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Description of document:	Commodity Futures Trading Commission (CFTC) Inspector General (OIG) Reports of Investigation (ROI) for each substantiated investigation, CY 2018 - CY 2019
Requested date:	23-May-2020
Release date:	06-July-2020
Posted date:	26-October-2020
Source of document:	Freedom of Information Act Request FOIA Compliance Office Commodity Futures Trading Commission Three Lafayette Centre 1155 21st Street, NW Washington, DC 20581 <a href="#">CTFC FOIA Online Request Form</a>

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FOIA Office

## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW, Washington, DC 20581  
[www.cftc.gov](http://www.cftc.gov)

July 6, 2020

RE: 20-00120-FOIA

This is in response to your request dated May 23, 2020, under the Freedom of Information Act seeking access to: [A copy of the final report or report of investigation (ROI) for each SUBSTANTIATED CFTC Office of Inspector General investigation closed during Calendar Year 2018 or Calendar Year 2019.].

In accordance with the FOIA and agency policy, we have searched our records, as of May 26, 2020, the date we received your request in our FOIA office.

We have located 64 pages of responsive records. I am granting partial access to, and am attaching copies of, the accessible records. Portions of some pages fall within the exemptions to the FOIA's disclosure requirements, as explained below.

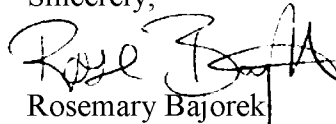
The records contain personal information, which is exempt from release under FOIA Exemption 6 because individuals' right to privacy outweighs the general public's interest in seeing personal identifying information. 5 U.S.C. § 552(b)(6); *see also The Lakin Law Firm v. FTC*, 352 F.3d 1122 (7th Cir. 2003).

If you have any questions about the way we handled your request, or about our FOIA regulations or procedures, please contact me at 202-418-5912, or Jonathan Van Doren, our FOIA Public Liaison, at 202-418-5505.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with this response to your request, you may appeal by writing to Freedom of Information Act Appeal, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 8<sup>th</sup> Floor, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581, within 90 days of the date of this letter. Please enclose a copy of your original request and a copy of this response.

Sincerely,



Rosemary Bajorek  
Attorney-Advisor

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>				1. CONTRACT ID CODE	PAGE 1 OF 2 PAGES
2. AMENDMENT/MODIFICATION NO. <b>M001</b>		3. EFFECTIVE DATE <b>September 30, 2015</b>		4. REQUISITION/PURCHASE REQ. NO. <b>PRENF-15-0619</b>	
5. PROJECT NO. (If applicable)					
6. ISSUED BY Commodity Futures Trading Commission (CFTC) Attn: (b)(7)(F) (b)(7)(G) (b)(7)(D) 1155 21st Street, NW Washington, DC 20581 (b)(6) Email: (b)(6)		7. ADMINISTERED BY (If other than Item 6) See block 6		CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No. Street, county, State and ZIP+Code)				9A. AMENDMENT OF SOLICITATION NO.	
<b>Berkeley Research Group, LLC</b> <b>2200 Powell Street, Ste. 1200</b> <b>Emeryville, CA 946081</b> <b>POC: Dr. Sanjay Unni: 510.285.3300/sunni@thinkbrg.com</b>				9B. DATED (SEE ITEM 11)	
				10A. MODIFICATION OF CONTRACT/ORDER NO. <b>CFENF-15-CO-0104</b>	
				10B. DATED (SEE ITEM 13) <b>02/10/2015</b>	
CODE 962429069		FACILITY CODE 67NF2			

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

☐ The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing items 8 and 15, and returning one (1) copy of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

**CF15140000.2015.66050A0Z28.2000000000.25258.61000000 (F) \$179,400.00**

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS,  
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

( )	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
X	D. OTHER Specify type of modification and authority: <b>FAR 52.217-9 Option to Extend the Term of the Contract</b>

E. IMPORTANT: Contractor ☒ is not, ☐ is required to sign this document and return \_\_\_ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The purpose of this modification is to exercise Option 1, revise the period of performance and obligate funding.

1. Option 1 is hereby exercised. The total ceiling amount of Option 1 is \$171,400.00.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) (b)(6) (b)(6) Contracting Officer	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA (b)(6) (b)(6) BY (Signature of Contracting Officer)	16C. DATE SIGNED
(Signature of person authorized to sign)			

2. Period of Performance is hereby revised as follows:

The period of performance associated with the exercise of Option 1 is September 30, 2015 through September 29, 2016.

3. Funding

The total funded amount of the Base period is \$280,000.00. Funding in the amount of \$8,000.00 is hereby obligated to fully fund the Base period. Additionally, funding in the amount of \$171,400.00 is hereby obligated for the performance of Option 1. Accordingly, the total funding obligated to this contract is increased from \$280,000.00 by \$179,400.00 to \$459,400.00. The contractor shall not exceed \$459,400.00 for work performed under this contract without prior written approval of the Contracting Officer.

4. Modification summary

Action	Description/date	Date signed	Funded by action	Total Contract Funded Amount	Contract Ceiling (Base plus all options exercised)
Award		02/10/2015	\$280,000.00	\$280,000.00	\$288,000.00
Mod 1	Exercise Option 1 and add funding	09/30/2015	\$179,400.00	\$459,400.00	\$459,400.00

{End of Modification}



Commodity Futures Trading Commission  
Financial Management Branch

Order for Supplies or Services

Page 1 of 2

1. Effective Date: See Block 19	2. Contract No. (if any): GS-35F-0401N / CFODT-15-BP-0214	3. CFTC Order No.: Task Order 001	4. Requisition No.: n/a
5. Issuing Office: Commodity Futures Trading Commission Financial Management Branch Three Lafayette Centre 1155 21 <sup>st</sup> Street, NW Washington, DC 20581		6. Ship to: Commodity Futures Trading Commission Office of Data and Technology 1155 21 <sup>st</sup> Street, NW Washington, DC 20581	
		7. Contracting Officer's Representative: (b)(6) (b)(6) Alternate - (b)(6) (b)(6) (b)(6)	
8. To Contractor (name, address and Zip Code): Catapult Technology, Ltd. 11 Canal Center Plaza Floor 2 Alexandria, VA 22314-1554		9. Deliver on or before: 08-31-2016	10. F.O.B. Point: Destination
		11. Type of Action: Initial Award <input type="checkbox"/> Modification <input checked="" type="checkbox"/> Mod. # M002	
8a. Point of contact: Matt Vineguera		13. Submit Invoices to: U.S. DOT-Mike Monroney Aeronautical Center Financial Operations Division CFTC Accounts Payable Branch AMZ-150 PO Box 25710 Oklahoma City, OK 73125 E-Mail: <a href="mailto:9-AMC-AMZ-CFTC@faa.gov">9-AMC-AMZ-CFTC@faa.gov</a>	
8b. Phone: (703)880-2331	8c. DUNS #: 958045346		
12. Discount for Prompt Payment: n/a			
14. Description of Supplies/Services/Prices:  See Continuation Page(s)			
15. Total (of this action): (\$560,000.00)		16. Accounting Data: CF15140000,2015,6900000000,9000000001,2510A,61000000 (\$560,000.00)	
17. Signature of Contracting Officer: (b)(6)		18. Name of Contracting Officer: (b)(6)	19. Date (for block 17): 10/1/15
20. Signature of Contractor:		21. Name and Title (for block 20):	22. Date (for block 20):

CONTINUATION PAGE

The purpose of this modification is to deobligate funds from Task Order 001 of Blanket Purchase Agreement CFODT-15-BP-0214.

Accordingly;

1. Block 14 "Description of Supplies/Services/Prices", as amended through Modification M001, is hereby modified to incorporate the following change. (Change is reflected in gray highlight.)

Delete: "The estimated amount of the Base Year of this task order is \$6,583,711.05. At this time, appropriated funds are not available to fund the entire period of performance. The amount obligated to this task order is shown in Block 15. This task order will be modified to add funds if and when such funds are available. In the meantime, the Government's liability under this task order is limited to the amount obligated (~~\$2,984,284.20~~). The contractor shall not exceed the total funded amount of this task order without prior authorization from the Contracting Officer, as evidenced by a modification to this task order. The contractor shall not incur any other direct costs (e.g., travel) without the prior authorization from the Contracting Officer, as evidenced by a modification to this task order."

Insert: "The estimated amount of the Base Year of this task order is \$6,583,711.05. At this time, appropriated funds are not available to fund the entire period of performance. The amount obligated to this task order is shown in Block 15. This task order will be modified to add funds if and when such funds are available. In the meantime, the Government's liability under this task order is limited to the amount obligated (~~\$2,984,284.20~~ \$2,424,284.20). The contractor shall not exceed the total funded amount of this task order without prior authorization from the Contracting Officer, as evidenced by a modification to this task order. The contractor shall not incur any other direct costs (e.g., travel) without the prior authorization from the Contracting Officer, as evidenced by a modification to this task order."

2. The effect of this modification on the total funded amount of the task order is illustrated below.

Previous Amount:	\$2,984,284.20
This Modification:	(\$560,000.00)
Revised Amount:	\$2,424,284.20

3. All other terms and conditions remain in full force and effect.

END OF MODIFICATION M002 TO TASK ORDER 001 OF  
BLANKET PURCHASE AGREEMENT CFODT-15-BP-0214

PRODT160055

(b)(6) 7/31/2015

<b>COMMODITY FUTURES TRADING COMMISSION REQUISITION AND COMMITMENT OF FUNDS FOR SERVICES AND SUPPLIES</b>		<b>DOCUMENT CONTROL NO. (Assigned by OFM-Presurement) PRODT160055</b>							
<b>FAILURE TO COMPLETE ALL APPLICABLE ITEMS ON THIS FORM MAY RESULT IN AWARD DELAYS</b>									
1. REQUESTING OFFICE ODT/Infrastructure		2. NAME OF REQUESTOR (Name and Telephone No.) (b)(6)							
3. DATE OF REQUEST 9/30/15		4. ESTIMATED PERIOD OF PERFORMANCE / DATE REQUIRED							
5. TOTAL ESTIMATED COST \$340,000.00		6. PROJECT TITLE / DESCRIPTION OF SUPPLIES, EQUIPMENT AND/OR SERVICES (For supplies indicate item/model/stock number, item name, quantity, unit price and amount. Attach an additional sheet if necessary.) This Requisition will provide funding to extend Task Order 005 under SPA CPTC-03-070080 through POB 3/1/15 - 11/30/15 (b)(6)							
7. PROPOSED COTR (Include office symbol and telephone number.) (b)(6)		8. SUGGESTED SOURCE(S) (Include name, point of contact and telephone number.) Citizen Corporation 810 Herndon Va 20170-8157 Attn Carol Carls 703-621-1083							
9. CONTRACTORS SOLICITED (Include name, point of contact, telephone number, price and GSA Federal Supply Schedule contract number, if applicable.)									
10. LIST OF ATTACHMENTS <input checked="" type="checkbox"/> SCOPE/STATEMENT OF WORK <input type="checkbox"/> PROPOSAL EVALUATION CRITERIA <input type="checkbox"/> INDEPENDENT GOVERNMENT COST ESTIMATE <input type="checkbox"/> QUOTATIONS <input type="checkbox"/> RECOMMENDATION FOR OTHER THAN FULL AND OPEN COMPETITION <input type="checkbox"/> JUSTIFICATION FOR AWARD TO OTHER THAN A SMALL BUSINESS <input type="checkbox"/> JUSTIFICATION FOR EXERCISING AN OPTION <input type="checkbox"/> DRAFT DETERMINATION AND FINDING FOR AN INTERAGENCY AGREEMENT <input type="checkbox"/> LEASE/BUY ANALYSIS <input type="checkbox"/> LICENSE/MAINTENANCE/ VENDOR AGREEMENT <input type="checkbox"/> SECTION 808 CHECKLIST <input type="checkbox"/> BARCODES / NUMBERS <input type="checkbox"/> OTHER (Specify)									
11. REFERENCES <input type="checkbox"/> AMENDMENT/MODIFICATION TO									
12. JUSTIFICATION / COMMENTS (Attach an additional sheet if necessary.)									
13. APPROVALS: PROGRAM / ADMINISTRATIVE AREA  Requestor _____ Date _____  (b)(6) _____ Date <u>9/30/15</u>  Other Coordination _____ Date _____  Other Coordination _____ Date _____		14. APPROVAL: COMMISSION ASSET MANAGEMENT PROGRAM  <input type="checkbox"/> NON-CAPITALIZED AND NON-ACCOUNTABLE ASSETS <input type="checkbox"/> NON-CAPITALIZED AND ACCOUNTABLE ASSETS <input type="checkbox"/> CAPITALIZED AND ACCOUNTABLE ASSETS  CMO Asset Manager _____ Date _____ CMO Asset Manager, if applicable _____ Date _____							
15. FUNDING subject to the availability of funds (b)(6) CP 6140000.2016.0000000000.9000000000.2510A 000000000.0000000000.2510A.01000000 max _____ (s) \$340,000.00 (b)(6) 9/30/15 Funds in the amount of \$340,000.00 are hereby certified available and reserved for this requisition. (b)(6) _____ Date <u>9/30/15</u>		4/20/15 610000000							
16. ASSIGNMENT <table style="width:100%;"> <tr> <th>NAME</th> <th>TELEPHONE NO.</th> <th>DATE ASSIGNED</th> </tr> <tr> <td>CONTRACTING OFFICER _____</td> <td>_____</td> <td>_____</td> </tr> </table>				NAME	TELEPHONE NO.	DATE ASSIGNED	CONTRACTING OFFICER _____	_____	_____
NAME	TELEPHONE NO.	DATE ASSIGNED							
CONTRACTING OFFICER _____	_____	_____							



PRENF160054

(b)(6)

9/28/2015

DOCUMENT CONTROL NO.  
(Assigned by GFM-Procurement)

PRENF160054

COMMODITY FUTURES TRADING COMMISSION  
REQUISITION AND COMMITMENT OF FUNDS FOR SERVICES AND SUPPLIES

FAILURE TO COMPLETE ALL APPLICABLE ITEMS ON THIS FORM MAY RESULT IN AWARD DELAYS

1. REQUESTING OFFICE Division of Enforcement, NY	2. NAME OF REQUESTOR (Name and Telephone No.) (b)(6)	3. DATE OF REQUEST 9/28/2015
4. ESTIMATED PERIOD OF PERFORMANCE / DATE REQUIRED September 2016		5. TOTAL ESTIMATED COST \$200,000.00
6. PROJECT TITLE / DESCRIPTION OF SUPPLIES, EQUIPMENT AND/OR SERVICES (For supplies indicate item/model/stock number, item name, quantity, unit price and amount. Attach an additional sheet if necessary.) The Division of Enforcement against three individuals—William Byrnes, Chris Curia, and Ron Eliechitz and the New York Mercantile Exchange ("NYMEX") alleging that Curia and Byrnes willfully and knowingly disclosed for purposes inconsistent with their official duties material nonpublic information to Eliechitz.		
7. PROPOSED COTR (Include office symbol and telephone number.) (b)(6)	8. SUGGESTED SOURCE(S) (Include name, point of contact and telephone number.) The Brattle Group, Inc., #1.817.864.7800 44 Brattle St, 3rd Fl Cambridge, MA 02138-3748 Barbara Levine - Barbara.Levine@brattle.com	
9. CONTRACTORS SOLICITED (Include name, point of contact, telephone number, price and GSA Federal Supply Schedule contract number, if applicable.)		

## 10. LIST OF ATTACHMENTS

- |                                                                                  |                                                                                       |                                                                |
|----------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|----------------------------------------------------------------|
| <input checked="" type="checkbox"/> SCOPE/STATEMENT OF WORK                      | <input type="checkbox"/> JUSTIFICATION FOR AWARD TO OTHER THAN A SMALL BUSINESS       | <input type="checkbox"/> LEASE/BUY ANALYSIS                    |
| <input type="checkbox"/> PROPOSAL EVALUATION CRITERIA                            | <input type="checkbox"/> JUSTIFICATION FOR EXERCISING AN OPTION                       | <input type="checkbox"/> LICENSE/MAINTENANCE/ VENDOR AGREEMENT |
| <input type="checkbox"/> INDEPENDENT GOVERNMENT COST ESTIMATE                    | <input type="checkbox"/> DRAFT DETERMINATION AND FINDING FOR AN INTERAGENCY AGREEMENT | <input type="checkbox"/> SECTION 508 CHECKLIST                 |
| <input type="checkbox"/> QUOTATIONS                                              |                                                                                       | <input type="checkbox"/> BARCODES / NUMBERS                    |
| <input type="checkbox"/> RECOMMENDATION FOR OTHER THAN FULL AND OPEN COMPETITION |                                                                                       | <input type="checkbox"/> OTHER (Specify)                       |

## 11. REFERENCES

☒ AMENDMENT/MODIFICATION TO CP-BNF16000224

## 12. JUSTIFICATION / COMMENTS (Attach an additional sheet if necessary.)

Brattle will assist the CFTC in four phases. In Phase I Brattle will assist the CFTC with discovery and will include a preliminary analysis to assess the most practical analytical approaches likely to provide proof of a connection between disclosures and subsequent trading, and, if possible, and materially as it relates to trading. In Phase II, Brattle will conduct a more detailed analysis of the data in relation to the specific disclosures made by the defendants to identify the best-suited approach(es) possible given the data and the CFTC's budget considerations.

## 13. APPROVALS: PROGRAM / ADMINISTRATIVE AREA

(b)(6)

9/25/15  
DateDate  
9/25/15  
Date

Other Coordination

Date

Other Coordination

(b)(6)

## 14. APPROVAL: COMMISSION ASSET MANAGEMENT PROGRAM

- ☐ NON-CAPITALIZED AND NON-ACCOUNTABLE ASSETS  
☐ NON-CAPITALIZED AND ACCOUNTABLE ASSETS  
☐ CAPITALIZED AND ACCOUNTABLE ASSETS

CMT Asset Manager

Date

CMTS Asset Manager, if applicable

Date

## 15. FUNDING

CF16140000.2016.67030A0M99.2000000000.25258

2000000000.67030A0M99.2000000000.25258.61000000.

Accounting String(s) Subject to the availability of funds

(b)(6)

9/30/15

Funds in the amount of \$200,000.00 are hereby certified available and reserved for this solicitation.

## 16. ASSIGNMENT

CONTRACTING OFFICER



**Commodity Futures Trading Commission  
Financial Management Branch**

**Order for Supplies or Services**

Page 1 of 2

1. Effective Date: See Block 19		2. Contract No. (if any): GS-35F-5109H / CFIT-08-BP-0080		3. CFTC Order No.: Task Order 005		4. Requisition No.: PRODT-15-0622	
5. Issuing Office: Commodity Futures Trading Commission Financial Management Branch Three Lafayette Centre 1155 21 <sup>st</sup> Street, NW Washington, DC 20581				6. Ship to: Commodity Futures Trading Commission Office of Data and Technology 1155 21 <sup>st</sup> Street, NW Washington, DC 20581			
				7. Contracting Officer's Representative: (b)(6) (b)(6) (b)(6) Alternate - (b)(6) (b)(6) (b)(6)			
8. To Contractor (name, address and Zip Code): Digicon Corporation 7926 Jones Branch Drive, Suite 615 McLean, VA 22102-3373				9. Deliver on or before: 11-30-2015		10. F.O.B. Point: Destination	
8a. Point of contact: Carol Carlisle				11. Type of Action: Initial Award <input type="checkbox"/> Modification <input checked="" type="checkbox"/> Mod. # M027			
8b. Phone: (703)621-1083		8c. DUNS #: 174243907		13. Submit invoices to: U.S. DOT-Mike Monroney Aeronautical Center Financial Operations Division CFTC Accounts Payable Branch AMZ-150 PO Box 25710 Oklahoma City, OK 73125 E-Mail: 9-AMC-AMZ-CFTC@faa.gov			
12. Discount for Prompt Payment: n/a							
14. Description of Supplies/Services/Prices:  See Continuation Page(s)							
15. Total (of this action): \$340,000.00		16. Accounting Data: CF15140000.2015.0000000000.9000000000.2510A.61000000 \$340,000.00 (F)					
17. Signature of Contracting Officer: (b)(6)				18. Name of Contracting Officer: (b)(6) (b)(6)		19. Date (for block 17): 9/30/15	
				21. Name and Title (for block 20):		22. Date (for block 20):	

CONTINUATION PAGE

The purpose of this modification is to obligate additional funds to increase the authorized not-to-exceed amount of Task Order 005.

Accordingly;

1. Block 14 "Description of Supplies/Services/Prices", as amended through Modification M026, is hereby deleted in its entirety and is replaced with the following. (Changes are reflected in gray highlight.)

**Insert:**

"Information Technology Services – Year 5 (extended)"

The contractor shall provide all personnel, facilities, equipment, material, supplies, and services (except as expressly set forth as furnished by the Government) and otherwise do all things necessary for, or incidental to, providing the services and items listed in the attached Performance Work Statement (PWS). The contractor shall staff the task order with the appropriate number and skill mix of personnel to perform the work described in the PWS, subject to the not-to-exceed amount of the task order.

The period of performance of this task order is March 1, 2012 through November 30, 2015. The not-to-exceed amount of this Time and Materials task order is \$32,811,880.82, which includes \$21,304 for reimbursement of travel costs inclusive of general and administrative expenses as allowed by the contractor's GSA FSS contract. Reimbursement of all travel costs shall be in accordance with the Federal Travel Regulation (FTR). Beginning on March 1, 2015, the contractor shall be paid at the following discounted rates.

<b>GSA Labor Category</b>	<b>Discounted Rate</b>	<b>GSA Labor Category</b>	<b>Discounted Rate</b>
57 Principal Specialist/Scientist	116.45	88 Principal Network Administrator	\$85.31
58 Senior Specialist/Scientist	99.67	91 Senior Network Technician	\$56.91
59 Scientist/Specialist	83.47	92 Network Technician	\$44.66
72 Principal Network Engineer	96.42	93 Junior Network Technician	\$34.54
73 Senior Network Engineer	78.27	69 Principal Networking Specialist	\$152.80
74 Network Engineer	72.07	70 Senior Networking Specialist	\$126.85
75 Junior Network Engineer	49.28	71 Networking Specialist	\$107.23
76 Principal Systems Engineer	110.48	25 Systems Administrator	\$54.29
77 Senior Systems Engineer	89.77	54 Senior Administrative Assistant	\$38.67
78 Systems Engineer	76.96	97 Senior Consultant	\$198.14
15 Junior Computer Systems Analyst	38.63	98 Consultant	\$117.55
81 Operation Tech Support/Analyst	60.82		

The contractor shall only be paid for actual hours worked. Overtime hours shall be paid at the discounted rates stated above without any premium. The amount obligated to this task order is \$32,811,880.82. The Government's liability under this task order is limited to the total amount obligated (\$32,811,880.82). The contractor shall not exceed the total funded amount of this task order without prior authorization from the Contracting Officer, as evidenced by a modification to this task order."

2. The effect of this modification on the total funded amount of the task order is illustrated below.

Previous Amount:	\$32,471,880.82
This Modification:	\$340,000.00
Revised Amount:	\$32,811,880.82

3. All other terms and conditions remain in full force and effect.

END OF MODIFICATION M027 TO TASK ORDER 005 OF  
BLANKET PURCHASE AGREEMENT CFIT-08-BP-0080



**Commodity Futures Trading Commission  
Financial Management Branch**

**Order for Supplies or Services**

Page 1 of 3

1. Effective Date: See Block 19		2. Contract No. (if any): GS-35F-5109H / CFIT-08-BP-0080		3. CFTC Order No.: Task Order 005		4. Requisition No.: PRODT-16-0086	
5. Issuing Office: Commodity Futures Trading Commission Financial Management Branch Three Lafayette Centre 1155 21 <sup>st</sup> Street, NW Washington, DC 20581				6. Ship to: Commodity Futures Trading Commission Office of Data and Technology 1155 21 <sup>st</sup> Street, NW Washington, DC 20581			
				7. Contracting Officer's Representative: (b)(6) (b)(6) Alternate - (b)(6) (b)(6)			
8. To Contractor (name, address and Zip Code): Digican Corporation 7926 Jones Branch Drive, Suite 615 McLean, VA 22102-3373				9. Deliver on or before: 12-20-2015		10. F.O.B. Point Destination	
				11. Type of Action: Initial Award <input type="checkbox"/> Modification <input checked="" type="checkbox"/> Mod. # M028			
8a. Point of contact: Carol Carlisle				13. Submit Invoices to: U.S. DOT-Mike Monroney Aeronautical Center Financial Operations Division CFTC Accounts Payable Branch AMZ-150 PO Box 25710 Oklahoma City, OK 73125 E-Mail: 9-AMC-AMZ-CFTC@fin.gov			
8b. Phone: (703)621-1083		8c. DUNS #: 174243907					
12. Discount for Prompt Payment: n/a							
14. Description of Supplies/Services/Prices:  See Continuation Page(s)							
15. Total (of this action): \$485,000.00		16. Accounting Data: CF161714IT.2016.6900000000.9000000000.2510A.61000000 \$485,000.00 (F)					
17. Signature of Contracting Officer: (b)(6)		18. Name of Contracting Officer: (b)(6) (b)(6)			19. Date (for block 17): 11/20/15		
20. Signature of Contractor: (b)(6)		21. Name and Title (for block 20): John J. Wu, President/CEO			22. Date (for block 20): 11/20/2015		

CONTINUATION PAGE

The purpose of this modification is to exercise the option to extend services that was incorporated into the task order via Modification M023. CFTC is exercising the option for twenty (20) days, per the terms of the settlement agreement between the contractor and CFTC, which resolved the contractor's protest at GAO (no. B-412083). During the remainder of this task order, the contractor shall perform and orderly and efficient transition to the successor contractor per the requirements of BPA clause II.17 "Continuity of Services". Additionally, since the close of business on October 16, 2015, the contractor is no longer required to perform configuration management or IT security services (i.e., other than for the network), as those requirements were transitioned to the contractor that was selected for award of Task Order 002 resulting from RFQ CFODT-14-SO-0109. This modification also obligates additional funds to accommodate the extension.

Accordingly;

1. All references to the period of performance of Task Order 005, as amended through Modification M026, are hereby deleted in their entirety and are replaced with the following.

Insert:

"The period of performance of this task order is March 1, 2012 through December 20, 2015. This period of performance includes 3 months and 20 days of the option to extend services that was incorporated into the task order via Modification M023. CFTC may require continued performance of any services at the rates specified in the task order for up to an additional 2 months and 11 days (i.e., through February 29, 2016). This option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 2 months and 11 days. The Contracting Officer may exercise the option by written notice to the Contractor within 30 days prior to task order expiration."

2. Block 14 "Description of Supplies/Services/Prices", as amended through Modification M027, is hereby deleted in its entirety and is replaced with the following. (Changes are reflected in gray highlight.)

Insert:

"Information Technology Services Year 5 (extended)"

The contractor shall provide all personnel, facilities, equipment, material, supplies, and services (except as expressly set forth as furnished by the Government) and otherwise do all things necessary for, or incidental to, providing the services and items listed in the attached Performance Work Statement (PWS). The contractor shall staff the task order with the appropriate number and skill mix of personnel to perform the work described in the PWS, subject to the not-to-exceed amount of the task order.

The period of performance of this task order is March 1, 2012 through December 20, 2015. The not-to-exceed amount of this Time and Materials task order is \$33,296,880.82, which includes \$21,304 for reimbursement of travel costs inclusive of general and administrative expenses as allowed by the contractor's GSA FSS contract. Reimbursement of all travel costs shall be in accordance with the Federal Travel Regulation (FTR). Beginning on March 1, 2015, the contractor shall be paid at the following discounted rates.

<b>GSA Labor Category</b>	<b>Discounted Rate</b>	<b>GSA Labor Category</b>	<b>Discounted Rate</b>
57 Principal Specialist/Scientist	116.45	88 Principal Network Administrator	\$85.31
58 Senior Specialist/Scientist	99.67	91 Senior Network Technician	\$56.91
59 Scientist/Specialist	83.47	92 Network Technician	\$44.66
72 Principal Network Engineer	96.42	93 Junior Network Technician	\$34.54
73 Senior Network Engineer	78.27	69 Principal Networking Specialist	\$152.80
74 Network Engineer	72.07	70 Senior Networking Specialist	\$126.85
75 Junior Network Engineer	49.28	71 Networking Specialist	\$107.23
76 Principal Systems Engineer	110.48	25 Systems Administrator	\$54.29
77 Senior Systems Engineer	89.77	54 Senior Administrative Assistant	\$38.67
78 Systems Engineer	76.96	97 Senior Consultant	\$198.14
15 Junior Computer Systems Analyst	38.63	98 Consultant	\$117.55
81 Operation Tech Support/Analyst	60.82		

The contractor shall only be paid for actual hours worked. Overtime hours shall be paid at the discounted rates stated above without any premium. The amount obligated to this task order is \$33,296,880.82. The Government's liability under this task order is limited to the total amount obligated (\$33,296,880.82). The contractor shall not exceed the total funded amount of this task order without prior authorization from the Contracting Officer, as evidenced by a modification to this task order."

3. The quarterly surveillance periods for the extended period of performance, as described through Modification M026, are hereby modified to reflect the current and new periods identified below.

- Extended Task Order (M023 - third quarter): September 1, 2015 through November 30, 2015.
- Extended Task Order (M023 - fourth quarter): December 1, 2015 through December 20, 2015.

\*\*Payment deductions, if applicable, for the December 1, 2015 through December 20, 2015 period shall be prorated by a factor of 22%.\*\*

4. The effect of this modification on the total funded amount of the task order is illustrated below.

Previous Amount:	\$32,811,880.82
This Modification:	\$485,000.00
Revised Amount:	\$33,296,880.82

5. All other terms and conditions remain in full force and effect.

END OF MODIFICATION M028 TO TASK ORDER 005 OF  
BLANKET PURCHASE AGREEMENT CFIT-08-BP-0080



**Commodity Futures Trading Commission  
Financial Management Branch**

Page 1 of 1

**Order for Supplies or Services**

1. Effective Date: See Block 19		2. Contract No. (if any): GS-35F-5109H/CFIT-08-BP-0080		3. CFTC Order No.: Task Order 005		4. Requisition No.: n/a	
5. Issuing Office: Commodity Futures Trading Commission Financial Management Branch Three Lafayette Centre 1155 21 <sup>st</sup> Street, NW Washington, DC 20581				6. Ship to: Commodity Futures Trading Commission Three Lafayette Centre 1155 21 <sup>st</sup> Street, NW Washington, DC 20581			
				7. Contracting Officer's Representative: (b)(6) (b)(7) (b)(6) (b)(6) (b)(7) (b)(6)			
8. To Contractor (name, address and Zip Code): Digicon Corporation 7926 Jones Branch Drive, Suite 615 McLean, VA 22102-3373				9. Deliver on or before: 12-20-2015		10. F.O.B. Point: Destination	
				11. Type of Action: Initial Award <input type="checkbox"/> Modification <input checked="" type="checkbox"/> Mod. M029			
8a. Point of contact: Carol Carlisle				13. Submit Invoices to: U.S. DOT-Mike Monroney Aeronautical Center  Financial Operations Division CFTC Accounts Payable AMZ-150 PO Box 25710 Oklahoma City, OK 73125 E-Mail: 9-AMC-AMZ-CFTC@faa.gov			
8b. Phone: (703) 621-1083		8c. DUNS #: 174243907					
12. Discount for Prompt Payment: N/A							
14. Description of Supplies/Services/Prices:  The purpose of this modification is to close-out the order and de-obligate excess funding.  1. By signing this modification, the contractor: <ul style="list-style-type: none"><li>certifies that a final payment has been received and that the total of all payments received for the order is \$33,190,142.92;</li><li>certifies that all of its employees and workers performing services, bills for travel, sub-contracts and other indebtedness connected with the work under the order have been paid or otherwise satisfied; and,</li><li>does remise, release, and discharge the Government, its officers, agents, and employees, of and from all liabilities, obligations, claims and demands whatsoever under or arising from the task order.</li></ul> 2. Excess funding in the amount of \$106,737.90 is de-obligated as follows:  Previous Obligation Amount: \$33,296,880.82 Amount to De-obligate: \$ (106,737.90) Total Amount Obligated: \$33,190,142.92  3. All other terms and conditions remain unchanged.							
15. Total (of this action): (\$106,737.90)		16. Accounting Data: CF1617141T.2016.6900000000.9000000000.2510A.61000000 (\$99,663.99) CF15140000.2015.0000000000.9000000000.2510A.61000000 (\$7,073.91)					
17. Signature of Contracting Officer: (b)(6) (b)(6) (b)(6)				18. Name of Contracting Officer: (b)(6) (b)(7)		19. Date (for block 17): 7/6/2016	
20. Signature of Contractor: (b)(6)				21. Name and Title (for block 23): Kelly K. Ames, V.P.		22. Date (for block 23): 7/5/16	

I know you want to be on time, we have a little time today and per (b)(6), she is telling me not to stress over these accruals happening today. I will talk to (b)(6) if I need to.

**From:** (b)(6)  
**Sent:** Thursday, October 01, 2015 10:18 AM  
**To:** (b)(6); (b)(6)  
**Subject:** RE: CFTC Open Requisitions Updated.xls

When will I be able to send these to (b)(6) as I was already supposed to have sent these earlier this morning?

(b)(6)

**From:** (b)(6); (b)(6); (b)(6)  
**Sent:** Thursday, October 01, 2015 9:06 AM  
**To:** (b)(6)  
**Subject:** RE: CFTC Open Requisitions Updated.xls

OK, thank you. Let me go through this morning. I am trying to figure out where I got off. I was on Target before and after yesterday. I am not.

Thanks for your help.

(b)(6)

**From:** (b)(6)  
**Sent:** Thursday, October 01, 2015 8:24 AM  
**To:** (b)(6); (b)(6)  
**Subject:** RE: CFTC Open Requisitions Updated.xls  
**Importance:** High

(b)(6)

Here is the information that you requested. I added whether it was obligated or awarded. Obligated meant that it is in Delphi and Awarded meant – contract given but unobligated in Delphi.

This spreadsheet does not account for the other 4 that I believe CFTC sent later. This is what I am planning on sending out for the accruals in this spreadsheet.

(b)(6)

(b)(6)



(b)(6)

**From:** (b)(6) (b)(6) (b)(6)  
**Sent:** Wednesday, September 30, 2015 11:41 PM  
**To:** (b)(6)  
**Subject:** CFTC Open Requisitions Updated.xls

H (b)(6)

Of the below, please let me know what was actual awarded. I know the procurement officers sent a few more today that were to be obligated/accrued.

I want to go over those with you. With the pulling of the commitments so early, I have been struggling the afternoon with what my true availability was after this. Embarrassingly I may have to pull back some of those items sent in the afternoon.

Before you send over to the final accruals, let's talk.

Thanks,  
(b)(6)

(b)(6)

(b)(6)

1/30/2018

<b>COMMODITY FUTURES TRADING COMMISSION</b> <b>REQUISITION AND COMMITMENT OF FUNDS FOR SERVICES AND SUPPLIES</b>		DOCUMENT CONTRL NO. (Assigned by OFM-Procurement) <b>PRENF150617</b>
FAILURE TO COMPLETE ALL APPLICABLE ITEMS ON THIS FORM MAY RESULT IN AWARD DELAYS		
<b>1. REQUESTING OFFICE</b> Division of Enforcement, NY	<b>2. NAME OF REQUESTOR (Name and Telephone No.)</b> (b)(6)	<b>3. DATE OF REQUEST</b> 9/25/2015
<b>4. ESTIMATED PERIOD OF PERFORMANCE / DATE REQUIRED</b> September 2015		<b>5. TOTAL ESTIMATED COST</b> \$200,000.00
<b>6. PROJECT TITLE / DESCRIPTION OF SUPPLIES, EQUIPMENT AND/OR SERVICES</b> (For supplies indicate item/model/stock number, item name, quantity, unit price and amount. Attach an additional sheet if necessary.) The Division of Enforcement against three individuals—(b)(6)—and the New York Mercantile Exchange ("NYMEX") alleging that (b)(6) willfully and knowingly disclosed for purposes inconsistent with their official duties material nonpublic information to (b)(6).		
<b>7. PROPOSED COTR</b> (Include office symbol and telephone number.) (b)(6)	<b>8. SUGGESTED SOURCE(S)</b> (Include name, point of contact and telephone number.) The Brattle Group, Inc., #1.617.864.7900 44 Brattle St, 3rd Fl Cambridge, MA 02138-3746 Barbara Levine – Barbara.levine@brattle.com	
<b>9. CONTRACTORS SOLICITED</b> (Include name, point of contact, telephone number, price and GSA Federal Supply Schedule contract number, if applicable.)		
<b>10. LIST OF ATTACHMENTS</b>  <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> <input checked="" type="checkbox"/> SCOPES/STATEMENT OF WORK  <input type="checkbox"/> PROPOSAL EVALUATION CRITERIA  <input type="checkbox"/> INDEPENDENT GOVERNMENT COST ESTIMATE  <input type="checkbox"/> QUOTATIONS  <input type="checkbox"/> RECOMMENDATION FOR OTHER THAN FULL AND OPEN COMPETITION         </div> <div style="width: 30%;"> <input type="checkbox"/> JUSTIFICATION FOR AWARD TO OTHER THAN A SMALL BUSINESS  <input type="checkbox"/> JUSTIFICATION FOR EXERCISING AN OPTION  <input type="checkbox"/> DRAFT DETERMINATION AND FINDING FOR AN INTERAGENCY AGREEMENT         </div> <div style="width: 30%;"> <input type="checkbox"/> LEASE/BUY ANALYSIS  <input type="checkbox"/> LICENSE/MAINTENANCE/VENDOR AGREEMENT  <input type="checkbox"/> SECTION 508 CHECKLIST  <input type="checkbox"/> BARCODES / NUMBERS  <input type="checkbox"/> OTHER (Specify)         </div> </div>		
<b>11. REFERENCES</b> <input checked="" type="checkbox"/> AMENDMENT/MODIFICATION TO CF-ENF15CO0224		
<b>12. JUSTIFICATION / COMMENTS</b> (Attach an additional sheet if necessary.) Brattle will assist the CFTC in four phases. In Phase I Brattle will assist the CFTC with discovery and will include a preliminary analysis to assess the most practical analytical approaches likely to provide proof of a connection between disclosures and subsequent trading, and, if possible, end materiality as it relates to trading. In Phase II, Brattle will conduct a more detailed analysis of the data in relation to the specific disclosures made by the defendants to identify the best-suited approach(es) possible given the data and the CFTC's budget considerations.		
<b>13. APPROVALS: PROGRAM / ADMINISTRATIVE AREA</b> (b)(6)		<b>14. APPROVAL: COMMISSION ASSET MANAGEMENT PROGRAM</b>  <input type="checkbox"/> NON-CAPITALIZED AND NON-ACCOUNTABLE ASSETS <input type="checkbox"/> NON-CAPITALIZED AND ACCOUNTABLE ASSETS <input type="checkbox"/> CAPITALIZED AND ACCOUNTABLE ASSETS  OMO Asset Manager _____ Date _____ OITS Asset Manager, if applicable _____ Date _____
Other Coordination _____ Date _____  Other Coordination _____ Date _____		<b>15. FUNDING</b>  OF4548000.2015.67030A0M99.2000000000.25258.61000000. CF15140000 Accounting String(s)  Funds in the amount of \$200,000.00 are hereby certified available and reserved for this acquisition.
<b>18. ASSIGNMENT</b>  CONTRACTING OFFICER _____		(b)(6)

(b)(6) 1/31/2015

**COMMODITY FUTURES TRADING COMMISSION  
REQUISITION AND COMMITMENT OF FUNDS FOR SERVICES AND SUPPLIES**
**DOCUMENT CONTROL NO.**  
(Assigned by OFM-Procurement)

PRODT150622

FAILURE TO COMPLETE ALL APPLICABLE ITEMS ON THIS FORM MAY RESULT IN AWARD DELAYS

**1. REQUESTING OFFICE**  
ODT/Infrastructure

**2. NAME OF REQUESTOR (Name and Telephone No.)**

(b)(6) (b)(6)

**3. DATE OF REQUEST**  
9/30/15

**4. ESTIMATED PERIOD OF PERFORMANCE / DATE REQUIRED**
**5. TOTAL ESTIMATED COST**  
\$340,000.00

**6. PROJECT TITLE / DESCRIPTION OF SUPPLIES, EQUIPMENT AND/OR SERVICES** (For supplies indicate item/model/stock number, item name, quantity, unit price and amount. Attach an additional sheet if necessary.)

This Requisition will provide funding to extend Task Order 005 under BPA CFIT-08-BP0090 through

PO# 3/1/15 - 11/30/15 (b)(6)

**7. PROPOSED COTR (include office symbol and telephone number.)**

(b)(4)

(b)(6) (b)(6)

**8. SUGGESTED SOURCE(S) (include name, point of contact and telephone number.)**

 Digicon Corporation  
510 Herndon Va 20170-5157  
Attn Carol Carlisle 703-821-1083

**9. CONTRACTORS SOLICITED** (include name, point of contact, telephone number, price and GSA Federal Supply Schedule contract number, if applicable.)
**10. LIST OF ATTACHMENTS**

- ☒ SCOPE/STATEMENT OF WORK  
☐ PROPOSAL EVALUATION CRITERIA  
☐ INDEPENDENT GOVERNMENT COST ESTIMATE  
☐ QUTATIDNS  
☐ RECOMMENDATION FOR OTHER THAN FULL AND OPEN COMPETITION

- ☐ JUSTIFICATION FOR AWARD TO OTHER THAN A SMALL BUSINESS  
☐ JUSTIFICATION FOR EXERCISING AN OPTION  
☐ DRAFT DETERMINATION AND FINDING FOR AN INTERAGENCY AGREEMENT

- ☐ LEASE/BUY ANALYSIS  
☐ LICENSE/MAINTENANCE/VENDOR AGREEMENT  
☐ SECTION 509 CHECKLIST  
☐ BARCODES / NUMBERS  
☐ OTHER (Specify)

**11. REFERENCES**
☐ AMENDMENT/MODIFICATION TO
**12. JUSTIFICATION / COMMENTS** (Attach an additional sheet if necessary.)**13. APPROVALS: PROGRAM / ADMINISTRATIVE AREA**

Requester

Date

(b)(6)

Date

9/30/15

Date

Other Coordination

Date

Other Coordination

Date

**14. APPROVAL: COMMISSION ASSET MANAGEMENT PROGRAM**

- ☐ NON-CAPITALIZED AND NON-ACCOUNTABLE ASSETS  
☐ NON-CAPITALIZED AND ACCOUNTABLE ASSETS  
☐ CAPITALIZED AND ACCOUNTABLE ASSETS

DMD Asset Manager

Date

OITS Asset Manager, if applicable

Date

**15. FUNDING**

CF15140000

(b)(6) CF 1514 2015.0000000000.9000000000.2510A.61000000

Accounting String(s)

\$340,000.00 (b)(6) 9/30/15

Funds in the amount of \$340,000.00 are hereby certified available and reserved for this acquisition

(b)(6)

Date

9/30/15

**16. ASSIGNMENT**

NAME

TELEPHONE NO.

DATE ASSIGNED

CONTRACTING OFFICER

## INSTRUCTIONS

Completion of this form is required for all acquisitions except:

- Micro-purchases (purchases up to \$2,000 for construction, \$2,500 for other goods and services), which require only a written or email request.
- No cost modifications or amendments to existing contracts or interagency agreements. These require only a written or email request from the Contracting Officer's Technical Representative (COTR).
- Purchases from the Government Printing Office. These require completion of a SF-1, Printing and Binding Requisition.
- Court reporting services. These services may be authorized using a CFTC Form 11, Request for Court Reporting Services; otherwise a written or email request will be sufficient. Services acquired under a CFTC contract will be ordered using the process defined in the contract.

For further guidance on the requisition process, see CFTC's Policy and Procedures for Acquiring Goods and Services, Overview of Award Process.

Failure to complete all applicable items on this form may result in award delays.

### ITEM NO.

1. REQUESTING OFFICE: Identify the office (e.g., OITS, DOE, etc.) preparing the requisition.
2. NAME OF REQUESTOR: Identify the name and telephone number of the individual preparing the requisition.
3. DATE OF REQUEST: Insert the date the form is initiated.
4. ESTIMATED PERIOD OF PERFORMANCE / DATE REQUIRED: As applicable, specify one of the following:
  - a. The desired "start date" and "completion date" during which the service is to be performed (e.g., October 1, 20XX through September 30, 20XX); or
  - b. The specified date the supply item, final product or service is needed (e.g., June 30, 20XX).
5. TOTAL ESTIMATED COST: Indicate the total estimated cost of this action. Additionally, attach the Independent Government Cost Estimate, as described in CFTC's Policy and Procedures for Acquiring Goods and Services.
6. PROJECT TITLE / DESCRIPTION OF SUPPLIES, EQUIPMENT AND/OR SERVICES: Provide a brief summary (i.e., description) of the acquisition. For supplies, indicate item/model/stock number, item name, quantity, unit price and amount.
7. PROPOSED COTR: Indicate the name, office symbol and telephone number of the individual who is proposed as COTR. This individual will be responsible for technical oversight of the contract consistent with his/her authorities as delegated by the Contracting Officer. This individual must meet the preconditions for service as COTR, as defined in CFTC's Policy and Procedures for Acquiring Goods and Services. The COTR must be formally designated by the Contracting Officer.
8. SUGGESTED SOURCE(S): If you can suggest one or more possible sources, list the company name, point of contact and telephone number.
9. CONTRACTORS SOLICITED: Consult with a CFTC Contracting Officer prior to soliciting quotations. As a general rule, requesting offices may request quotations for personal property up to \$100,000 under existing government contracts (e.g., GSA Federal Supply Schedules), and up to \$2,500 for services (\$2,000 for construction). As a general rule, solicit at least three quotations for all acquisitions between \$2,500 (\$2,000 for construction) and \$100,000.
10. LIST OF ATTACHMENTS: Check the appropriate box(es). For questions regarding the applicability of certain items, refer to CFTC's Policy and Procedures for Acquiring Goods and Services or consult with a CFTC Contracting Officer.
11. REFERENCES: If the purpose of the requisition is to modify an existing CFTC contract, check the box and identify the contractor name and CFTC contract number. If the purpose is to amend a solicitation, check the box and identify the solicitation number.
12. JUSTIFICATION / COMMENTS: Provide an explanation of why the supplies, equipment and/or services are needed. Also, use this space to include any desired special terms and conditions, requests or circumstances that may impact the acquisition.
13. APPROVALS: PROGRAM / ADMINISTRATIVE AREA:
  - Requestor: The Requestor's signature is always required.
  - Intermediate Approval: Signature to be provided as may be determined necessary by requesting office policies.
  - Program Head: Signature of an individual at the Office Director level, as required by requesting office policies.
  - Other Coordination: When multiple Commission offices are affected or involved, or when clearance from another office is required (e.g., Office of the Executive Director).

Each requisition must be signed by an individual in the Requesting Office who is authorized to sign a requisition and is listed on CFTC's Delegations of Authority as having that authority.

14. APPROVAL: COMMISSION ASSET MANAGEMENT PROGRAM: Coordinate all requisitions for the acquisition of personal property with the OMO Asset Manager. The OMO Asset Manager will identify the class of assets to be acquired, if any, by checking the appropriate block. The OMO Asset Manager will coordinate requisitions for information technology (IT) assets with the OITS Asset Manager.
15. FUNDING: Indicate the appropriate accounting string(s) to be charged. The Budget Manager must certify the availability of funds and the appropriateness of the accounting string(s) to the acquisition requirements.
16. ASSIGNMENT: This item will be completed by OFM-Procurement.

## Barzani, Dastan

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**From:** (b)(6) (b)(6)  
**Sent:** Friday, June 08, 2018 12:12 PM  
**To:** Glotfelty, Thaddeus J  
**Subject:** FW: Digicon PRODT150622 \$340,000.00  
**Attachments:** PRODT150622 Digicon corrected 9-30-15.pdf

Here is one more.

-----Original Message-----

**From:** (b)(6) (b)(6)  
**Sent:** Wednesday, September 30, 2015 1:15 PM  
**To:** 9-AMC-AMZ-CFTC@FAA.GOV; (b)(6) (b)(6) (b)(6) (b)(6) (b)(6) (b)(6) (b)(6) (b)(6)  
(b)(6) 9-AMC-AMZ-CFTC@FAA.GOV; (b)(6) (b)(6) (b)(6) (b)(6) (b)(6) (b)(6) (b)(6)  
(b)(6) (b)(6) (b)(6)  
**Subject:** Digicon PRODT150622 \$340,000.00

The attached has been forwarded to procurement for processing. Thanks.

**From:** (b)(7) (b)(7)  
**To:** (b)(7) (b)(7); (b)(6) (b)(7)  
**Subject:** RE: Corrected Requisitions for Brattle Group (b)(6) & Digicon (b)(6)  
**Date:** Friday, October 02, 2015 9:38:33 AM

Cool got it. Why they send me into the field of tigers yesterday - LOL  
Thanks Guys !

**From:** (b)(6) (b)(6)  
**Sent:** Friday, October 02, 2015 9:36 AM  
**To:** (b)(6) (b)(6) (b)(6) (b)(7)  
**Subject:** RE: Corrected Requisitions for Brattle Group (b)(6) & Digicon (b)(6)

(b)(6)

After speaking with (b)(7) I am of the understanding that we will not be pursuing the LOA change to the Brattle contract either.

Regards,  
(b)

**From:** (b)(6) (b)(6)  
**Sent:** Friday, October 02, 2015 9:35 AM  
**To:** (b)(6) (b)(7)  
**Cc:** (b)(6) (b)(6)  
**Subject:** FW: Corrected Requisitions for Brattle (b)(6) & Digicon (b)(6)  
**Importance:** High

Hello (b)(6)

Last night, (b)(6) (b)(7) decided to deobligate funds from the Catapult task order, instead of pursuing a LOA change on the Digicon task order. Therefore, the revised requisition you sent me yesterday (PRODT-16-0055) will not be needed. I don't know anything about the Brattle contract.

Thank you,

(b)(6)

**From:** (b)(6) (b)(7)  
**Sent:** Thursday, October 01, 2015 4:00 PM  
**To:** (b)(6) (b)(6) (b)(6) (b)(6) (b)(6) (b)(6)  
**Cc:** (b)(6) (b)(7) (b)(6) (b)(6) (b)(7) (b)(6)  
**Subject:** Corrected Requisitions for Brattle (b)(6) & Digicon (b)(6)  
**Importance:** High

Per our conversation, the funding is available for these req per the following LOA:  
Please adjust your documentation. Thanks.

CF16140000.2016

(b)(6)

A large rectangular redacted area, outlined in black, covering the majority of the page content below the header and above the footer. The text "(b)(6)" is visible in the top-left corner of this area.

**Barzani, Dastan**

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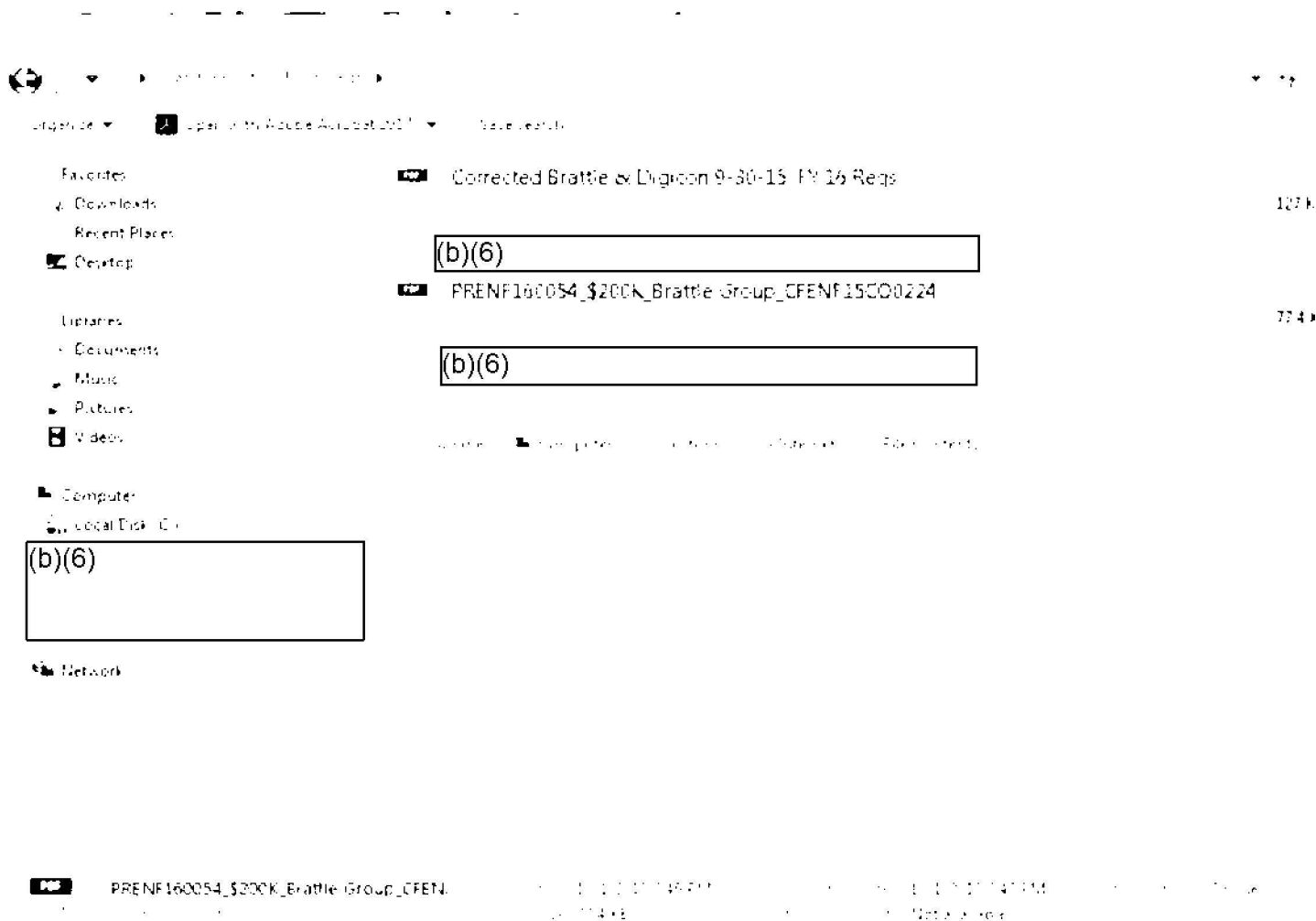
**From:** (b)(7) (b)(6) (b)(7)  
**Sent:** Monday, July 02, 2018 8:07 AM  
**To:** Glotfelty, Thaddeus J  
**Subject:** RE: question  
**Attachments:** PRENF150617\_\$200K\_Brattle.pdf; TheBrattleGroup CFENF-15-CO-0224 (M001).pdf; Corrected Brattle & Digicon 9-30-15 FY 16 Reqs.pdf; PRENF160054\_\$200K\_Brattle Group\_CFENF15CO0224.pdf

Ted-

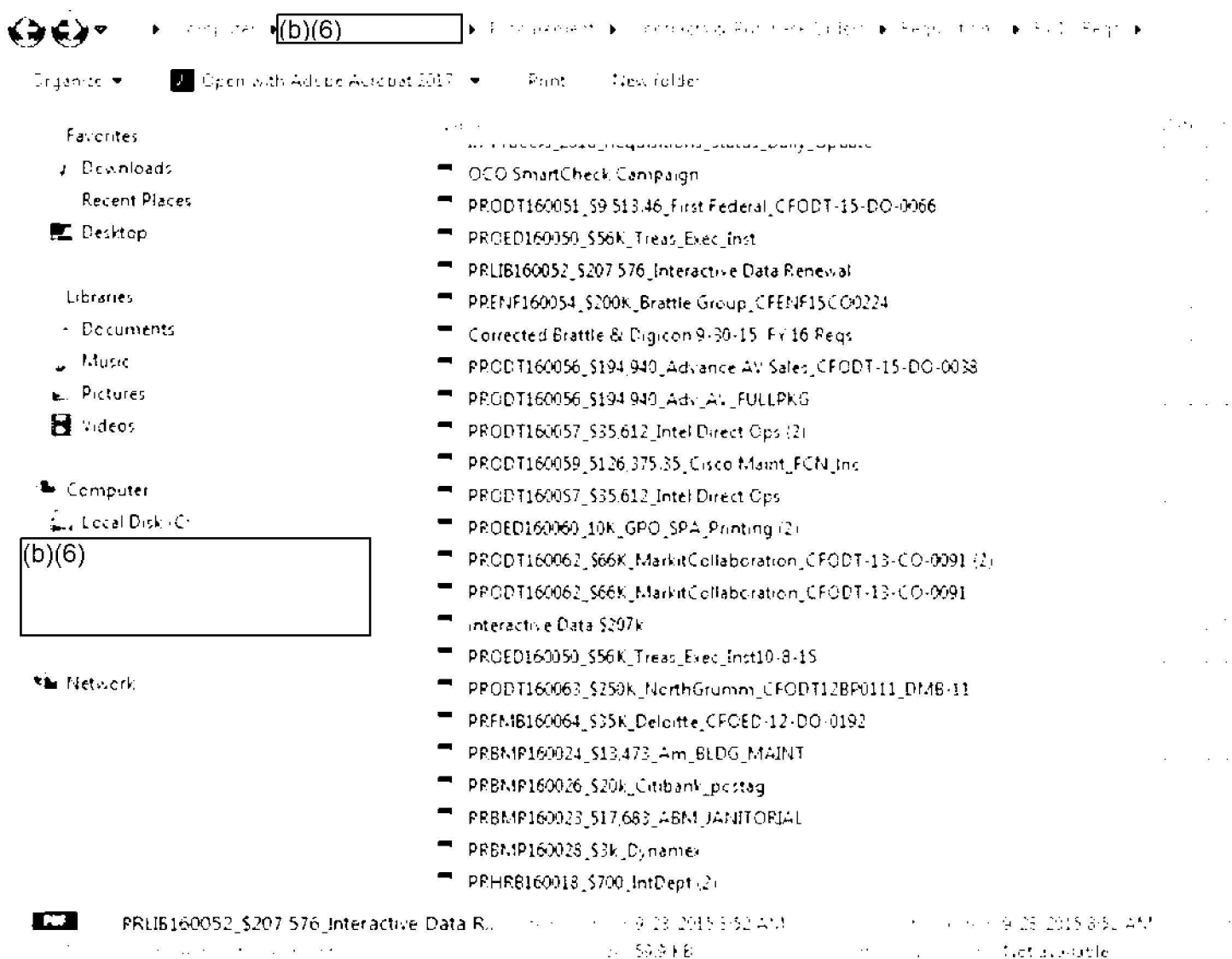
On September 28, 2018 (b)(6) (b)(6) certified Requisition PRENF150617. I processed the requisition via Modification M001 which I signed 9/30/2018 (see attached time stamped modification). Late in the day on 10/1, I received an email from (b)(6) (b)(6) where someone had whited-out previous information on a requisition that had been signed by other individuals changing the requisition number and line of accounting from FY15 to FY16 funds. I do not recall receiving a hard-copy of the requisition on 9/30 and would question why I would have received it directly as the process was that requisitions were provided to (b)(6) (b)(6) so that he could log and assign. (b)(6) (b)(6) may have the log from FY15/FY16 but not sure. If Budget provided Procurement with the two requisitions reflected in the email then they would have had to scan the docs on 9/30. The metadata on the requisition reflects it was scanned late in the day on 10/1. If I had the requisition how would they have scanned it? Are they suggesting that they used the copier and then scanned? That is not how they handled requisitions since they have desktop scanners in their respective offices so it seems odd that is how they would handle this one situation.

The Brattle Group requisition was uploaded to Procurement's S Drive twice. Once without (b)(6) notating 9/30 but making the change and the other where she signed 9/30. I have not looked closer to see what may have changed between the 2 requisitions but am attaching both requisitions to this email.

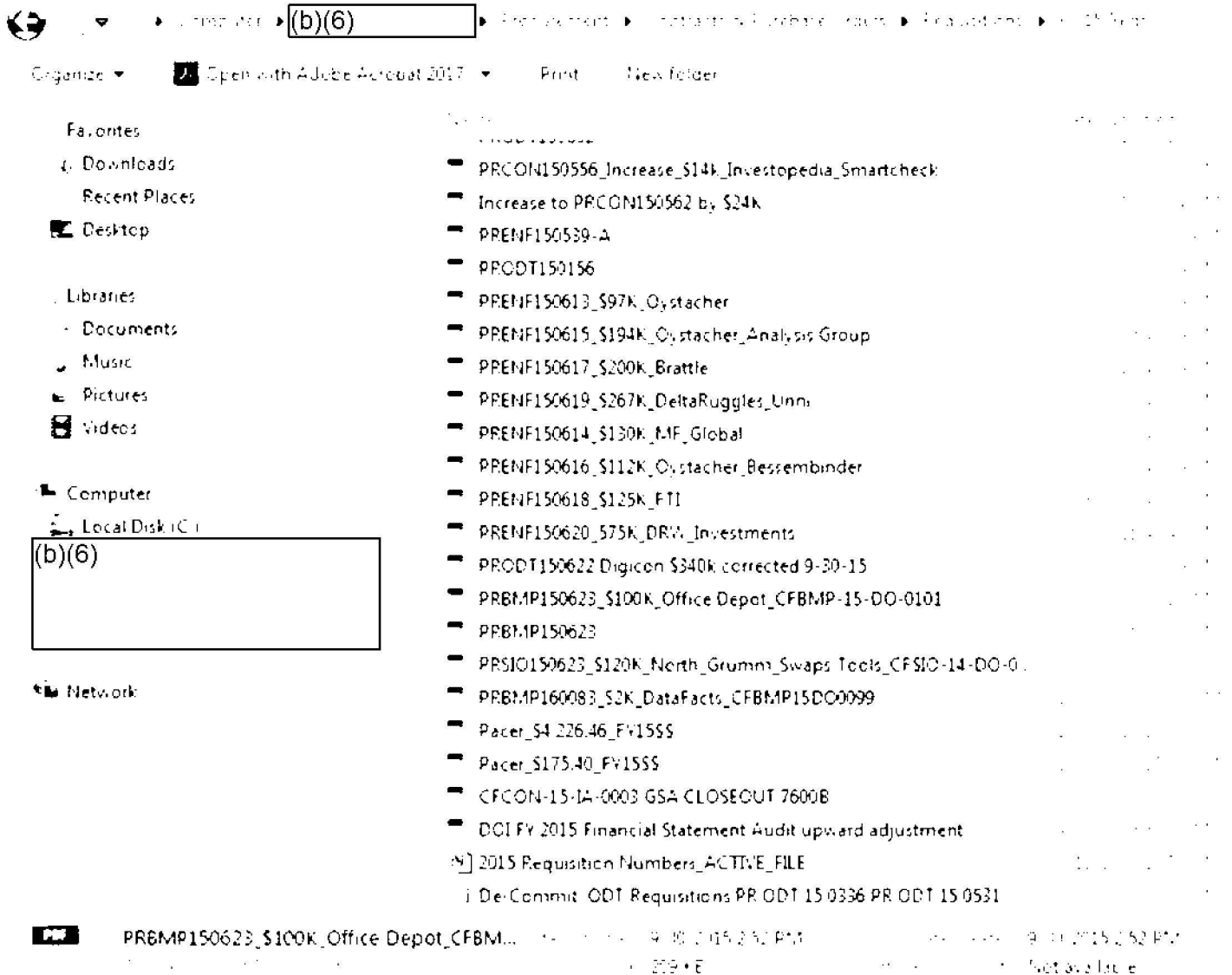




Maybe she was back-logged with requisitions toward the end of September 2015, however there were several other requisitions that were also uploaded/processed on 10/1



There was a requisition signed and saved to the FY15 S Drive site on 9/30 demonstrating that documents were being scanned/uploaded on 9/30, however the requisitions in question were not.



I am out of the office today and unavailable. I am back in the office tomorrow.

Regards

(b)(6)

(b)(6)

**From:** Glotfelty, Thaddeus J  
**Sent:** Saturday, June 30, 2018 10:40 AM

To: (b)(6) (b)(6) (b)

Subject: question

Hi (b)

It has been suggested that (b)(7) hand-delivered a copy of the contract mod for Brattle group to you on 9/30. And that the email on 10/1 was merely a followup. I know you said emphatically that you first got a copy via the email on 10/1. But I need a direct response to this suggestion about a hard-copy. We can schedule another interview if you prefer, but it might be quicker for you to simply comment via email. Specific questions:

Did (b)(7) (or anyone else) deliver a hard-copy of the contract mod to you on 9/30?

If the answer is no, there's really no way to prove a negative with reference to documentation that doesn't exist. So can you please describe in your own words **\*why\*** you can be sure that no one delivered a hard-copy to you? We can chat by phone Monday (or even this weekend should you prefer) if it would help.

Thank you,

-Ted

Also – this, like everything else, is confidential. Please remember that you cannot speak to anyone at CFTC about this investigation.



**U.S. COMMODITY FUTURES TRADING COMMISSION**

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5000  
Facsimile: (202) 418-5521  
[www.cftc.gov](http://www.cftc.gov)

**Financial Management  
Branch**

(b)(6)

**MEMORANDUM**

**TO:**

(b)(6)

**FROM:**

(b)(6)

**DATE:** September 30, 2015

**SUBJECT:** Deobligation of Catapult Task order 1

Due to the bid protest, you informed me that the Digicon contract for existing IT support services was extended, and as such, funds for Catapult's performance of these services could be de-obligated, as they will not be needed until FY 2016. Please de-obligate \$560,000 from the salaries and expense portion of Catapult's contract as soon as possible.

*This was received at 6:30 p.m.  
on October 1, 2015.*

(b)(6)

10/1/15

285

No back dating of P allowed!  
Correction of an error that 5 in app  
... Ch W/ESC ...

Prob. # & resume (K) in  
next by the Cof

Overhead:  
next week...

To apply to 2015.

~~Conclusion~~  
New!

Heather - Finances in  
Call to 614 4/375-3882  
(7/922-4214)

Book  
WLT Monday  
memo

Same cover  
to support  
that get make  
memo  
Monday

Conclusion  
Start  
same

Make Sure Big  
Procurement  
file approp.  
documented

**From:** (b)(6) (b)(7)  
**To:** [Glottelty, Thaddeus J](#)  
**Subject:** FW: Modification M002 to Task Order 001 of Blanket Purchase Agreement CFOOT-15-BP-0214 Catapult Technology  
**Date:** Friday, June 08, 2018 11:17:44 AM  
**Attachments:** Catapult CFODT-15-BP-0214 TO001 M002.pdf

**From:** (b)(6) (b)(6)  
**Sent:** Thursday, October 01, 2015 7:16 PM  
**To:** (b)(6) (b)(6)  
**Subject:** Modification M002 to Task Order 001 of Blanket Purchase Agreement CFODT-15-BP-0214 Catapult Technology

Hello (b)(6)

Here is an FYI copy of the deobligation modification (b)(6) (b)(7) asked me to do when she met with us, (b)(7) and (b)(6) tonight.

Thank you,

(b)(6)

**From:** (b)(6)  
**To:** Glotfelty, Thaddeus J  
**Subject:** FW: Braddle Group, Mod & Option Extension  
**Date:** Friday, June 29, 2018 1:03:43 PM  
**Attachments:** [image001.jpg](#)

(b)(6)

**From:** (b)(6) (b)(6) (b)(6)

**Sent:** Wednesday, October 07, 2015 10:55 AM

(b)(6)

**Subject:** RE: Braddle Group, Mod & Option Extension

(b)(6) has decided not to pursue the correction at this time. Thanks for getting back to me and I will file this info in case it comes back up. Thanks for your assistance, (b)(6)

**From:** (b)(6)

**Sent:** Wednesday, October 07, 2015 11:52 AM

**To:** (b)(6) (b)(6) (b)(6)

**Cc:** (b)(6)

**Subject:** RE: Braddle Group, Mod & Option Extension

(b)(6) gave me more information on this. If this was previously put on the accrual list, it needs to be removed and not accrued to the FY15 funds. As soon as the new modification is done to correct the loa and POP (b)(6) will get the funds obligated to FY16 loa etc.

(b)(6)

**From:** (b)(6) (b)(6) (b)(6)

**Sent:** Wednesday, October 07, 2015 10:25 AM

**To:** (b)(6)



**Cc:** (b)(6)  
**Subject:** RE: Braddle Group, Mod & Option Extension

Thanks for getting back to us on this. (b)(6)

**From:** (b)(6)  
**Sent:** Wednesday, October 07, 2015 9:25 AM  
**To:** (b)(6)  
**Cc:** (b)(6)  
**Subject:** RE: Braddle Group, Mod & Option Extension  
**Importance:** High

I've added (b)(6) as he directly manages the Accounts Payable for your agency, but he is out today and I didn't want to leave you hanging out to dry. So based on the initial base award the POP was 9-14-15 through 10-31-15. So I assume you will need to correct the POP on option year 1 to 11-1-15 through 10-31-16? And then also to update the accounting string to reflect 2016 loans? To do this, normally this requires a requisition be provided to contracting office and then they can do an SF30 Amendment of Solicitation/modification of contract. This modification would be a 0.00 change since you are just changing the loa and POP only.

Let me know if you still need anything from me. If im tied up in meetings I can always get (b)(6) or someone else on our staff to call you and help explain things.

(b)(6)

**From:** (b)(6) (b)(6) (b)(6)  
**Sent:** Friday, October 02, 2015 4:13 PM  
**To:** (b)(6)  
**Subject:** FW: Braddle Group, Mod & Option Extension

(b)(6) This contract signed on September 30, 2015 using FY 2015 funds should have been signed on October 1, 2016 using FY 2016 funds. Is there any way for us to fix this issue? Has ESC ever dealt with this issue with another client and if so how did it get fixed. Thanks, (b)(6)

**From:** (b)(6) (b)(7)  
**Sent:** Friday, October 02, 2015 2:49 PM  
**To:** (b)(6)  
**Subject:** FW: Braddle Group, Mod & Option Extension

The option exercised

**From:** (b)(6) (b)(7)  
**Sent:** Friday, October 02, 2015 1:16 PM  
**To:** (b)(6) (b)(7) (b)(7)  
**Cc:** (b)(6) (b)(7)  
**Subject:** Braddle Group, Mod & Option Extension

**From:** (b)(6) (b)(6) (b)(6)  
**To:** Glottelty, Thaddeus J  
**Subject:** FW: On the down low....  
**Date:** Thursday, June 28, 2018 2:00:46 PM  
**Attachments:** Berkeley Research Group - Unni CFENF-15-CO-0104 - (M001).pdf  
TheBrattleGroup CFENF-15-CO-0224 (M001).pdf

Here is the email I mentioned during our meeting. Attached are also the modifications referenced in (b)(6) initial email.

**From:** (b)(6) (b)(6)  
**Sent:** Wednesday, October 07, 2015 1:28 PM  
**To:** (b)(6)  
**Subject:** RE: On the down low....

You just have to believe me. ☺

**From:** (b)(6)  
**Sent:** Wednesday, October 07, 2015 1:25 PM  
**To:** (b)(6) (b)(6)  
**Subject:** RE: On the down low....

Man you are going to have me read all the freaking contracts from now on. Dammmmm. ;-P

---

(b)(6)

**From:** (b)(6) (b)(6) (b)(6)  
**Sent:** Wednesday, October 07, 2015 11:41 AM  
**To:** (b)(6)  
**Subject:** RE: On the down low....

Hi (b)(6)

CFENF-15-CO-0224 PoP for option is correct. Both the base year and option period can run simultaneously because the work is different and does not need to be done in sequential order. Some of the work under Phase III (Option 1) is not dependent on work in Phases I & II (Base Period) to be complete. (See Items 2, 3, 4)

As for Block 14.....Option 1 is \$171,400 however we still needed to add \$8,000 to the Base year which gets you to the \$179,400.

Thanks for the heads-up.

(b)

**From:** (b)(6)

**Sent:** Wednesday, October 07, 2015 10:38 AM

**To:** (b)(6) (b)(6)

**Subject:** On the down low....

I guess accounting still working on figuring everything out. They have pointed a few things I wanted to pass along to you that I had not have a chance to check since I have not obligated the contracts yet. Maybe they trying to find a way to fix it.

\* CFENF15CO0224 - MOD 1 - believe the POP is wrong. The base award was from 9-24-15 to 10-31-15. This mod, I believe should have been 11-1-15 – 10-31-16? I think you listed it on the contract as – 9-30-15 – 9-29-16.

\* CFENF15CO0104 - (I made this mistake on my accrual spreadsheet.) Box 12 of the contract shows \$179,400.00. In box 14, it shows \$171,400.00. (Typo I believe.) I listed it to be accrued as \$171,400.00. In looking at page 1 and 2, the amounts mentioned \$179,400.00, so I think box 14 should have said \$179,400.00.

Anyway, I wanted to pass along this information so you can begin to correct them whenever you get a chance. ;-). Anyway, I am keeping it on the down low, and just wanted to forward you anything I hear. ;-)

---

(b)(6)

**From:** (b)(6) (b)(6)  
**To:** Glottelty, Thaddeus J  
**Subject:** RE: Deobligation  
**Date:** Tuesday, June 26, 2018 5:16:35 PM  
**Attachments:** LOA Change Emails (10-1-15 - 10-2-15).pdf  
Digicon CFIT-08-8P-0080 TO005 M027.pdf  
Digicon CFIT-08-8P-0080 TO005 M028.pdf  
Digicon CFIT-08-8P-0080 TO005 M029 (close).pdf  
PRODT160055 \$340K Digicon CFIT-08-8P0080.pdf

Hello Ted

Per our conversation today, I am confirming for you that I did not act on the amended requisition (renumbered to PRODT160055). That is what I reflected in my October 2, 2015 email to (b)(6) (b)(6). I've also attached Modification M027 to show that I obligated the \$340k on September 30<sup>th</sup>. I'll separately forward you an email showing that I signed the modification to obligate the funds within 90 minutes of receiving the committed FY15 requisition (PRODT150622) from (b)(6) on September 30, 2015.

Modifications M028 and M029 are being provided to show you the subsequent obligation / deobligation history for the Digicon task order. Modification M029 had a slight deobligation because we closed out the task order (not because of the amended requisition (b)(6) presented on October 1<sup>st</sup>).

With respect to the question of whether it is possible to modify a line of accounting contained in a contract, the short answer is "yes". This is something that is specifically contemplated in the Federal Acquisition Regulation:

#### **43.103 Types of contract modifications.**

Contract modifications are of the following types:

(a) *Bilateral*. A bilateral modification (supplemental agreement) is a contract modification that is signed by the contractor and the contracting officer. Bilateral modifications are used to—

- (1) Make negotiated equitable adjustments resulting from the issuance of a change order;
- (2) Definitize letter contracts; and
- (3) Reflect other agreements of the parties modifying the terms of contracts.

(b) *Unilateral*. A unilateral modification is a contract modification that is signed only by the contracting officer. Unilateral modifications are used, for example, to—

- (1) Make administrative changes;
- (2) Issue change orders;
- (3) Make changes authorized by clauses other than a changes clause (*e.g.*, Property clause, Options clause, or Suspension of Work clause); and
- (4) Issue termination notices.

#### **43.101 Definitions.**

As used in this part—

“Administrative change” means a unilateral (see 43.103(b)) contract change, in writing, that does not affect the substantive rights of the parties (*e.g.*, a change in the paying office or the appropriation data).

CFTC’s lines of accounting contain nearly 50 digits, which up until the recent implementation of PRISM, were entered manually (i.e., on the requisition, on the contract, and in the Delphi accounting system). Because of this, errors could occur. The reference in the FAR to administrative changes contemplates such a scenario. Another good example would be changing the SGL code (last data field) to reflect a capital asset versus an expensed asset:

CF171814IT.2017.6908000000.9000000000.3101.61000000

CF171814IT.2017.6908000000.9000000000.3101.17500000

In the example above, the SGL code change affects how the Commission would account for an asset (i.e., how it is depreciated). It is not the same as what the amended requisition would have had me do. In that case, we would not have simply been changing an SGL code, but rather violating appropriations law. Per the GAO Redbook:

The *bona fide* needs rule is one of the fundamental principles of appropriations law: A fiscal year appropriation may be obligated only to meet a legitimate, or *bona fide*, need arising in, or in some cases arising prior to but continuing to exist in, the fiscal year for which the appropriation was made.

I signed the Digicon Modification M027 on September 30<sup>th</sup>. That modification increased the task order ceiling by \$340,000 and obligated FY15 funds to cover that requirement. The ceiling is the amount up to which the contractor was authorized to work. To simply change the obligation a day later to reflect FY16 funds versus FY15 funds would not be legal per the bona fide needs rule. To do that would create a situation where the contract would have been underfunded by \$340,000 on the last day of the fiscal year. In other words, since I increased the ceiling in FY15, I would have to obligate FY15 funds to cover that increase. I could not fund that increase with a future year appropriation, which is what I was being asked to do. Also, since the amended requisition included the disclaimer about being subject to availability of funds, I was not even being provided with FY16 funds at that time, but rather an expectation that they would be furnished at some future date. Please note that I also have attached a later version of the subject requisition, which I got from the FM S:/ Drive. It looks like (b)(6) (b)(7) committed the funds on October 12, 2015, but I did not obligate them (for the reasons described above).

I hope this is helpful. Please let me know if you have any additional questions or need anything else from me.

Thank you,

(b)(7)

(b)(6)

(b)(6)

**From:** (b)(6) (b)(6)

**Sent:** Friday, June 08, 2018 11:02 AM

**To:** Glotfelty, Thaddeus J

**Subject:** FW: Deobligation

Hello Ted

Please see below and attached.

Thank you,

(b)

(b)(6)

**From:** (b)(6) (b)(6)

**Sent:** Friday, October 02, 2015 11:49 AM

**To:** (b)(6) (b)(6)

**Subject:** Deobligation

Hello (b)(6)

In case you want these, attached are some emails and documents involving the FY15 / FY16 issue from last night.

Thank you,

(b)(6)

(b)(6) 7/31/2015

**COMMODITY FUTURES TRADING COMMISSION  
REQUISITION AND COMMITMENT OF FUNDS FOR SERVICES AND SUPPLIES**

**DOCUMENT CONTROL NO.**  
(Assigned by OFM-Procurement)  
**PRODT160055**

**FAILURE TO COMPLETE ALL APPLICABLE ITEMS ON THIS FORM MAY RESULT IN AWARD DELAYS**

**1. REQUESTING OFFICE**  
ODT/Infrastructure

**2. NAME OF REQUESTOR (Name and Telephone No.)**  
(b)(6) (b)(6)

**3. DATE OF REQUEST**  
9/30/15

**4. ESTIMATED PERIOD OF PERFORMANCE / DATE REQUIRED**

**5. TOTAL ESTIMATED COST**  
\$340,000.00

**6. PROJECT TITLE / DESCRIPTION OF SUPPLIES, EQUIPMENT AND/OR SERVICES** (For supplies indicate item/model/stock number, item name, quantity, unit price and amount. Attach an additional sheet if necessary.)

This Requisition will provide funding to extend Task Order 005 under BPA CFT-08-BP0080 through

POB 3/1/15 - 11/30/15 (b)(6)

**7. PROPOSED COTR (Include office symbol and telephone number.)**  
(b)(6) (b)(6) (b)(6)

**8. SUGGESTED SOURCE(S) (Include name, point of contact and telephone number.)**  
Digicon Corporation  
510 Herdon Va 20170-5157  
Attn Carol Carlisle 703-621-1083

**9. CONTRACTORS SOLICITED (Include name, point of contact, telephone number, price and GSA Federal Supply Schedule contract number, if applicable.)**

**10. LIST OF ATTACHMENTS**

- ☒ SCOPE/STATEMENT OF WORK
- ☐ PROPOSAL EVALUATION CRITERIA
- ☐ INDEPENDENT GOVERNMENT COST ESTIMATE
- ☐ QUOTATIONS
- ☐ RECOMMENDATION FOR OTHER THAN FULL AND OPEN COMPETITION

- ☐ JUSTIFICATION FOR AWARD TO OTHER THAN A SMALL BUSINESS
- ☐ JUSTIFICATION FOR EXERCISING AN OPTION
- ☐ DRAFT DETERMINATION AND FINDING FOR AN INTERAGENCY AGREEMENT

- ☐ LEASE/BUY ANALYSIS
- ☐ LICENSE/MAINTENANCE/ VENDOR AGREEMENT
- ☐ SECTION 508 CHECKLIST
- ☐ BARCODES / NUMBERS
- ☐ OTHER (Specify)

**11. REFERENCES**

☐ AMENDMENT/MODIFICATION TO

**12. JUSTIFICATION / COMMENTS (Attach an additional sheet if necessary.)**

**13. APPROVALS: PROGRAM / ADMINISTRATIVE AREA**

Requestor \_\_\_\_\_ Date \_\_\_\_\_

(b)(6) \_\_\_\_\_ Date 9/30/15

Other Coordination \_\_\_\_\_ Date \_\_\_\_\_

Other Coordination \_\_\_\_\_ Date \_\_\_\_\_

**14. APPROVAL: COMMISSION ASSET MANAGEMENT PROGRAM**

- ☐ NON-CAPITALIZED AND NON-ACCOUNTABLE ASSETS
- ☐ NON-CAPITALIZED AND ACCOUNTABLE ASSETS
- ☐ CAPITALIZED AND ACCOUNTABLE ASSETS

OMO Asset Manager \_\_\_\_\_ Date \_\_\_\_\_

OITS Asset Manager, if applicable \_\_\_\_\_ Date \_\_\_\_\_

**15. FUNDING**

CF16140000.2016.0000000000.9000000000.2510A.61000000

0000000000.9000000000.2510A.81000000

Funds in the amount of \$340,000.00 (b)(6) 9/30/15

are hereby certified available and reserved

(b)(6) \_\_\_\_\_ Date 9/30/15

**16. ASSIGNMENT**

NAME

CONTRACTING OFFICER \_\_\_\_\_



<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>			1. CONTRACT ID CODE	PAGE 1 OF 2 PAGES
2. AMENDMENT/MODIFICATION NO. <b>M001</b>	3. EFFECTIVE DATE <b>September 30, 2015</b>	4. REQUISITION/PURCHASE REQ. NO. <b>PRENF-15-0617</b>	5. PROJECT NO. (If applicable)	
6. ISSUED BY Commodity Futures Trading Commission (CFTC) Attn: (b)(7) (b)(7) (b)(7) 1155 21st Street, NW Washington, DC 20581 (b)(6) Email: (b)(6)		7. ADMINISTERED BY (If other than Item 6) See block 6		
8. NAME AND ADDRESS OF CONTRACTOR (No. Street, county, State and ZIP+4 Code) <b>The Brattle Group, Inc. 44 Brattle Street, 3rd Floor Cambridge, MA 02138-3746 POC: Barbara Levine - Barbara.levine@brattle.com Telephone: (617) 664-7900</b>			9A. AMENDMENT OF SOLICITATION NO.  9B. DATED (SEE ITEM 11)  X 10A. MODIFICATION OF CONTRACT/ORDER NO. <b>CFENF-15-CO-0224</b> 10B. DATED (SEE ITEM 13) <b>09/14/2015</b>	
CODE <b>618195325</b>		FACILITY CODE		

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

☐ The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing items 8 and 15, and returning one (1) copy of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

**CF15140000.2015.67030A0M99.2000000000.25258.61000000 (F) \$200,000.00**

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS,  
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

( )	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
X	D. OTHER Specify type of modification and authority: <b>FAR 52.217-9 Option to Extend the Term of the Contract</b>

E. IMPORTANT: Contractor ☒ is not, ☐ is required to sign this document and return \_\_\_ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The purpose of this modification is to exercise Option 1, revise the period of performance and obligate funding.

1. Option 1 is hereby exercised. The total ceiling amount of Option 1 is \$200,000.00.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) (b)(6)	
15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY (b)(6) (b)(6) (Signature of Contracting Officer)	16C. DATE SIGNED

2. Period of Performance is hereby revised as follows:

The period of performance associated with the exercise of Option 1 is September 30, 2015 through September 29, 2016.

3. Funding

The total funded amount of the Base period is \$125,000.00. Funding in the amount of \$200,000.00 is hereby obligated for the performance of Option 1. Accordingly, the total funding obligated to this contract is increased from \$125,000.00 by \$200,000.00 to \$325,000.00. The contractor shall not exceed \$325,000.00 for work performed under this contract without prior written approval of the Contracting Officer.

4. Modification summary

Action	Description/date	Date signed	Funded by action	Total Contract Funded Amount	Contract Ceiling (Base plus all options exercised)
Award		09/14/2015	\$125,000.00	\$125,000.00	\$125,000.00
Mod 1	Exercise Option 1 and add funding	09/30/2015	\$200,000.00	\$200,000.00	\$325,000.00

{End of Modification}

**From:** (b)(6) (b)(7)  
**To:** Glottelty, Thaddeus J  
**Subject:** FW: Digicon PRODT150622 \$340,000.00  
**Date:** Friday, June 8, 2018 12:11:38 PM  
**Attachments:** PRODT150622 Digicon corrected 9-30-15.pdf

Here is one more.

-----Original Message-----

From: (b)(6) (b)(7)

Sent: Wednesday, September 30, 2015 1:15 PM

To: 9-AMC-AMZ-CFTC@FAA.GOV; (b)(6) (b)(6) (b)(7) (b)(6) (b)(6) (b)(6) (b)(6) (b)(6)

(b)(6) 9-AMC-AMZ-CFTC@FAA.GOV; (b)(6) (b)(6) (b)(6)

(b)(6) (b)(7) (b)(6) (b)(6) (b)(6) (b)(7)

Subject: Digicon PRODT150622 \$340,000.00

The attached has been forwarded to procurement for processing. Thanks.

Investigation into an Allegation that (b)(6) Made and Instructed Staff to  
Make False Statements in an Effort to Avoid an ADA Violation

Prepared by the  
Office of the Inspector General  
Commodity Futures Trading Commission

August 22, 2018

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## **THE REFERRAL**

On November 30, 2017, the Chairman's Chief of Staff and the General Counsel briefed the Inspector General and Deputy Inspector General/Chief Counsel (DIG) on certain complaints about (b)(6). Later that day, the Executive Director separately briefed the IG and DIG on the same matter and provided hard-copies of complaints drafted by (b)(6) direct reports.

The complaints were wide-ranging. The IG initially determined to open a management review. After interviews and document review, on January 30, 2018, the IG determined to refer one allegation to the Assistant Inspector General for Investigations: that on October 1, 2015 the first day of Fiscal Year 2016 (b)(6) allegedly instructed staff to backdate a contract modification and personally drafted a backdated memo to that end.<sup>1</sup>

According to the allegation, (b)(6) was concerned that CFTC had over-obligated funds in FY 2015, and believed that she might be responsible for a violation of the Antideficiency Act. (b)(6) alleged solution was to locate a contract from which funds could be de-obligated and to backdate the contract modification, so that it would appear to have been made in FY 2015.<sup>2</sup>

## **SCOPE & METHODOLOGY**

The Inspector General determined to notify an Assistant U.S. Attorney of the preliminary facts developed during the management review. The AUSA declined to consider prosecution. Accordingly, we proceeded with an administrative investigation.<sup>3</sup>

We requested and timely received records from multiple CFTC staff in the Office of Financial Management. We imaged the subject's emails and hard drive. With the help of staff in the Budget Office, we reviewed voluminous budget spreadsheets from FY 2015 and FY 2016. We interviewed staff from the Office of the Executive Director ("OED"), the Chairman's office, the Office of General Counsel ("OGC"), the Office of Financial Management ("OFM"), and Enterprise Services Center ("ESC") the entity that assists OFM with tracking CFTC's budget.<sup>4</sup> We interviewed (b)(6) under a Kalkines Warning, and she cooperated fully.<sup>5</sup>

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<sup>1</sup> OIG has independent authority to investigate all instances of fraud, waste, and abuse within the agency. Inspector General Act of 1978 §§ 4, 8G(g).

<sup>2</sup> The contract identified was for IT services from "Catapult" and is addressed *infra* at the section titled "Contract Three."

<sup>3</sup> This investigation was completed in compliance with CIGIE Quality Standards for Investigations.

<sup>4</sup> ESC operates as a division of the U.S. Department of Transportation and is located in Oklahoma City, Oklahoma.

<sup>5</sup> A Kalkines warning assures an employee that her statements cannot be used against her in a criminal proceeding, but that failure to cooperate will result in referral to the Commission for possible disciplinary action.

After targeted follow-up interviews, we completed our investigation. During the course of the investigation, facts were uncovered that were related to but outside the immediate scope of this report. We recommend that the Commission consider those additional facts and take appropriate action.

## STATUTES

**18 U.S.C. § 1001<sup>6</sup>:** creates criminal penalties for an individual who knowingly and willfully, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the U.S. government:

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- (2) makes any materially false, fictitious, or fraudulent statement or representation; or
- (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.

**31 U.S.C. § 1341(a)(1)(A)<sup>7</sup>:** The Antideficiency Act prohibits federal employees from making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law. Federal employees who violate the Antideficiency Act are subject to two types of sanctions: administrative and penal. Employees may be subject to appropriate administrative discipline including, when circumstances warrant, suspension from duty without pay or removal from office. In addition, employees may also be subject to fines, imprisonment, or both.

**5 C.F.R. § 2635.705(b)<sup>8</sup>:** “An employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.”<sup>9</sup>

## INTRODUCTION

(b)(6) serves the CFTC as (b)(6) OFM, which oversees budget, procurement, and accounting.<sup>10</sup> Limiting expenditures and obligations to the amount

<sup>6</sup> <https://www.law.cornell.edu/uscode/text/18/1001>.

<sup>7</sup> <https://www.law.cornell.edu/uscode/text/31/1341>; <https://www.gao.gov/legal/anti-deficiency-act/about>.

<sup>8</sup> <https://www.law.cornell.edu/cfr/text/5/2635.705>.

<sup>9</sup> Violations of the ethics regulations “may be cause for appropriate corrective or disciplinary action to be taken under applicable Government-wide regulations or agency procedures (in addition to any action or penalty prescribed by law).” 5 C.F.R. § 2635.106(a). <https://www.law.cornell.edu/cfr/text/5/2635.106>.

<sup>10</sup> OFM consists of three sections: Budget and Planning; Procurement; and Accounting. Budget and Planning prepares the CFTC annual budget, meets with OMB and Congressional staff to discuss CFTC’s budget requests, and supports the Chairman in testimony before Congress relating to the CFTC proposed budgets. Procurement oversees

appropriated by Congress is a fundamental responsibility of (b)(6) and an Agency's budget office.<sup>11</sup> Failure can result not only in administrative action but potential criminal penalties.<sup>12</sup> All witnesses understood that violations of the Anti-Deficiency Act were serious.<sup>13</sup> Many knew that there were potential criminal consequences. One senior official described violations of the Antideficiency Act as the "career killer."<sup>14</sup> We find that CFTC staff knew about the Antideficiency Act and that avoiding a potential violation – or at least avoiding responsibility for a violation – would be a motivating factor in the behavior of all staff involved.

## Fiscal Year 2015

CFTC hired (b)(6) and two other senior budget staff in FY 2015.<sup>15</sup> They arrived to find that CFTC tracked its \$250,000,000 budget not via the sort of sophisticated real-time software that had existed for decades but by manual entry to a series of extremely complex excel spreadsheets.<sup>16</sup>

OFM works with ESC, on which it relies to provide data entry for the official record of CFTC's finances.<sup>17</sup> Toward the end of each fiscal year, ESC shuts down all services<sup>18</sup>; in FY 2015, ESC shut down services on September 30 at approximately noon.<sup>19</sup> At that time, the CFTC continued obligating funds and making related changes to its FY 2015 accounts. These changes could not be recorded by ESC<sup>20</sup>; there was no longer a master list of CFTC's current

CFTC purchases of goods and services. Accounting prepares financial statements and oversees the accounting for all agency expenditures, including payments on office-space leases and travel.

<sup>11</sup> (b)(6) Interview at 8:45. (b)(6) Interview at 11:00. (b)(6)

(b)(6)

<sup>12</sup> <https://www.law.cornell.edu/uscode/text/31/1341>

<sup>13</sup> E.g., (b)(6) Interview at 9:00; 13:00. (b)(6) explained that in the event of an ADA violation, CFTC would prepare letters to Congress, GAO, and the head of OMB.

<sup>14</sup> (b)(6) Interview at 3:30. (b)(6) was clear that this problem arose within the budget office, and that an ADA violation in this instance would have adversely affected the careers of (b)(6) and (b)(6). (b)(6) Interview at 4:00.

<sup>15</sup> (b)(6) and (b)(6) were also hired in FY 2015.

<sup>16</sup> Beginning in FY 2018, Contracts and requisitions are now tracked through a system called "Prism" that automatically documents the date and time of every requisition and amendment, and requires documented approvals on all requisitions and amendments prior to processing.

<sup>17</sup> (b)(6) Interview at 33:30.

<sup>18</sup> (b)(6) Interview at 5:30. This shut-down of service is apparently not an error, but rather a feature of CFTC's relationship with ESC. *Id.* at 9:25; (b)(6) Interview at 35:00.

<sup>19</sup> Unattached Exhibit 3. Email from ESC staff to (b)(6), dated 9/30/2015 at 1:30 p.m.

<sup>20</sup> *Id.* "[W]e have been locked out of Delphi. We currently have inquiry only access."



obligations. Instead, CFTC relied on its spreadsheets to manually track its last minute obligations or de-obligations, payment card expenditures, travel, etc.<sup>21</sup> This made it difficult to know the CFTC's precise financial position at any given moment.<sup>22</sup>

Through close of business on 9/30, OFM believed that it had additional funds to spend.<sup>23</sup> Late on 9/30, (b)(6), a staffer in the budget office, realized that there may have been an error – and that as a consequence the CFTC may have over-obligated its available funds for FY 2015. If true, the CFTC would be in violation of the Antideficiency Act. On 9/30, at 11:41 p.m., (b)(6) sent an email to staff at ESC: “[e]mbarrassingly I may have to pull back some of those items sent in the afternoon.”<sup>24</sup> This email is attached as Exhibit A.

### BACKDATING

When a fiscal year ends on September 30, a snapshot is taken of all obligations in place. Some obligations might not yet be known to OFM – for instance, the details of purchase card expenditures from the operating divisions – but they still count as part of the snapshot if the obligation or expenditure occurred by midnight on September 30. This snapshot determines whether an ADA violation occurred. It remains possible to make legitimate accounting changes to prior fiscal years – just not in a way that will impact the existence of an ADA violation.

Many contracts are entered into during one fiscal year with a portion of the performance to occur in the next. In FY 2016, an agency might determine that it wants to increase the amount of “lapse” – that is, the portion of the appropriation that remained unspent from FY 2015. To do so, the agency could – in FY 2016 – de-obligate funds from a contract that was entered in FY 2015, but in which a portion of the services were to be performed in FY 2016.

This modification would have a different impact on each fiscal year. De-obligating funds from an FY 2015 contract would add funds to the FY 2015 lapse. Because the lapse can only be spent on FY 2015 obligations, and because no new FY 2015 obligations can be created in FY 2016, these funds generally remain unspent (and unable to be spent) by CFTC; they become unavailable, part of a long-term and inaccessible reserve.

For FY 2016, the de-obligation would have a practical impact on CFTC's ability to spend. The de-obligation of funds from FY 2015 would cancel the anticipated services for FY 2016. Should CFTC decide it still needed the anticipated services, it would need to find new funds from the FY 2016 appropriation to fill the gap.

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<sup>21</sup> (b)(6) Interview at 5:45.

<sup>22</sup> *Id.* at 6:30.

<sup>23</sup> For instance, the Digicon contract modification to increase the obligated funds by \$340,000, was pushed through in the afternoon 9/30/2015. Exhibit D; Unattached Exhibit 5, Confirmation to (b)(6) of Receipt by ESC of Digicon Contract.

<sup>24</sup> Exhibit A.

## The Beginning of Fiscal Year 2016

On October 1, 2015, the first day of the new fiscal year, (b)(6) brought her concern to the attention of her supervisor (b)(6).<sup>25</sup> (b)(6) brought the issue to the attention of (b)(6).<sup>26</sup> A series of meetings occurred throughout the day as staff tried to determine whether the CFTC had in fact over-obligated its funding in FY 2015.<sup>27</sup> By the early afternoon, (b)(6) recalled that the budget office believed CFTC might be short by as much as a few hundred thousand dollars.<sup>28</sup> The focus of staff conversation turned to what options were available<sup>29</sup>; the goal was to increase the amount of un-obligated/unspent funds in FY 2015 to account for any possible shortfall.<sup>30</sup>

Among the options discussed were whether some sort of administrative error might have occurred—that is, whether funding levels would have been appropriate had all contract modifications been completed and recorded timely.<sup>31</sup> If contract modifications had not been timely recorded due to administrative error, but the modifications had in fact been authorized and technically complete on 9/30, then the date of the modification might control—and witnesses suggested that in this manner an ADA violation might be avoided.<sup>32</sup> Another option discussed was whether contracts could be backdated and funds retroactively removed.<sup>33</sup>

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<sup>25</sup> (b)(6) Interview at 1:30.

<sup>26</sup> (b)(6) Interview #2 at 10:30.

<sup>27</sup> (b)(6) Interview #2 at 10:50.

<sup>28</sup> (b)(6) Interview #2 at 2:30.

<sup>29</sup> (b)(6) Interview at 1:30:20. (b)(6) explained that the first step is to confirm if you have an ADA. If so, the next step is to try to cure it. *Id.* at 11:30.

<sup>30</sup> Witnesses disagree whether these meetings were expressly within the context of a potential violation of the ADA. (b)(6) and (b)(6) stated emphatically that the ADA was openly and actively discussed. (b)(6) Interview at 12:15; (b)(6) Interview at 1:30; (b)(6) Interview #2 at 11:15. (b)(6) did not recall the ADA being mentioned, but did remember that she was concerned that CFTC might have over-obligated its FY 2015 appropriation. (b)(6) Interview at 05:04-06:00. (b)(6) memory was unclear whether the ADA was expressly at issue. (b)(6) Interview at 1:34:00.

But witnesses agreed that the meetings occurred in the context of the CFTC having potentially over-obligated funds beyond the FY 15 appropriation. If true, this would constitute a violation of the ADA. And everyone, including (b)(6) and (b)(6), was experienced enough to know this. Therefore, the express or implied nature of the potential ADA violation is not relevant; we find that the potential of an ADA violation was a motivating factor in either case.

<sup>31</sup> (b)(6) Interview at 14:30; (b)(6) Interview at 47:06.

<sup>32</sup> (b)(6) Interview at 12:30; (b)(6) Interview at 13:00-40; *see* (b)(6) Interview at 01:35:20 re: “Treasury correction of an error rules.” *But see* (b)(6) Interview at 2:42:40, describing how just because someone doesn’t do something, it does not get you out of the ADA.

<sup>33</sup> (b)(6) Interview at 11:50; (b)(6) Interview at 13:45; (b)(6) Interview #2 at 1:23:00; (b)(6) Interview at 1:37:06-1:39:05.

## **CFTC's Office of Financial Management Backdated Documents Related to Three Contracts**

On the first day of FY 2016, CFTC's Office of Financial Management, (b)(6) backdated documents related to three contracts. Nearly three years later, it is not possible to perfectly reconstruct a timeline of who made certain decisions and why. However, through a combination of contemporaneous emails, review of iterations of contract modifications, and witness interviews, we have established some facts with certainty. Where a fact is uncertain, or in reliance on conflicting witness statements, we will make this clear.

### **Contracts One and Two**

The first contract was for The Brattle Group, and a requisition to modify the contract by adding an additional \$200,000 is attached as Exhibit B. The requisition (PRENF150617) was dated 9/25 and approved on 9/25 by (b)(6) from the Division of Enforcement as the Program Head.<sup>34</sup> (b)(6) of the Budget Office certified the funds on 9/28<sup>35</sup>; it was processed through procurement by (b)(6) on 9/30/2018<sup>36</sup> and sent to ESC.<sup>37</sup> This contract used FY 2015 funds from an FY 2015 Line of Account, for services to be performed in FY 2016.<sup>38</sup>

The second contract was for Digicon Corporation, and a requisition to modify the contract by adding \$340,000 is attached as Exhibit C. Emails – including one attached as Exhibit D – between budget and procurement staff on September 30 from 10 a.m. to 2 p.m. show staff working to obligate \$340,000 in additional FY 2015 funds.<sup>39</sup> The requisition (PRODT150622) was dated 9/30, and approved on 9/30 by (b)(6), business manager in the Office of

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<sup>34</sup> Exhibit B, Box 13.

<sup>35</sup> Exhibit B, Box 15.

<sup>36</sup> There may have been a miscommunication between the budget office and procurement concerning the Brattle Group requisition. The requisition had been signed by (b)(6) as of 9/28 and sent to procurement. But some documents refer to an attempt on 9/30 by (b)(6) to recall the Brattle Requisition. Unattached Exhibit 7.

This attempt to recall was not successful. No other email was sent to notify staff that the budget office was attempting to recall the requisition. Unattached Exhibit 7. Procurement processed the requisition on 9/30 and confirmed this with the budget office after 5 p.m. on 9/30. Unattached Exhibit 6, Brattle Group Requisition, version digitally signed by (b)(6) 9/30/2015 at 5:30 p.m., 9/30/2015. Unattached Exhibit 7, email chain between (b)(6) and (b)(6) referring to 5:36 p.m. notification of Brattle Group requisition sent to ESC.

This alleged attempt to recall the Brattle Group requisition is beyond the scope of this report and has no bearing on our findings. We address it here only to add context to level of miscommunications and confusion within OFM on 9/30 and 10/1.

<sup>37</sup> Unattached Exhibit 8, (b)(6) email exchange with ESC dated 9/30/2015, at 4:33 p.m., stating that additional requisitions are to be sent to ESC later that day.

<sup>38</sup> Exhibit B, Box 15.

<sup>39</sup> Exhibit D. Email from (b)(6) to multiple staff, dated 9/30/2015, at 1:15 p.m., stating "[t]he attached has been forwarded to procurement for processing. Thanks." See (b)(6) interview, at 7:35.

Data and Technology (“ODT”), on behalf of (b)(6), the CIO and director of ODT,<sup>40</sup> (b)(6) of the budget office signed as the budget manager on 9/30,<sup>41</sup> and (b)(6) sent it to ESC the same day.<sup>42</sup> This contract also used FY 2015 funds from an FY 2015 Line of Account, for services to be performed in FY 2016.<sup>43</sup>

Another version of these two requisitions exists. On 10/1 at 4 p.m., (b)(6) from the Budget Office sent a group of OFM officials an email titled “Corrected Requisitions for Brattle Group (b)(6) & Digicon (b)(6).” This email part of a chain is attached as Exhibit E. The body of the email follows:

Per our conversation, the funding is available for these req per the following  
LOA: Please adjust your documentation.

CF16140000.2016<sup>44</sup>

In the first sentence, “req” stands for “requisitions” and LOA stands for Line of Account. In essence, (b)(6) told multiple staff in OFM to change their records to reflect a new accounting line for two requisitions – changing the source of funds from FY 2015 to FY 2016 – and attached the altered versions of the two requisitions to the email. The altered Brattle Group requisition is attached as Exhibit F and the altered Digicon requisition as Exhibit G.

#### Proper Procedures were not Followed

Witnesses described the proper procedure to de-obligate funds.<sup>45</sup> They explained that since altering the source of funding was a material change – as opposed to correcting a typographical error in the LOA – that a new (second) requisition de-obligating the funds should have been issued with new signatures and a new date and timestamp.<sup>46</sup> This would be proper whatever the date; that is, if the intent to change the source of funding occurred on 9/30, or the intent to change the source of funding occurred on 10/1, the same procedure should have been followed. Similarly without regard to the date, the proper procedure to obligate funds from FY 2016 would be to issue a third requisition – again with new signatures and new dates and times.<sup>47</sup>

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<sup>40</sup> Exhibit C, Box 13.

<sup>41</sup> Exhibit C, Box 15.

<sup>42</sup> Unattached Exhibit 5, ESC confirmation of receipt to (b)(6) of Digicon requisition.

<sup>43</sup> Exhibit C, Box 15.

<sup>44</sup> The highlight exists within the email.

<sup>45</sup> (b)(6) Interview at 38:50-40:05; (b)(6) Interview at 24:08; (b)(6) Interview #2 at 23:19.

<sup>46</sup> (b)(6) Interview #2 at 30:50.

<sup>47</sup> Id.

## The Lines of Account were Altered Using White-Out

In each requisition, the original line of account using FY 2015 funds has been removed with white-out and replaced by a new line of account reflecting FY 2016.<sup>48</sup> This would reduce the funds available to CFTC in FY 2016 by the full amount of the requisitions. These changes to lines of account are material and of a predictable interest to the requesting parties – the Division of Enforcement and the Office of Data and Technology.

(b)(6) agreed in an interview that she hand-wrote on each requisition under the new line of account the sentence “subject to the availability of funds,” along with her initials “(b)(6)” and the date 9/30.<sup>49</sup> Ostensibly, this sentence is a necessary addition; witnesses explained that on 9/30/2015 it would not be possible to obligate FY 2016 funds.<sup>50</sup>

## The Requisitions were not Re-signed by Staff from Enforcement or ODT

We interviewed (b)(6),<sup>51</sup> (b)(6), and (b)(6)<sup>52</sup> about the amended requisitions, and all were clear that they were not notified of the change, did not approve it, did not re-sign, and would prefer to be notified in advance of such changes. In an interview, (b)(6) agreed that the requisitions had not been re-signed.<sup>53</sup> (b)(6) also agreed that the general practice was to get requisitions with material changes re-signed; she was not certain why this had not been done in these instances.<sup>54</sup>

We find that the altered requisitions are photocopies of the originals, and that the signatures on the originals were duplicated, without warning to the signatories, to effect a material change to both requisitions.<sup>55</sup>

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<sup>48</sup> Exhibits F and G, Box 15.

<sup>49</sup> *Id.*; (b)(6) Interview at 27:33.

<sup>50</sup> (b)(6) Interview at 21:52-23:20; (b)(6) Interview at 30:57; (b)(6) Interview at 13:07.

<sup>51</sup> (b)(6) stated that:

[Y]es, I would prefer and would have expected to be notified either directly or through our business manager staff whether a requisition request was being changed from funded to subject to availability of funds. In this instance, the expert contract we were trying to get funded was for a litigation. If we were not able to get the contract funded, we would have to assess the impact on the litigation and make the necessary decisions as to how to continue the litigation.

(b)(6) email chain dated 7/6/2018. Unattached Exhibit 2.

<sup>52</sup> OIG interview notes of (b)(6) and (b)(6), dated 6/28/2018.

<sup>53</sup> Regarding Digicon: (b)(6) Interview at 33:37; Regarding Brattle Group: (b)(6) Interview at 1:01:00

<sup>54</sup> (b)(6) Interview at 34:45.

<sup>55</sup> (b)(6) explained that LOAs were frequently typed or hand-written at that time, and that mistakes were common. Correcting an LOA with white-out or photocopying would not, of itself, be cause for concern. But

## The Handwritten Dates on the Altered Requisitions are False

(b)(6) emailed the original Digicon requisition to procurement in the afternoon of 9/30,<sup>56</sup> and the original requisitions for Brattle Group and Digicon were processed by procurement on 9/30.<sup>57</sup>

(b)(6) insisted in an interview that she altered the requisitions on 9/30 and that the handwritten dates were accurate.<sup>58</sup> (b)(6) was equally clear that she remembered almost none of the other events surrounding these two days.<sup>59</sup> Attempts to refresh her recollection with emails she authored and documents she signed and altered were largely unsuccessful.<sup>60</sup> Among the only memories on which she was clear were that the revised requisitions occurred on 9/30, the same day the original requisitions were processed.<sup>61</sup>

We find that (b)(6) altered the requisitions on 10/1.

Exhibit A shows that even just before midnight on 9/30, (b)(6) thought that she “may” have to pull back some recent requisitions.<sup>62</sup> (b)(6) stated that (b)(6) did not report the concern to him until 10/1.<sup>63</sup> There was therefore no reason on the evening of 9/30 to alter requisitions to reflect a new fiscal year. We asked (b)(6) to explain for what purpose she was altering the requisitions on the evening of 9/30. (b)(6) had no explanation beyond saying that it would have been for Procurement.<sup>64</sup>

Witnesses stated that it is not appropriate to commit funds from a fiscal year that has not yet begun.<sup>65</sup> But the revised requisitions – if in fact they occurred on 9/30 – do just that. (b)(6)

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(b)(6) explained that this would only be in an instance of minor administrative error – like a typo. (b)(6) agreed that changing the funding year was a material change, and that material changes should not be made by using white-out and without notice to the requesting parties. (b)(6) Interview #2 at 27:15.

<sup>56</sup> Email from (b)(6) to multiple staff, dated 9/30/2015, at 1:15 p.m., stating “[t]he attached has been forwarded to procurement for processing. Thanks.” Exhibit D.

<sup>57</sup> Unattached Exhibit 5, ESC confirmation of receipt to (b)(6) of Digicon requisition; Unattached Exhibit 6, Brattle Group Requisition, version digitally signed by (b)(6) 9/30/2015 at 5:30 p.m.; Unattached Exhibit 7, email chain between (b)(6) and (b)(6) referring to 5:36 p.m. notification of Brattle Group requisition sent to ESC.

<sup>58</sup> (b)(6) Interview at 37:00-37:40.

<sup>59</sup> (b)(6) Interview at 13:20, 14:30, 32:45, etc.

<sup>60</sup> *Id.*

<sup>61</sup> (b)(6) Interview at 37:00.

<sup>62</sup> Exhibit A; (b)(6) Interview at 2:18.

<sup>63</sup> (b)(6) Interview at 1:30.

<sup>64</sup> (b)(6) Interview at 1:08:00.

<sup>65</sup> (b)(6) interview at 13:00; Exhibit N, (b)(6) email dated 6/26/18:

That modification increased the task order ceiling by \$340,000 and obligated FY15 funds to cover that requirement. The ceiling is the amount up to which

agreed that it is not appropriate to commit funds in advance of the fiscal year, and stated that she did not remember why she appeared to have done so in this instance.<sup>66</sup>

Exhibit E shows that (b)(6) forwarded the altered Digicon and Brattle Group requisitions to the staff in OFM at 4 p.m. on 10/1. Under other circumstances, a document could be reasonably dated and initialed on one day and emailed the next. But budget events impacting 9/30 or 10/1 are not merely consecutive days, but days in distinct fiscal years.

At first, (b)(6) stated that she did not know why she sent the requisitions the following day.<sup>67</sup> But later in the interview, (b)(6) stated that she now remembered hand-delivering hardcopies of the requisitions on 9/30.<sup>68</sup> When asked to whom, she stated it would have had to have been the relevant procurement officers listed in the email – (b)(6) and (b)(6).<sup>69</sup>

(b)(6) and (b)(6) had been clear in interviews that they received notice of the changed requisition for the first time via the email on 10/1.<sup>70</sup> Nevertheless, we followed-up after (b)(6) statement that she had hand-delivered copies to (b)(6) and (b)(6) on 9/30. (b)(6) stated directly that no one provided him a hard-copy of the altered requisition on 9/30.<sup>71</sup> (b)(6) also reaffirmed that no one hand-delivered a copy to her on 9/30.<sup>72</sup>

(b)(6) produced screen shots of the shared drive in which the requisitions are stored; we have attached the email and screen shots as Exhibit H. There are two PDFs. The first is for the Brattle Group and is dated 10/1 at 3:46 p.m. In this iteration of the requisition, (b)(6) had amended the LOA and typed the sentence “subject to the availability of funds.” It does not

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the contractor was authorized to work. To simply change the obligation a day later to reflect FY16 funds versus FY15 funds would not be legal per the bona fide needs rule. To do that would create a situation where the contract would have been underfunded by \$340,000 on the last day of the fiscal year. In other words, since I increased the ceiling in FY15, I would have to obligate FY15 funds to cover that increase. I could not fund that increase with a future year appropriation, which is what I was being asked to do. Also, since the amended requisition included the disclaimer about being subject to availability of funds, I was not even being provided with FY16 funds at that time, but rather an expectation that they would be furnished at some future date.

<sup>66</sup> (b)(6) Interview at 50:55.

<sup>67</sup> (b)(6) Interview at 38:40.

<sup>68</sup> (b)(6) Interview at 48:02.

<sup>69</sup> (b)(6) Interview at 48:16.

<sup>70</sup> Unattached Exhibit 10; (b)(6) Interview at 8:07. See also Unattached Exhibit 4, written statement by (b)(6) dated 11/17/2017; Exhibit II, (b)(6) email dated: 07/02/2018.

<sup>71</sup> Unattached Exhibit 10, (b)(6) email dated: 07/05/2018. (b)(6) wrote that “I was not provided with a hardcopy of either version of PRODT160055 on September 30, 2015. It was not until 4:00 p.m. on October 1<sup>st</sup> that the changed requisition was provided to me.”

<sup>72</sup> (b)(6) Interview at 8:06.

include the date 9/30 or the initials (b)(6).<sup>73</sup> The second PDF is timestamped 10/1 at 3:55 p.m., and contains both the revised Brattle Group and the Digicon requisitions. The 3:55 p.m. version is the one emailed by (b)(6) at 4:00 p.m. that day to (b)(6).<sup>74</sup> This version of the Brattle Group requisition – in a PDF created 10/1 at 3:55 p.m., and sent 10/1, at 4 p.m. – has, on top of more white-out, what is now a hand-written sentence “subject to the availability of funds.” This new version also contains the hand-written date of 9/30 and the initials “(b)(6).” The date of 9/30 and initials “(b)(6)” must have been added between 3:46 p.m. and 3:55 p.m. on 10/1.

(b)(6) and (b)(6) stated that they were upset on receiving the requisitions 10/1, because by dating the changes 9/30, it created the false impression to ESC and other third parties that procurement had failed to timely file the requisitions.<sup>75</sup> This failure – in the event of an ADA violation – would be evidence that the blame lay with the two procurement officers.<sup>76</sup>

The second email in the string attached as Exhibit E is from (b)(6). He writes on the morning of 10/2 that:

Last night, (b)(6) decided to de-obligate funds from the catapult task order, instead of pursuing a LOA change on the Digicon task order. Therefore, the revised requisition you sent me yesterday (PRODT-16-0055) will not be needed....

Every person in OFM is aware of the importance of and distinction between 9/30 and 10/1. This email, written on the morning of 10/2, states that (b)(6) sent (b)(6) the revised requisition “yesterday” – that is, on 10/1. We find this contemporaneous email setting forth the date (b)(6) sent the revised requisition to be further evidence of the true date. Similarly, we find (b)(6) failure to correct (b)(6) statement in her response three minutes later is indicative that she had no objections to (b)(6) summary of events. Finally, (b)(6) submitted a written statement to OIG that he would only have drafted his response in the manner he did – expressly setting forth both the date and code of the revised requisition – if he were attempting to make a clear record of the timing of events.<sup>77</sup>

We find that (b)(6) did not obtain new signatures on the altered requisitions; that (b)(6) did not alter the requisitions on 9/30; that (b)(6) did not hand-deliver the altered requisitions to (b)(6) or (b)(6) on 9/30. We find that (b)(6) did not write, initial, and date the sentence “subject to available funds” on 9/30. We expressly asked (b)(6) to distinguish

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<sup>73</sup> Exhibit H. (b)(6) wrote that “[t]he Brattle Group requisition was uploaded to Procurement’s S Drive twice. Once without (b)(6) notating 9/30 but making the change and the other where she signed 9/30.”

<sup>74</sup> Exhibit F.

<sup>75</sup> (b)(6) Interview at 8:33.

<sup>76</sup> (b)(6) Interview at 8:48.

<sup>77</sup> Exhibit N: (b)(6) wrote: “Per our conversation today, I am confirming for you that I did not act on the amended requisition (renumbered to PRODT160055). That is what I reflected in my October 2, 2015 email to (b)(6). I’ve also attached Modification M027 to show that I obligated the \$340k on September 30<sup>th</sup>.”



between events that she independently recalled and events that she hypothesized occurred based on review of the requisitions during the interview.<sup>78</sup> With this in mind, (b)(6) stated that she did independently recall meetings on 9/30 and dating the requisitions on 9/30.<sup>79</sup>

We cannot credit (b)(6) claim that the requisitions were revised on 9/30, both in light of her general assertions of limited memory and in light of the substantial evidence to the contrary. We find that the requisitions were altered on 10/1 and sent to procurement on 10/1. We find that (b)(6) and (b)(6) did not implement the altered requisitions.

(b)(6) stated that she would not, on her own initiative, change a line of account to a new fiscal year; she would only act on the instruction of a supervisor.<sup>80</sup> Given the structure of OFM, we found this statement credible. (b)(6) insisted that she did not, despite repeated questioning, recall the supervisor who instructed her to alter the requisitions. However, (b)(6) was clear that it must have been (b)(6), (b)(6), or (b)(6)<sup>81</sup>

## Summary

We find that the revised requisitions are photocopies of earlier requisitions. We find that the signatories from the Division of Enforcement and the Office of Data and Technology were not aware that their signatures were being used on materially different requisitions, and that they were not notified that their funding source would change. We find that CFTC was obligating additional funds through 9/30, and that the altered requisitions were created on 10/1, communicated on 10/1, and received by procurement on 10/1. We find that the hand-written dates of 9/30 are false.

We received notice of these backdated requisitions after our target interview with (b)(6). We determined to issue this report as is, because we believe the facts established should be communicated without delay to the Commission. We emphasize that we have strictly limited our scope in this report of investigation to (b)(6). With regard to Contracts One and Two, we make no findings at present regarding potential violations by (b)(6) or other OFM staff.<sup>82</sup>

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<sup>78</sup> (b)(6) Interview at 35:35.

<sup>79</sup> (b)(6) Interview at 36:00. When reminded that she had to tell the truth, and asked one more time if she were 100% certain that the requisitions were signed on 9/30, (b)(6) stated that she could not be 100% certain. (b)(6) Interview at 36:45.

<sup>80</sup> (b)(6) Interview at 9:15.

<sup>81</sup> (b)(6) Interview at 10:45; 28:45. (b)(6) stated that (b)(6) was her direct supervisor at the time. (b)(6) Interview at 9:30-10:00. (b)(6) explained that while he was formally (b)(6) supervisor, (b)(6) was the team lead and exercised informal supervisory authority. (b)(6) Interview #2 at 39:07.

<sup>82</sup> Should the Commission choose to implement our recommendations below, we may schedule follow-up interviews with (b)(6) and other witnesses.

### Contract Three<sup>83</sup>

The third contract was for Catapult Technology LTD in support of the Office of Data and Technology. ODT has a distinct line item in CFTC's annual appropriation, and most expenditures on data and technology come from this separate pool of funds. On 9/4, CFTC obligated \$560,000 from its main appropriation for salaries and expenses – that is, from outside the line-item dedicated to ODT – to the contract with Catapult.<sup>84</sup> This obligation used FY 2015 funds.

(b)(6) Contacted the Deputy General Counsel about Backdating on 10/1

(b)(6) took hand-written notes of some of the meetings in which she participated over this period. They contain a description of a phone call she placed to the deputy General Counsel for General Law – Heather Gottry. These are attached as Exhibit J. (b)(6) asked the deputy GC if backdating was ok.<sup>85</sup> The deputy GC stated “no.” This response is clear in (b)(6) notes.

(b)(6) did not record the time of the conversation with the deputy GC; but she was certain that it occurred on 10/1, and according to (b)(6) it must have occurred before 5 p.m., prior to the final meeting with (b)(6), (b)(6) and (b)(6) late that evening.<sup>86</sup>

(b)(6) stated that she did not remember if she had communicated the opinion of the deputy GC to (b)(6) and was not certain if she communicated it to other staff; (b)(6) hypothesized that (b)(6) and (b)(6) would have known, but stated that she did not recall specifically.<sup>87</sup> (b)(6) and (b)(6) stated that they had no memory that OGC had provided an opinion.<sup>88</sup>

(b)(6) Instructed (b)(6) to Backdate a De-obligation

(b)(6) does not believe that she instructed (b)(6) to backdate the Catapult contract.<sup>89</sup> However, (b)(6) memory of these events was quite limited.<sup>90</sup> The following narrative therefore relies primarily on (b)(6) recollection of events with some support from

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<sup>83</sup> This third contract modification triggered the request for this investigation: that on 10/1, (b)(6) allegedly instructed staff to backdate a document and personally drafted a backdated memo to that end.

<sup>84</sup> Unattached Exhibit 16, (b)(6) email dated 6/8/2018 with attached Delphi history.

<sup>85</sup> Exhibit J.

<sup>86</sup> (b)(6) Interview at 01:50:15-1:51:45.

<sup>87</sup> (b)(6) interview at 02:13:00-02:13:45.

<sup>88</sup> (b)(6) Interview #2 at 19:20. Unattached Exhibit 17, email from (b)(6).

<sup>89</sup> (b)(6) Interview at 02:10:05; 2:32:45.

<sup>90</sup> (b)(6) Interview at 02:07:15; 02:10:30; 2:36:25. For instance, (b)(6) did not remember who created the backdated memorandum, though she agreed that she signed it.

(b)(6). We find (b)(6) and (b)(6) to be credible witnesses, and we find that the evidence supports their memories of events.

Sometime after the conversation with OGC, (b)(6) called a meeting in her office on the evening of 10/1, likely between 5 and 6 p.m. At least three senior CFTC staff were present (b)(6), (b)(6), and (b)(6). (b)(6) has retired, and has not responded to requests for an interview. (b)(6) and (b)(6) state that they personally heard (b)(6) direct (b)(6) to backdate to 9/30 a de-obligation of \$560,000 from the Catapult contract.<sup>91</sup> (b)(6) memory was clear because he said it was the first time in his career that anyone had told him to do something like this.<sup>92</sup> (b)(6) expressly stated that his memory was clear for a related reason; he remembered how upset (b)(6) seemed to be and remembered (b)(6) arguing that this was not appropriate.<sup>93</sup>

#### (b)(6) Backdated a Memo to 9/30 Instructing (b)(6) to De-obligate Funds

(b)(6) does not recall the circumstances surrounding the drafting of the memo,<sup>94</sup> and so we have little with which to contrast (b)(6) and (b)(6) recollections.

(b)(6) and (b)(6) stated in interviews that (b)(6) (and (b)(6)) repeatedly refused (b)(6) instruction to backdate the contract modification.<sup>95</sup> By the end of the meeting, (b)(6) instructed (b)(6) to de-obligate the funds immediately dated 10/1.<sup>96</sup> (b)(6) stated

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<sup>91</sup> (b)(6) Interview #2 at 1:23:00; (b)(6) Interview at 11:50.

<sup>92</sup> (b)(6) Interview at 12:00.

<sup>93</sup> (b)(6) Interview #2 at 1:23:00-1:24:50.

<sup>94</sup> (b)(6) Interview at 02:10:45; 2:32:45.

<sup>95</sup> (b)(6) of course had the right to refuse to obey her instruction. The "right-to-disobey" provision of the Whistleblower Protection Act of 1989, 5 U.S.C. § 2302(b)(9)(D), makes it a prohibited personnel practice to take action against any federal employee who refuses to obey an order that would require the individual to violate a law, rule, or regulation.

<sup>96</sup> These facts are in dispute. In (b)(6) written complaint to Paul Ullman of HR, dated 11/17/2017, (b)(6) describes (b)(6) as having repeatedly instructed him to backdate the contract modification and having "then relented." Unattached Exhibit 4. (b)(6) does not believe she instructed (b)(6) to backdate a contract modification at all. (b)(6) Interview at 02:10:05. She further stated that she had no memory of the circumstances surrounding the drafting of the backdated memo. (b)(6) Interview at 02:07:00; 2:36:25. (b)(6) memory agrees with (b)(6) on the important point: (b)(6) firmly recalls (b)(6) instructing (b)(6) to backdate the contract modification. (b)(6) Interview #2 at 1:23:00. However, (b)(6) believed that (b)(6) drafted the backdated memo expressly as an instruction for (b)(6) to backdate the contract modification and was not aware that (b)(6) relented and instructed (b)(6) to de-obligate funds effective 10/1. (b)(6) Interview at 14:30. We find that (b)(6) was best placed to know the circumstances of his instruction; he was the only staff person who retained a copy of the backdated memo, and the only staff person to act on the basis of that memo.

he would need something in writing.<sup>97</sup> (b)(6) reportedly asked why, and (b)(6) responded that he could not de-obligate \$560,000 for no reason.<sup>98</sup>

(b)(6) then went to her computer and typed out a memorandum instructing (b)(6) to de-obligate the funds.<sup>99</sup> She printed the memo from her desktop printer and handed it to (b)(6).<sup>100</sup> The memo is dated 9/30, and it is attached as Exhibit I.

(b)(6) immediately acted on the instructions in the memo.<sup>101</sup> By just after 7 p.m., (b)(6) had filled out the relevant paperwork, made the necessary phone calls and sent the necessary emails to notify relevant parties that the \$560,000 would be de-obligated.<sup>102</sup> The de-obligation was dated 10/1.<sup>103</sup>

After processing the de-obligation, (b)(6) noticed that (b)(6) had backdated the memo 9/30.<sup>104</sup> (b)(6) explained that it created the false impression he had received the memo 9/30 and failed to act on it.<sup>105</sup> He therefore hand-wrote on the bottom of the memo "[r]eceived 10/1 at 6:30 p.m."<sup>106</sup> (b)(6) also sent emails to various staff in which he intentionally included statements to the effect that he had accomplished the de-obligation that had been instructed by (b)(6) at the meeting on 10/1.<sup>107</sup> Exhibit E provides one example; we have attached another as Exhibit K.

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<sup>97</sup> (b)(6) Interview at 13:11.

<sup>98</sup> (b)(6) Interview at 13:17.

<sup>99</sup> (b)(6) Interview at 14:00; (b)(6) Interview #2 at 1:23:00; (b)(6) Interview at 13:30.

<sup>100</sup> (b)(6) Interview at 14:00; (b)(6) Interview #2 at 1:23:00; (b)(6) Interview at 13:36.

<sup>101</sup> Unattached Exhibit 4, (b)(6) initial complaint.

<sup>102</sup> *E.g.*, Exhibit K.

<sup>103</sup> Exhibit K, attachment to email: Amended Requisition for Catapult, Catapult CFODT-15-BP-0214 TO001 M002.

<sup>104</sup> Unattached Exhibit 4, (b)(6) initial complaint.

<sup>105</sup> (b)(6) Interview at 23:30.

<sup>106</sup> Exhibit I. (b)(6) noted in the interview that (b)(6) time is wrong, because it is inconsistent with an email timestamped at 6:13 p.m. where (b)(6) has begun to take action on the basis of the memo. (b)(6) Interview at 1:55:40-1:57:50. Unattached Exhibit 11, email timestamped 6:13 p.m. 10/1. (b)(6) did not suggest, however, that (b)(6) had lied or even that the mistaken time was somehow material.

(b)(6) stated in his initial complaint that he did not realize that (b)(6) had backdated the memo until sometime afterwards. So while he handwrote the date and time of receipt contemporaneously, he did not do so the moment the memo was handed to him. It is not unreasonable that his estimate of 6:30 p.m. was off, and that he actually received it 20 or 25 minutes earlier.

<sup>107</sup> Exhibit E; Exhibit K.

## We Found no Record in CFTC Systems of the Original Memorandum

We have only a single version of the memo in our records – the one that contains (b)(6) hand-written date and time of receipt. To obtain the date and timestamp on the original, we requested staff to search the OFM shared drives; no original was found.

With the assistance of digital forensics experts, we searched the following CFTC systems for the original memo:

1. Exchange email. A search for the document was conducted across all CFTC mailboxes. A search was conducted for all Exchange mailboxes for 9/30 and 10/1/2015, based on the date on the document. There was a high likelihood the document could exist in the custodian's mailbox or a recipient.
2. Custodian data sources (b)(6). A search of the custodian's primary data sources (Exchange, Enterprise Vault, and Home Share) was conducted.
3. Custodian hard drive. A search of the custodian's hard drive was conducted. The analysis and search included residual areas of the hard drive as well as the Volume Shadow Copies for any residual traces of the document based on the substantive text of the document.

Each search met with negative results. Under most circumstances, official memos are saved to the CFTC's system in a shared drive, or perhaps emailed to the relevant staff so that an official record exists. For instance, the multiple iterations of the Brattle Group and Digicon requisitions are all found in the shared drive.

The series of negative findings, according to an expert in digital forensics, is unusual. It suggests that the document was typed, printed, and immediately deleted. Even then, some trace of the file usually exists. In this instance, no trace was found. This prevented our office from adding the original document and its metadata to our file.

(b)(6) Admitted that on 10/1 She Signed the Memo Dated 9/30

(b)(6) agreed that she signed the memo on 10/1, and stated that the date of 9/30 was a "mistake."<sup>108</sup> She suggested that the mistake might have occurred because OFM had been considering backdating a contract as a possible solution.<sup>109</sup> And that, by mistake, the wrong date remained on the memo even after OFM determined not to backdate anything.<sup>110</sup>

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<sup>108</sup> (b)(6) Interview at 02:12:15, 02:27:00.

<sup>109</sup> *Id.* at 02:08:00.

<sup>110</sup> (b)(6) Interview at 02:08:00-02:11:30.

(b)(6) Characterization of Backdating as a “Mistake” is Inconsistent with the Facts

(b)(6) hypothesis that the date on the memo is a mistaken holdover from earlier in the day, prior to (b)(6) changing her mind about pursuing a backdated contract as a solution is inconsistent with the established timeline.

We find that (b)(6) admissions in her interview, of themselves, skirt the edge of intent. (b)(6) was clear that she understood the critical distinction between 9/30 and 10/1. (b)(6) stated that she was considering backdating documents on 10/1 and had discussed the issue with her staff. (b)(6) stated that she reached out to OGC for an opinion. After being told not to backdate by OGC, (b)(6) stated that she nevertheless, by “mistake,” signed a backdated memo instructing a de-obligation.

Intent turns on that window of time in which (b)(6) allegedly changed her mind. In essence, (b)(6) argues that – while she did pursue the option of backdating a de-obligation, and while she did sign a backdated memo instructing staff to process a de-obligation – between the period where she had intent to backdate and the concrete action in furtherance of that intent, (b)(6) changed her mind. And because she changed her mind, the incorrect date in the memo is a “mistake” rather than an intentional false statement.

Intent can be difficult to prove. While (b)(6) explanation for why the memo contains the wrong date is strained, this is not dispositive. But when we consider the substantial evidence inconsistent with (b)(6) assertion that the false date was a “mistake,” we find that (b)(6) acted with intent.

First, we have two statements from credible witnesses that immediately prior to drafting the memo, (b)(6) instructed (b)(6) to backdate the de-obligation. According to these witnesses, (b)(6) drafted the backdated memo as a direct consequence of (b)(6) refusal.

Second, (b)(6) alleged that she had no present memory of how the memo was drafted or the circumstances that led to its drafting. So while (b)(6) does not believe she affirmatively instructed (b)(6) to backdate the de-obligation, our decision is not simply to judge the relative credibility of similarly believable witnesses, but whether two witnesses with firm memories are more credible than a witness who admits to almost no memory.

Third, the timeline is clear that the final meeting and the drafting of the backdated memo occurred after COB on 10/1 – that is, *after* (b)(6) had spoken to the Deputy GC. Therefore, whether or not we credit (b)(6) and (b)(6) statements, the mere fact that the issue was still under discussion at the evening meeting suggests that (b)(6) had not determined to accept the advice of agency counsel.

Fourth, (b)(6) stated that she had no memory of communicating OGC’s opinion to staff. Similarly, staff expressed no knowledge that (b)(6) had spoken with OGC. On any given occasion, it may not be necessary for (b)(6) to communicate OGC opinions to staff. But on this occasion, staff had been not only discussing the option to backdate contracts throughout the day on 10/1, but had already backdated the Brattle Group and Digicon requisitions and emailed these

backdated documents to multiple staff with an instruction to “[p]lease adjust your documentation [to match the altered LOA].”<sup>111</sup> Because actions had already occurred in furtherance of backdating, the only way to effectuate a change in direction in OFM would be to communicate the change to staff. (b)(6) did not, suggesting that (b)(6) intent remained unchanged.

Fifth, the predictable consequences of the backdated memo are consistent with the consequences of the backdated requisitions: (A) to a casual observer, procurement would have appeared to have failed in a critical duty; (B) any ADA violation would be attributed to procurement’s mistakes; (C) among the possibilities discussed by OFM to fix the perceived ADA violation was administrative error – and procurement’s “failure” to timely modify the contract modification might constitute one. In short, one backdated document on 10/1 in OFM could possibly be a mistake – even when authored by (b)(6). Three backdated documents on 10/1 in OFM, each with the same predictable consequence, supports a finding of intent.

Sixth, (b)(6), there are few tasks more important than ensuring the agency spends within its appropriation and few failures more consequential than an ADA violation. (b)(6) is obligated to pay attention to matters like this; signing a backdated memo that suggests a decision was made in a prior fiscal year would be an egregious mistake. Given the events of this day: the concern about an ADA violation; the discussions of backdating; the pursuit of backdating by staff; the call with OGC and the hand-written note that backdating is impermissible; and the fact that this de-obligation was the last decision of the last meeting of the day, it is simply not believable that (b)(6) failed to pay attention to the date. We find the overall context supports a finding of intent to falsify a document in order to avoid a potential ADA violation.

### **WHETHER STAFF COVERED UP AN ADA VIOLATION**

We have not been able to verify, as of the date of this report, whether these altered requisitions or the backdated memo were used in any manner to impact CFTC’s official FY 2015 accounts with ESC.<sup>112</sup> Superficially, there is some evidence that they did not. The email chain in Exhibit E suggests that as of the morning of 10/2, there was consensus that CFTC would not be pursuing the altered LOA.<sup>113</sup> And the de-obligation of the Catapult contract was correctly dated 10/1.<sup>114</sup>

However, we also have emails from representatives of ESC. The first, attached as Exhibit L, is dated 10/2 at 1:16 p.m., from (b)(6) to (b)(6) and (b)(6).<sup>115</sup> The subject

<sup>111</sup> Exhibit E.

<sup>112</sup> (b)(6) stated that the purpose of de-obligating funds from the Catapult contract was not to avoid an ADA violation but to add funds to the FY 2015 lapse. (b)(6) Interview at 3:16:01-3:21:40. But funds can be added to a lapse without backdating; there was simply no reason to discuss backdating as an option, or to approach OGC on the subject, if the intent was solely to add funds to a lapse.

<sup>113</sup> Exhibit E.

<sup>114</sup> Exhibit K attachment: Amended Requisition for Catapult, Catapult CFODT-15-BP-0214 TO001 M002.

<sup>115</sup> Exhibit L.

line reads “Braddle [sic] Group, mod & Option Extension.” It otherwise has no content. (b)(6) forwards this email to two CFTC staff. On 10/2, just after 4 p.m., a staffer emails ESC with the following:

(b)(6), This contract signed on September 30, 2015 using FY 2015 funds should have been signed on October 1, 2016 using FY 2016 funds. Is there any way for us to fix this issue? Has ESC ever dealt with this issue with another client and if so how did it get fixed. Thanks, (b)(6)

This email contradicts the understanding of the two procurement officers who believed, on the morning of 10/2, and after speaking with (b)(6) and (b)(6), that CFTC would not be pursuing changes to the line of account.<sup>116</sup> It is therefore noteworthy that later that same day, a CFTC staffer continued to pursue the change.

The email string ends on 10/7:

(b)(6) has decided not to pursue the correction at this time. Thanks for getting back to me and I will file this info in case it comes back up. Thanks for your assistance, (b)(6)

The second email, attached as Exhibit M, is dated 10/7 and from a different representative of ESC with the subject line “[o]n the down low....” It suggests that CFTC’s accounting is “still working on figuring everything out” and “[m]aybe they [sic] trying to find a way to fix it.” The email references the Brattle Group contract, and suggests the period of performance should begin in October rather than on 9/30. The email ends with the following sentences:

“Anyway, I wanted to pass along this information so you can begin to correct them whenever you get a chance. ;-) Anyway, I am keeping it on the down low, and just wanted to forward you anything I hear. ;-)”

(b)(6) responded that the period of performance was in fact correctly dated 9/30.<sup>117</sup>

Finally, we have a last known version of the Digicon requisition. We have attached it as Exhibit O. Showing a 2016 line of account, but absent the handwritten date of 9/30 and initials (b)(6), the metadata shows that this PDF was created on 10/13 and digitally signed by (b)(6).<sup>118</sup> We have attached an email with screen shots of the metadata as Exhibit P. (b)(6) stated that he did not process this revised requisition, and that he does not know whether the requisition ever made it to ESC.<sup>119</sup> But we cannot know on the existing record whether other

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<sup>116</sup> Exhibit E.

<sup>117</sup> Exhibit M.

<sup>118</sup> Exhibit O.

<sup>119</sup> Unattached Exhibit 10.



staff used it – or other altered documents – to impact ESC’s official records of the CFTC’s FY 2015 balance of available funds.

## **CONCLUSIONS**<sup>120</sup>

### **(b)(6) Violated 18 USC § 1001 by Intentionally Backdating a Memo**

OIG Investigations received an allegation that (b)(6) had instructed staff to backdate a contract modification for Catapult and that (b)(6) had personally backdated a memo related to the same contract. Our investigation was initially limited in scope to this issue. Over time, we learned of two other backdated requisitions that played a direct role in the facts that led to (b)(6) backdated memo. Accordingly, we expanded the scope to include discussion of these additional backdated documents.

We find that (b)(6) first learned that the CFTC might have over-obligated its FY 2015 appropriation in the early afternoon of 10/1/2015. We find that (b)(6) considered backdating contracts as a viable option to resolve the situation. We find that in the afternoon of 10/1, (b)(6) requested and received a legal opinion from OGC that backdating was not appropriate, and we find that (b)(6) did not communicate this information to her staff.

We find that between 3 p.m. and 4 p.m., (b)(6) altered and backdated requisitions for Brattle Group and Digicon. We find that the two backdated requisitions were altered by using white-out to replace the original LOA with a new funding source from a new fiscal year. We find that the new LOAs were a material change to the requisitions. We find the requisitions reused the signatures of senior CFTC staff from the Office of Data and Technology and the Division of Enforcement without their knowledge or consent. We find that the handwritten dates of 9/30 were false.

We find that (b)(6) did not take this action on her own initiative. We find that someone in her supervisory chain instructed (b)(6) to alter the requisitions, and that (b)(6) is at the top of that supervisory chain. We find that (b)(6) admission that she

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<sup>120</sup> While the investigation focuses on the actions of the CFTC and the budget office, the decision to de-obligate funds from the Catapult contract had practical consequences. While de-obligations occur all the time, (b)(6) observed that this particular circumstance was unique; it de-obligated funds from a prior fiscal year, impacting an open contract from which services were still anticipated. (b)(6) Interview at 40:00

Because the funds were de-obligated in FY 2016 from a contract dated in FY 2015, they became effectively unusable, part of a permanent reserve. Because ODT still needed these services, another \$560,000 had to be found from CFTC’s FY 2016 budget to pay for them. In effect, CFTC (and more specifically, the Office of Data and Technology) lost \$560,000 as a direct consequence of the decision to de-obligate funds from a contract entered in a prior fiscal year. (b)(6) Interview at 34:00-34:35.

was considering backdating on 10/1, the fact that the requisitions were backdated on 10/1, and the contemporaneous email from (b)(6) on 10/2 stating that (b)(6) had changed her mind about pursuing the new LOAs, supports a conclusion that (b)(6) knew of whether or not she personally instructed (b)(6) to create the backdated requisitions for the Brattle Group and Digicon contracts.

We find that in the evening of 10/1, (b)(6) instructed (b)(6) to backdate the Catapult contract as an alternative to the backdated requisitions for Digicon and Brattle Group. We find that (b)(6) backdated a memo instructing (b)(6) to de-obligate \$560,000 from the catapult contract. We cannot credit (b)(6) assertion that between her pursuit of backdating as an option, and her actual backdating of a memo, that she changed her mind. We cannot agree with (b)(6) characterization of the false date of 9/30 as a “mistake.” Rather, we find that (b)(6) backdated the memo with intent.

We find that the motivation to backdate requisitions and memos was to avoid an ADA violation; properly dated modifications, in compliance with laws, regulations, and CFTC procedures, would still have added funds to the lapse for FY 2015.

**(b)(6) Violated 5 C.F.R. § 2635.705(b) by Directing (b)(6) and (b)(6) to Backdate the Catapult De-obligation**

We find that (b)(6) instructed (b)(6) and (b)(6) to backdate the Catapult contract de-obligation. In so doing, she violated the ethics regulation that prohibits any request to a subordinate to use official time to perform activities other than those authorized or in accordance with law or regulation.

**Possible Cover-up of an ADA Violation**

We do not find that an ADA violation occurred or that backdated documents were used to give the appearance that FY 2015 accounts contained sufficient funds as of 9/30/15. We find only that contemporaneous emails and the metadata of certain files create cause for concern.

We determined to issue this ROI at this time because we resolved the issue referred for investigation (b)(6) did instruct staff to backdate a document and did personally backdate a memo to that end – and because we determined that the evidence we developed would be of immediate interest to the Commission. But unanswered questions remain.

Witnesses “heard” that (b)(6), who had first brought the ADA issue to the attention of supervisors, turned out to be mistaken. They similarly heard that CFTC had not over-obligated its funds; that there was, in fact, no ADA violation after all.

(b)(6) stated that he reviewed records with his staff and was satisfied by

approximately 10/3 that no ADA violation had occurred.<sup>121</sup> However, (b)(6) agreed that it was possible to influence ESC with documents that were backdated while the system was down between 9/30 and approximately 10/7.<sup>122</sup> And no staff person had full information on the series of backdated documents we investigated here.

It is beyond the scope of this investigation – and beyond the competencies of OIG investigative staff – to conclusively answer these questions without the procurement of forensic accountants. Accordingly, we do not find at this time whether any of the backdated documents discussed, or others of which we are not aware, were used to avoid an ADA violation. But our evidence suggests that for a period of one or two weeks in FY 2016, CFTC staff including (b)(6) created false records in an effort to avoid a possible ADA violation. And we were unable to conclude that CFTC staff failed in this effort.

### **RECOMMENDATION**

We recommend that the Commission take appropriate action.

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<sup>121</sup> (b)(6) Interview #2 at 13:00.

<sup>122</sup> (b)(6) Interview #2 at 51:30-53:30