGATION

On December 7, 2012, a confidential complainant reported to the U.S. Department of Commerce (Commerce) Office of Inspector General (OIG) that Commerce's Office of Public Affairs (Commerce Public Affairs) and National Institute of Standards and Technology (NIST) management improperly removed a NIST Special Publication entitled "(b) (7)(C) (b) (7)(C) " by (b) (7)(C) Office of Applied Economics (OAE), Engineering Lab (EL), NIST, from NIST's website for political reasons before the presidential election. The complainant alleged that this violated the December 20, 2011, NIST Scientific Integrity Notice, which states, "There should be no non-scientific interference in reporting the products of scientific work." (Attachments 1, 2)

RESULTS/SUMMARY OF INVESTIGATION

Our investigation did not substantiate the allegation. We interviewed many NIST employees, and while some said they thought that Commerce Public Affairs and NIST management caused (b) (7)(C) report to be removed from NIST's website for political reasons, our investigation found that this step was taken to allow (b) (7)(C) (b) (7)(C) an opportunity to review (b) (7)(C) report. (Attachments 3, 4, 5)

We found that (b) (7)(C) report, which is a compilation of multiple sources of manufacturing and industry subsector data, was submitted to NIST's Washington Editorial Review Board (WERB) for prepublication review on February 9, 2012, as required by the NIST Administrative Manual.

Distribution: OIG x Bureau/Organization/Agency Management ___ DOJ: ____ Other (specify):

Si (b) (7)(C)	Date: 6/27/13	(b) (7)(C) al:	Date: 7/2/13
Name/Title: (b) (7)(C) Investigator		Name/Title: (b) (7)(C) Special Investigations	

The WERB approved (b) (7)(C) report for publication on March 15, 2012. However, EL waited to publish it to allow (b) (7)(C) NIST, an opportunity to comment on it. Before (b) (7)(C) had provided his comments on (b) (7)(C) report, however, in mid-September 2012, NIST asked (b) (7)(C) Public and Business Affairs (PBA), NIST, to draft a press release for it. (b) (7)(C) report was published as NIST Special Publication (b) (7)(C) and posted on NIST's website on or about (b) (7)(C) 2012. (Attachments 2, 6, 7, 8, 9, 10)

On October 17, 2012, (b) (7)(C) s draft press release, which included a link to (b) (7)(C) report on NIST's website, was forwarded to Commerce Public Affairs for review and approval as per Commerce policy. (b) (7)(C) ; (b) (7)(C) and (b) (7)(C) (b) (7)(C) , Commerce Public Affairs, recommended that (b) (7)(C) review (b) (7)(C) report to ensure that it did not contradict the findings in an Economics and Statistics Administration (ESA) report that was considered the "standard" on manufacturing, or explained the reasons for differences if it did. (b) (7)(C) also forwarded the draft press release to (b) (7)(C) (b) (7)(C) Commerce, who asked (b) (7)(C) NIST, to take (b) (7)(C) report off NIST's website pending its review by (b) (7)(C) , (b) (7)(C) in turn asked (b) (7)(C) (b) (7)(C) NIST, to "bury the link" to (b) (7)(C) report – in other words, to make it inaccessible through NIST's website. (b) (7)(C) said NIST intended only to "uncheck the box" that linked (b) (7)(C) report to NIST's website, but mistakenly "expunged [it from] the record." (Attachments 2, 3, 4, 5, 11, 12, 13)

(b) (7)(C) said he recalled reviewing (b) (7)(C) report at some point, but was unclear as to when he did so, whether he provided comments on it and, if so, to whom. On or about (b) (7)(C) 2012, (b) (7)(C) ' report was renumbered as NIST Special Publication (b) (7)(C) and reposted to NIST's website, otherwise unchanged. (Attachments 7, 14, 15)

METHODOLOGY

This investigation was conducted through witness interviews and the review of documents.

DETAILS OF INVESTIGATION

On December 7, 2012, a confidential complainant reported to OIG that Commerce Public Affairs and NIST management improperly removed (b) (7)(C) report from NIST's website for political reasons before the presidential election. The complainant alleged that this action violated the NIST Scientific Integrity Notice. (Attachment 1)

In a January 22, 2013, interview, (b) (7)(C) told us he heard that on October 17, 2012, (b) (7)(C) ran into (b) (7)(C) EL, NIST, en route to an off-site conference and reportedly asked him, in effect, "Don't you know there's a moratorium on manufacturing data?" (b) (7)(C) said he searched NIST's website that evening and found the report had been removed. (b) (7)(C) said when he asked (b) (7)(C) PBA, why the report had

been removed, she said "to wait until the dust settles after the election," which gave him the impression that (b) (7)(C) report was pulled for political reasons. (Attachment 2)

On January 22, 2013, we reviewed (b) (7)(C) report. We found that while the report highlights that U.S. manufacturing growth lags behind that of many other countries and is growing slower than the whole of the U.S. economy, it does not appear to advocate a particular course of action or offer any policy recommendations. (Attachment 6)

In a January 23, 2013, interview, (b) (7)(C) told us Commerce Public Affairs did not want to issue a press release announcing the publication of (b) (7)(C) report because "manufacturing was clearly a Presidential priority area." He said (b) (7)(C) also asked him to take (b) (7)(C) report offline, so he advised (b) (7)(C) to "bury the link" to it – in other words, to make it inaccessible through NIST's website. (b) (7)(C) said he complied with (b) (7)(C) request because, in his opinion, (b) (7)(C) report did not contain any "real science." He said (b) (7)(C) report did not contribute to the discussion on manufacturing in any meaningful way because it was simply a regurgitation of other people's research. As such, (b) (7)(C) said, its removal could not have constituted a violation of the NIST Scientific Integrity Notice. (b) (7)(C) added that the topic of (b) (7)(C) report (manufacturing) was also inappropriately assigned to (b) (7)(C), in that it was not within OAE's purview. (Attachment 12)

In a February 13, 2013, interview, (b) (7)(C) told us it was his understanding that Commerce Public Affairs forwarded the draft press release to the White House for review because (b) (7)(C) report dealt with manufacturing, which was a key issue in the upcoming presidential election. (b) (7)(C) said he believed the White House "freaked out," which is why, he surmised, (b) (7)(C) told him not to issue the press release. (b) (7)(C) said NIST authors are not entitled to press releases announcing their work, so he went ahead and suppressed the draft press release. However, he said he believed the "people over at the White House kept clicking on the link" to (b) (7)(C) report on NIST's website in the draft press release and insisted that the entire report be taken down as well. As a result, (b) (7)(C) said he told his staff to delink (b) (7)(C) report from NIST's website. However, they mistakenly "deleted the record" of it. (b) (7)(C) said that a few weeks after the election, he had the record recreated and "quietly… put the report back up" on NIST's website. (b) (7)(C) said he did not think the removal of (b) (7)(C) report from NIST's website violated the NIST Scientific Integrity Notice because (b) (7)(C) report could presumably have been accessed in another manner (e.g., in NIST's library). (Attachment 13)

In a February 13, 2013, interview, (b) (7)(C) told us (b) (7)(C) report was essentially an "annotated bibliography." He said he was told that (b) (7)(C) report was removed from NIST's website because it was a policy document. However, (b) (7)(C) said (b) (7)(C) report was "definitely not a policy piece," and could instead be considered "scientific work" within the meaning of the NIST Scientific Integrity Notice because it contained research. (Attachment 9)

In a February 13, 2013, interview, (b) (7)(C) told us he was given many reasons for the removal of his report from NIST's website (e.g., (b) (7)(C) had a problem with it, it was a policy document,

and *finally* "there was an embargo on publications on the manufacturing industry… because of the election.") (b) (7)(C) said he did not think his report was a policy document. He also said that while his report remained off NIST's website, it was not available elsewhere. (b) (7)(C) said the removal of his report from NIST's website was "probably politically related," and thus likely violated the NIST Scientific Integrity Policy. He also described and later provided us a copy of a (b) (7)(C) 2010 NIST Special Publication he had authored, which presented data related to the construction industry just as the report that is the subject of this investigation presented data related to the manufacturing industry. He said that report, entitled, "(b) (7)(C) (b) (7)(C) " was not treated as a policy piece, and was never removed from NIST's website. (Attachments 14, 16)

In a February 13, 2013, interview, (b) (7)(C) OAE, NIST, said (b) (7)(C) report was essentially a "presentation of statistics," and did not contain any policy recommendations. He dismissed as "invalid" any argument that (b) (7)(C) report did not constitute "scientific work" within the meaning of the NIST Scientific Integrity Notice. (b) (7)(C) also said (b) (7)(C) report was an approved deliverable for a particular EL project, and later emailed us a description of the "(b) (7)(C) " under which (b) (7)(C) produced his report. (b) (7)(C) said (b) (7)(C) told him (b) (7)(C) report had been pulled from NIST's website because "there was an embargo on all manufacturing-related statistics" pending the presidential election. He said he might have understood if (b) (7)(C) report had simply been taken down from NIST's website, but, in fact, (b) (7)(C) report was deleted in its entirety. He said, "[I]t was as if the report had never even existed." He said that was "a little heavy handed." (Attachments 10, 17)

In a March 14, 2013, interview, (b) (7)(C) said he remembered reading (b) (7)(C) report and "not being overwhelmed with the quality" of it. However, he said he could not recall whether he provided comments on it and, if so, when or to whom. (b) (7)(C) also said he would "be shocked if someone said there was a moratorium" on government publications in the weeks before a presidential election, but conceded that "during the election season, you do have to be careful that whatever you say can't be taken out of context." On May 20, 2013, (b) (7)(C) searched his emails for information related to this matter and determined that he received the draft press release for (b) (7)(C) report on October 17, 2013. (Attachments 14, 18)

In a March 14, 2013, interview, (b) (7)(C) told us that manufacturing was an area of particular interest and importance to former Acting Secretary of Commerce Rebecca Blank and, as such, Commerce Public Affairs notified him of (b) (7)(C) report and NIST's intent to issue a press release announcing it. (b) (7)(C) said he questioned whether (b) (7)(C) had reviewed (b) (7)(C) report because Acting Secretary Blank had tasked ESA with writing a report on manufacturing, and he wanted to make sure the messages were the same. He said that when he learned that (b) (7)(C) had not seen it, he asked (b) (7)(C) and Gallagher to "take it down until we have (b) (7)(C) take a look at it." (b) (7)(C) said the White House was not involved, and (b) (7)(C) report was not pulled because of the pending presidential election. He also said he did not follow up with (b) (7)(C) or NIST regarding (b) (7)(C) report and assumed that if it was reposted on NIST's website, it had undergone sufficient additional review. (Attachment 11)

In an April 11, 2013, interview, (b) (7)(C) (b) (7)(C) NIST, said he was not aware of any NIST policy that required a different or more intense pre-publication review for NIST reports on "priority" topics, including manufacturing. He said that in his opinion, (b) (7)(C) report itself did not warrant additional scrutiny simply because it was related to manufacturing. Rather, the draft press release suggested (wrongly, in his opinion) that the report contained policy recommendations related to the manufacturing industry. He said that based solely on his read of the draft press release, he too would have "pulled" the report offline pending further review. When probed, however, (b) (7)(C) could not point to another example in which a report was similarly pulled from NIST's website after publication. (Attachment 19)

In an April 11, 2013, interview, (b) (7)(C) told us that all PBA draft press releases are forwarded to Commerce Public Affairs for review, which then collaborates with PBA and other bureaus that might have an interest in the draft press release prior to releasing it. (b) (7)(C) said she could not remember why the draft press release announcing (b) (7)(C) report was not published, but she listed out a number of reasons why a press release might not be published (e.g., the report on which the press release is based does not reflect what Commerce as an agency believes, or it contradicts another Commerce report). (b) (7)(C) said she was not aware of any instance when a press release was suppressed for political reasons. (b) (7)(C) also could not recall a single instance when a published report was pulled as a result of Commerce Public Affairs' disapproval of the draft press release announcing it. Finally, (b) (7)(C) provided us a copy of (b) (7)(C) s draft press release announcing (b) (7)(C) report, entitled "(b) (7)(C) (b) (7)(C) " While the draft press release did not appear to indicate that (b) (7)(C) report contained manufacturing policy recommendations, it did specify that (b) (7)(C) assessed the "roles that the $1.8 trillion sector plays in the national economy and compare[d] U.S. manufacturing performance against that of other countries." (Attachment 20)

In an April 17, 2013, interview, (b) (7)(C) Commerce Public Affairs, provided us several email exchanges, dated October 17-18, 2012, which offer a glimpse into who and what caused (b) (7)(C) report to be taken off NIST's website. Based on our review of these emails, we found that (b) (7)(C) PBA, NIST, emailed (b) (7)(C) the draft press release on October 17, 2012, which (b) (7)(C) forwarded, as she always does, to Commerce's Office of Policy and Strategic Planning (OPSP) and Office of Legislative and Intergovernmental Affairs (OLIA), and to (b) (7)(C) (b) (7)(C) and (b) (7)(C) Both OPSP and OLIA approved the publication of the draft press release, but (b) (7)(C) (b) (7)(C) and (b) (7)(C) recommended that (b) (7)(C) forward the draft press release to (b) (7)(C) to ensure that (b) (7)(C) report did not contradict a particular ESA report, or provided reasons for said conflict. (b) (7)(C) thus emailed the draft press release to (b) (7)(C), (b) (7)(C), Office of Economic Affairs, for (b) (7)(C) review. In the meantime, (b) (7)(C) emailed (b) (7)(C) that she was "flagging" the draft press release for "others higher up." (Attachment 3)

On April 30, 2013, (b) (7)(C) provided us additional email exchanges, which indicate that (b) (7)(C) report was removed from NIST's "active publications database" and website on October 17, 2012, before 5:00 PM. These emails also provide that (b) (7)(C), (b) (7)(C) (b) (7)(C), (b) (7)(C), (b) (7)(C), (b) (7)(C) and (b) (7)(C) were involved in the removal. (Attachment 4)

In a May 1, 2013, interview, (b) (7)(C) said she only vaguely recalled the circumstances surrounding the removal of (b) (7)(C) report from NIST's website. She said to the best of her knowledge, (b) (7)(C) report was removed pending the resolution of two questions: (1) Why the report had been published and posted on NIST's website before the draft press release announcing it had been submitted to Commerce Public Affairs for review; and (2) Whether the report contradicted or overlapped with another ESA manufacturing-related report that was in the pipeline and nearing publication. (b) (7)(C) said she knew (b) (7)(C) report was forwarded to (b) (7)(C) for review, but she did not know what happened after that or why it took 1.5 months for (b) (7)(C) report to be republished on NIST's website. (Attachment 21)

In a May 6, 2013, interview, (b) (7)(C) said he did not know why Commerce Public Affairs rejected (b) (7)(C)'s press release, or why (b) (7)(C) report was taken offline, but he had heard from a third party that Commerce had raised objections to (b) (7)(C) report and the draft press release because (b) (7)(C) report had not been reviewed by another Commerce bureau, under whose purview manufacturing fell. (b) (7)(C) said he was never given any reason to believe that (b) (7)(C) report was removed from NIST's website for political reasons, whether related to the pending presidential election or not. (b) (7)(C) also provided several email exchanges dated October 17, 2012, which indicate that (b) (7)(C) coordinated with NIST information technology (IT) specialists to remove (b) (7)(C) report from NIST's website on NIST's behalf. (Attachment 5)

On May 31, 2013, we reviewed NIST Scientific Integrity Order 110.01 (NIST O 110.01), dated January 17, 2013, which replaces the earlier NIST Scientific Integrity Notice. Among other things, NIST O 110.01 provides that "[t]he discussion, presentation and publication of research results shall be subject to the level of peer review required to ensure the quality of such results." There is no further discussion as to the required level of peer review. (Attachment 22)

In a series of emails dated June 3-4, 2013, (b) (7)(C) provided us a timeline related to the approval, publication, removal and reposting of his report on NIST's website. (b) (7)(C) said he began researching and writing his report in October 2011. He said he submitted his report to the WERB for review on February 9, 2012, which the WERB approved on March 15, 2012. (b) (7)(C) said EL management continued to review and tweak his report until early October 2012. He said his report was originally published on NIST's website on or about (b) (7)(C), 2012, but it was removed soon afterward. He said his report was reposted to NIST's website on or about (b) (7)(C), 2012. (Attachment 7)

On June 4, 2013, we reviewed NIST's policies regarding the communication of official NIST writings. According to Chapter 4.09 of the NIST Administrative Manual, a technical manuscript need only be reviewed by the responsible division chief within an author's operating unit and

the appropriate NIST editorial review board prior to publication. The WERB is responsible for the final review and approval of technical manuscripts prepared by authors at NIST's Gaithersburg, Maryland location. (Attachment 23)

In an email dated June 14, 2013, (b) (7)(C) told us it was "possible" that she told (b) (7)(C) "to wait until the dust settles after the election," when he questioned why his press release announcing (b) (7)(C) report had not been published. (b) (7)(C) added, however, that she did not actually know why (b) (7)(C) s press release was suppressed or (b) (7)(C) report was removed from NIST's website. (Attachment 24)

TABLE OF ATTACHMENTS

Attachment	Description	Serial
1	Complaint Documents	
2	IRF (b) (7)(C) January 22, 2013 Interview	
3	IRF (b) (7)(C) April 17, 2013 Interview	
4	IRF Records Review (b) (7)(C) October 17, 2012 Emails	
5	IRF (b) (7)(C) May 6, 2013 Interview	
6	IRF Records Review NIST Special Publication (b) (7)(C), entitled "(b) (7)(C) (b) (7)(C)"	
7	IRF Records Review (b) (7)(C) June 3-4, 2013 Email	
8	IRF Record Review (b) (7)(C) June 4, 2013 Email	
9	IRF (b) (7)(C) February 13, 2013 Interview	
10	IRF (b) (7)(C) February 13, 2013 Interview	
11	IRF (b) (7)(C) March 14, 2013 Interview	
12	IRF (b) (7)(C) January 23, 2013 Interview	
13	IRF (b) (7)(C) February 13, 2013 Interview	
14	IRF (b) (7)(C) March 14, 2013 Interview	
15	IRF (b) (7)(C) February 13, 2013 Interview	
16	IRF Records Review NIST Special Publication (b) (7)(C), entitled "(b) (7)(C) (b) (7)(C)"	
17	IRF Records Review "(b) (7)(C) (b) (7)(C)"	
18	IRF Records Review (b) (7)(C) May 20, 2013 Email	
19	IRF (b) (7)(C) April 11, 2013 Interview	
20	IRF (b) (7)(C) April 11, 2013 Interview	
21	IRF (b) (7)(C) May 1, 2013 Interview	
22	IRF Records Review NIST Scientific Integrity Order 110.01	
23	IRF Records Review Chapter 4.09, NIST Administrative Manual	
24	IRF Records Review (b) (7)(C) June 14, 2013 Email	

UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

MEMORANDUM FOR: File

FROM: (b) (7)(C)

DATE: March 8, 2013

REF: Action Memorandum for Closure
Re: OI Case FOP-WF-13-0399-P

On January 22, 2013, our office received a qui-tam complaint from the District of Delaware. The complaint alleged that Majestic Blue Fisheries, LLC made false statements in applications to obtain fishing licenses under the South Pacific Tuna Treaty (SPTT). The complaint further alleged that Korean individuals and entities conspired to falsely represent to the US Coast Guard and the National Oceanic & Atmospheric Administration (NOAA) that American citizens owned and operated two purse seiner tuna fishing vessels in order to obtain fishing licenses that are reserved only for American citizens under the terms of the South Pacific Tuna Treaty. (Serials 2-4)

On January 22, 2013, (b) (7)(C), a (b) (7)(C) with the National Marine Fisheries Service (NMFS), Pacific Islands Regional Office (PIRO), International Fisheries Section was interviewed. Mr. (b) (7)(C) works in the division of NOAA that is responsible for administration of the SPTT. The fishing licenses issued under the SPTT are actually issued by the Forum Fisheries Agency (FFA), which is located in the Solomon Islands and is made up of 16 different Pacific Island countries with which the United States has entered into this treaty. Under the SPTT, the United States is allocated 40 fishing licenses per year. There is significant demand for these licenses and thus there are regulations specifying the various requirements to obtain a license, one of which is to obtain an annual Coast Guard certification of Documentation that the vessel is a United States flagged vessel. The SPTT is overseen through the State Department's Office of Marine Conservation, but in large part is administered through NOAA, whose role is to facilitate the application process as the administrative body on behalf of the U.S. Government and U.S. fishermen. NOAA charges no fees, receives no special appropriation or other funding to accomplish this mission, but does it as part of their regular mission with normal appropriated monies paying for the support (mostly salaries/admin related). There are no statements or certifications made directly to NOAA, though NOAA relies on the Coast Guard certification that, if false, would be something NOAA would not know or have reason to question. (Serial 5)

On January 23, 2013, (b) (7)(C), the (b) (7)(C) for NOAA's Office of General Counsel, Pacific Islands Regional Office (PIRO) and formerly with the United States Coast

Guard, confirmed there is no claim for money under an SPTT license application as might arise under the False Claims Act. He said NOAA does rely on the Coast Guard registry documents, and if those documents were falsified, NOAA would have no way to know this. As an example, he said if the vessel does not meet the US ownership requirements, and obtains a US documentation with a fishery endorsement from the Coast Guard by material misrepresentation of the amount of US control of the organization, the presentation of a falsely obtained document to NOAA, had they known, could result in the denial of the license application. (Serial 6)

On March 4, 2013, the complainants were interviewed, who claimed that a Korean company, Dongwon Industries, registered two vessels as U.S. flagged vessels in order to apply and receive a U.S.-sponsored fishing licenses under the SPTT. They alleged Dongwon used a former Dongwon (b) (7)(C)s (b) (7)(C) naturalized U.S. citizen (b) (7)(C) (b) (7)(C) and (b) (7)(C) ((b) (7)(C)), to serve as (b) (7)(C) of two U.S.-based single asset Limited Liability Corporations (LLCs) that Dongwon incorporated in Delaware. The purpose of these LLCs was to create shell companies in which Dongwon could transfer two of its Korean-flagged purse seine tuna fishing vessels, renamed *Majestic Blue* and *Pacific Breeze*, to U.S. entities in order to re-flag the vessels under U.S. registry. To accomplish this, Dongwon, through the (b) (7)(C) filed a Coast Guard registry for the vessels that falsely stated in the relevant section of the registration form that the vessels were owned by a partnership controlled by U.S. citizens and that foreign entities were not under the operational control of the vessels. Complainants allege that these false statements allowed the vessel to be flagged in the U.S. and to receive their "registry endorsement." After these vessels became U.S.-flagged in 2008, Dongwon allegedly directed the LLCs to submit application documents to NOAA for licenses under the SPTT. The complainants allege that the LLCs were a sham, established in order for Dongwon to fish in the SPTT treaty waters. To substantiate this allegation, the complainants said during depositions taken of the(b) (7)(C) both admitted they never participated in any of the business decisions of the LLCs; never paid any money for the vessels; or ever received any profits from the business. Complainant also alleged the LLCs ceded all operational control of the vessels to Dongwon through contracts where Dongwon had exclusive right to buy the fish caught by the vessels; decide/execute crew-manning contracts; and forced the vessels to buy consumables from Dongwon at inflated prices. Complainants stated numerous examples of how Dongwon controlled every aspect of the operations of the LLCs, including that Dongwon employees opened the LLCs' bank accounts and served as the account's only signatories. (Serial 10)

The United States Attorney's Office in the District of Delaware indicated they saw no false claims by which to continue a qui-tam case. The false statements, if they exist, are made to the US Coast Guard, which has indicated they do not intend to enforce rules related to the registry they issue. The risk to NOAA is that they rely solely on the efficacy of the Coast Guard's control mechanisms with respect to the registry. Given the Coast Guard's ambivalence to this issue, NOAA has been made aware of the control weakness.

Approved by (b) (7)(C) OSI Date: March 8, 2013

UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

MEMORANDUM FOR: File

THRU: (b) (7)(C)
(b) (7)(C) Special Investigations

FROM: (b) (7)(C) (b) (7)(C)

DATE: March 22, 2013

REF: FOP-WF-13-0429-P
RE: Action Memorandum for Closure

On January 30, 2013, we received a complaint from a confidential complainant, alleging a potential conflict of interest by (b) (7)(C) a former patent examiner at the U.S. Patent & Trademark Office (USPTO) in Alexandria, Virginia. The complainant, a current USPTO employee, provided documentation indicating a potential conflict due to (b) (7)(C) being employed as a patent examiner for USPTO while also simultaneously practicing as a registered patent agent. The complainant provided a printout from (b) (7)(C)'s "LinkedIn" profile, wherein (b) (7)(C) identified his current employment as "(b) (7)(C) ((b) (7)(C)) at (b) (7)(C)" while stating in his "Summary" section "I'm currently a Patent Examiner at the United States Patent Office (USPTO) and I am available for consulting in both IP & life sciences." Further, under the "Specialties" section of his LinkedIn summary, (b) (7)(C) listed "US Patent Agent (Reg.No. (b) (7)(C))." (Serials 1–2)

We interviewed the complainant, who stated he received notification of this potential conflict through several other USPTO supervisors who oversee various divisions of patent examiners. The complainant notified us of a USPTO administrative process begun to preclude (b) (7)(C) from being able to practice as a registered patent agent before USPTO. (Serial 5)

At the time the complaint was filed, (b) (7)(C) had [redacted] from service, effective (b) (7)(C) 2013; he entered and exited as a Series (b) (7)(C) GS (b) (7)(C) on (b) (7)(C) 2012. On (b) (7)(C) 2013, USPTO issued a "Notification of Discharge During Trial Period" to (b) (7)(C), citing his termination from the Patent Examiner position due to a "failure to demonstrate your fitness or qualifications for continued employment." USPTO cited, as grounds for termination, (1) (b) (7)(C)'s failure to report to work on two occasions despite his supervisor's direct instruction to do so; and (2) the fact that "an Internet [sic] search reveals that you have listed yourself as a Patent Examiner for the USPTO who is currently available for outside consulting work…These outside activities are a violation of ethics rules for Patent Examiners." The termination letter

permitted (b) (7)(C) an opportunity to appeal, and subsequently, USPTO permitted (b) (7)(C) to (b) (7)(C). (Serial 5)

We contacted the Department's Office of General Counsel (OGC) to determine whether (b) (7)(C) had been required to file an OGE-450, a financial disclosure form, wherein certain employees are to report their outside sources of income. We spoke with (b) (7)(C), an OGC attorney who (b) (7)(C) the Department's financial disclosure program, who stated the Department provides general criteria for determining which employees are required to file an annual OGE-450. (b) (7)(C) stated each Departmental operating unit, such as USPTO, can amend those criteria as they see fit, and then provides OGC with an annual list of required filers, for OGC to oversee compliance. (b) (7)(C) stated (b) (7)(C) was not identified by USPTO as a required filer in 2012. (Serial 8)

We spoke with (b) (7)(C), an attorney with USPTO's Office of the Solicitor, who stated USPTO has jurisdiction under 37 CFR 11 to pursue administrative action by disbarring individuals from practicing before USPTO for a variety of violations, including conflicts of interest such as (b) (7)(C)s. (b) (7)(C) stated the initial process is begun by USPTO's Office of Enrollment and Discipline, and that USPTO has one calendar year from when they become aware of a potential violation to initiate, investigate, and enact any action under the statute. (b) (7)(C) stated they are set to issue the letter of allegations to (b) (7)(C) which will afford him the opportunity to respond. (b) (7)(C) stated USPTO will then proceed to investigate the allegations, and if appropriate, institute sanctions, to include disbarment from practicing before USPTO for a defined period of time. (Serial 9)

We contacted the U.S. Attorney's Office for the Eastern District of Virginia, and provided a summary of the allegations and evidence to date against (b) (7)(C) as well as USPTO's impending administrative process to Assistant United States Attorney (b) (7)(C). (b) (7)(C) notified our office on March 4, 2013 of his office's declination for criminal prosecution. (Serial 12)

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
(b) (7)(C) (ZP(b) (7)(C)) National Institute of Standards & Technology (NIST) Boulder, Colorado	FOP-WF-13-0686-I **TYPE OF REPORT** ☐ Interim ☒ **Final**

BASIS FOR INVESTIGATION

On April 12, 2013, we received information from (b) (7)(C) U.S. Department of Commerce, Office of General Counsel (OGC), that the (b) (7)(C) Colorado Police Department conducted a search of the home of a NIST employee, subsequently seizing NIST-owned computers. (b) (7)(C) requested our assistance in determining the status of the property.

RESULTS/ SUMMARY OF INVESTIGATION

Our investigation found no pornographic images on either of the seized NIST-owned computers, though web browser history revealed searches related to pedophilia. We were able to retrieve NIST-owned computers and return them to NIST and aid the U.S. Postal Inspection Service in their investigation. Our case is closed because our assistance is complete.

METHODOLOGY

This case was conducted through interviews and document review, including electronic mail, public domain documentation, Internet sources, and NIST Human Resources. We completed computer forensic analysis and worked with the U.S. Postal Inspection Service to aid in their investigation into child pornography violations.

Distribution: OIG _x_ Bureau/Organization/Agency Management __ DOJ: ____ Other (specify):			
Signature of Case Agent: (b) (7)(C)	Date: 6/13/13	Signature of Approving Official:	Date: 6/13/2013
Name/Title: (b) (7)(C)		Name/Title: Rick Beitel, Principal Inspector General for Investigations	

DETAILS OF INVESTIGATION

Upon receipt of the request from (b) (7)(C), we contacted the (b) (7)(C) Police Department, learning that their computer forensics unit had assisted the Postal Inspection Service in a search warrant service at the home of (b) (7)(C) a NIST (b) (7)(C) The (b) (7)(C) Police Department said they did not recover any evidence because it was all recovered by the Postal Inspection Service. (Attachment 1)

On April 16, 2013, we received from the Postal Inspection Service the computer equipment seized from Mr. (b) (7)(C)s residence that belong to NIST, including a Dell Laptop computer, Serial number (DPN #)(b) (7)(C) containing a NIST Property tag citing tag #(b) (7)(C) and SN#(b) (7)(C) (service tag #) and a Dell PowerEdge R410 Server, Serial number (b) (7)(C) containing a NIST Property tag citing tag #(b) (7)(C) and SN# (b) (7)(C). Both items were collected as evidence and sent to (b) (7)(C) (b) (7)(C) for forensic analysis. The Postal Inspection Service informed us they had evidence Mr. (b) (7)(C) had trafficked in child pornography, and we agreed to conduct the forensic analysis to determine if any illicit material as stored on either of the NIST computers. (Attachment 2)

On April 17, 2013, we interviewed (b) (7)(C) who is (b) (7)(C)s supervisor. Mr. (b) (7)(C) confirmed no previous performance or disciplinary problems with Mr. (b) (7)(C). Mr. (b) (7)(C) said Mr. (b) (7)(C)s assignment was to test an "(b) (7)(C)" called "(b) (7)(C)", which is a monitoring program running virtual servers. Mr. (b) (7)(C) said Mr. (b) (7)(C) has had (b) (7)(C) (b) (7)(C) since birth and over the past few years has had complications that have resulted in (b) (7)(C) different surgeries to (b) (7)(C) After the last surgery, the (b) (7)(C) (b) (7)(C) and the (b) (7)(C) surgery was to (b) (7)(C). Because of this, and because of (b) (7)(C) and (b) (7)(C) Mr. (b) (7)(C) has been allowed to telework full time from his home as a reasonable accommodation for his . Mr. (b) (7)(C) said he was aware of one laptop computer and a server owned by NIST that Mr. (b) (7)(C) had at his residence. This information was provided to the Postal Inspection Service. (Attachment 3)

On May 6, 2013, we received employment related documents for (b) (7)(C) from the NIST Human Resources Management office. The records include Mr. (b) (7)(C)s latest SF-50, and documents concerning his reasonable accommodation request that allowed him to telework full time. There were no past disciplinary records in Mr. (b) (7)(C)s official personnel file. This information was provided to the Postal Inspection Service for their case. (Attachment 4)

On May 7, 2013, SA (b) (7)(C) completed his forensic review of the two computers, finding no images depicting pornography of any kind. However, in the web browsing history index, there were located numerous web searches related to pedophilia websites. This information was provided to the Postal Inspection Service. (Attachment 5)

On June 2, 2013, the Postal Inspection Service gave permission to release the seized computer equipment back to NIST, which was accomplished on June 12, 2013. (Attachment 6)

On June 2, 2013, after discussion with the Postal Inspection Service, it was determined that our assistance was complete in this investigation, and though a criminal prosecution may result from further investigation by the Postal Inspection Service, it was appropriate for us to close our case.

TABLE OF ATTACHMENTS/INDEXES

Attachment	Description	IG-CIRTS Serial Index
1	Opening Complaint documents	1
2	Evidence Transfer of computers	3
3	Interview report of (b) (7)(C)	2
4	Records Received from NIST HR	9
5	IRF on Results of Forensic Computer Examination	8
6	IRF on Return of Evidence	10

UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

MEMORANDUM FOR: File

FROM: (b) (7)(C)

DATE: August 28, 2013

REF: Action Memorandum for Closure
RE: FOP-WF-13-1086-P

On August 21, 2013, our office opened a case based on a complaint from the US Patent and Trademark Office (USPTO), Human Resources (HR). HR alleged (b) (7)(C) an Attorney-Adviser in the Trademark Law Office, had an undisclosed private law practice that may represent clients on patent or trademark issues in violation of USPTO policy and 18 U.S.C. §203 and 205. USPTO/HR based their referral on a LinkedIn web page indicating (b) (7)(C) had an ongoing law practice. (Serial 1-2)

We obtained employment records for (b) (7)(C) showing that she began employment with USPTO on (b) (7)(C) 2013. On that same day, she had ethics training related to the requirement to withdraw from representing any clients before the USPTO. Included with her package was a "Statement of Employee Relative to Interests, Activities and Obligations" indicating that as of May 6, 2013 she had withdrawn as an attorney representing clients. (Serial 7)

Initial research found (b) (7)(C) is a principal in (b) (7)(C) which specializes in patent and trademark law. One website was for the (b) (7)(C) Intellectual Property Law Association, which indicates (b) (7)(C) is on the Board of Directors for that organization. While several trademarks were located where she was the representing counsel, all of them predate her USPTO employment. Furthermore, the more recent trademark entries show that Ms. (b) (7)(C) did in fact withdraw from representation. (Serial 5)

On August 28, 2013, USPTO/HR informed us that they had already reminded Ms. (b) (7)(C) of her obligations about representing third parties; they did so before referring this case to us. There is no evidence that Ms (b) (7)(C) has represented third parties after her employment with USPTO began, and she has been warned by her managers of that continuing obligation. This case is closed.

Approved by: (b) (7)(C)
(b) (7)(C)

Date: 28 Aug 13

(b) (7)(C)

Case Disposition Considerations

Case Number: 13-1165 Case Agent: (b) (7)(C)

Days Open: _____

YES	NO	CRITERIA
✓		Is the matter investigated within OI's investigative priorities?
✓		Is the investigation likely to result in referral for criminal/civil action?
	✓	Does the allegation involve misconduct on the part of a senior DOC employee (GS-14 or above)?
	✓	Does the allegation involve serious improprieties within a DOC program?
	✓	Does the allegation involve significant waste within a DOC component?
	✓	Is the investigation likely to result in substantive recommendations to the component for changes in policy/processes?
✓		Is the investigation likely to result in a recommendation to the DOC component that administrative disciplinary action be taken?
	✓	Is it appropriate to refer this to the component agency for handling and resolution? not yet
✓		Has there been substantive investigative activity within the last 30 days? via 13-0914
	✓	Has the investigation been referred to DOJ?
	✓	Has there been contact with an AUSA/trial attorney within the last 30 days?
✓		Is criminal prosecution or civil litigation expected? possible via 13-0914
	✓	Have subpoenas (IG or GJ) been issued during the course of the investigation?
	✓	Has assistance specifically been requested of DOC OIG by the affected component or another agency?
	✓	Is the investigation likely to result in cost savings/restitution to DOC? most equip recovered, other recycled
	✓	Is essential investigative activity remaining to be carried out? via 13-0914
	✓	Is the ROI complete? Recommend merge w/ 0914 as info appears to indicate allegations are same incident.

Closure Recommended? ✓ YES NO

Case Agent Signature: (b) (7)(C) Date 9/20/13

Reviewing Supervisor Signature: (b) (7)(C) Date 09/20/2013

Concur / Non-concur _____ Date: 9/24/2013

PAIGI

UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, DC 20230

November 14, 2013

MEMORANDUM FOR: File

FROM: SA (b) (7)(C)

REF: ACTION MEMORANDUM – CLOSURE
RE: (b) (7)(C) (BIS)
OI Case FOP-WF-13-1184-P

On August 28, 2013, the Office of Investigations (OI) received a complaint from (b) (7)(C) (b) (7)(C) (b) (7)(C) (b) (7)(C), Technology Crimes Section, Office of the Inspector General, U.S. Department of Energy (DOE). (b) (7)(C) indicated on (b) (7)(C), 2013, a DOE sponsored conference where BIS employee (b) (7)(C), utilized a thumb drive to conduct a presentation on behalf of the Department of Commerce, and BIS. (b) (7)(C) completed (b) (7)(C) presentation and left the thumb drive (b) (7)(C) used in the computer utilized for the conference presenters. Following the presentation given by (b) (7)(C) an adult pornographic video began playing on the computer being used for the presentation. Further investigation by conference attendees revealed the adult pornographic video in question emanated from the thumb drive used by (b) (7)(C) (Serial 1)

We then contacted (b) (7)(C) and (b) (7)(C) provided the thumb drive listed above for computer forensic analysis. SA (b) (7)(C) conducted forensic analysis on the thumb drive and located two adult pornographic videos. The analysis also determined the videos in question contained no child pornography. (b) (7)(C) stated the thumb drive in question was a personal thumb drive that belonged to (b) (7)(C) (b) (7)(C) said (b) (7)(C) used the thumb drive accidentally. We spoke to (b) (7)(C) and (b) (7)(C) said the thumb drive was in fact (b) (7)(C) and that (b) (7)(C) had downloaded the pornographic videos to the thumb drive. (Serial 3)

APPROVED BY: (b) (7)(C) (b) (7)(C) _____