Description of document:	Department of Commerce (DOC) Office of Inspector General (OIG) Various Final Reports of Investigations Closed 2013-2019
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Source of document:	FOIA Officer Office of Inspector General U.S. Department of Commerce 1401 Constitution Avenue, N.W. Washington, DC 20230 Fax: 202.501.7335 Email: FOIA@oig.doc.gov Coronavirus pandemic preferred: Email: FOIA@oig.doc.gov FOIAOnline

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

February 8, 2021

VIA E-MAIL

RE: FOIA Request No. DOC-OIG-2021-000713

This letter is regarding your Freedom of Information Act (FOIA) request, tracking number DOC-OIG-2021-000713, received by the Department of Commerce, Office of Inspector General (OIG) on January 13, 2021, in which you seek a "A copy of the final report, report of investigation, closing memo, closing letter, referral memo, referral letter, and any other conclusory document for each of the following Dept of Commerce Office of Inspector General closed investigations: 13-1234,14-0433, 17-0062, 17-1391, 18-1001, 19-0063, 19-0108, 19-0373, 19-0690, 19-0721, 19-0857, and 19-0917."

With respect to file number 19-0108, that report is publicly available at https://www.oig.doc.gov/OIGPublications/ROI-19-0108_redacted.pdf. The report associated with file number 19-0690 was provided to you in response to FOIA request DOC-OIG-2020-000577.

A search of records maintained by the OIG has located eighty-five (85) pages that are responsive to your request. We have reviewed these pages under the terms of FOIA and have determined the pages may be released to you as follows:

- Eleven (11) pages may be released to you in full;
- Seventy-four (74) pages must be partially withheld under FOIA exemption (b)(6), 5 U.S.C. § 552(b)(6), which protects information in personnel, medical or similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and FOIA exemption (b)(7)(C), 5 U.S.C. § 552(b)(7)(C), which protects law enforcement information, the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. See 5 U.S.C. § 552(c) (2012 & Supp. V 2017). This response is limited to those records that are subject to the requirements of FOIA. This is a standard notification to all OIG requesters and should not be taken as an indication that excluded records do, or do not, exist.

You have the right to appeal this determination. Any appeal must be received within ninety (90) calendar days of the date of this response letter. An appeal may be sent by e-mail to FOIA@oig.doc.gov

or by FOIAonline, if you have an account in FOIAonline, at https://www.foiaonline.gov/foiaonline/action/public/request.

The appeal should include a copy of the original request and this letter. In addition, the appeal should include a statement of the reasons why you believe that the determination was in error. The appeal e-mail subject line should be clearly marked "Freedom of Information Act Appeal". The e-mail and FOIAonline are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box and FOIAonline after normal business hours will be deemed received on the next normal business day. If the 90th calendar day falls on a Saturday, Sunday, or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely. An appeal received after the 90-day limit will not be considered.

If you have any questions or concerns or would like to discuss any aspect of your request, you may contact our office by email at foia@oig.doc.gov.

In addition, 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
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
E-mail at ogis@nara.gov
Telephone at (202) 741-5770; toll free at 1 (877) 684-6448; facsimile at (202) 741-5769

Sincerely,

JENNIFER PIEL

Digitally signed by JENNIFER PIEL
Date: 2021.02.08 15:17:26 -06'00'

Jennifer Piel
FOIA Officer

Enclosures

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
[redacted] [redacted] (NTIA)	13-1234
	TYPE OF REPORT: ☐ Interim ☒ Final ☐ Supplemental

BASIS FOR INVESTIGATION

In September 2013, an anonymous complainant contacted the Department of Commerce (DOC) Office of Inspector General (OIG) alleging potential improprieties related to the First Responder Network Authority (FirstNet). Particularly, the complainant alleged that [redacted] had leveraged a prior business relationship with FirstNet board member [redacted] to secure a FirstNet contract-support position and then to obtain monthly payments from others in exchange for securing them similar positions. According to the complainant, the government paid more than would ordinarily be required for the services of many of these individuals because [redacted] arranged to have [redacted] monthly payments built into their hourly rates.

INVESTIGATIVE METHODOLOGY

To address the complainant's allegations, the OIG gathered and reviewed financial, email, and other documents obtained pursuant to search warrants, subpoenas, and administrative process. The OIG also conducted over 70 witness interviews.

Because this matter implicated federal law imposing criminal and civil penalties, the OIG referred it to the criminal division of the U.S. Attorney's Office for the Northern District of California in the fall of 2013. The OIG investigated this matter in consultation with this U.S. Attorney's Office until the summer of 2016, when the office made the decision not to bring criminal charges. In the fall of 2016, the OIG began working on the matter with the civil division of the U.S. Attorney's Office for the District of Maryland, which ultimately decided not to bring a civil case in the summer of 2017.

Distribution: OIG: X Bureau/Organization/Agency Management: ___ DOJ: ___ Other (specify):	
Signature of Case Agent: [redacted]	Date: [redacted]
Name/Title: [redacted]	Name/Title: [redacted]

In the spring of 2018, the OIG completed a Consideration Memorandum for the Issuance of a Notice of Proposed Debarment of certain entities and individuals associated with this case (Debarment Proposal), including [redacted] and [redacted] which is currently under consideration by the DOC's Suspending and Debarment Official.[1]

SUMMARY OF INVESTIGATIVE FINDINGS & RESULTING ACTION

The OIG's investigation substantiated the complainant's allegations. Specifically, the OIG found that [redacted] and [redacted] engineered a contracting arrangement to provide consulting services to FirstNet that they knew to be inconsistent with government contracting rules and increased the government's cost for these services by more than half-a-million dollars. The OIG found that [redacted] conduct in this regard implicated the statutory prohibition against the solicitation and acceptance of "kickbacks" and that [redacted] knowingly facilitated this conduct.

Because its investigation substantiated the complainant's allegations, the OIG has alerted the DOC to its findings in its Debarment Proposal, which contains substantially the same information as this Report of Investigation. Accordingly, the OIG is closing this investigation pending resolution of its Debarment Proposal and any resulting proceedings.

APPLICABLE LEGAL FRAMEWORK

The federal statute prohibiting the solicitation or acceptance of "kickbacks" is found at 41 U.S.C. §§ 8701-07. Section 8702 of the "Anti-Kickback Act" states that "a person may not . . . solicit, accept, or attempt to accept a kickback," which is defined by Section 8701 of the Act as "any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided to a prime contractor . . . [or] subcontractor . . . *to improperly obtain or reward favorable treatment* in connection with a prime contract or a subcontract relating to a prime contract."[2]

As one court has noted, "there is no statutory definition" in the Anti-Kickback Act for the modifier "improperly," but "the most natural meaning" of this word in its statutory context would support liability under circumstances where favorable treatment in connection with a government contract is "obtained or rewarded in a way that is . . . not in accord with right procedure."[3] Thus, "[a]s a general understanding, . . . anything of value offered in order to subvert the 'proper' process for awarding contracts is a potential kickback," which would include money offered to obtain "treatment not generally available."[4]

[1] Beginning at footnote five, this Report of Investigation cites to the attachments submitted in support of the OIG's Debarment Proposal.
[2] 41 U.S.C. §§ 8702, 8701 (emphasis added).
[3] *United States ex rel. Vavra v. Kellogg Brown & Root, Inc.*, 848 F.3d 366, 377-78, 379 (5th Cir. 2017) (internal quotation marks omitted).
[4] *Id.* at 379-80.

DETAILS OF INVESTIGATION & FINDINGS

A. The Evidence Gathered by the OIG Supports the Complainant's Allegations

Evidence gathered by the OIG establishes that and formed a company called [5] The company marketed its ability to provide the services of a variety of wireless telecommunication consultants who and knew from prior work in the industry.[6]

, took a position as one of the initial members of FirstNet's board of directors.[7] Soon thereafter, contacted and the two began discussing the prospect of providing technical consulting services to FirstNet.[8] despite the fact that did not have a contract with the government, consultants were performing work for FirstNet and was reporting on this work to [9]

Evidence gathered by the OIG indicates that allowed consultants to begin working even without a contract. For example, described early work for FirstNet in an email sent in April of the following year, stating:

> [A]t that time you and FirstNet could not offer any contract, but rather we began working with your assurance of a verbal contract. That was good enough for us. I started working with First[N]et in . Most of the rest of the initial team started in [10]

Similarly, consultant stated the following in a email to "During our first meeting, [re[i]nforced that our time and expenses would be

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[5] Attachment 1 (Partners IRF); Attachment 2 (to Email); Attachment 3 (IRF).
[6] Attachment 2 to Email); Attachment 3 (IRF).
[7] Attachment 4 (to Email).
[8] The following emails are examples of proposing and reacting to referenced discussions with regarding the retention of by FirstNet: Attachment 2 (to Email); Attachment 4 (to Email); Attachment 5 (to Email); Attachment 6 (to Email); Attachment 7 (to Email); Attachment 8 (to Email); Attachment 9 to Email).
[9] Attachment 10 (to Email); Attachment 11 (to Email); Attachment 12 (to Email); Attachment 13 to Email); Attachment 14 (to Email); Attachment 15 (to Email); Attachment 16 (to Email); Attachment 17 (to Email); Attachment 18 to Email); Attachment 19 to Email); Attachment 20 to Email).
[10] Attachment 21 (to Email).

compensated. [redacted] was very clear that it was only a matter of time. [redacted] wanted us to move forward with the initial phase of the project."[11]

The evidence shows that [redacted] eventually learned that government-contracting rules would not allow FirstNet to contract with [redacted] as [redacted] had planned, but [redacted] and [redacted] worked to ensure the government retained [redacted] consultants regardless of this fact. For instance, [redacted] told [redacted] in [redacted] email:

> During [redacted], as we were working with you to prepare for the first [b]oard meeting, some changes began to occur. It was now communicated to [redacted] that hiring a consulting company would not be possible. However, it may be possible to hire talented individuals through already existing contracting companies with the DOC. This would have to be cleared with NTIA and DOC. [redacted] continued to work all September, for free, on this assumption.[12]

[redacted] similarly summarized events during this period in [redacted] email to [redacted]

> [D]uring our second meeting, [redacted] told us that there were a few complexities with getting the contracts in place. [redacted] reiterated that it was a matter of finding the right way to push the contract process through the government red tape. You [both] made it clear that you did not want to go through the normal government procurement process.[13]

In a [redacted] email to [redacted] consultants, [redacted] stated: "[redacted] and I are still going round on how to engage contractually. The[re] seem to be two methods now, both of which circumvent the competitive bidding process, but one is more expedient and the other is more financially lucrative."[14]

In [redacted], [redacted] forwarded [redacted] a draft "Request for Proposals" (RFP) prepared by the National Telecommunications and Information Administration (NTIA) for the purpose of retaining consultants for FirstNet.[15] In this email, [redacted] wrote: "I thought you might be interested in this RFP as an idea of what the agency usually does. Please continue with the path we have discussed."[16] [redacted] responded by stating, "[t]hanks, I will take a look."[17]

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[11] Attachment 22 ([redacted] IRF).
[12] Attachment 21 ([redacted] to [redacted] Email).
[13] Attachment 22 ([redacted] IRF) (third alteration in original).
[14] Attachment 22 ([redacted] IRF).
[15] Attachment 23 [redacted] to [redacted] Email).
[16] Attachment 23 [redacted] to [redacted] Email).
[17] Attachment 24 [redacted] to [redacted] Email).

A review of this RFP shows that it should have put both [redacted] and [redacted] on notice about certain fundamentals in government contracting if they were not already aware of them before receiving it. Most notably, the RFP contained several provisions explaining that government-contracting arrangements are not valid unless expressly approved by a duly authorized contracting officer. For example:

- Section G.2.1. of the RFP states: "The Contracting Officer is the only person authorized to make or approve any changes in any of the requirements of this contract, and, notwithstanding any provisions contained elsewhere in this contract, the said authority remains solely in the Contracting Officer. In the event the Contractor makes any changes at the direction of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract terms and conditions, including price;"

- Section G.2.2. of the RFP states: "The COR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes which affect the contract price, terms or conditions. Any Contractor request for changes shall be referred to the Contracting Officer directly or through the COR. No such changes shall be made without the express written prior authorization of the Contracting Officer;" and

- Section I.5. of the RFP states: "This contract is subject to the written approval of an authorized Contracting Officer . . . and shall not be binding until so approved."[18]

Nonetheless, neither [redacted] nor [redacted] ever fully disclosed and obtained express approval from any contracting officer for the particular contracting arrangement, discussed in detail below, that they would go on to structure.

Instead of the government contracting directly with [redacted] and [redacted] arranged to have [redacted] consultants and others recruited by [redacted] retained as individual subcontractors to companies with existing government contracts. [redacted] provided [redacted] with a "Consulting Engagement Authorization" form for each of the individuals [redacted] wished to become a FirstNet subcontractor, beginning with [redacted] such forms in [redacted][19] These one-page forms identified each individual by name, set forth the job duties the individual would perform for FirstNet, and proposed an hourly rate for the individual's services.[20] [redacted] then signed each of these forms to indicate [redacted] approved hiring each individual and presented the forms to FirstNet's board chairman and NTIA officials.[21]

[18] Attachment 23 ([redacted] to [redacted] Email).
[19] Attachment 25 ([redacted] to [redacted] Email).
[20] Attachment 25 ([redacted] to [redacted] Email).
[21] Attachment 26 ([redacted] to [redacted] Email); Attachment 27 ([redacted] to [redacted] Email); Attachment 28 ([redacted] IRF 1).

One NTIA official who received these forms was [redacted] who would serve as the [redacted] overseeing the subcontractor consultants that FirstNet retained.[22] [redacted] reported to the OIG that [redacted] told NTIA officials it was essential for FirstNet to retain the consultants [redacted] had selected because they possessed skills and expertise that were "critical" for meeting FirstNet's needs.[23] [redacted] explained that [redacted] was acting like a [redacted] for FirstNet at that time, and that [redacted] and the FirstNet board of directors pushed NTIA officials to retain [redacted] chosen consultants quickly.[24] According to [redacted] this pressure led to a coordinated effort between NTIA, DOC's Office of Acquisition Management, and the National Institute of Standards and Technology (NIST) to find contract vehicles that would allow FirstNet to retain the individuals that [redacted] had identified.[25] [redacted] said [redacted] and other NTIA officials, including then-[redacted] had concerns about retaining FirstNet consultants in this manner.[26] However, [redacted] said, NTIA officials overlooked these concerns to accommodate the perceived sense of urgency to get [redacted] consultants working.[27]

The government contracted with two different companies to retain the consultants recruited by [redacted] and approved by [redacted] By [redacted] four consultants, including [redacted] had been retained as subcontractors to FirstNet through a company called [redacted] which had an existing contract to provide advisory and management support services to FirstNet.[28] Beginning in [redacted], these four consultants, along with an additional dozen consultants selected by [redacted] and [redacted] began subcontracting to FirstNet through a company called [redacted][29] According to [redacted] and the company's leadership, the government selected [redacted] to retain these consultants because the company had provided personnel-support services to DOC in the past, and could contract with the government quickly due to its Section 8(a) certification with the U.S. Small Business Administration.[30] However, because the consultants [redacted] recruited wished to remain independent subcontractors, [redacted] soon determined that it would not be able to maintain its Section 8(a) status, which requires at least 50% of the individuals working on a contract to be company employees.[31] Accordingly, NIST awarded [redacted] a second contract commencing in [redacted] that was not dependent on the company's

[22] Attachment 28 ([redacted] IRF 1); Attachment 29 ([redacted] to [redacted] Email); Attachment 30 ([redacted] IRF 2).
[23] Attachment 28 ([redacted] IRF 1); Attachment 30 ([redacted] IRF 2).
[24] Attachment 28 ([redacted] IRF 1); Attachment 30 ([redacted] IRF 2); Attachment 31 ([redacted] FirstNet Board Minutes Excerpt). The evidence gathered by the OIG does not indicate that other members of the board participated as actively in the retention of [redacted] chosen consultants or had the same level of awareness regarding the improprieties discussed herein.
[25] Attachment 30 ([redacted] IRF 2).
[26] Attachment 28 ([redacted] IRF 1).
[27] Attachment 28 ([redacted] IRF 1).
[28] Attachment 32 ([redacted] IRF); Attachment 33 ([redacted] IRF).
[29] Attachment 32 ([redacted] IRF); Attachment 34 ([redacted] IRF 1); Attachment 35 ([redacted] to [redacted] Email); Attachment 36 ([redacted] to [redacted] Email).
[30] Attachment 28 ([redacted] IRF 1); Attachment 30 ([redacted] IRF 2); Attachment 34 ([redacted] IRF 1).
[31] Attachment 28 ([redacted] IRF 1); Attachment 30 ([redacted] IRF 2); Attachment 34 ([redacted] IRF 1).

Section 8(a) status.[32] According to [redacted] NIST awarded this second contract to [redacted] on a sole-source basis to ensure the consultants the company had already retained could continue working without interruption, which is what [redacted] and the FirstNet board wanted.[33]

What neither [redacted] nor [redacted] ever disclosed to the government about the consultants they recruited is that [redacted] had (1) required most of them to pay [redacted] a portion of their consulting rates in exchange for [redacted] recommending that they be retained by FirstNet, and (2) provided [redacted] with inflated rates for these consultants to accommodate the payments [redacted] expected from them.[34]

[redacted] described this arrangement in a [redacted] email to [redacted] consultants:

> Per the Consultant Placement Agreement, [redacted] will be billing you for [redacted] of the rate on your contract [with [redacted] or [redacted] (all rates were grossed up for this purpose). The Process is as follows:
>
> 1. The Contractor (you) bills monthly. This is done by submitting your timesheets to your contracted company, either [redacted] or [redacted].
> 2. The Contractor then sends a duplicate timesheet by email to . . . [redacted] . . . , [which] provides book keeping services for [redacted] . . .
> 3. [redacted] will then bill you by email for [redacted] of your rate, as stated in the Consultant Placement Agreement.
> 4. The Contractor then submits payment to [redacted] within 3 days after receiving payment from your contracted company. . . .
>
> That's it. Easy process.[35]

The "Consultant Placement Agreement" referenced in this email is a contract that [redacted] had individuals sign as a condition of [redacted] recommending them to [redacted] This document contains several statements giving the impression (1) that [redacted] had authority to recruit consultants for [redacted] and [redacted] to staff a FirstNet project, and (2) that it was legitimate for [redacted] to collect payments from individuals wishing to provide consulting services to FirstNet. For example:

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[32] Attachment 28 ([redacted] IRF 1); Attachment 34 ([redacted] IRF 1).
[33] Attachment 28 ([redacted] IRF 1).
[34] Attachment 21 (Apr. 25, 2013 [redacted] to [redacted] Email); Attachment 22 ([redacted] IRF); Attachment 37 ([redacted] IRF).
[35] Attachment 22 ([redacted] IRF).

- Recital A of the contract states: "In order to expedite the hiring process and to accommodate government contracting requirements, [redacted] shall be responsible to procure individual consulting contracts placing Consultant with a Company called [redacted] which has an existing relationship with the Department of Commerce;"

- Recital C of the contract states: "[redacted] as a result of its exclusive relationship with [redacted] has been assigned a management role in staffing the [redacted] project with a qualified team of consultants;"

- Recital D of the contract states: "As a direct result of [redacted] efforts in placing Consultant with [redacted] each individual Consultant shall contract directly with [redacted] as an independent contractor."

- Section One A of the contract states: "In consideration of [redacted] placing Consultant with [redacted] Consultant agrees pay to [*sic*] [redacted] a sum representing sixteen and sixty-seven hundredths percent ([redacted] of the gross receipts received by Consultant on account of Consultant's individual consulting contract with [redacted] ("Continuing Placement Fee"); and

- Section One B of the contract states: "It is anticipated that the Continuing Placement Fee due [redacted] will be embedded in Consultant's gross rates in the form of a mark-up of Consultant's rates as negotiated and established by [redacted] in procuring Consultant's individual consulting contract with [redacted][36]

But the evidence gathered by the OIG establishes that (1) [redacted] had no contractual or "exclusive" relationship with either [redacted] or [redacted] and (2) neither company – nor any government official authorized to oversee their respective contracts – was aware of the "placement-fee" arrangement that [redacted] had engineered.

Specifically, the [redacted] of [redacted] told the OIG that, while [redacted] company retained certain individuals affiliated with [redacted] the company had no business relationship with [redacted] itself, nor did the government have any contractual relationship with [redacted][37]

The [redacted] of [redacted], told the OIG that [redacted] company never had a contract with [redacted] the company had no awareness of [redacted] placement-fee arrangement

[36] Attachment 37 ([redacted] IRF), Att. 3.
[37] Attachment 32 ([redacted] IRF).

or that any consultant's rate had been inflated to accommodate the arrangement, and recruiting other consultants was not within the scope of [redacted] contractual relationship with the company.[38]

Similarly, [redacted], the NIST contracting officers overseeing [redacted] FirstNet contracts, told the OIG that they had no awareness of [redacted] having any involvement with the [redacted] contracts, nor did they have any awareness of [redacted] placement-fee arrangement or that any consultant's rate had been inflated to accommodate the arrangement.[39]

Finally, [redacted] told the OIG that [redacted] had no awareness of [redacted] placement-fee arrangement or that any consultant's rate had been inflated to accommodate the arrangement, and [redacted] could not see how anyone in the government might have given either [redacted] or [redacted] the impression that the placement-fee arrangement was permissible.[40]

By contrast, the evidence establishes that [redacted] was aware of [redacted] placement-fee arrangement and that [redacted] facilitated it. In a [redacted] email, for example, [redacted] wrote to [redacted] explaining that [redacted] did not want FirstNet consultants to become [redacted] employees because it would "be difficult for [redacted] to recover [redacted] gross up from W2'ed employees, since [redacted] placement and management fee is likely not a deduction anyone [could] take against their rates."[41]

The evidence also establishes that [redacted] should have known that [redacted] placement-fee arrangement was inconsistent with government contracting rules and that [redacted] was not in a position to authorize the arrangement.

Between [redacted], for example, [redacted] and DOC officials provided several training sessions on government contracting rules to [redacted] and [redacted] fellow FirstNet consultants.[42] Among the material presented during one of those sessions were six separate slides addressing the Anti-Kickback Act, including one slide defining a prohibited "kickback" to mean:

> [A]ny money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.[43]

[38] Attachment 38 ([redacted] IRF 2).
[39] Attachment 39 ([redacted] IRF).
[40] Attachment 30 ([redacted] IRF 2).
[41] Attachment 40 (Dec. 14, 2012 [redacted] to [redacted] Email).
[42] Attachment 41 ([redacted] IRF).
[43] Attachment 41 ([redacted] IRF), Att. 6, Slide Deck #3, Pages 12-15.

Further, [redacted] was aware that at least one member of the FirstNet board had come to question the propriety of how [redacted] and [redacted] went about retaining the consultants [redacted] recruited.

Specifically, [redacted] FirstNet board member [redacted] presented a motion to the board in which [redacted] criticized an organizational start-up plan [redacted] was proposing.[44] In making this motion, [redacted] raised several allegations and concerns regarding the hiring and monitoring of [redacted] and [redacted] fellow FirstNet consultants, including the following:

- "The plan was developed largely by consultants who were not engaged 'in a fair, transparent, and objective manner' as required by the [l]aw, whose qualifications in relation to public safety communications have never been disclosed or demonstrated to the board, who have prior relationships with certain members of the board who come from the commercial wireless world not the public safety community, and who are paid amounts that have never been disclosed to the board as a whole."

- "In my view, the processes thus far employed by FirstNet are killing our credibility. It appears to me that directors of FirstNet do not have equal access to documentation and information. For example, I have not had access to financial information. Other directors must have that information since we're paying for many services. I do not know what the consultants working for FirstNet are being paid, or how they were hired. Other directors must have that knowledge. I have not had access to the agreements pursuant to which they are working. Other directors must have that access."[45]

According to [redacted] seemed nervous and took down the [redacted] website for a time after [redacted] raised these concerns.[46] When [redacted] asked [redacted] why [redacted] had done this, [redacted] told [redacted] [redacted] was worried about the negative consequences that could stem from [redacted] remarks.[47] [redacted] told the OIG that upon hearing this, [redacted] asked [redacted] for confirmation that [redacted] was aware [redacted] was collecting placement-fee payments from FirstNet consultants.[48] [redacted] told [redacted] that [redacted] was aware of the placement-fee arrangement, and provided [redacted] with an email [redacted] had sent to [redacted] as evidence of this fact.[49] This [redacted] email sets out [redacted] version of how [redacted] became involved with FirstNet, including how the rates for consultants that [redacted] recruited "included the [redacted] mark-up" that they paid [redacted][50] According to [redacted] everything in the email "ha[d] been discussed in the

[44] Attachment 42 ([redacted] FirstNet Board Motion & Prepared Remarks).
[45] Attachment 42 ([redacted] FirstNet Board Motion & Prepared Remarks).
[46] Attachment 3 ([redacted] IRF).
[47] Attachment 3 ([redacted] IRF).
[48] Attachment 3 ([redacted] IRF).
[49] Attachment 3 ([redacted] IRF).
[50] Attachment 3 ([redacted] IRF); Attachment 21 ([redacted] to [redacted] Email).

past," but [redacted] felt the need to "review the engagement history of [redacted] and FirstNet" with [redacted] due to [redacted] public remarks and the ensuing "media response."[51]

There is no evidence that [redacted] ever responded to this email. What is clear, however, is that [redacted] did not stop [redacted] from continuing to collect placement fees after receiving the email.

In total, 18 FirstNet consultants made 95 placement-fee payments to [redacted] between [redacted] [redacted][52] [redacted] collected 44 of these payments, and approximately 98% of this revenue went directly from the company to [redacted] the remainder went towards overhead expenses with no portion of it going to [redacted][53] In [redacted] [redacted] set up a new company called [redacted], LLC, and thereafter had FirstNet consultants pay their placement fees to that company instead of [redacted][54] [redacted] which appears to be owned and controlled solely by [redacted] collected 51 placement-fee payments from FirstNet consultants.[55] Collectively, [redacted] and [redacted] received $549,412.55 in placement fee revenue.[56] An additional $20,730 in placement fees went to a third company called [redacted] which [redacted] used to recruit [redacted] of the 18 FirstNet consultants who paid such fees.[57] All placement fees paid by FirstNet consultants between [redacted] and [redacted] amounted to $570,142.55, which could be viewed as the baseline cost to the government for [redacted] placement-fee arrangement due to the "mark-up" [redacted] incorporated into FirstNet consultant rates.[58] This cost increases when factoring in the "burden rate" [redacted] charged the government.[59] To make a profit on the FirstNet consultants it provided, including those who paid placement fees to [redacted] [redacted] charged 25% of each consultant's billed rate throughout the duration of its first contract and 18% throughout the second.[60] An example of how this burden rate increased the cost to the government for [redacted] placement fees can be seen by applying an 18% burden on $570,142.55, which creates an increase of $102,625.66, or a total cost to the government of $672,768.21 for the fees.[61]

B. The Evidence Implicates the Federal Prohibition Against the Solicitation and Acceptance of Kickbacks

Liability under the Anti-Kickback Act may be established upon a showing that an individual (1) solicited or accepted money (2) in exchange for providing favorable, or not generally available,

[51] Attachment 21 ([redacted] to [redacted] Email).
[52] Attachment 43 (Referral Fee IRF).
[53] Attachment 3 ([redacted] IRF); Attachment 43 (Referral Fee IRF).
[54] Attachment 1 ([redacted] Partners IRF); Attachment 3 ([redacted] IRF).
[55] Attachment 1 ([redacted] Partners IRF); Attachment 3 ([redacted] IRF); Attachment 43 (Referral Fee IRF).
[56] Attachment 44 (Placement Fee IRF).
[57] Attachment 44 (Placement Fee IRF); Attachment 45 ([redacted] IRF).
[58] Attachment 44 (Placement Fee IRF); Attachment 46 (Financial Analysis IRF).
[59] Attachment 46 (Financial Analysis IRF).
[60] Attachment 46 (Financial Analysis IRF).
[61] Attachment 46 (Financial Analysis IRF).

treatment to the payer (3) knowing that this arrangement subverted proper or correct government contracting rules, procedures, or processes. That is what the evidence establishes in this case.

It is plain that [redacted] solicited and accepted money from [redacted] fellow FirstNet consultants in exchange for providing them favorable treatment, or treatment "not generally available" to those who did not have [redacted] connections to [redacted] This fact is best evidenced by [redacted] Consultant Placement Agreements, which explicitly state that [redacted] expected placement-fee payments "to expedite the hiring process" through [redacted] company's "exclusive relationship[s]" and "management role in staffing" FirstNet "with a qualified team of consultants."[62]

It is also plain that [redacted] knew [redacted] was accepting payment for treatment that subverted proper government contracting procedure. Indeed, the evidence establishes that [redacted]

- Knew that the government "could not offer [redacted] any contract;"[63]
- Knew it "would not be possible" for FirstNet to retain [redacted] as a consulting company under applicable contracting rules;[64]
- Made it clear to [redacted] consultants that [redacted] "did not want to go through the normal government procurement process" to secure them consulting positions and needed to find a way to "push the contract process through the government red tape;"[65]
- Chose with [redacted] among methods to retain [redacted] consultants that [redacted] knew "circumvent[ed] the competitive bidding process," with options ranging from the "more expedient" to the "more financially lucrative;"[66]
- Settled with [redacted] on a contracting arrangement that [redacted] knew did not match with "what the [government] usually does;"[67]
- Concealed [redacted] placement-fee arrangement from government-contracting officials, or at least failed to disclose the arrangement while knowing that government-contracting arrangements are not valid unless authorized by such officials;[68]

[62] Attachment 37 ([redacted] IRF), Att. 3.
[63] Attachment 21 ([redacted] to [redacted] Email).
[64] Attachment 21 ([redacted] to [redacted] Email).
[65] Attachment 22 ([redacted] IRF) (third alteration in original).
[66] Attachment 22 ([redacted] IRF).
[67] Attachment 23 [redacted] to [redacted] Email).
[68] Attachment 23 ([redacted] to [redacted] Email); Attachment 39 ([redacted] IRF); Attachment 30 ([redacted] IRF 2); Attachment 41 ([redacted] IRF).

- Knew that at least one FirstNet board member did not believe the consultants [redacted] recruited had been "engaged 'in a fair, transparent, and objective manner,' as required by the [l]aw;"[69] and

- Expressed worry about the negative publicity that could result from how [redacted] and [redacted] had retained FirstNet consultants, which even prompted [redacted] to take down the [redacted] website to avoid scrutiny from the media.[70]

As for [redacted] the evidence establishes that [redacted] facilitated [redacted] potentially unlawful activity by (1) exerting pressure on government officials and contractor personnel to hire specific consultants recommended by [redacted] (2) at rates [redacted] knew [redacted] had inflated to include [redacted] placement fees (3) without fully disclosing the details of this placement-fee arrangement to those overseeing FirstNet contracting matters.[71]

[69] Attachment 42 ([redacted] FirstNet Board Motion & Prepared Remarks).
[70] Attachment 3 ([redacted] IRF).
[71] The OIG also notes that [redacted] failed to comply with applicable federal ethics law during [redacted] tenure as a FirstNet board member, which is discussed in an audit report published by the OIG on December 5, 2014 (Attachment 47). The audit report refers to [redacted] as "Board member A" and details how [redacted] (1) improperly delayed submitting [redacted] initial Form 278 public financial disclosure, (2) improperly omitted [redacted] financial ties to a company posing a potential conflict of interest for [redacted] when [redacted] did submit the form, and (3) did not amend [redacted] public financial disclosure to include reference to the company until DOC's Office of General Counsel required [redacted] to do so eight months later.

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REPORT OF INVESTIGATION

CASE TITLE:	FILE NO.: 14-0433-I
Contracting Conflict of Interest (NIST)	TYPE OF REPORT: ☐ Interim ☒ Final ☐ Supplemental

BASIS FOR INVESTIGATION

On April 2, 2014, the U.S. Department of Commerce (DOC), Office of Inspector General (OIG), Office of Investigations (OI), initiated an investigation involving Nikita Davis (Subject), President/Chief Executive Officer (CEO), Federal Acquisition Consultants Inc. (FACI or the Company), based on the following allegations:

1. The Subject submitted false invoices to DOC and made false statements to government agencies (18 U.S.C. § 287 (False, fictitious or fraudulent claims); 18 U.S.C. § 1001 (False statements); and 18 U.S.C. § 1031 (Major fraud against the U.S.));

2. [redacted] (Employee 1), [redacted] National Institute of Standards and Technology (NIST), steered International Trade Administration (ITA) contracts to the Company (FAR Subpart 3.104 (Procurement integrity)); and

3. Employee 1 had a conflict of interest or the appearance of a conflict of interest based on [redacted] close personal relationship with the Subject (18 U.S.C. § 208 (Acts affecting a personal financial interest); 5 C.F.R § 2635.502, Subparts D (Conflict of Interest), E (Impartiality in Performing Official Duties) and G (Misuse of Position)).

Distribution:	OIG
[redacted]	[redacted]
Signature of Case Agent	Signature of Approving Official

SUMMARY OF INVESTIGATION

OIG substantiated allegation #1. The Subject, President/CEO of the Company, submitted false invoices to DOC. The Subject double-billed and overbilled the government for reimbursement of travel-related expenses, submitted inaccurate supporting documentation to substantiate requests for reimbursement, and falsified and altered receipts submitted to DOC. Specifically, the Subject submitted six false invoices for hazardous duty pay with a loss to DOC of $201,050.85; five false invoices for insurance with a loss to DOC of $60,646; and four false invoices for security with a loss to DOC of $148,894. These false invoices resulted in a combined loss to DOC of $410,590.85. The Company, through the Subject, also improperly billed DOC for $401,802.68 in travel expenses and $377,304 in labor expenses. These actions, in total, resulted in an improper gain of $1,189,697.53 to the Subject.

Additionally, the Subject made eight false statements to OIG and the General Services Administration (GSA). Six of these false statements occurred when the Subject misrepresented the Company by submitting false supporting documentation to GSA when she applied for a GSA Multiple Awards Schedule (MAS) Mission Oriented Business Integrated Services (MOBIS) contract. Without the GSA MAS MOBIS contract, the Company would have been ineligible to bid successfully on the DOC contracts that resulted in the improper $1,189,697.53 gain to the Subject. The two additional false statements occurred when the Subject provided DOC OIG with false information about the Company's hotel and security expenses.

Based at least in part on the above information, on March 16, 2017, the Subject was charged in a criminal information with one count of major fraud against the United States in violation of 18 U.S.C. § 1031 (Criminal Information). The Subject entered a plea agreement on June 8, 2017 in which she agreed to plead guilty to the charge in the Criminal Information (Plea Agreement). On November 7, 2017, the United States District Court for the District of Columbia entered a judgment against the Subject and sentenced her to 20 months imprisonment with 36 months of supervised release following release from imprisonment. The court also ordered the Subject to pay $1,189,697.53 in restitution to DOC and to contribute 200 hours of community service. [1]

OIG did not substantiate allegation #2. The investigation found that each of the seven contracts awarded to the Company were competitively bid and awarded based on "The Lowest Price Technically Acceptable."

[1] 1:17-cr-00056-EGS, docket entry Nos. 2, 9, 10, 31 and 34. The judgment entered on November 7, 2017 was amended on March 20, 2018 to state that the Subject's payments toward restitution are to begin once she begins her term of supervised release.

OIG did not substantiate allegation #3. OIG's investigation revealed Employee 1 and the Subject both attended [redacted] and later worked at the [redacted]. The investigation also found Employee 1 and the Subject exchanged emails that created the appearance of a close personal relationship. However, OIG did not find evidence that Employee 1 (nor any member of [redacted] household) had a financial interest in the Company or a "covered relationship" with the Subject or the Company required for a violation of the applicable conflict of interest or ethical conduct laws.

METHODOLOGY OF INVESTIGATION

OIG interviewed the Complainant, [redacted]Employee 1, three ITA Contracting Officer Representatives (CORs), 10 former employees of the Company, the Company's accountant, employees of Rutherfoord International (the company that brokered the Company's insurance), four executives from companies the Subject used as past performance references, two GSA COs who assisted with the GSA Schedule contract award to the Company, and two additional witnesses. Additionally, OIG reviewed Employee 1's email messages that were sent and received between Employee 1 and the Subject from August 1, 2012 through June 12, 2014. Furthermore, DOC OIG reviewed the seven DOC contracts awarded to the Company. OIG also reviewed the Company's payroll journals, bank statements, general ledgers (covering 2013-2014) and all invoices the Company submitted to DOC. Finally, OIG reviewed the Federal Procurement Data System; USAspending.gov and the System for Award Management databases.

DETAILS OF INVESTIGATION

Background

The DOC, ITA, Iraq and Afghanistan Investment & Reconstruction Task Force (AIRTF) supports the Government of Afghanistan's efforts to develop its private sector as cited in the Afghanistan National Development Strategy. The AIRTF leads the DOC's efforts for commercial development in Afghanistan to develop a market conducive to trade, investment, commercial development and a prosperous and sustainable private sector. The Company was awarded seven firm-fixed-price (FFP) DOC contracts in September 2013 to assist in accomplishing the AIRTF goals. The total amount obligated under these contracts was $3,164,076, and the Company expended the entire amount.

Allegation #1: The Subject submitted false invoices to DOC and made false statements to government agencies.

OIG substantiated allegation #1. As detailed below, the Subject submitted false invoices to the DOC, double-billed/overbilled the government for reimbursement of travel-related expenses, submitted inaccurate supporting documentation to substantiate requests for reimbursement and falsified/altered receipts submitted to the DOC. These actions, in total, resulted in an improper

gain of $1,189,697.53 to the Subject. In a Statement of Offense filed with the Plea Agreement, the Subject agreed she improperly billed the government for a total amount of $1,189,697.53, as represented by improper billing in each of the categories detailed below.[2]

Double-billing and Overbilling

Three of the Company's employees, including the Subject, traveled to Hanover, Germany. The Subject double-billed the DOC when she submitted two separate invoices on two separate contracts for this one trip to Germany. The Subject provided the same supporting documentation for each invoice. The amount double billed was $6,516.33.

Additionally, the Subject falsified and altered travel receipts on the same supporting documentation in an effort to disguise the Subject's individual lodging rate. The Subject combined the lodging rate for all employees and divided by the total number of travelers to compensate for her increased lodging rate. A review of the Company's general ledger and bank statements disclosed the cost for lodging for the two employees of the Company was $1,872.93 each, whereas lodging for the Subject was $3,547.82.

Two of the Company's employees, including the Subject, traveled to Shanghai, China. The Subject overbilled the DOC when she submitted an invoice for reimbursement of travel-related expenses for this trip to China. As supporting documentation, the Subject provided a reservation confirmation from Hilton Hotel with a typed-in cost of $6,028.44. In a written response to the DOC, the Subject stated the cost of $6,028.44 was for an additional employee who traveled to China. OIG reviewed the Company's payroll journals, bank statements, general ledgers, submitted invoices and airfare receipts. OIG determined only the Subject and one other employee of the Company traveled to China. This overbilling resulted in an overpayment of $6,028.44 and the Subject making a false statement.

The Subject also overbilled the DOC when she submitted an invoice for reimbursement of security-related expenses in Shanghai, China. The Subject invoiced the DOC $139,000 for a security detail in China. The Subject later provided a statement through her legal counsel that security was not required in China. Therefore, the amount overbilled for security-related expenses was $139,000.

Hazardous Duty Pay

The Subject invoiced the DOC $218,338.17 on six invoices for hazardous duty pay. OIG reviewed the Company's payroll journals, employee expense reports and invoices which revealed the Subject paid five of the Company's employees a combined total of $17,287.32 for hazardous duty pay. The amount overbilled for hazardous duty pay was $201,050.85.

[2] 1:17-cr-00056-EGS, docket entry No. 10.

Insurance

The Subject invoiced the DOC $72,146 for Defense Base Act (DBA) and Foreign Home (FH) insurance on five invoices. The Subject contacted Rutherfoord International (Insurer) on November 14, 2013 to broker insurance for the Company. The Subject submitted a package for DBA and FH insurance on December 20, 2013 to the Insurer. OIG reviewed the Company's insurance policy which disclosed the Company was bonded by the ACE Group (ACE), USA on January 27, 2014 for DBA insurance which included kidnap/ransom and evacuation. The policy had a minimum annual premium of $9,000 for DBA and a minimum annual premium of $2,500 for FH. The total combined cost the Company paid for DBA and FH was $11,500. The effective date of both policies was February 1, 2014. The policy was contracted for 12 months and expired on February 2, 2015. The Company did not renew either policy.[3] The amount overbilled was $60,646.

Security

The Subject invoiced the DOC $163,244 for security on six invoices. OIG reviewed the contracts and determined security was only required in Afghanistan. OIG reviewed the Company's general ledger and contract with RMA Group, Afghanistan Ltd. (RMA). RMA was contracted by the Subject to provide life support services to the Company's employees while in Afghanistan. Those services included: lodging, meals, transportation, communication, office supplies, translation services and in-country security. The total amount paid for security-related cost to RMA was $14,350. The amount overbilled was $148,894.

False Statements

The Subject made eight false statements: five to the GSA and three to the DOC. The investigation revealed the Subject misrepresented the Company in order to obtain a GSA MAS MOBIS contract. The GSA relied on the misrepresentation provided by the Subject to determine if the Company met the minimum standards for a GSA MAA MOBIS contract.

The Subject stated to the GSA that the Company received $520,848 in compensation from SF Business Solutions (SFBS). The Company used SFBS as a reference for past performance. An interview with the owner of SFBS disclosed SFBS did hire the Company as a subcontractor but did not pay the Company for any work under the contract because the Company's product was unacceptable.

[3] DOC awarded the Company contracts in September 2013 which included quotes for DBA insurance. As noted above the Company did not seek DBA insurance until November 2013, two months after the Company was awarded the DOC contracts. Therefore, the Company did not submit accurate pricing data in accordance with Federal Acquisition Regulation (FAR) Clause 552.215.52 (Failure to provide accurate information).

The Subject provided the GSA contracting officer a false Task Order, IC-Task-12-F-0001 from Intellectual Concepts LLC (IC) and two false invoices: invoice 0002, dated October 5, 2012 in the amount of $74,364.32 and invoice 0012, dated January 31, 2013 in the amount of $95,294.08. The task order referenced IC's U.S. Agency for International Development contract AIDCIOO1200016 for IT and Telecom-Cyber Security Services. The total amount awarded to IC was $23,380 with a period of performance form September 21, 2012 through April 30, 2013. The owner of IC was interviewed and stated IC did not subcontract work to the Company or any other vendor. Additionally, IC did not give the Subject permission to use the owner's IC's signature, IC's letterhead or business entity in any capacity.[4]

The Subject certified on April 13, 2015 in the System for Award Management (SAM) that neither the Subject nor the Company had federal tax liens. A review of the Maryland Judiciary Case Search disclosed the Subject was assessed a federal tax lien in the amount of $25,526.85 for taxable year 2012 on September 26, 2014.

The Subject stated to the GSA that the Company worked with JAB Innovative Solutions LLC (JAB), 12932 Ness Hollow Ct, Bristow, VA on federal contracts. OIG interviewed the owner of JAB, who advised JAB and the Company entered into a teaming agreement but were not awarded any work.[5] The Company did not work as a subcontractor or co-contractor on any contracts with JAB.

Importantly, GSA relied on these misrepresentations regarding past performance to determine whether the Company met the minimum standards for a GSA MAS MOBIS contract. The Company would not have received a GSA MAS MOBIS contract if it had not misrepresented its past work performance.

The Subject made false statements to the OIG. The Subject provided a statement through legal counsel wherein the Subject stated, "[The Company] did not hire a private security company in China…as such [the Company] did not bill the Department of Commerce for security services in China." OIG/OI reviewed invoices submitted by the Subject which disclosed an invoice for $139,000 for security in China.[6]

Allegation #2: Employee 1, [redacted] steered contracts to the Company.

OIG did not substantiate allegation #2. Each of the seven contracts awarded to the Company were competitively bid and awarded based on "The Lowest Price Technically Acceptable." The contracts were solicited on GSA eBuy to multiple vendors. On five of the seven contracts, the

[4] The Company had copies of IC's letterhead and owner's signature because IC had bid on government contracts with the Company.
[5] A teaming agreement is a contract between a potential prime contractor and another company to act as a subcontractor under a specified federal government contract or acquisition program.
[6] This was discussed under the "Double-billing and Overbilling" subheading above.

Company was the only bidder. On one contract, there were two bidders which included the Company, and the Company was the lowest bidder. On the remaining contract, there were three vendors, including the Company. The Company was determined acceptable by the technical evaluation team, whereas the other vendors were determined unacceptable by the technical evaluation team.

Allegation #3: Employee 1, [redacted] had a conflict of interest or the appearance of a conflict of interest based on a close personal relationship with the Subject.

OIG did not substantiate allegation #3. OIG interviewed witnesses, including Employee 1, regarding this allegation. OIG also reviewed Employee 1's DOC email messages, which disclosed Employee 1 and the Subject attended [redacted] together and later worked at the [redacted] at the same time. OIG's investigation revealed Subject and Employee 1 exchanged emails and had conversations that created the appearance of a close personal relationship. However, OIG did not find evidence that Employee 1 (nor any member of [redacted] household) had a financial interest in the Company or a "covered relationship" with the Subject or the Company required for a violation of the applicable conflict of interest or ethical conduct laws.

CRIMINAL PROSECUTION

OIG referred this matter to the United States Attorney's Office, District of Columbia (USAO DC) on May 21, 2015. On October 12, 2015, the USAO DC accepted the case for prosecution. Since that date, OIG worked with the USAO DC to complete the investigation and obtained a conviction of Subject 1.

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Criminal Information

On March 26, 2017, USAO DC charged the Subject with one count of 18 U.S.C. § 1031 (Major Fraud Against the United States) in a Criminal Information related to the conduct described under "Allegation #1" above.[7] Specifically, the Criminal Information alleged the Subject improperly billed the United States under the DOC contracts for travel ($401,802.68), hazardous or danger pay ($201,050.85), insurance ($60,646), security ($148,894) and labor ($377,304), resulting in an improper gain to the Subject of $1,189,697.53. In addition, the Criminal Information alleged that GSA relied on the information the Subject provided to determine whether the Company met the minimum standards for a GSA MAS MOBIS contract, and the Company would not have received a GSA MAS MOBIS contract if the Subject had not misrepresented the Company's past work performance. Without the GSA MAS MOBIS contract, the Company would have been ineligible

[7] 1:17-cr-00056-EGS, docket entry No. 2.

to bid successfully on the DOC contracts that resulted in the improper $1,189,697.53 gain to the Subject.

Plea Agreement and Statement of Offense

On June 8, 2017, the Subject filed a Plea Agreement in the U.S. District Court for the District of Columbia. In the plea agreement, the Subject pleaded guilty to the one-count Criminal Information charging her with Major Fraud Against the United States, in violation of 18 U.S.C. § 1031.[8] In connection with the Plea Agreement, the Subject filed a Statement of Offense in which she admitted to the facts related to her criminal activity. Notably, the Subject agreed she improperly billed the United States for the amounts listed in the Criminal Information, as detailed above.[9]

Judgment/Conviction and Sentencing

On November 11, 2017, the court issued a guilty judgment against Subject in which she was convicted of the offense outlined in the Criminal Information and to which she agreed to plead guilty. The court sentenced the Subject to 20 months imprisonment with 36 months of supervised release following release from imprisonment. The court also ordered the Subject to pay $1,189,697.53 in restitution to DOC and to contribute 200 hours of community service.[10]

SUSPENSION AND DEBARMENT

On February 5, 2016, the DOC Suspending and Debarring Official (SDO) issued notices of proposed debarment to the Subject and Company based on a memorandum for consideration of proposed debarment the OIG provided to the SDO. On June 16, 2016, following a lack of response by the Subject and Company to the allegations in the notices of proposed debarment, the SDO debarred the Subject and Company from Government procurement and nonprocurement programs and from directly receiving the benefits of federal assistance programs for a period of three years. The debarment periods for the Subject and Company commenced on June 16, 2016 and terminated on June 15, 2019.

[8] 1:17-cr-00056-EGS, docket entry No. 9.
[9] 1:17-cr-00056-EGS, docket entry No. 10.
[10] 1:17-cr-00056-EGS, docket entry Nos. 31 and 34. The judgment entered on November 7, 2017 was amended on March 20, 2018 to state that the Subject's payments toward restitution are to begin once she begins her term of supervised release.

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REPORT OF INVESTIGATION

CASE TITLE:	FILE NO.:
[redacted] (USPTO)	17-0062-I
	TYPE OF REPORT:
	☐ Interim ☒ Final ☐ Supplemental

BASIS FOR INVESTIGATION

On October 18, 2016, the U.S. Department of Commerce (DOC), Office of Inspector General (OIG), Office of Investigations (OI) was notified by the DOC, Office of Security, that they were previously contacted by Detective [redacted] Special Victims Unit, [redacted] Police Department, currently assigned to the Child Exploitation Task Force (CETF). Detective [redacted] related that CETF suspected [redacted] (Subject), U.S. Patent and Trademark Office (USPTO), [redacted] of possessing child pornography. Detective [redacted] further related a social media website alerted CETF that suspected child pornography images had been uploaded to the aforementioned website, and the images were uploaded through an account believed to belong to Subject.

DOC OIG opened an investigation into the allegation on November 3, 2016. The potential violations included 18 U.S.C. § 2252 (a)(4)(b) (Possession of child pornography depicting a prepubescent minor)

SUMMARY OF INVESTIGATION

OIG substantiated the allegation. The Federal Bureau of Investigation (FBI) interviewed Subject, who admitted [redacted] possessed child pornography images and subsequently uploaded the images to the website flicker.com. Subsequent to the interview, Subject voluntarily consented to a search of [redacted] cellular phone, which contained suspected child pornography images.

METHODOLOGY OF INVESTIGATION

Distribution:	OIG
[redacted]	
Signature of Case Agent	Signature of Approving Official

To address the allegation, the OIG worked jointly with the FBI. The DOC OIG was responsible for obtaining an image of a hard drive of a computer issued by USPTO to the Subject. A forensic examination was conducted of the hard drive's image to determine whether the computer contained child pornography.

DETAILS OF INVESTIGATION

Allegation: The Subject possessed child pornography, implicating 18 U.S.C. § 2252 (a)(4)(b) (Possession of child pornography depicting a prepubescent minor).

The joint investigation substantiated this allegation based upon statements and evidence provided by Subject.

At the onset of the investigation, CETF requested assistance from the DOC OIG to locate the Subject, as they wanted to conduct an interview regarding a child pornography offense in [redacted]. The DOC OIG confirmed Subject was an employee of the USPTO and lived in [redacted]; however, the Subject recently moved to [redacted]. Contact with the [redacted] FBI, was made and they agreed to interview Subject.

A review of Flickr.com indicated it is an online image and video hosting service. Users are able to upload image and video content from mobile devices, home computers, and various software platforms, as well as repost images previously posted online. The Flickr community guidelines state they "have a zero tolerance policy towards harmful content that involves minors." Any images, videos, comments, and other communication considered to involve child sexual abuse will be reported to law enforcement with "the goal of prosecuting to the full extent of the law."[1]

The DOC OIG contacted the USPTO, Cyber Security Investigations, and requested they remotely image Subject's USPTO-issued laptop computer, identified by its computer name "[redacted]." USPTO conducted a covert remote image of Subject's computer. Subject did not report any issues with the computer during or after the image transfer. USPTO transferred the image files to a thumb drive, and the DOC OIG collected them as evidence.

The DOC OIG utilized forensic software to conduct an examination of the image files. The OIG identified the profile belonging to Subject, as the profile's name matched Subject's name. The OIG conducted a comprehensive search of all allocated and unallocated (carved) image and video files. No suspected child pornography was identified. Further, a search of chat-based applications,

[1] See Flickr, *Guidelines*, available at https://www.flickr.com/help/guidelines (last visited May 6, 2020).

key words searches utilizing commonly known terms associated with child pornography, web browsing history, and web artifacts failed to produce any items of potential evidentiary interest.

The FBI located Subject at [redacted] residence in [redacted] and Subject agreed to be interviewed. The FBI advised Subject they were there to discuss child pornography uploaded to flickr.com a few years earlier. FBI agents showed Subject printouts of child pornography images located on Subject's Flickr account. Subject replied that all of the images looked familiar. Subject stated [redacted] was looking at child nudism and nude children images that did not depict penetration and did not consider the images to be child pornography because there were no adults and there were no sex acts. Further, Subject stated [redacted] did not intentionally try to upload the images to Flickr and believed an automatic upload feature was the reason the images were uploaded from [redacted] phone. Subject indicated all aforementioned images were only located on [redacted] previous cell phone, which [redacted] no longer possessed and denied using any other devices. Subject agreed to allow the FBI agents to view the content on [redacted] current cell phone. After viewing the data on [redacted] current cell phone, FBI agents informed Subject that [redacted] was still looking at child pornography. Subject replied [redacted] is trying not to and is on medication to control [redacted] desires. The FBI collected the Subject's phone as evidence.

Disposition of DOC OIG Investigation

During the course of this investigation, all relevant information and releasable documentation were shared between the DOC OIG and USPTO Workforce Relations Division.

On March 20, 2019, Subject was indicted in U.S. District Court, Middle District of [redacted] Division, on one count of 18 U.S.C. § 2252(a)(4)(b) and (b)(2).

On March 26, 2019, the FBI arrested Subject for the aforementioned offense.

On September 7, 2019, Subject entered into a plea agreement, wherein [redacted] pleaded guilty to count one of the indictment. Count one charges Subject with possession of child pornography depicting a prepubescent minor.

On October 2, 2019, Subject entered a plea of guilty to count one of the indictment.

On January 8, 2020, the court sentenced Subject to the following: imprisonment for a term of 24 months; special assessment of $100.00; fine in the amount of $5,000.00; Justice for Victims of Trafficking Act Assessment of $5,000.00; mandatory registration with the sexual offender registration agency in the state of residence.

On [redacted] the USPTO issued Subject a Notice of Proposed Removal, dated [redacted].

On [redacted] Subject authored and provided a resignation letter in lieu of termination.

On April 21, 2020, the DOC conducted a review of a collection of Standard Form (SF) 50 (Notification of Personnel Action) regarding Subject. Remarks located on one SF-50 detail "Agency Finding: Resigned after receiving written notice on [redacted] of proposal to separate for misconduct."

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11 & Attach.	IRF - FBI 302—Subject Interview (Aug. 24, 2018)
12 & Attach.	IRF detailing 8:19-cr-00122-WFJ-SPF Docket entry No. 1 (Mar. 20, 2019)
13 & Attach.	IRF - USPTO Coordination and email (Mar. 27, 2019)
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17 & Attach.	IRF Subject Resignation (Feb. 14, 2020)

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REPORT OF INVESTIGATION

CASE TITLE:	FILE NO.:
[redacted] (BIS)	17-1391
	TYPE OF REPORT:
	☐ Interim ☒ Final ☐ Supplemental

BASIS FOR INVESTIGATION

In September 2017, the U.S. Department of Commerce (DOC) Office of Inspector General (OIG) received an anonymous complaint alleging [redacted] (Subject), [redacted] Bureau of Industry and Security (BIS), DOC, was committing travel and time and attendance fraud by

- frequently traveling to [redacted] for personal reasons under the guise of official purposes;
- transporting a dog home while on official orders;
- misusing a government vehicle (GOV) to tow a personal boat and trailer;
- misusing [redacted] government travel card (GTC); and
- harassing and discriminating against [redacted] in the office.

SUMMARY OF INVESTIGATIVE FINDINGS

OIG referred the allegation that the Subject harassed and discriminated against [redacted] in the office to BIS for investigation. BIS was not required to report its findings to OIG. OIG found sufficient evidence to substantiate that the Subject committed travel and time and attendance fraud by frequently traveling to [redacted] for personal reasons under the guise of official purposes; violated policy by transporting a dog in a government rental while on orders; misused [redacted] GOV

Distribution:	BIS
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to tow a personal boat and trailer; and misused [redacted] GTC. OIG also found that the Subject made false statements. On November 5, 2018, the U.S. Public Integrity Office, Department of Justice, Washington, DC, declined prosecution.

INVESTIGATIVE METHODOLOGY

OIG reviewed travel, time and attendance, GOV fuel purchases, and GTC usage for the Subject. OIG also interviewed the Subject's supervisors, co-workers, U.S. attorneys, law enforcement partners, business managers, [redacted] current friend (Friend), and the Subject. OIG obtained video surveillance and receipts; conducted surveillance; and reviewed work emails, computer login, and virtual private network (VPN) information.

DETAILS OF INVESTIGATION AND FINDINGS

OIG's findings regarding the allegations raised in this case are set forth below along with supporting evidence.

A. There Is Sufficient Evidence to Substantiate the Allegation that the Subject Committed Travel Fraud and Time and Attendance Fraud by Traveling to [redacted] for Personal Reasons Under the Guise of Official Purposes

A review of travel vouchers for the Subject showed that from [redacted] through [redacted], the Subject made 35 official trips to [redacted] Two surveillances conducted in [redacted] and [redacted] showed the Subject did not appear to conduct any notable work while in [redacted] During these two trips, the Subject incurred fleet gas card transactions and GTC charges, filed travel vouchers to claim per diem and lodging, and used a GOV. Surveillance, which included a review of (1) Outlook work emails, (2) work calendar entries, and (3) work computer login and VPN information, did not show any meetings scheduled during these two trips. WebTA did not show that the Subject had submitted leave requests during either of these trips. Interviews conducted of law enforcement partners, Assistant U.S. Attorneys (AUSAs), witnesses, and the Subject did not produce evidence that the Subject had conducted any notable work during these trips.

Surveillance—The Subject was surveilled in [redacted] on two occasions and no identifiable work was conducted during these surveillances.

- Surveillance #1: The Subject was observed from the evening of [redacted]. On [redacted] the Subject arrived at a hotel in [redacted] then the Friend arrived and entered the hotel with bags. On [redacted] the Subject and Friend left the hotel that afternoon in their respective cars. The Subject went to a barbecue restaurant in [redacted] then to the [redacted] Mall in [redacted] for approximately 5 hours. Surveillance was

maintained on the Subject's GOV during the 5 hours, but the Subject was not seen. Just prior to the Subject exiting the mall around 18:52, a vehicle believed to be the Friend's was seen navigating through the mall parking lot. After the Subject exited the mall, [redacted] got into [redacted] vehicle and onto the Interstate. Surveillance was terminated 20 minutes later for safety reasons as the Subject was driving upwards of 85 miles per hour and appeared to be headed home to [redacted].

The total cost to the government for this trip to [redacted] was $473.10.[1]

Surveillance #2: The Subject was observed from [redacted] in [redacted] On [redacted] the Subject was seen with [redacted] Friend, and both spent the night in a hotel. The Subject's GTC transactions and an interview revealed that they had dinner at a restaurant after surveillance was terminated. On [redacted] the Subject had brunch with [redacted] Friend and then lunch with a Department of Homeland Security Investigations Agent (HSI Agent). The Subject then went to a mall and checked into a second hotel. The Friend arrived at the hotel, they had dinner, and the Friend spent the night. On [redacted] the Subject's and Friend's vehicles were observed in the parking lot of the hotel and surveillance was terminated. The total cost to the government for this trip to [redacted] was $647.10.[2]

Email Reviews:

A review of the Subject's work emails and calendar did not show any meetings in [redacted] during these trips.

Computer Login and VPN—Login and VPN data for the Subject's work laptop could only be obtained for the period of [redacted] through [redacted] The data showed the Subject did not login to [redacted] government laptop or use the VPN during [redacted] trip to [redacted] on [redacted]. The data also showed the Subject did not login to [redacted] work computer or use the VPN on [redacted] or [redacted], during [redacted] trip to [redacted] [redacted] did login to [redacted] computer on [redacted] at 18:29 and 23:26, but did not use the VPN. The data showed that in addition to the information cited in the two surveillances above, the Subject also traveled to [redacted] from [redacted] but did not login to [redacted] work computer or use the VPN during that trip.

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[1] This cost includes $216.10 in per diem and lodging expenses and $257 in mileage (472 miles roundtrip between [redacted] and [redacted] at $0.545/mile, not including in-and-around mileage in [redacted]

[2] This cost includes $390.10 in per diem and lodging expenses and $257 in mileage (472 miles roundtrip between [redacted] and [redacted] at $0.545/mile, not including in-and-around mileage in [redacted]

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Interviews:

- *BIS OEE* [redacted] *Field Office*—Seven special agents and administrative personnel from this office were interviewed and related that the Subject makes trips to [redacted] once or twice a month. Several personnel pointed out the Subject does not attend meetings at the U.S. Attorney's Office (USAO) in [redacted] or liaise with other law enforcement agencies in the [redacted] area like [redacted] says [redacted] does in [redacted] Multiple personnel related the Subject will not say why [redacted] travels to [redacted] and if they question [redacted] [redacted] gets annoyed and tells them it is none of their business. Personnel said [redacted] frequent trips to [redacted] give the appearance that it is for personal reasons. One individual said the Subject mentioned a [redacted] the Subject sees in [redacted] Another individual related the Subject goes on a lot of trips to [redacted] and never says why [redacted] is going. This individual said it is a running joke in the office about how often the Subject goes to [redacted]

- *AUSAs in* [redacted] Four AUSAs in [redacted] were interviewed from the USAO. The four AUSAs related the Subject attended approximately 10 meetings at the USAO from [redacted] through [redacted], for a BIS investigation, though none during the two periods of surveillance. One AUSA related the meetings were appropriate for the Subject to attend. Another AUSA related the meetings were not necessary for [redacted] to attend. Two AUSAs did not comment on whether the Subject needed to be there for the meetings.

- *HSI* [redacted] As discussed above, the Subject was observed having lunch with an HSI Agent while in [redacted] whom the OIG later interviewed. The HSI Agent related that the Subject visits [redacted] "a lot." [redacted] said when the Subject comes to [redacted] [redacted] will text the HSI Agent the day of or day before they meet. The HSI Agent said they have met for lunch less than 12 times in the last 3 years. [redacted] said the primary reason for the lunch meetings was to "keep up relations" and that the Subject usually paid. The HSI Agent recalled only one formal meeting that [redacted] and the Subject attended "years ago" at the USAO, [redacted] and another formal meeting at HSI, [redacted]

  The Special Agent in Charge and two additional special agents with HSI were also interviewed. They cited the same two instances of formal meetings with the Subject as the HSI Agent recalled. The two agents related the Subject would call or text them to schedule lunches on the day of or the day before the lunch. The special agents noted they were not engagements that were necessary to occur in person.

- *Central Command (CENTCOM)*—A representative from CENTCOM affirmed the Subject attended a meeting at CENTCOM on [redacted] from 13:30 to 14:45.

- *Friend*—The Friend related [redacted] met the Subject when [redacted] took one of [redacted] yoga classes. [redacted] stated that they would go to dinner and sometimes breakfast. [redacted] said the Subject does not talk about work and never takes calls in [redacted] presence.

- *Subject's* [redacted]—The Subject's [redacted] was interviewed and stated that over the past 4 to 4 and a half years—both when they were [redacted]—the Subject made trips to [redacted] almost every 2 weeks. The [redacted] explained the Subject has always used and currently uses [redacted] when [redacted] travels to [redacted] provided statement information and screen shots of hotel stays. [redacted] suspected the Subject was having an [redacted] in [redacted] because of the frequency of trips [redacted] made and changes in [redacted] behavior. The [redacted] detailed an instance wherein [redacted] had [redacted]. [redacted] said the Subject insisted [redacted] had to go to [redacted] for a work trip and no one else could go in [redacted] place because of BIS policy. The [redacted] believed it was an excuse to see [redacted] "Friend." Although [redacted] at the time, the [redacted] also stated that around [redacted], the Subject asked [redacted] if [redacted].

- *Subject*—The Subject related [redacted] makes many trips to [redacted] to repair relations with HSI and in support of an investigation being prosecuted out of the USAO in [redacted] The Subject said that when [redacted] liaises with HSI [redacted] tries to schedule meetings in advance of [redacted] trips, but [redacted] does not always have meetings planned prior to the commencement of [redacted] travel to [redacted] [redacted] said sometimes [redacted] texts [redacted] contacts the day of or the day before [redacted] meets with them to set up the meeting and the meetings are generally over lunch at a restaurant.

  The Subject said that the purpose of the [redacted] trip to [redacted] was to meet the HSI Agent for lunch. [redacted] said the lunch meeting was scheduled the day before. (Note: the Subject was already in [redacted] on official travel when this lunch meeting was scheduled). The Subject confirmed the lunch meeting was the only meeting [redacted] had during [redacted] trip.

  The Subject said [redacted] could not recall specifics for trips [redacted] made to [redacted] in [redacted].

  The Subject stated that [redacted] has not had any lunch meetings with the FBI in [redacted]

  The Subject said if [redacted] is unable to set up meetings in [redacted] or they are canceled, [redacted] would return early from [redacted] trip or do work on [redacted] laptop and phone.

Analysis

The evidence substantiates the allegation that the Subject traveled to [redacted] on official travel orders on multiple occasions, yet conducted no identifiable work while on official travel.

First, failing to accurately record time and attendance in order to receive pay for time not actually worked, as well as falsely claiming on travel vouchers and other forms that travel to [redacted] was for official business purposes, implicates three criminal statutes: 18 U.S.C. § 1001, which prohibits making any materially false, fictitious, or fraudulent statement or representation; 18 U.S.C. § 641, which prohibits stealing any money or thing of value of the United States or of any department or agency thereof; and 18 U.S.C. § 287, which prohibits making false, fraudulent, or fictitious claims upon or against the United States. While it appears that the Subject knew [redacted] did not have official business planned for at least two trips, [redacted] asserted the trips were for official business when [redacted] requested authorization through the travel system. The Subject further provided statements that appear to be false when vouchered [redacted] trips and asserted they were for official business, even after [redacted] did not conduct any identifiable official business. Additionally, it appears that the Subject inaccurately logged [redacted] time in webTA as work time during the trips to [redacted] even though [redacted] was conducting little or no work.

Second, the Subject's trips also implicate at least two ethics regulations that apply to federal employees: 5 C.F.R. § 2635.101(b)(5), which requires employees to "put forth honest effort in the performance of their duties[,]" and 5 C.F.R. § 2635.101(b)(14), which requires employees to "endeavor to avoid any actions creating the appearance that they are violating the law." Here, the evidence shows that the Subject likely did not put forth honest effort in the performance of [redacted] duties, as [redacted] spent time [redacted] represented as work time at a shopping mall and restaurant with [redacted] Friend.

Third, the Subject's conduct implicates the Federal Travel Regulations (FTR) by incurring and requesting reimbursement for personal expenses while performing official travel. Part 301-2.2 of the FTR states that agencies may pay "only those [travel] expenses essential to the transaction of official business," and Part 301-2.4 states that employees are responsible for any costs "unnecessary or unjustified in the performance of official business." The Subject did not appear to be conducting official business during either of the abovementioned trips during which [redacted] was surveilled, yet the government paid the Subject $1,120.20 in per diem and lodging expenses.

Fourth, the BIS Special Agent Manual (SAM) is implicated. SAM Section 4, "Vehicle Operations," cites 31 U.S.C. § 1344, and provides that the use of government-owned or leased motor vehicles is restricted to official purposes. It also cites 41 C.F.R. § 301-10.201, which states that government vehicles can be used only between places of official business or other circumstances not applicable here. As already established, it appears the travel for the two trips during [redacted], and [redacted] were not for official purposes. The Subject had no apparent official business scheduled prior to these trips. During the [redacted] trip,

[redacted] seemingly did not conduct any official business. During the [redacted] trip, the only official business the Subject appears to have conducted was lunch with an HSI Agent that [redacted] scheduled after the trip commenced and that multiple witnesses stated was not a meeting that needed to occur in person. Based on surveillance, the Subject spent the majority of [redacted] time on both of these trips with the Friend. Because these trips appear to be for personal reasons, rather than for official business, the Subject's use of a GOV during these trips was likely improper. Further, the Subject should have known this was improper, as [redacted] had signed a BIS home-to-work agreement for fiscal years [redacted] acknowledging [redacted] understanding of the abovementioned section of the SAM and acknowledging [redacted] understanding of 31 U.S.C. § 1349(b), which provides that "[a]n officer or employee who willfully uses or authorizes the use of a passenger motor vehicle or aircraft owned or leased by the United States Government (except for an official purpose authorized by section 1344 of this title) or otherwise violates section 1344 shall be suspended for at least one month, and when circumstances warrant, for a longer period or summarily removed from office."

B. There Is Sufficient Evidence to Substantiate the Allegation that the Subject Misused [redacted] Government Vehicle to Transport a Personal Boat and Trailer

A former BIS OEE special agent related [redacted] observed a trailer hitched to the government vehicle assigned to the Subject while the vehicle was parked in the Subject's driveway. The Subject was interviewed and said a couple of years ago [redacted] towed [redacted] personal boat on [redacted] personal trailer with [redacted] government vehicle. [redacted] said [redacted] picked up the boat from a marina near the BIS office in [redacted] and towed it home because it was convenient.

Analysis

As discussed above, the BIS SAM provides that the use of government-owned or leased motor vehicles is restricted to official purposes and can be used only between places of official business, among other circumstances not applicable here. The transport of the Subject's personal trailer and boat with the GOV was neither for official purposes nor was it between places of official business. The Subject's use of a GOV to transport a personal boat and trailer appears to be in direct violation of both the BIS SAM and the underlying statutes and regulations on which the BIS SAM is based. As discussed above, the Subject acknowledged that such misuse of a GOV for personal reasons was improper and could result in [redacted] suspension or removal.

C. There Is Sufficient Evidence to Substantiate the Allegation that the Subject Committed Travel Fraud When Transporting a Dog Home in a Government Rental Vehicle, While on Government Orders

The OIG reviewed travel for the Subject that occurred [redacted] from [redacted] to [redacted] for "training attendance." The Subject's original orders had [redacted] traveling to and from [redacted] via airplane. While on travel in [redacted] the Subject obtained approval to change [redacted] mode of transportation from flying to driving to return to [redacted]. In an email, the Subject stated it was more cost effective to the U.S. government. In a phone call to the administrative officer in the BIS [redacted] Field Office, the Subject related [redacted] was too ill to fly home from Washington, DC, to [redacted] and needed to drive. The Subject's orders were changed and [redacted] rented a vehicle in Washington, D.C. on [redacted] [redacted] stayed overnight in a hotel in [redacted] and arrived at the [redacted] airport on [redacted] and retrieved [redacted] GOV. Both the rental car and hotel stay were charged to the Subject's government credit card.

A BIS OEE special agent was interviewed and related that sometime in 2016, the Subject called [redacted] while the Subject was transporting a German Shepherd home to [redacted] from [redacted]. The agent related the Subject said [redacted] bought the dog at a kennel in [redacted] but [redacted] did not want the dog. The agent said the Subject ended up keeping the dog for a week then returned it to the kennel.

The kennel in [redacted] provided a contract showing the Subject purchased a German Shepard from its location on [redacted]

The [redacted] was interviewed and said the Subject arrived home in [redacted] on either [redacted] or [redacted] with a German Shepherd [redacted] purchased in [redacted]. The [redacted] believed the dog was transported in a vehicle. [redacted] said they kept the dog for 5 days and the Subject returned it to [redacted] because [redacted] did not want it.

The Subject was interviewed and stated that sometime in [redacted] or [redacted] [redacted] was in [redacted] for a senior executive service training. [redacted] said [redacted] purchased a German Shepherd from a kennel in [redacted] and transported it home to [redacted]. The Subject changed [redacted] reply several times regarding how [redacted] transported the dog. Initially [redacted] said [redacted] rented a vehicle, then said [redacted] used a GOV, and then stated [redacted] could not recall. The Subject said [redacted] and [redacted] [redacted] kept the dog for a few days and then [redacted] returned it to the kennel in [redacted]. [redacted] could not remember how [redacted] returned the dog.

According to the Subject's travel voucher for this trip, [redacted] had a government rental car during [redacted] temporary duty in [redacted] from [redacted] to [redacted] [redacted] voucher shows a

second rental car which was picked up from [redacted] on [redacted] and returned to [redacted] on [redacted]

Analysis

As discussed above, the BIS SAM provides that the use of government-owned or leased motor vehicles is restricted to official purposes and can be used only between places of official business, among other situations not applicable here. The kennel was 57 miles north from where the Subject's hotel was located in [redacted] during [redacted] temporary duty to [redacted] The Subject presumably used the government rental car to pick up the dog from the kennel, which would have been approximately 114 miles, roundtrip, from [redacted] area of official business. [redacted] then used a government rental vehicle to transport the dog more than 1,000 miles from [redacted], to [redacted]. The use of this government vehicle does not appear to have been for official purposes, but for the purpose of transporting the dog home. Witness accounts and the Subject's own admissions support that [redacted] transported the dog in a government rental vehicle. The Subject thus apparently violated the BIS SAM, as well as the underlying statutes and regulations upon which the BIS SAM is based.

Furthermore, due to the transport of the dog from [redacted] to [redacted] the government incurred expenses for an additional night in a hotel and an extra day of per diem. The cost of the change to [redacted] orders so that [redacted] could drive back, stay in a hotel, and receive an extra day of per diem was more than the original estimate of [redacted] travel authorization. Although the Subject paid expenses over the authorization amount, the U.S. government incurred additional cost because the Subject departed [redacted] on [redacted] a day earlier than scheduled; however, [redacted] did not arrive home until [redacted] Had the Subject departed on [redacted] and flown home, [redacted] would have arrived home on [redacted] and the U.S. government would therefore not have paid for an extra night in a hotel, an additional day of per diem, or an extra day for a rental car. The total cost to the government for these expenses was $363.17 ($157 hotel, $142.17 car rental, and $64 per diem).

Finally, this conduct implicates 18 U.S.C. § 1001, which prohibits making any materially false, fictitious, or fraudulent statements or representations. The Subject appears to have lied to BIS about the reasons for which [redacted] needed to drive back from [redacted] versus flying home. The voucher that [redacted] signed contained false statements, because the reasons for which [redacted] needed to change [redacted] orders from flying to driving were apparently for personal reasons, not for official business.

D. There Is Sufficient Evidence to Substantiate the Allegation that the Subject Misused [redacted] Government Travel Card

A review of the Subject's GTC showed a charge on [redacted] at a shooting range in [redacted] The receipt was obtained and showed two shooters were paid for, along with shooting targets. Video was obtained from the shooting range and showed the Subject with the Friend. A further review of the Subject's GTC showed a declined charge on [redacted] at 14:34 at [redacted] in [redacted] and many charges at restaurants in which the amounts appeared to be for more than one diner. Receipts were obtained from seven restaurants that showed between [redacted] the Subject used [redacted] GTC to pay for 14 meals for two guests. Corresponding video was obtained for two of the 14 meals showing the Subject and the Friend eating together. During a surveillance, the Subject and Friend were also observed eating together.

Several law enforcement personnel in the [redacted] were interviewed and related that when the Subject meets them for lunch, the Subject generally pays for them. One instance was observed during surveillance wherein the Subject met at a restaurant with a law enforcement officer, a charge to the Subject's GTC was reflected, and the law enforcement officer affirmed during an interview that the Subject paid for [redacted] lunch and generally does pay for [redacted] lunch. During an interview with the Subject, [redacted] admitted to buying meals for the Friend with [redacted] GTC. The Subject stated [redacted] did not think it was wrong to use [redacted] GTC to pay for [redacted] meals because [redacted] does not eat much and [redacted] believed [redacted] was not surpassing [redacted] per diem. The Subject also admitted [redacted] uses [redacted] GTC to buy lunch for law enforcement personnel when [redacted] is in [redacted]

Analysis

GSA Order No. OAS 5740.1 CHGE 1, states that individual cardholders "[u]se the travel card for official authorized travel activities only." The Subject does not appear to have been conducting official business while on the two trips in August and September 2018 subject of the above-mentioned surveillance. The Subject was also using [redacted] GTC to pay for meals for the Friend and co-workers, which is not an authorized travel activity.

CONCLUSION

On [redacted] this investigation was declined for prosecution by the Public Integrity Office, U.S. Department of Justice, Washington, DC, due to lack of interest.

This investigation is being provided to BIS for its review and any administrative action that it deems necessary and appropriate.

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13	IRF—Review of [redacted] TVs [redacted]
15	IRF—Interview with [redacted] 6-14-18
16	IRF—Review of [redacted] FO Inspection Reports 6-14-18
17	IRF—Review of [redacted] Work Emails 6-15-18
20	IRF—Interview with [redacted] 6-18-18
21	IRF—Interview with [redacted] 6-19-18
22	IRF—Interview with [redacted] 6-20-18
23	IRF—Review of BIS Rules of Behavior Documents 6-22-18
24	IRF—Consultation with the AUSA 6-22-18
25	IRF—[redacted] Surveillance
26	IRF—Interview with [redacted] 6-22-18
27	IRF—Interview with [redacted] 6-22-18
28	IRF—Contact with the [redacted] Hotel 7-2-18
29	IRF—Review of [redacted] Work Emails 7-6-18
32	IRF—Analysis of Travel Vouchers
33	IRF—Interview with [redacted] 7-16-18
34	IRF—Interview with [redacted] 7-16-18
35	IRF—Review of [redacted] Work Emails 7-17-18
39	IRF—Trip Voucher for [redacted]
40	IRF—Receipt from [redacted] for [redacted]
41	IRF—Review of [redacted] Work Emails 8-23-18
42	IRF—Review of [redacted] Time and Attendance 8-24-18
45	IRF—[redacted] Surveillance [redacted]
46	IRF—Information Received from [redacted]
47	IRF—Information Regarding [redacted]
48	IRF—Information Regarding [redacted]
49	IRF—Review of Leave Requests 9-11-18
50	IRF—Review of [redacted] TV for [redacted]
51	IRF—Review of [redacted] Government Credit Card Charges [redacted]

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CMS Document No.	Description
53	IRF—Receipts from [redacted]
54	IRF—Receipts from [redacted]
55	IRF—Interview with [redacted] 10-11-18
56	IRF—Receipts and Video from [redacted]
57	IRF—Receipts and Video from [redacted]
58	IRF—Receipts from [redacted]
59	IRF—Receipts from [redacted]
60	IRF—Receipts from [redacted]
61	IRF—Vital Statistics Information from [redacted]
62	IRF—Analysis of Travel Activity for [redacted] [redacted] Trips
63	IRF—Gas Card Activity for [redacted] Government Vehicle
65	IRF—[redacted] Surveillance [redacted]
66	IRF—Interview with [redacted] 10-22-18
67	IRF—Interview with [redacted]
68	IRF—Interview with [redacted] 10-22-18
69	IRF—Interview with [redacted] 10-22-18
70	IRF—Interview with [redacted] 10-22-18
71	IRF—Interview with [redacted] 10-23-18
72	IRF—Interview with [redacted] 10-24-18
73	IRF—Interview with [redacted] 10-24-18
74	IRF—Declination of Prosecution from USAOs
75	IRF—Interview with [redacted] 10-24-18
76	IRF—Interview with [redacted] 10-23-18
77	IRF—Interview with [redacted] 10-24-18
78	IRF—Interview with [redacted] 10-24-18
79	IRF—Review of OPM Records for [redacted] 12-3-18
80	IRF—Travel Voucher [redacted]
82	IRF—Receipt of Information from [redacted]
83	IRF—BIS Use of Government Vehicles
84	IRF—BIS HTW Agreement [redacted]
85	IRF—Review of Logon Logoff and VPN for [redacted]
86	IRF—Receipts and Video from [redacted]

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REPORT OF INVESTIGATION

CASE TITLE:	FILE NO.:
PTAB Management Issues (USPTO)	18-1001-I
	TYPE OF REPORT:
	☐ Interim ☒ Final ☐ Supplemental

BASIS FOR INVESTIGATION

The United States Department of Commerce (DOC), Office of Inspector General (OIG), initiated this investigation in August 2018 based on reports by [redacted] (Complainant 1) and [redacted] (Complainant 2), [redacted], at the Patent Trial and Appeal Board (PTAB), U.S. Patent and Trademark Office (USPTO), that [redacted] (Subject), the [redacted], and other [redacted] of the PTAB created a hostile and toxic work environment.

Complainant 1 alleged that the Subject and other [redacted] of the PTAB mandated APJs submit decisions to multiple internal review committees; pressured APJs to alter decisions; threatened to remove APJs from panels if management's desires were not heeded; and expanded board panels without the [redacted] of the USPTO delegated authority. The Complainant further alleged that the Subject, caused, and then failed to correct misrepresentations made by [redacted], the [redacted] Office of the Solicitor General, U.S. Department of Justice, before the U.S. Supreme Court (SCOTUS) in violation of 18 U.S.C. § 1001(a)(1) and 5 C.F.R. § 2635.101(b)(5).

In parallel, Complainant 2 reported similar allegations pertaining to mandated internal PTAB review procedures; pressuring APJs to change their decisions; and threatening to remove APJs from proceedings for noncompliance. Complainant 2 further re-emphasized previous allegations pertaining to unfair peer reviews and retaliation by PTAB management. The USPTO Office of General Law unsubstantiated those allegations, which the OIG documented in DOC OIG Case No. 18-0897.

Distribution:	OIG
[redacted]	[redacted]
Signature of Case Agent: [redacted], Special Agent	Signature of Approving Official: [redacted], Assistant Special Agent in Charge

OFFICE OF INSPECTOR GENERAL
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Summary of Investigation

DOC OIG's investigation unsubstantiated that the Subject violated 18 U.S.C. § 1001(a)(1), which, in relevant part, prohibits an individual within the jurisdiction of the executive, legislative, or judicial branch of the United States government to "knowingly and willfully . . . falsifies, conceals, or covers up by any trick, scheme, or device a material fact." 18 U.S.C. § 1001(a)(1).

DOC OIG's investigation unsubstantiated that the Subject violated 5 C.F.R. § 2635.101(b)(5), which in relevant part, mandates that employees of an executive agency "shall put forth honest effort in the performance of their duties." 5 C.F.R. § 2635.101(b)(5).

Document reviews and interviews determined the Witness did not make misrepresentations before the SCOTUS; therefore, the Subject did not cause the Witness to make false representations nor had an obligation to correct them.

DOC OIG's investigation also confirmed through legal research that in the position as the [redacted] the Subject [redacted] the PTAB.

Background

The PTAB is an administrative law body within the USPTO formed under the Leahy–Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (AIA). According to the USPTO website, the mission of the PTAB is to "conduct[] trials, including inter partes, post-grant, and covered business method patent reviews and derivation proceedings, hears appeals from adverse examiner decisions in patent applications and reexamination proceedings, and renders decisions in interferences."[1]

The PTAB is made up of "more than 300 people serving in many positons including Chief Administrative Patent Judge, Deputy Chief Administrative Patent Judge, Vice Chief Administrative Patent Judges, Lead Administrative Patent Judges, Administrative Patent Judges, Supervisory Patent Attorneys, Patent Attorneys, Paralegal Specialists, Legal Instrument Examiners, Administrators, Analysts, and Support Specialists."[2]

[redacted] claimed that

[1] See USPTO, *Patents Application Process, Patent Trial and Appeal Board*, available at https://www.uspto.gov/patents-application-process/patenttrialandappealboard (last visited Apr. 21, 2020).

[2] See USPTO, *Organizational Structure and Administration of the Patent Trial and Appeal Board*, available at https://www.uspto.gov/sites/default/files/documents/Organizational%20Structure%20of%20the%20Board%20May%2012%202015.pdf (last visited Apr. 21, 2020).

the inter parte review (IPR) process of the PTAB violated Article III and the 7th Amendment of the U.S. Constitution which inherently challenged the AIA.[3]

In their brief to SCOTUS (at 3), [redacted] alluded that the [redacted] of the USPTO had previously "[redacted]

During [redacted] told SCOTUS that the [redacted] of the PTAB had altered the adjudicatory body of an IPR only three times in the past. [redacted] further stated that in those three times, the [redacted] made the decision in the institution stage of the process. [redacted] Tr. 47.

On [redacted] the United States Court of Appeals for the Federal Circuit issued a decision, which vacated in part and affirmed in part the PTAB's earlier final decision in [redacted]. [redacted]. The Federal Circuit remanded the case back to the PTAB for further review, [redacted].

Complainant 1 asserted that in [redacted], the Subject expanded the panel of the [redacted] after it had been remanded back to the PTAB and therefore not in the institution stage. The Complainant stated that since the Subject was in audience at the SCOTUS, [redacted] knew [redacted] statements were false and had an obligation to correct them.

Details of Investigation

Allegation: It was unsubstantiated that the Subject pressured APJs to alter decisions; threatened to remove APJs from panels if management's desires were not heeded; and expanded board panels without the [redacted] of the USPTO delegated authority.

The DOC OIG found insufficient evidence to substantiate that the Subject pressured APJs to alter decisions; threatened to remove APJs from panels if management's desires were not heeded; and expanded board panels without the [redacted] of the USPTO delegated authority.

At the time of the alleged violation, the Subject was in the [redacted] as the [redacted] PTAB.

Complainant 1 stated that [redacted] was directed to remove information from a decision that [redacted] of the PTAB deemed "confidential" and if that directive was not met, Complainant 1 would be removed from the panel.

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[3] See [redacted].

The OIG did not find any evidence or legal authority to suggest these actions were improper. As [redacted] PTAB, [redacted].

The overall establishment of the PTAB falls under 35 U.S.C. § 6(a), which states "[t]here shall be in the Office a Patent Trial and Appeal Board. The Director, the Deputy Director, the Commissioner for Patents, the Commissioner for Trademarks, and the administrative patent judges shall constitute the Patent Trial and Appeal Board. The administrative patent judges shall be persons of competent legal knowledge and scientific ability who are appointed by the Secretary, in consultation with the Director." Section 6(c) gives further direction on the assignment of member panels: "[e]ach appeal, derivation proceeding, post-grant review, and inter partes review shall be heard by at least 3 members of the Patent Trial and Appeal Board, who shall be designated by the Director."

Legal research conducted by the OIG concluded that the USPTO has the authority to issue policy directives that are binding on all USPTO employees, which includes APJs. See 35 U.S.C. § 3(a)(2)(A) "[t]he Director shall be responsible for providing policy direction and management supervision for the [USPTO]." The Director also has the authority to issue regulations that, among other things, govern PTAB reviews: See 35 U.S.C. § 316(a)(4) (PTAB inter partes reviews); § 326(a)(4) (PTAB post-grant reviews).

A review of *PTAB Standard Operating Procedure 2 (Revision 10), Precedential Opinion Panel Review to Decide Issues of Exceptional Importance Involving Policy or Procedure* (*PTAB SOP 1*) reflected that the Director "has an interest in creating binding norms for fair and efficient Board proceedings, and for establishing consistency across decision makers under the Leahy-Smith America Invents Act (35 U.S.C. §§ 311-329; Section 18 of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284, 329 (2011)) and, to the extent applicable, for patent examination, for example, in ex parte appeals and reexamination appeals." *Id.* § I.A.[4]

A review of *PTAB Standard Operating Procedure 1 (Revision 14), Assignment of Judges to Merits Panels, Interlocutory Panels, and Expanded Panels* (*PTAB SOP 2*) states that "[t]he Director's authority under 35 U.S.C. § 6 to designate panels has been delegated to the Chief Judge. *See Manual of Patent Examining Procedure* § 1002.02(f) (9th ed., March 2014). The Director's authority to institute a trial has been delegated to the Board. *See* 37 C.F.R. § 42.4 (2012); 37 C.F.R. § 42.408 (2012)." *Id.* at 2.

[4] PTAB, USPTO, *Standard Operating Procedure 2 (Revision 10)*, available at https://www.uspto.gov/sites/default/files/documents/SOP2%20R10%20FINAL.pdf (last visited Apr. 23, 2020).

The same SOP establishes that [redacted] PTAB, "in an appropriate circumstance, may designate an expanded panel consisting of any number of judges to decide a case." *Id*. at 5.

Allegation: It was unsubstantiated that the Subject knowingly and willfully caused the [redacted] to make false statements before the U.S. Supreme Court, then failed to correct those statements in violation of 18 U.S.C. § 1001(a)(1) (Statements or entries generally) and 5 C.F.R. § 2635.101(b)(5) (Basic obligation of public service).

The DOC OIG found insufficient evidence to substantiate that the Subject violated 18 U.S.C. § 1001 or 5 C.F.R. § 2635.101.

As previously cited, *PTAB SOP 1* specifically established that the [redacted] had the authority to designate an expanded panel.

[redacted] told the OIG that in [redacted] the context of [redacted] statement to SCOTUS hinged on the number of IPRs in which the [redacted] altered the panel specifically to affect the outcome. [redacted] stated two of those cases were [redacted] and [redacted] but could not recall the third.

During [redacted] interview (CMS Doc. No. 23, at 4), the Subject denied that [redacted] or other [redacted] expanded the [redacted] panel to affect its outcome, rather it was to ensure the panel adhered to the Federal Circuit's instructions. The Subject explained that one of the original panel judges used a rule or test to determine patentability, which did not coincide with the Federal Circuit's directives.

Conclusion

The DOC OIG's investigation found insufficient evidence to substantiate that the Subject violated 18 U.S.C. § 1001 or 5 C.F.R. § 2635.101, nor did the Subject abuse [redacted] authority in the execution of [redacted] duties of the PTAB. Statutes and regulations in place at the time of the allegations established [redacted] Since the onset of this investigation, the DOC OIG Office of Audits and Evaluations (OAE) initiated an evaluation of the PTAB operations.[5] In October 2019, the United States Court of Appeals for the Federal Circuit ruled that the appointment of APJs at the PTAB violated the Appointments Clause, U.S.

[5] See Memorandum from Frederick J. Meny, Jr., Assistant Inspector General for Audit and Evaluation, to Andrei Iancu, Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office (Oct. 1, 2019), available at https://www.oig.doc.gov/OIGPublications/2019-10-01_USPTO_PTAB_Announcement%20Memo.pdf).

Const., art. II, § 2, cl. 2. See *Arthrex, Inc.* v. *Smith & Nephew, Inc.*, No. 18-2140 (Fed. Cir. Oct. 31, 2019), slip op. (Moore, J).

The DOC OIG Office of Investigations (OI) is referring this matter to the DOC OIG OAE for consideration of further action.

This investigation is being closed.

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INDEX OF PERTINENT CASE FILE DOCUMENTS

CMS DOCUMENT NO.	DESCRIPTION
1	Initial Complaint (July 19, 2018)
5	Request for Records—OIG Investigation: 18-1001-P (Apr. 30, 2020)
6	IRF—Complainant Interview (Aug. 28, 2018)
7	Complaint No. 18-1142 (merged with 18-1001) (Aug. 23, 2018)
9	IRF— [redacted] IRF (Sept. 13, 2018)
10	Emails between [redacted] USPTO [redacted], OIG (Aug. 16, 2018 through Sept. 18, 2018)
12	E-Discovery Processing for Email Production (Oct. 23, 2018)
13	Memorandum from OIG to U.S. Patent and Trademark Office, Request for Records (Apr. 30, 2020)
14	Memorandum from OIG to U.S. Patent and Trademark Office, Request for Records (Apr. 30, 2020)
17	IRF—Initial Investigative Steps (Feb. 27, 2019)
19	IRF— [redacted] Interview (June 17, 2019)
20	IRF— [redacted] Interview (June 17, 2019)
21	Emails between OIG OI, OC and USPTO OGL (July 1 through 15, 2019)

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REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
[redacted] (ZP-05) (NIST)	19-0063-I
	TYPE OF REPORT: ☐ Interim ☒ Final ☐ Supplemental

BASIS FOR INVESTIGATION

On October 17, 2018, National Institute of Standards and Technology (NIST) [redacted] (Complainant) filed a confidential report to the U.S. Department of Commerce (DOC), Office of Inspector General (OIG) Hotline. The complaint alleged that a NIST work group reported contraband found in a NIST building laboratory on September 22, 2018. The complaint alleged that the samples belonged to [redacted] (Subject), a NIST [redacted]. DOC OIG opened an investigation into the allegation on October 25, 2018 to monitor the NIST investigation and provide assistance if needed. Additionally, four [redacted] to the Subject alleged the Subject harassed them by making sexual comments. The potential violations included 18 U.S.C. § 371 (conspiracy to commit offense or to defraud the United States), 18 U.S.C. § 1001 (false statements), 5 C.F.R § 2635.705 (misuse of official time) and Department Administrative Order (DAO) 202-955 (Allegations of Harassment Prohibited by Law).

SUMMARY OF INVESTIGATION

The allegation was substantiated. An administrative investigation was conducted by [redacted] after consulting the DOC Office of Security (OSY), Police Services Group and notifying the DOC OIG Office of Investigations (OI). The [redacted] determined that the Subject was responsible for four (4) 20 milliliter (ml) vials marked with handwritten labels for Ritalin, Adderall, Lidocaine HCL, and Blueberry Bud Oil THC, found by [redacted] staff, in a laboratory in

Distribution: OIG: X Bureau/Organization/Agency Management: ___ DOJ: ___ Other (specify):			
Signature of Case Agent: [redacted]	Date:	Signature of Approving Official: [redacted]	Date: 2/4/2020
Name/Title: [redacted] Investigator		Name/Title: [redacted], Assistant Special Agent-in-Charge	

Building 2 on the NIST [redacted] campus on September 14, 2018. If labeled correctly, the contents would be classified as Schedule I or II controlled substance by the Drug Enforcement Administration (DEA), which require licensing and special purchasing procedures to obtain and to use for testing. However, NIST did not test the contents of the vials to determine the substance. A second investigation was conducted by [redacted] NIST [redacted] wherein the Subject admitted [redacted] sexually harassed four NIST employees.

METHODOLOGY OF INVESTIGATION

During the investigation of the allegation, DOC OIG remained in contact with the [redacted] to monitor the internal investigations conducted by NIST and provide investigative assistance, if necessary. DOC OIG reviewed reports and incident documentation provided by NIST and conducted interviews of investigative officials.

DETAILS OF INVESTIGATION

The OIG's findings regarding the allegations raised in this case are set forth below along with supporting evidence:

The allegations that Subject was responsible for controlled substances found by [redacted] staff and for sexually harassing [redacted] were founded.

Allegation #1: The Subject was responsible for bringing contraband into the NIST Building Lab.

This allegation is founded. The [redacted] determined that the Subject was responsible for four 20 ml vials marked with handwritten labels for Ritalin, Adderall, Lidocaine HCL, and Blueberry Bud Oil THC found by [redacted] staff, in a laboratory in Building 2 on the NIST [redacted] campus on September 14, 2018. NIST did not have the vials tested to see what they actually contained, but if labeled correctly, they would be classified as Schedule I or II by DEA, which require licensing and special purchasing procedures to obtain and to use for testing. Police Services Group declined to pursue further investigation or charges.

Allegation #2: The subject sexually harassed [redacted] employees.

This allegation is founded. The [redacted] reports reflect that the Subject admitted to making many sexual comments to four of [redacted].

Conclusion

The allegations against the subject were founded. NIST police did not to pursue criminal charges in this matter. The subject was suspended for three (3) workdays, removed from a supervisory position and removed from contact with the individuals [redacted] sexually harassed. The

Subject [redacted] and has no access to the NIST campus. [redacted] committed to work with the Division and research group to continue with regular inspections and review of safety and controlled substance practices. All deficiencies have been corrected.

Coordination with Prosecutors, EDA, and Disposition of the DOC OIG Investigation

This office did not coordinated with the U.S. Attorney's Office as NIST Police did not test the vials to determine their substance and have not retained the vials.

Based on the remedies enacted by NIST officials, this investigation is closed.

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INDEX OF PERTINENT CASE FILE DOCUMENTS

CMS Document #	Description
1	Initial complaint
3	Referral Memo and Packet to Office of Audits and Evaluation
5	Public Record Data Checks (FINCEN, MAGLOCLEN, ChoicePoint, etc.)
6	FBI Notification Letter
9	Documents from NIST [redacted]
10	Investigative Report Form (IRF) - [redacted]
11	IRF - [redacted]
12	[redacted] Report
14	NIST Report and Request for Approval of Investigation Findings and Actions

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NO.:
[redacted] (ITA)	19-0373-I
	TYPE OF REPORT:
	☐ Interim ☒ Final ☐ Supplemental

BASIS FOR INVESTIGATION

In March 2019, an anonymous complainant stated that [redacted] (Subject), [redacted] International Trade Administration (ITA), U.S. Department of Commerce (DOC), Washington, D.C., was performing unofficial duties for [redacted] political communications consulting firm, [redacted]. The complainant stated that while Subject officially passed leadership of the firm to [redacted] has taken meetings in support of its work. The complainant also stated Subject commuted to/from [redacted] each week and claimed to have been working while commuting to [redacted] home on Thursdays and charged time to work remotely on Fridays while not working a full day. The complainant also stated that there were questions as to how Subject finances [redacted] weekly commute from [redacted] to Washington.

SUMMARY OF INVESTIGATION

The OIG found no evidence to substantiate allegations that Subject's involvement with [redacted] violated government ethics rules or the Hatch Act. Additionally, the OIG found no evidence that Subject submitted fraudulent time cards for periods of work when [redacted] was teleworking.

METHODOLOGY OF INVESTIGATION

The OIG conducted open source research on political campaigns serviced by [redacted] analyzed Subject's government computer; reviewed Subject's work emails, ethics advice documentation, public financial disclosures, WebTA time cards, and travel vouchers;

Distribution:	OIG
[redacted]	[redacted]
Signature of Case Agent: [redacted] Special Agent	Signature of Approving Official: [redacted] Assistant Special Agent in Charge

conducted analysis of Subject's teleworking and travel schedule; interviewed witnesses with knowledge of Subject's commuting/telework schedule; and interviewed Subject.

DETAILS OF INVESTIGATION

The OIG's findings regarding the allegations raised in this case are set forth below along with supporting evidence.

Allegation #1: There is Insufficient Evidence to Substantiate the Allegation that Subject's Political Consulting Company Constitutes a Conflict of Interest with [redacted] Government Position

The OIG reviewed Subject's work emails, ethics advice documents from Ethics Law and Program Division (ELPD), and public financial disclosures, which showed Subject fully reported [redacted] involvement with [redacted] and was advised on the ethical requirements which would violate the Hatch Act and ethics statutes. Subject acknowledged the advice and indicated [redacted] would manage the company while the U.S. Government employed [redacted] Open source research on [redacted] showed that the company performed "Compliance Consulting" for a political campaign in 2017-2018 (note: Subject started work at DOC on April [redacted] During the interview of Subject, [redacted] stated [redacted] assisted in establishing the "bookkeeping" for the individual's campaign and ensured the campaign's financial filings with the Federal Election Commission were accurate. Subject also stated that since starting at DOC, [redacted] assisted on one other candidate's election campaign. According to Subject, [redacted] helped the campaign get started with their bookkeeping, and then handed them off to another consulting firm. None of the bookkeeping activities described by Subject violated the rules and guidance on outside activities provided by ELPD. Subject was well aware of the U.S. Government guidelines and statutes on political involvement, and stated [redacted] never actively campaigned for any political candidates and never contacted anyone in the U.S. Government about a particular candidate or campaign. An analysis of documents and emails stored on Subject's government computer disclosed no evidence that Subject utilized [redacted] government computer to conduct political consulting or bookkeeping activities.

Allegation #2: There is Insufficient Evidence to Substantiate the Allegation that Subject Submitted Fraudulent Time Cards for Periods in which [redacted] Teleworked

The OIG reviewed and analyzed Subject's WebTA time cards from January 1, 2018 to June 30, 2019, E2 Travel Vouchers for Fiscal Years (FY) 2017 and 2018, and network logon data from April 2, 2019 to July 3, 2019, which showed Subject routinely claimed telework hours on Fridays and Mondays. An interview of Subject's supervisor disclosed [redacted] frequently traveled to [redacted] to spend weekends with [redacted] family. The supervisor also stated [redacted] never had any problems with Subject's teleworking because [redacted] could always reach [redacted] when [redacted] needed something. An interview of one of Subject's co-workers in ITA provided that Subject was always "above board"

with [redacted] government travel and described [redacted] as extremely responsive to emails and phone calls when not in the office. During Subject's interview, [redacted] provided that [redacted] attempts to fly home to [redacted] to see [redacted] family every weekend. However, due to travel costs and work obligations, [redacted] generally makes it home about three weekends per month. Subject plans to depart Washington D.C. on Thursday evenings after work and return on Monday, but [redacted] travel plans ultimately depend on when [redacted] can secure the cheapest airfare. Regardless of which days [redacted] travels, Subject stated [redacted] always puts in a full eight hours of telework and considered [redacted] to be a good steward of government resources.

This investigation was not referred to the U.S. Attorney's Office for prosecution as there were no criminal or civil violations.

No further action is anticipated by DOC OIG and this matter will be closed.

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INDEX OF PERTINENT CASE FILE DOCUMENTS

CMS DOCUMENT NO.	DESCRIPTION
1	Initial Hotline Complaint (Mar. 1, 2019)
2	IRF—Coordination with ELPD (Mar. 12, 2019)
3	IRF—Coordination with Digital Analysis Group (Mar. 8, 2019)
4	Mem.: Request for Emails (May 13, 2019)
5	IRF—Initial Investigative Steps (Mar. 21, 2019)
10	IRF—[redacted] Records Check (Mar. 26, 2019)
13	Email processing (Mar. 25, 2019)
14	IRF—Review of FY17/FY18 Travel Card Data (Mar. 28, 2019)
16	IRF—Receipt of Emails (Apr. 16, 2019)
17	IRF—Collection of Evidence (Apr. 12, 2019)
18	IRF—Review of Ethics Documents (Apr. 12, 2019)
19	IRF—Receipt of Phone Records (Apr. 16, 2019)
20	IRF—Coordination with DOJ (May 29, 2019)
21	IRF—Review of Travel Vouchers (June 18, 2019)
22	IRF—Review of Work Emails (June 27, 2019)
23	IRF—Review of Time and Attendance Data (July 22, 2019)
24	IRF—Interview of [redacted] (Subject's Supervisor) (July 24, 2019)
25	IRF—Review of Email from ELPD (July 24, 2019)
26	IRF—Interview of [redacted] (Oct. 16, 2019)
27	IRF—WebTA Teleworking Data Analysis (Feb. 24, 2020)
28	IRF—Interview of Subject (Apr. 6, 2020)
33	IRF—Final Forensic Report (June 24, 2020)
35	IRF—Email Production (June 24, 2020)
37	IRF—Review of Hard Disk Drive (June 18, 2020)

All Withholdings (B)(6) & (B)(7)(C)

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NO.:
[redacted] (AD-0) (USPTO)	19-0721-W
	TYPE OF REPORT:
	☐ Interim ☒ Final ☐ Supplemental

BASIS FOR INVESTIGATION

On June 21, 2019, the U.S. Department of Commerce (DOC), Office of Inspector General (OIG), Hotline received a complaint from [redacted] (Complainant 1)—an [redacted] with the U.S. Patent and Trademark Office (USPTO), [redacted]. Complainant 1 alleged that [redacted] and one other employee, [redacted] (Complainant 2), (hereafter collectively referred to as Complainants) were in the process of being removed from their positions as [redacted] on the Patent Data Capture (PaDaCap) contract as retaliation for providing information during an administrative inquiry that was conducted by USPTO's Office of Human Resources. The allegations, if substantiated, would violate the Whistleblower Protection Act—5 U.S.C. § 2302(b)(8)-(9), as the Complainants alleged the agency committed a prohibited personnel practice to an employee in a covered position.

SUMMARY OF INVESTIGATION

OIG investigated the circumstances surrounding Complainants' allegations. Complainant 1 alleged that the Complainants were in the process of being removed as [redacted] on the PaDaCap contract as retaliation for providing information during an investigation conducted by USPTO's Office of Human Resources (Administrative Inquiry). The Complainants alleged that the retaliation was done at the direction of the [redacted] (Subject 1), and the [redacted] (Subject 2) (hereafter collectively referred to as Subjects). OIG determined that the allegations of violating the Whistleblower Protection Act were unsubstantiated. OIG determined that the actions outlined by the Complainants were agency wide actions affecting all [redacted] on

Distribution:	Office of Inspector General, Department of Commerce
[redacted]	[redacted]
Signature of Case Agent: [redacted], Investigator	Signature of Approving Official: [redacted] Special Agent in Charge

every contract under the Office of Commissioner for Patents. While the Complainants perceived this action to be a threat, OIG determined the agency was planning to reclassify all [redacted] positions on every office to [redacted] and appoint individuals in [redacted] as [redacted] despite the Complainants' protected disclosure.

METHODOLOGY OF INVESTIGATION

The following investigative techniques were used:

- Reviewed emails of the Complainants, Subjects, and witnesses from January 1, 2018, through June 30, 2019, which covers the period in which the actions were alleged to have occurred;
- Reviewed the Administrative Inquiry report, exhibits, and statements that were provided during the USPTO Office of Human Resources inquiry conducted by [redacted], dated April 20, 2018;
- Conducted interviews of the Complainants, Subjects, and Complainants' supervisors and coworkers.

DETAILS OF INVESTIGATION

Background

Patent Data Capture (PaDaCap) Contract

The PaDaCap contract is considered USPTO's largest contract which is supported by multiple [redacted] The contract was set to expire on January 31, 2015. Prior to the expiration, a three-year "bridge contract" was awarded to run from February 1, 2015 through January 31, 2018. Prior to the end of the bridge contract, a multi-year delivery order was issued which continues through January 31, 2021. In order to comply with competition requirements, the PaDaCap contract must enter a "recompete" effort and allow other prospective contractors to receive the award. The recompete should have taken place at the expiration of the bridge contract and the renewed contract should have been effective on February 1, 2018. Due to multiple setbacks, [redacted] has not completed the recompete process and intends to post the request for proposal shortly before the multi-year delivery order expires in January of 2021.

The Complainants serve as [redacted] in the [redacted] and [redacted] the PaDaCap contract since [redacted]. On June 3, 2019, the Complainants were notified by their [redacted], of the potential for position changes once the PaDaCap contract had successfully been renewed. The Complainants believed this action had already occurred as Complainant 2 was [redacted] and Complainant 1 [redacted]. The

Complainants believe this action was due to their cooperation with a 2017 – 2018 USPTO human resources investigation, Administrative Inquiry.

USPTO Workforce Resources Division of the Office of Human Resources, Administrative Inquiry Report

On April 20, 2018, a [redacted] with the USPTO [redacted] Division of the Office of Human Resources, [redacted] (Specialist), submitted an Administrative Inquiry report to [redacted] for USPTO. The report was in response to DOC OIG Referral No. 18-0048-N regarding [redacted] (Employee 1), [redacted] (Employee 2), and [redacted] (Employee 3). The inquiry addressed allegations that Employee 1 and Employee 3 created a hostile work environment, committed hiring improprieties, and mistreated employees. The inquiry also addressed the allegation that Employee 2 was reluctant to act on the issues. Employee 2 was the [redacted]. Employee 1 was the [redacted] and worked directly for Employee 2. Employee 1 was responsible for [redacted] Employee 3 was the [redacted] and worked directly for Employee 1.

The allegations set forth in the report were substantiated. As a result of this Administrative Inquiry, Specialist recommended that the substantiated allegations that Employee 1 and Employee 3 mistreated their subordinates' be referred to the USPTO Workforce Relations Division for further inquiry. Ultimately, Employee 1 and Employee 3 were reassigned to non-managerial positions, in different departments, away from the Complainants and others negatively affected by their actions.

During the investigation, Specialist interviewed twenty-two (22) individuals including the Complainants. Both Complainants provided detailed accounts of their interactions with Employee 1, who was their supervisor at the time. Only the Complainants made reports of retaliation for working with the Specialist during the administrative inquiry.

Interviews

OIG interviewed several Bureau employees with a nexus to the complaint. The most relevant interview statements are detailed below.

[redacted]

During [redacted] OIG interview, [redacted] identified [redacted] as the [redacted]. [redacted] relayed the PaDaCap contract is due to be renewed but had received an extension for renewal into 2020 when the office intended to submit the contract into a solicitation phase. [redacted] believed the renewal award would occur during 2021. [redacted] stated both

Complainants [redacted] the current PaDaCap contract until the renewed contract was awarded, at which point the Complainants [redacted] According to [redacted] this direction came from upper management and would affect all [redacted] positions under the Commissioner for Patents. [redacted] stated [redacted] could not recall the exact date the decision to move all [redacted] positions to [redacted] was made but believed it to be in 2018 or earlier. [redacted] stated that [redacted] was aware of the Complainants' protected disclosures during the administrative inquiry as [redacted] provided a statement to during the inquiry as well. [redacted] did not believe the reclassification was a form of retaliation for the Complainants' cooperation during the administrative inquiry as all [redacted] under the Commissioner for Patents were being reclassified. [redacted] relayed the Office of Patent Application Processing had already reclassified their [redacted] to [redacted] on their contracts per the same upper management direction. [redacted] identified another contract for patent printing was preparing to issue a new solicitation reclassifying their [redacted] as a [redacted] stated the Complainants were dissatisfied with the decision and felt their roles were being diminished. [redacted] advised the Complainants their job duties would not notably change but was aware they felt the title of the role itself was important. [redacted] stated [redacted] assured the Complainants they would not experience a demotion in grade on the General Schedule pay scale and could not be passed over for promotions as the Complainants were already at the top of their grade level.

[redacted]

During [redacted] OIG interview, [redacted] advised that while [redacted] is a [redacted], [redacted] is not the Complainants' [redacted]. [redacted] works closely with the Complainants as [redacted]. [redacted] relayed similar information as [redacted] – the decision to move all [redacted] to [redacted] was made at the Subjects' level but added it was overall, [redacted] the [redacted] decision. [redacted] was advised the Complainants would be classified as [redacted] but continue performing the same job duties they currently perform. [redacted] recalled the Complainants voicing concern of their reclassification on the renewal contract but was aware the Complainants were not the only [redacted] experiencing a reclassification. [redacted] stated that [redacted] was aware of the Complainants' protected disclosures during the administrative inquiry as [redacted] provided a statement too during the inquiry as well. [redacted] did not believe the reclassification was a form of retaliation for the Complainants' cooperation during the administrative inquiry as all [redacted] under the Commissioner for Patents were being reclassified. [redacted] believed over a dozen [redacted] were in the process of being reclassified as their respective contracts were moved to [redacted] According to [redacted] the decision to begin the transition of [redacted] to [redacted] began approximately 10 years ago but had only then heard about the decision through the "rumor mill." [redacted] advised the decision was made in order to centralize all of the [redacted] in one location instead of having several [redacted] split up over various offices. [redacted] reiterated similar comments made by [redacted]

[redacted] confirming the title change will have no negative effect on the Complainant's positions or opportunity for bonuses or promotions.

[redacted]

During [redacted] OIG interview, [redacted] related [redacted] is the [redacted]. [redacted] stated [redacted] only involvement with Employee 1 was a brief email [redacted] received from Employee 1 welcoming [redacted] to the position and when [redacted] removed Employee 1 from [redacted] office's email distribution list. [redacted] reiterated the comments made by [redacted] and [redacted] but clarified that Complainant 2 [redacted] while Complainant 1 [redacted] added [redacted] met with [redacted] months prior to June of 2019 who voiced [redacted] frustrations with the prolonged renewal process and believed the recompete process completion was long overdue. [redacted] felt the process needed to be pushed forward in a more timely fashion. In order to move forward, contracts need an "e-acquisition package" listing individuals who will function as the [redacted] and [redacted] on the contract. [redacted] tasked Subject 1 with [redacted] According to [redacted], an individual from [redacted] needed to be listed at the [redacted] to comply with [redacted] direction to centralize all [redacted] under the same office. The change would allow for one individual to be listed as a [redacted] and another to be an alternate [redacted] believed since Complainant 1 [redacted] listing Complainant 1 [redacted] and Complainant 2 as the alternate would keep consistency despite the title change. [redacted] stated the contract's appointment letter lists [redacted] and [redacted] together sharing the workload evenly.

[redacted] knew of the Complainant's protected disclosure as the Complainants briefed [redacted] on the previous investigation when [redacted] assumed the [redacted] position. [redacted] stated [redacted] relayed the Complainants reclassification concerns to [redacted]

[redacted] *Office of the Commissioner for Patents*

During [redacted] OIG interview, [redacted] confirmed statements outlined above regarding the PaDaCap contract and [redacted] reclassification. In addition to concurring with information provided in previous interview statements, [redacted] advised [redacted] was aware of the Complainants' protected disclosure as [redacted] was a [redacted] at the conclusion of the administrative inquiry. [redacted] stated [redacted] found the details of the inquiry regarding Employee 1's behavior to be egregious. [redacted] added [redacted] found [redacted] actions to be unfathomable and considering the number of witnesses, [redacted] did not dispute the findings. [redacted] stated the evidence and statements provided during the case did not taint [redacted] view of any witness involved.

[redacted] stated [redacted] decision to [redacted] Complainants as [redacted] was made separate from and before the administrative inquiry occurred. [redacted] stated [redacted] had received multiple emails from Complainant 1 expressing concerns [redacted]. [redacted] stated that [redacted]. According to [redacted] [redacted] provided this reassurance to the Complainants and advised [redacted]. [redacted] related [redacted] did not know what the future holds but [redacted] but the agency as whole cannot prolong making beneficial changes due to the Complainants concerns [redacted].

INVESTIGATIVE FINDINGS

OIG's findings regarding the allegations raised in this case are set forth below along with supporting evidence:

The allegations that Subjects retaliated against the Complainants for making a protected disclosure were unsubstantiated.

Allegation #1: Proposed removal of the Complainants [redacted] as a retaliation for making a protected disclosure.

This allegation was UNSUBSTANTIATED.

The Complainants alleged that they were [redacted] after providing statements during a USPTO Human Resources inquiry into their [redacted] and [redacted] of [redacted] Employee 1.

Legal Standard

The WPA makes it a prohibited personnel practice to take or fail to take (or threaten to take or fail to take) a personnel action with respect to a federal employee or applicant for employment because of any disclosure of information by the employee or applicant that the employee reasonably believes evidences any violation of law, rule or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety.

In order to establish a prima facie case of retaliation, an employee must show [redacted] made a protected disclosure and that the disclosure was a contributing factor in a personnel action against [redacted] The employee may demonstrate that the protected disclosure was a contributing factor in the personnel action through circumstantial evidence, such as evidence that the official taking the action knew of the disclosure and the personnel action occurred within a period of time such that a reasonable person could conclude that the disclosure was a contributing factor in the personnel action.

The agency can rebut this prima facie case if it demonstrates by clear and convincing evidence that it "would have taken the same personnel action in the absence of such disclosure." The key factors in determining whether the agency has met this burden are (1) the strength of the agency's evidence in support of the personnel action, (2) the existence and strength of a retaliatory motive, and (3) the evidence that similarly situated non-whistleblowers were treated similarly.

Analysis

Protected Disclosure

Complainants' roles as [redacted] fits into the WPA's definition of a covered position. The evidence establishes Complainants made a protected disclosure under the WPA when they served as witnesses during the USPTO [redacted] Division of the Office of Human Resources Administrative Inquiry in 2017. On June 4, 2019, the Complainants were advised Complainant 2 would [redacted] and Complainant 1 would [redacted]

The evidence further establishes Complainants' management chain became aware of the disclosure at the conclusion of the Administrative Inquiry in 2018. While Subjects were not interviewed, they were [redacted] during the Administrative Inquiry therefore there is reason to believe they had knowledge of all participants in the inquiry.

Disclosure Not a Contributing Factor

The evidence did not establish the disclosure was a contributing factor in management's decision to propose moving the Complainants [redacted]. [redacted] who acknowledged to OIG [redacted] had knowledge of the Complainants' protected disclosure, made the decision to centralize all [redacted] under [redacted] The decision impacted all [redacted] under the Commissioner for Patents including those who did not participate in the Administrative Inquiry. The process of centralizing [redacted] under [redacted] was proposed in 2006 and had already been implemented on other contracts. Thus the agency provided sufficient evidence to meet the rebuttal standard as clear and convincing evidence exists the Bureau likely would have taken the same personnel action even if Complainants had not made the protected disclosure.

As a result, OIG did not substantiate a violation of 5 U.S.C. § 2302(b).

Conclusion

While the Complainants' [redacted] was a protected disclosure and evidence revealed that the Subjects had knowledge of the disclosure, the agency met the rebuttal standard in the decision to change the Complainants' [redacted].

Additionally, clear and convincing evidence exists the Bureau likely would have taken the same personnel action even if Complainant had not made the protected disclosure.

Referral to USDOJ

This investigation was not presented to an Assistant United States Attorney for prosecution as there was no evidence of a criminal violation. This investigation is being closed.

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OFFICE OF INVESTIGATIONS

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16	Investigative Record Form– [redacted] Interview (Aug. 8, 2019)
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20	Investigative Record Form– [redacted] Interview (Oct. 25, 2019)
21	Investigative Record Form– [redacted] (Jan. 27, 2020)

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NO.:
Retaliation by PTAB Management (USPTO)	19-0857-W
	TYPE OF REPORT:
	☐ Interim ☒ Final ☐ Supplemental

BASIS FOR INVESTIGATION

On August 5, 2019, the U.S. Department of Commerce (DOC), Office of Inspector General (OIG), Hotline received a complaint from [redacted] Patent Trial and Appeal Board (PTAB) with the United States Patent and Trademark Office (USPTO). The Complainant stated that [redacted] grieved [redacted] fiscal year (FY) [redacted] peer-review survey results to USPTO [redacted] via emailed letter [redacted]. In turn, the Complainant alleged [redacted] and PTAB management (Subject) retaliated against [redacted] by:

1. Issuing a proposal to remove the Complainant from [redacted] position.
2. Denying the Complainant an opportunity to participate in a mentoring program.
3. Issuing the Complainant a low performance rating for FY [redacted] Performance Appraisal Plan (PAP).

If true, such allegations could violate the Whistleblower Protection Act—5 U.S.C. § 2302(b)(8)—which makes it a "prohibited personnel practice" for an agency to take a personnel action against an employee in retaliation for making a protected disclosure.

Distribution:	Office of Inspector General, U.S. Dep't of Commerce
[redacted]	[redacted]
Signature of Case Agent: [redacted] Investigator	Signature of Approving Official: [redacted] Special Agent in Charge

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

SUMMARY OF INVESTIGATION

The Complainant alleged that the Subject retaliated against [redacted] for grieving [redacted] FY [redacted] peer-review survey results by issuing a Notice of Proposed Removal (Removal Notice) to remove the Complainant from [redacted] position. As a result of the Complainant's low peer review scores, the Complainant alleged that [redacted] was issued a low performance rating on [redacted] FY [redacted] PAP. As a result of the low performance rating, the Complainant alleged [redacted] was denied the opportunity to participate in a mentoring program. OIG determined that the allegations of violating the Whistleblower Protection Act were unsubstantiated. The OIG investigation revealed that the official who proposed Complainant's removal was unaware of the Complainant's alleged protected disclosure and the low performance scores on the Complainant's FY [redacted] PAP were a result of issues documented by [redacted] colleagues on the peer review survey. The performance evaluation determines an employee's eligibility to participate as a mentor in USPTO's enterprise-wide mentoring program. Due to the Complainant's low FY [redacted] PAP rating, [redacted] was ineligible to participate in the program. Additionally, the Complainant stated that three PTAB employees, who the Complainant labels [redacted] improperly provided information on [redacted] peer-review survey. The allegation was investigated by USPTO's associate counsel. The Complainant refused to identify two of the three [redacted] during USPTO's investigation. This investigation determined the identity of the two [redacted] and determined that they did not provide improper information.

During the course of the investigation, the Complainant submitted documentation outlining [redacted] dissatisfaction with [redacted] FY [redacted] PAP, and restated [redacted] original allegations. OIG Hotline accepted the documentation and assigned the Complaint as No. 20-0303. OIG determined that [redacted] dissatisfaction with [redacted] FY [redacted] rating was not a violation of policy or *United States Code* (U.S.C.). The Complainant's supplemental documentation regarding [redacted] original complainant did not change OIG's determination that [redacted] allegations were unsubstantiated.

METHODOLOGY OF INVESTIGATION

OIG reviewed the Complainant's Removal Notice, grievances, performance evaluations, and documents. OIG also conducted interviews of the Complainant, Subject, Complainant's supervisors, and Complainant's coworkers.

BACKGROUND

On [redacted] with the Office of the General Counsel, USPTO, submitted an Administrative Inquiry Report at the written request of the OIG. [redacted] report addressed a referral made by [redacted] USPTO, on [redacted]. That referral included a letter from the Complainant to [redacted] of the PTAB, dated [redacted] (Original

Complaint). The Complainant later sent a complaint directly to the OIG on [redacted] (Supplemental Complainant). In the Supplemental Complaint, the Complainant expanded on [redacted] prior complaints and added additional allegations of retaliation for protected whistleblower activity. With the Supplemental Complaint, the Complainant provided 22 exhibits, in excess of 1,000 pages.

In the Original Complaint, the Complainant expressed dissatisfaction with a decision by [redacted] to deny the Complainant's grievance of [redacted] FY [redacted] peer review. The Complainant raised two allegations:

1. The PTAB employees, who the Complainant labels [redacted] improperly provided information on [redacted] peer-review survey.

2. The rating [redacted] received on [redacted] FY [redacted] PAP was based on the improper peer reviews.

In the Supplemental Complaint later submitted to the OIG, the Complainant further addressed the two issues identified above and raised additional complaints:

3. The proposal to remove [redacted] was retaliation for grieving [redacted] peer review survey

4. That denying [redacted] an opportunity to participate in a mentoring program was retaliation for grieving [redacted] peer review survey.

5. That an investigation into allegations that the Complainant had engaged in threatening behavior towards another [redacted] was retaliation for circling a controversial concurring opinion draft[1].

[redacted] Administrative Inquiry Report addressed the allegations made by the Complainant. During the course of [redacted] investigation, the Complainant refused to identify two of the [redacted] who allegedly provided improper peer reviews. OIG investigation was able to determine the identity of two unmentioned [redacted] (described under "Details of Investigation"). [redacted] investigation determined the following:

1. There is no evidence that management directed [redacted] to improperly influence the Complainant's rating in the FY [redacted] peer-review survey.

[1] This allegation was not explored as Associate Counsel's Administrative Inquiry Report determined there was no evidence that the Complaint was investigated for threatening actions toward another APJ. Given the findings of Associate Counsel's Administrative Inquiry, OIG determined to narrow the scope, this allegation would not be included in the subject investigation.

2. There is no evidence of any impropriety in the Complainant's FY [redacted] PAP.

3. There is no evidence that the decision to propose the Complainant's removal was motivated to any degree by an intent to retaliate against [redacted] for protected disclosures.

4. There is no evidence that the Complainant was denied the opportunity to participate in a mentorship program in retaliation for protected disclosures.

5. There is no evidence that the Complainant was investigated for threatening actions toward another APJ in retaliation for protected disclosures.

OIG conducted the subject investigation to identify the two unnamed [redacted] and determine if these judges made any actions of impropriety. The investigation was also conducted to determine if the Removal Notice, the low performance evaluation for FY [redacted] and denial of participation in a mentorship program were an act of retaliation.

DETAILS OF INVESTIGATION

The OIG's findings regarding the allegations raised in this case are set forth below along with supporting evidence:

The allegations that Subject retaliated against the Complainant for making a protected disclosure by issuing a Proposal of Removal Notice the Complainant, providing the Complainant a low performance evaluation for FY [redacted] and denying the Complainant an opportunity to participate in a mentoring program were unsubstantiated. The allegation that "[redacted] were used to enter improper reviews on the FY [redacted] peer-review survey was also unsubstantiated.

Allegation #1: A Proposal to Remove the Complainant was issued as retaliation for [redacted] grievance.

This allegation was unsubstantiated.

The Complainant alleged that the [redacted] issued a Removal Notice to [redacted] on [redacted] as means of retaliation against the Complainant for grieving [redacted] FY [redacted] Peer Review. While the removal was proposed, [redacted] retracted it because of an internal investigation. The Removal Notice against the Complainant was initiated as [redacted] went against the advice and recommendation of [redacted] colleagues and management team by appearing to circulate a document to the United States Court of Appeals for the Federal Circuit. Management believed [redacted] circulated the document because [redacted] openly boasted to management and [redacted] colleagues that [redacted] had done so. After review of [redacted] Outlook email system, it was discovered that the document had was placed in the "Ready to Mail" mailbox in PTAB's

electronic mailing system but was removed prior to mailing. Upon this discovery, management retracted the Removal Notice.

OIG was unable to establish the act as retaliation as the [redacted] was unaware of the Complainant's grievance during the period in question. The Subject was not in the Complainant's chain of command to receive the grievance, and was purposely excluded from all conversations pertaining to the grievance. The grievance was made to the [redacted] via emailed letter from the Complainant. The Subject did not become aware of the Complainant's grievance until [redacted], during an interview for [redacted] Administrative Inquiry. Additionally, OIG determined the Subject's decision to issue the Proposal to Remove the Complainant was free from outside influence. During the investigative period, the Subject was the [redacted] in PTAB as the [redacted].

Allegation #2: The Complainant received a low performance rating for [redacted] as retaliation for [redacted] grievance.

This allegation was unsubstantiated.

The FY [redacted] PAP incorporates four elements to determine the overall score. The PAP is designed to determine work performance of an APJ during a designated appraisal period. The PAP includes performance ratings in four (4) separate, distinct but critical elements, including: (1) Element #1 (Quality); (2) Element #2 (Production); (3) Element #3 (Board/Leadership); and (4) Element #4 (Customer Service). In addition to an [redacted] annual production requirement, PTAB management utilizes the peer review survey to evaluate Elements #1 (Quality), #3 (Board/Leadership) and #4 (Customer Service). The peer review survey requires [redacted] to provide meaningful feedback on the decision-making process as administered by [his or her] colleagues.

The Complainant received a [redacted] rating on Element [redacted] on [redacted] FY [redacted] PAP. [redacted] utilizes the peer review results to determine the rating. [redacted] who entered scores on the Complainant's FY [redacted] peer review survey were interviewed and provided detailed explanations for their low scoring of the Complainant. The ratings were free from outside influence as [redacted] provided detailed interactions with the Complainant where [redacted] behaved in a less than commendable manner. The peer reviews were entered in between [redacted] through [redacted] The Complainant received [redacted] FY [redacted] PAP on [redacted] The Complainant's grievance was not made until December 8, [redacted] Given the timeline, the OIG was unable to establish the FY [redacted] PAP scores as retaliation as the Complainant's grievance was not a contributing factor to the low performance evaluation.

Allegation #3: The Complainant was denied an opportunity to participate in a mentoring program as retaliation for [redacted] grievance.

This allegation was unsubstantiated.

The Administrative Inquiry determined that there was no evidence to suggest that the Complainant was denied the opportunity to participate in the USPTO enterprise-wide Mentoring Program as retaliation for protected disclosures. The Administrative Inquiry revealed that the agency's Office of Human Resources oversees the mentorship program. Human Resources receives a list of applicants consisting of volunteers and submits the list to the Workforce Relations Division (WRD) to verify that applicants receive a rating of at least Fully Satisfactory on the FY [redacted] Performance Appraisal – which the Complainant had not. OIG interviewed the Subject and confirmed this policy.

The Associate Counsel interviewed [redacted] USPTO, Office of Human Resources (HR) during the Administrative Inquiry. The [redacted] was the project manager for the mentorship program. In that capacity, [redacted] accepts volunteers for the program each year. For FY [redacted], [redacted] accepted applications until [redacted] WRD advised the [redacted] which employees to remove based on their FY [redacted] PAP. The [redacted] complied at the direction of WRD and related [redacted] was not acquainted with the complainant nor was [redacted] aware of any complaints [redacted] may have raised with the PTAB. The [redacted] did not contact anyone at PTAB prior to removing the Complainant from the list of mentors.

OIG was unable to establish [redacted] had any knowledge of the Complainant's protected disclosures. Given this policy, the OIG was unable to establish of the denial of the Complainant's participation as retaliation as the Complainant's protected disclosure was not a contributing factor in denying the Complainant participation in the USPTO Enterprise-wide Mentoring Program for FY [redacted]

Allegation #4: "[redacted] were used to enter improper reviews on the FY [redacted] peer-review survey.

This allegation was unsubstantiated.

The Complainant refused to provide the names of two "[redacted] during the Administrative Inquiry. The OIG was able to determine that the judges were [redacted] and [redacted]

[2] Moreover, as noted above, the OIG also could not substantiate the allegation that Complainant's FY [redacted] performance evaluation – the apparent basis for [redacted] ineligibility for the mentoring program – was issued in retaliation for any protected disclosures.

([redacted] The Complainant stated that [redacted] and [redacted] were not eligible to review [redacted] during the FY [redacted] peer-review period, as they never worked with [redacted] Interviews and case reviews indicated that both [redacted] and [redacted] had worked with the Complainant during the review period. [redacted] and [redacted] stated that they issued their low ratings free of influence from other colleagues or management. [redacted] and [redacted] provided several examples of dissatisfactory interactions they had with the Complainant justifying the low scores they issued on the Complainant's peer review.

Conclusion

While the evidence revealed that certain members of PTAB management had knowledge of the Complainant's grievance at the time [redacted] removal was proposed, the issuing official did not. There was insufficient evidence to conclude that the disclosure was a contributing factor in the Complainant's low performance evaluation for FY [redacted] The denial of the Complainant's participation in the USPTO's enterprise-wide mentorship program was not a retaliatory act as the Complainant did not meet the requirements, and the denial was not related to any protected disclosures Complainant may have made. '[redacted] were not used to purposely enter low performance ratings on the Complainant's peer-review survey for FY [redacted] as all [redacted] who provided input had previously worked with the Complainant and entered scores free from influence.

Referral to USDOJ

The OIG did not present this investigation to an Assistant United States Attorney for prosecution, as there was no evidence of a criminal violation. This investigation is being closed.

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14	IRF—Prosecutor Consultation (Dec. 16, 2019)
15	IRF– [redacted] Interview (Feb. 12, 2020)
16	IRF– [redacted] Interview (Mar. 12, 2020)
17	IRF—Review of Supplemental Documents (Mar. 19, 2020)

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NO.:		
Abt Associates, Inc (NOAA)	19-0917-I		
	TYPE OF REPORT:		
	☐ Interim	☒ Final	☐ Supplemental

BASIS FOR INVESTIGATION

The U.S. Department of Commerce (DOC) Office of Inspector General (OIG) initiated this investigation on August 29, 2019 based on a Hotline complaint from attorneys representing [redacted] (Complainant), former employee of government consulting firm Abt Associates (Contractor).

Complainant made the following allegations in the hotline complaint:

1) From November 2018-February 2019, Contractor employees knowingly and purposefully misbilled labor hours to a National Oceanic and Atmospheric Administration (NOAA) contract using National Fish and Wildlife Foundation's (NFWF) project codes that were unaffiliated with the work performed. NFWF is a federally funded independent 501(c)(3) nonprofit organization but is treated as a private corporation under Federal law.

2) Whistleblower retaliation. Complainant alleged Contractor fired [redacted] for bringing the aforementioned labor mischarging scheme to the attention of Contractor management. DOC OIG opened a separate investigation for this allegation (case #19-1039-W).

DOC OIG's investigative efforts revealed Contractor defrauded NFWF rather than NOAA, which led to the U.S. Department of Interior (DOI) OIG joining the investigation as the lead agency.

The following statutes related to this investigation: Title 18 §1001 - Statements or entries generally and Title 31 §3729 - Civil False Claims.

Distribution:	OIG X	National Oceanographic and Atmospheric Administration (NOAA) X
[redacted]		[redacted]
Signature of Case Agent		Signature of Approving Official

SUMMARY OF INVESTIGATION

OIG opened an investigation into Contractor based on allegations of contract/grant fraud from Complainant, a former Contractor employee. Complainant alleged Contractor employees fraudulently billed labor hours to NOAA firm-fixed-price (FFP) contract titled "Monitoring the Hurricane Sandy Coastal Resiliency Program's Socioeconomic Impacts in the Northeast (VA-ME)," Contract #GS-00F-252CA/ EA-133C-14-BA-0039 C-0012. The NOAA contracting officer assigned to the contract highlighted that the project was successfully completed, paid in full, and NOAA received all deliverables per the Statement of Work (SOW). Consequently, the investigation into mischarged labor hours did not uncover any criminal activity or monetary loss to NOAA.

A re-interview of Complainant, however, revealed Contractor may have actually fraudulently misbilled NFWF. Examinations of employee timesheets, NFWF invoices, and Contractor employee interviews led DOC and DOI OIG investigators to conclude Contractor correctly self-identified the fraudulent billing scheme; however, Contractor incorrectly believed they fixed the issue when they deliberately chose not to charge NFWF (i.e. "wrote off") $561.75 in misbilled labor hours. OIG review of Contractor employee timesheets revealed Contractor miscalculated the write-offs. Contractor admitted to these miscalculations and to inadvertently misbilling NFWF when they should have billed NOAA. In a good-faith effort to redress the issue, they wrote off 383 additional labor hours and reimbursed NFWF. The resultant administrative recovery was $44,322.95.

DOC OIG found Complainant's claims to be unsubstantiated due to the fact that investigators could not prove that Contractor knowingly and willfully violated 18 U.S.C. § 1001 (Statements or entries generally) or 31 U.S.C. § 3729 (False claims). OIGs found Contractor self-identified the misbilling scheme and attempted to write-off the misbilled hours prior to billing NFWF. Furthermore, when OIGs uncovered evidence to suggest Contractor had inaccurately calculated the misbilled hours, Contractor cooperated by agreeing to fully reimburse NFWF, even for questionable hours "out of an abundance of caution to avoid billing the client for work not received."

Since the conclusion of the investigation, NFWF has terminated the aforementioned sub-award with Contractor due to the labor mischarging issues. NFWF also informed Contractor that in order for them to remain eligible for future awards, "it is critical for NFWF to understand the past noncompliance(s) and [Contractor's] ability to appropriately and responsibly handle Federal funds going forward." Contractor will therefore be ineligible to receive any new awards from NFWF until they answer any outstanding noncompliance questions and NFWF completes an assessment of relevant safeguards to prevent reoccurrence.

The lack of knowing and willful intent to defraud the U.S. government, along with their cooperation to redress the misbilling issues, led DOC and DOI OIG investigators unable to substantiate the aforementioned allegations.

METHODOLOGY OF INVESTIGATION

OIGs reviewed two contract files; interviewed numerous present and former Contractor employees; queried multiple investigative databases; conducted document reviews of financial documents and timesheets; and analyzed billed vs. written-off contract labor hours.

DETAILS OF INVESTIGATION

Allegation #1: From November 2018-February 2019, Contractor employees knowingly and purposefully misbilled labor hours to a NOAA contract in violation of 18 U.S.C. § 1001 (Statements or entries generally) or 31 U.S.C. § 3729 (False claims).

OIGs unsubstantiated this allegation because the mischarged project labor hours were charged to NFWF, not NOAA. As a result, NOAA suffered no financial loss.

OIGs reviewed NOAA FFP contract EA-133C-14-BA-0039 C-0012/GS-O0F-252CA. In an interview of [redacted] NOAA, the fact that the contract was a FFP contract mattered greatly. Regardless of the number of hours billed—whether it was less, the exact amount, or more than what the contract estimated—NOAA was only responsible for the initially agreed upon value of the contract: $106,093.26. [redacted] noted that after Contractor accrued costs up to the ceiling outlined in the FFP contract, Contractor contractually could not continue billing NOAA, even if they accrued additional costs to complete the project's deliverables. According to the contract itself, "The Contractor shall not exceed the stated ceiling of any task order, except at its own risk in accordance with Federal Acquisition Regulation (FAR) clause 52.212-4 (Alternate I)." [redacted] further described Contractor's work as "satisfactory."

Furthermore, in a February 21, 2020 NOAA memorandum from [redacted] confirmed [redacted] claims when [redacted] wrote, "The firm fixed price amount of $106,093.26 was paid in full on August 16, 2019 and NOAA received all deliverables in full for the original awarded value of $106,093.26." Investigators thus proved NOAA could not have been misbilled because NOAA both got what it paid for and did not pay any additional monies to do so. The unaffiliated project codes Contractor employees used to bill NOAA for its contracted work were therefore immaterial; by the very nature of the FFP contract and a lack of financial loss to NOAA, investigators concluded the allegation was unsubstantiated.

Allegation #2: Allegation #2: From November 2018-February 2019, Contractor employees knowingly and purposefully misbilled labor hours to a NFWF contract in violation of 18 U.S.C. § 1001 (Statements or entries generally) or 31 U.S.C. § 3729 (False claims).

OIGs unsubstantiated that Contractor knowingly and willfully violated 18 U.S.C. § 1001 (Statements or entries generally) or 31 U.S.C. § 3729 (False claims).

Complainant posited that [redacted] intentionally miscoded [redacted] NOAA billable hours to NFWF because of worries about significant cost overruns, delayed delivery, and client dissatisfaction on the NOAA contract. Complainant also believed [redacted] knew of the fraudulent billing scheme based on [redacted] knowledge of the NOAA contract's performance deficiencies and cost overruns. Complainant could not identify the number of times the deliberate fraudulent billing may have occurred nor the amount of money involved.

Finding NFWF's Servicing Investigative Agency

Investigators coordinated with NFWF [redacted] to determine NFWF's servicing investigative agency. [redacted] told investigators their servicing investigative agency was DOI OIG. DOC OIG investigators coordinated with agents out of DOI OIG's Eastern Division office. They ultimately agreed to open an investigation of their own, coordinate efforts going forward in the form of a joint investigation with DOC OIG, and assume investigative lead in the case.

Contractor Employee Interviews

OIGs interviewed witness [redacted] (Witness 1). [redacted] identified other individuals who may have known about the alleged fraudulent billing scheme. They included Complainant, [redacted], [redacted] and possibly [redacted]. Witness 1 believed Contractor's management resolved the issue before they ever billed NFWF. [redacted] believed no invoices went out until the issue was rectified and Contractor had done its own internal investigation into the misbilling issues. Witness 1 also asserted that this instance of misbilling was not a widespread issue; rather, Contractor had always been clear about billing only to the contract on which an employee was working.

DOC and DOI OIG investigators interviewed Contractor [redacted] said their internal investigation found that there was a break down in three places: (1) [redacted] incorrect billing directions to subordinates, (2) Complainant's failure to report the issue despite [redacted] senior status and level of experience, and (3) [redacted] purported "amplification" of the problem.

[redacted] also provided Contractor's Employee Refresher Training- Timekeeping Basics FY 2017 which highlights the impermissible nature of labor mischarging per federal regulations. It includes verbatim excerpts detailing the following:

1) The importance of maintaining accurate timekeeping systems and procedures

2) The consequences (i.e. penalties) on the company and/or individual employees for false claims on timesheets or inadequate timekeeping systems

3) Hours worked on a particular project or task must be charged to that project or task regardless of the amount of budget provided

4) Choosing an incorrect project / task combination could result in over or undercharging a client

5) Employees who fail to comply with the company's time reporting policy and procedures are subject to disciplinary actions including termination of employment.

DOC and DOI OIG investigators also interviewed Contractor employee and [redacted] (Witness 2). [redacted] echoed the statements made by Witness 1 and Contractor [redacted].

Additionally, investigators interviewed alleged labor mischarging [redacted] and [redacted] (Witness 3). In [redacted] interview, [redacted] recounted how Contractor never contacted [redacted] as part of their investigation. This was likely due to [redacted] having [redacted] at the time the investigation began. Witness 3 also did not specifically recall directing anyone to ever split their hours amongst supposedly similar projects—NOAA or NFWF. Overall, Witness 3 claimed Contractor's consulting projects often overlapped in focus but [redacted] could not recall having ever mischarged one project when another should have been billed.

DOC OIG investigators also interviewed Contractor [redacted] (Witness 4). In late January or February 2019, Witness 4 [redacted] Witness 3 when Witness 3 [redacted]. [redacted] and reviewing the work performed up to that point, Witness 4 identified Complainant and [redacted] as "two individuals that had actually charged time to [the NFWF] project that should have been charged to a NOAA project." Witness 4 stated Complainant admitted to having incorrectly charged those hours because Witness 3 told [redacted] to do so due to the similarity of the work.

Investigators conducted a second follow-up interview with Complainant. Complainant highlighted that either Witness 3 or [redacted] ([redacted] could not recall which one) instructed [redacted] to misbill the NFWF project when [redacted] should have been billing the NOAA project. Complainant maintained, however, that in doing so [redacted] did not violate Contractor's timekeeping policies.

Lastly, DOC and DOI OIG investigators interviewed NFWF [redacted] (Witness 5). [redacted] like NFWF's [redacted] was unaware of any misbilling issues related to Contractor's work on their grant and, to [redacted] knowledge, all labor hours were accounted for or Contractor wrote them off entirely.

Investigators attempted numerous times, via phone and email, to get in touch with and/or interview [redacted] with no response. [redacted] Additionally, DOC and DOI OIG investigators concluded they had enough evidence from the analyses outlined below to forego interviews of [redacted] and [redacted].

Contractor's Internal Investigative Record

OIGs reviewed Contractor's internal investigative report. The report found that labor hours, which should have been recorded to the NOAA Coast Coral project, were incorrectly recorded to the NFWF project. Contractor never invoiced these NOAA project hours to NFWF because 1) Contractor believed they reversed all the these hours following their standard practice for transferring time and 2) Contractor's financial system was technologically incompatible with NFWF's systems to facilitate the invoicing at the time the mischarges occurred.

Additionally, the report highlighted that Contractor employee Witness 4 discovered, and was the first to report, that employees had misbilled the NFWF contract. The report also claimed that on November 1, 2018, Witness 3 directed Complainant and [redacted] to mischarge numerous labor hours, which both proceeded in doing. Based on the advice they received, Complainant and [redacted] also instructed others to do the same. Ultimately, Contractor discovered [redacted] employees had billed NOAA hours to NFWF: Complainant, [redacted] and Witness 1. Contractor found these individuals misbilled a total of 554.7 hours.

An interview with Witness 3 revealed [redacted] did not maliciously intend to defraud the government; rather, [redacted] believed the projects were similar enough to warrant the interchangeable use of project codes. Doing so, however, was in clear violation of Contractor's timekeeping policies. Ultimately, Contractor did not undertake any disciplinary against Witness 3 because Contractor had already [redacted] before learning of the misbilling issues.

Contractor chose to terminate Complainant and [redacted] because of their "violation of Contractor policies and clear lack of judgment" in light of their experience and training. Contractor determined that due to Complainant' senior status at the company, [redacted] knew, or should have known, that the billing was incorrect. Contractor also determined that [redacted] induced others to report their hours incorrectly. Because [redacted] was a [redacted] and reported, along with other Contractor employees, that [redacted] management's culture made it difficult to report issues, Contractor counseled and ultimately retained [redacted]. Contractor also retained Witness 1 because [redacted] and reported Contractor's billing codes to be "confusing."

Contractor Employee Timesheets

DOC OIG investigators conducted a document review and analysis of Contractor employee timesheets. The analysis found that Complainant, [redacted] and Witness 1 each misbilled the NFWF account for work that should have been allocated to the NOAA account. To fix this, Contractor adjusted the hours by crediting NFWF's account and re-allocating them (charging) to NOAA's account.

The timesheets also revealed Contractor management had only adjusted hours from November 1, 2018-February 1, 2019. It excluded multiple months (namely February and March 2019) from their calculations. Similarly, Contractor did not include or attempt to adjust hours for former employee and [redacted] Witness 3. This led DOC and DOI OIG investigators to believe that Contractor's hours adjustment calculations were either incomplete or incorrect.

NFWF billing statements

NFWF [redacted] provided DOC and DOI investigators with NFWF reimbursement requests for the period of 5/1/2018-3/20/2020. DOI OIG investigators identified unadjusted requests for reimbursement, suggesting a miscalculation in the total number of hours Contractor ought to have billed NFWF.

Contractor Mischarging Re-Evaluation

DOC and DOI OIGs identified Contractor miscalculated the misbilled hours, overlooking any mischarged labor hours from Witness 3 and omitting multiple months during the period of alleged fraudulent activity. At OIG investigators' behest, Contractor completed a full re-evaluation of the labor hours in question in order to determine the amount of refund, if any, owed to NFWF.

Contractor's re-evaluation concluded the company had failed to account for an additional 383 mischarged labor hours, with a total cost of $42,201.86. The omitted hours came from timesheet miscalculations for [redacted] and Witness 3. After taking network service costs into account ($2,121.09), Contractor determined the total amount they would refund NFWF to be $44,322.95. Contractor ultimately maintained their decision to reimburse NFWF was the result of an "abundance of caution to avoid billing the client for work not received even where this may result in a larger refund than the facts if fully known would require."

Consultation with the U.S. Department of Justice

As lead investigative agency, DOI OIG investigators chose not to seek prosecutor input based on Contractor self-identification and pre-investigation attempts to remedy the issue. Furthermore, after DOC and DOI investigators encouraged Contractor to re-examine their mischarged labor calculations, Contractor did so willingly. DOI OIG believed Contractor engaged in a good-faith

attempt to resolve the improperly recorded labor hours by voluntarily reimbursing NFWF $44,322.95. DOI OIG is also not pursuing any individual prosecutions or administrative actions against either current/former employees or Contractor at this time.

NFWF Termination of Contractor Sub-Award

In a memorandum dated October 14, 2020, NFWF sent Contractor official notice of termination of their sub-award (grant #55013) within 30 days of the letter's receipt. NFWF cited Contractor's labor mischarging issues (referenced as "noncompliance") as the reason for the sub-award's termination. NFWF highlighted that until Contractor can fully account for its noncompliance—and NFWF's own internal assessment of the matters is complete—Contractor will not be eligible to receive any new NFWF awards.

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

Index of Pertinent Case File Documents

CMS DOCUMENT NO.	DESCRIPTION
1	Initial Complaint
2	Complainant Notification
3	FBI Notification
4	Basis for Investigation
6	Initial Investigative Steps- Public Record Database Checks
7	Complainant Notification re: Whistleblower Reprisal
9	Interview of Complainant
10	[redacted] Interview
10	Grant/Cooperative Agreement/Contract File Records
11	NOAA Document Review
11	Abt Associates Memo
13	DOI NFWF Intervention Refusal
14	Complainant Follow-Up Questioning
15	NFWF Abt Agreement
15	Grant/Cooperative Agreement File Records
16	NFWF Payment Request Document Review
17	Witness Interview [redacted]
18	NFWF Reimbursement Requests (2018-2020) Document Review
19	DOI OIG LE Coordination
20	19-1039-W and 19-0917-I Abt Investigation Docs
21	Abt Contractor Timesheet Analysis
22	NFWF Payment Request DOI OIG Analysis
23	Abt [redacted] Correspondence
24	Abt [redacted] Follow-Up Questioning
25	Abt [redacted] Written-Off Hours Update
26	Witness Interview- Abt [redacted]
27	Abt ATLAS Training Record [redacted] and [redacted]
28	Witness Interview [redacted] (NFWF)
29	Interview- [redacted]

30	Interview- [redacted]
31	Interview- [redacted]
32	Abt Response (8.19.20)
33	DOI OIG Prosecutor Declination
34	Interview (7.28.2020) - [redacted]
35	Abt-NFWF Reimbursement Acknowledgement
36	Notice of Case Closure to Complainant